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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 11494. July 24, 2017]

HEIRS OF JUAN DE DIOS E. CARLOS, ***namely***, **JENNIFER N. CARLOS, JOCELYN N. CARLOS, JACQUELINE CARLOS-DOMINGUEZ, JO-ANN CARLOS-TABUTON, JIMMY N. CARLOS, LORNA A. CARLOS, JERUSHA ANN A. CARLOS and JAN JOSHUA A. CARLOS,** *complainants, vs.* **ATTY. JAIME S. LINSANGAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; A PRIVILEGE BESTOWED BY THE STATE UPON THOSE WHO SHOW THAT THEY POSSESS, AND CONTINUE TO POSSESS, THE QUALIFICATIONS REQUIRED BY LAW FOR THE CONFERMENT OF SUCH PRIVILEGE.— [T]he practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Whether or not a lawyer is still entitled to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. The avowed purpose of suspending or disbarring an attorney is not to punish the lawyer, but to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of

an attorney, and thus to protect the public and those charged with the administration of justice. The lawyer's oath is a source of obligations and its violation is a ground for suspension, disbarment or other disciplinary action.

2. ID.; ID.; PROHIBITED FROM ACQUIRING, BY PURCHASE OR ASSIGNMENT, THE PROPERTY THAT HAS BEEN THE SUBJECT OF LITIGATION IN WHICH THEY HAVE TAKEN PART BY VIRTUE OF THEIR PROFESSION; EXCEPTION; INAPPLICABLE IN CASE AT BAR.— [The] acts [of Atty. Linsangan] are in direct contravention of Article 1491(5) of the Civil Code which forbids lawyers from acquiring, by purchase or assignment, the property that has been the subject of litigation in which they have taken part by virtue of their profession. While Canon 10 of the old Canons of Professional Ethics, which states that "[t]he lawyer should not purchase any interests in the subject matter of the litigation which he is conducting," is no longer reproduced in the new Code of Professional Responsibility (CPR), such proscription still applies considering that Canon 1 of the CPR is clear in requiring that "*a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal process*" and Rule 138, Sec. 3 which requires every lawyer to take an oath to "obey the laws as well as the legal orders of the duly constituted authorities therein." Here, the law transgressed by Atty. Linsangan is Article 1491(5) of the Civil Code, in violation of his lawyer's oath. While jurisprudence provides an exception to the above proscription, *i.e.*, if the payment of contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer, such is not applicable to the instant case.

3. ID.; ID.; A LAWYER IS NOT ENTITLED TO UNILATERALLY APPROPRIATE HIS CLIENT'S MONEY FOR HIMSELF BY THE MERE FACT THAT THE CLIENT OWES HIM ATTORNEY'S FEES.— Atty. Linsangan does not deny having received the downpayment for the property from Helen. Atty. Linsangan does not also deny failing to give complainants' share for the reason that he applied said payment as his share in the property. In so doing, Atty. Linsangan determined all by himself that the downpayment accrues to him and immediately

appropriated the same, without the knowledge and consent of the complainants. Such act constitutes a breach of his client's trust and a violation of Canon 16 of the CPR. Indeed, a lawyer is not entitled to unilaterally appropriate his client's money for himself by the mere fact that the client owes him attorney's fees. The failure of an attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice and violation of the general morality, as well as of professional ethics; it also impairs public confidence in the legal profession and deserves punishment. In short, a lawyer's unjustified withholding of money belonging to his client, as in this case, warrants the imposition of disciplinary action.

D E C I S I O N

TIJAM, *J.*:

Complainants are children of the late Juan De Dios E. Carlos (Juan) who presently seek to disbar respondent Atty. Jaime S. Linsangan (Atty. Linsangan). Atty. Linsangan acted as counsel for their late father in several cases, one of which involving the recovery of a parcel of land located in Alabang, Muntinlupa City. Complainants alleged that Atty. Linsangan forced them to sign pleadings and documents, sold the parcel of land in Alabang, Muntinlupa City in cahoots with complainants' estranged mother, and evaded payment of income taxes when he divided his share in the subject property as his supposed attorney's fees to his wife and children, all in violation of his oath as lawyer.

The Facts and Antecedent Proceedings

The parcel of land located in Alabang, Muntinlupa City and covered by Transfer Certificate of Title (TCT) No. 139061 with an area of 12,331 square meters was previously owned by the Spouses Felix and Felipa Carlos. Their son, Teofilo Carlos (Teofilo), convinced them to transfer said title to his name with a promise to distribute the same to his brothers and sisters.

Teofilo delivered the owner's duplicate copy of the title to his brother, Juan. However, Teofilo sold the entire property to Pedro Balbanero (Pedro). Pedro, however, failed to pay the agreed installment payments.

For purposes of recovering the subject property from Teofilo (and Teofilo's supposed wife, Felicidad), and from Pedro, Juan engaged the services of Atty. Linsangan. It appears that Atty. Linsangan, for Juan, filed the following cases: (a) a case[1] against Felicidad which was settled with the latter acknowledging Juan's one-half interest and ownership over the property; (b) a case against Pedro which was concluded on September 12, 1997; and (c) another case[2] against Felicidad, albeit filed by another lawyer who acted under the direct control and supervision of Atty. Linsangan. In this case against Felicidad, it appears that the other half of the property was adjudicated to Juan, as Teofilo's sole heir. Said adjudication was appealed to the CA.[3]

It further appears that Atty. Linsangan represented Juan in the following cases, likewise all involving the subject property: (a) an action for partition[4] filed by Bernard Rillo against Pedro; (b) an ejectment case[5] filed by Juan against Pedro; and (c) Juan's intervention in the case[6] between Pedro and Teofilo.

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[1] Docketed as Civil Case No. 94-1964 filed before the Regional Trial Court of Muntinlupa City, Branch 256; *Rollo*, p. 4.

[2] Entitled *"Juan de Dios E. Carlos vs. Felicidad Sandoval, etc., et al.,"* and docketed as Civil Case No. 95-135 filed before the Regional Trial Court of Muntinlupa City, Branch 256; *id.*

[3] Docketed as CV No. 53229.

[4] Entitled *"Bernard Rillo, et al. vs. Sps. Pedro and Jovita Balbanero"* and docketed as Civil Case No. 97-022 filed before Regional Trial Court of Muntinlupa City, Branch 256.

[5] Entitled *"Juan de Dios Carlos vs. Gen. Pedro R. Balbanero"* and docketed as Civil Case No. 3256 filed before the Metropolitan Trial Court of Muntinlupa City.

[6] Entitled *"Pedro R. Balbanero vs. Teofilo Carlos, et al.,"* and docketed as Civil Case No. 18358 filed before the Regional Trial Court of Makati City, Branch 60.

It finally appears that Atty. Linsangan also represented Juan in the *certiorari* cases and petitions for review filed before the CA[7] and this Court,[8] likewise involving the same property.

During the pendency of the above cases, or on September 22, 1997, Atty. Linsangan and Juan executed a Contract for Professional Services[9] enumerating the above cases being handled by Atty. Linsangan for Juan. In said Contract, Atty. Linsangan and Juan agreed, as follows:

x x x x x x x x x

WHEREAS, the Parties have decided to consolidate their agreements in connection with ATTORNEY's engagement as CLIENT's attorney to recover the subject property;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have mutually agreed and bound themselves as follows:

1. That ATTORNEY shall continue to take all legal steps to recover the 10,000 square meters covered by TCT No. 139061, or any portion thereof acceptable to CLIENT, through any or all of the Court cases mentioned above, or such other Court cases as may be necessary;

2. That ATTORNEY shall not enter into any compromise agreement without the written consent of CLIENT. CLIENT may enter into any compromise agreement only upon consultation with ATTORNEY;

3. That ATTORNEY shall avail of all legal remedies in order to recover the property and shall continue the prosecution of such remedies to the best of his knowledge, ability, and experience, all within legal and ethical bounds;

4. That CLIENT shall shoulder all necessary and incidental expenses in connection with the said cases;

5. That considering, among others, the extent of services rendered by ATTORNEY; the value of the property sought to be recovered; the importance of the case to CLIENT; the difficulty of recovery

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[7] Docketed as SP No. 38097, SP No. 40819, and SP No. 39267.

[8] Docketed as G.R. Nos. 127257, 128613, and 12517.

[9] *Rollo*, pp. 4-6.

(considering that the Balbanero spouses have a favorable Court of Appeals[’] Decision in C.V. No. 29379, while Felicidad Sandoval’s name appears in the TCT No.139061 as wife of the registered owner, Teofilo Carlos), the professional ability and experience of ATTORNEY; as well as other considerations, **CLIENT hereby confirms and ratifies that he has agreed and bound himself to pay ATTORNEY a contingent fee in an amount equivalent to FIFTY PERCENT (50%) of the market value of the property, or portion thereof, which may be recovered, or the zonal value thereof, whichever is higher.**

The said attorney’s fees shall become due and payable upon recovery of the property, or any portion thereof, (a) upon finality of a favorable Court decision, or (b) compromise settlement, whether judicially or extrajudicially, through the execution of any document acknowledging or transferring CLIENT’s rights over the property, or any portion thereof, whether or not through ATTORNEY’s, CLIENT’s, or other person’s efforts or mediation, or (c) or by any other mode by which CLIENT’s interest on the subject property, or a portion thereof, is recognized, or registered, or transferred to him; or (d) should CLIENT violate this contract; or (e) should CLIENT terminate ATTORNEY’s services without legal or just cause.

6. That CLIENT undertakes and binds himself to pay the said attorney’s fees to the following:

(a) To ATTORNEY himself;

(b) In case of ATTORNEY’S death or disability, to LORNA OBSUNA LINSANGAN;

(c) In case of death or disability of ATTORNEY and LORNA OBSUNA LINSANGAN, jointly and severally, to LAUREN KYRA LINSANGAN, LORRAINE FREYJA LINSANGAN, and JAMES LORENZ LINSANGAN;

(d) In default of all the [foregoing], to the estate of ATTORNEY.

7. That this Contract shall be binding and enforceable upon CLIENT’s heirs, successors-in-interest, administrators, and assigns, if any.

8. That finally, CLIENT hereby authorizes, at ATTORNEY’s option, the annotation of this contract on TCT No. 139061 or any subsequent title which may be issued. (Emphasis supplied)

x x x x x x x x x[10]

However, it was not only Juan who went after the property, but also Bernard Rillo and Alicia Carlos, a sister-in-law. The latter also filed an action[11] for recovery of their share and by Compromise Agreement, an area of 2,331 square meters was awarded in their favor, leaving a 10,000 square meter portion of the property.[12]

This remaining 10,000 square meter portion was eventually divided in the case filed by Juan against Felicidad (which Atty. Linsangan admits[13] to have filed albeit through another lawyer who acted under his control and supervision), through a Compromise Agreement wherein 7,500 square meters of the subject property was given to the heirs of Juan while the remaining 2,500 square meters thereof was given to Felicidad.[14] In said Compromise Agreement, the parties likewise agreed to waive as against each other any and all other claims which each may have against the other, including those pending in the CA[15] and this Court. This Compromise Agreement was approved by the trial court on December 11, 2009.[16]

Subsequently, a Supplemental Compromise Agreement[17] dated December 16, 2009 was submitted by the heirs of Juan and Atty. Linsangan, dividing among them the 7,500 square meter-portion of the property as follows: 3,750 square meters to the

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[10] *Id*. at 5-6.

[11] Docketed as Civil Case No. 11975.

[12] *Rollo,* p. 105.

[13] *Id*. at 4.

[14] *Id*. at 19-20.

[15] The cases before the CA as mentioned in the Compromise Agreement were the cases docketed as CA-G.R. CV No. 53229, SP 40819 and SP 39267 while the cases before this Court as mentioned in the Compromise Agreement were the cases docketed as G.R. Nos. 135830, 136035, 137743, 140931 and 179922; *id*. at 20.

[16] *Id*. at 22.

[17] *Id*. at 23-29.

heirs of Juan and 3,750 square meters to Atty. Linsangan pursuant to the Contract for Professional Services. In said Supplemental Compromise Agreement, Atty. Linsangan waived in favor of his wife and children his 3,750 square meter share, except as to the 250 square meters thereof, as follows:

(a) To Mrs. Lorna O. Linsangan – 2,000 square meters;
(b) To Lauren Kyra O. Linsangan – 500 square meters;
(c) To Lorraine Freyja O. Linsangan – 500 square meters;
(d) To James Lorenz O. Linsangan – 500 square meters;
(e) To Atty. Jaime S. Linsangan – 250 square meters.[18]

Said Supplemental Compromise Agreement was likewise approved by the trial court in its Decision[19] dated December 18, 2009. There was no mention in the record, however, that the Compromise Agreement and the Supplemental Compromise Agreement were likewise presented for approval before the several courts where the other cases were pending.

On December 10, 2015, Atty. Linsangan executed a Deed of Absolute Sale[20] with a certain Helen S. Perez (Helen) covering the entire 12,331 square meters of the subject property for a purchase price of One Hundred Fifty Million Pesos (PhP150,000,000). Atty. Linsangan sold the entire property using the following:

1. a Special Power of Attorney[21] dated August 26, 2010, executed by his wife Lorna Linsangan, and children, Lauren Kyra O. Linsangan, Lorraine Freyja O. Linsangan and James Lorenz O. Linsangan to sell their shares in the subject property;

2. a Special Power of Attorney[22] dated September 2009, executed by Juan's wife, Bella N. Vda. de Carlos, and their children, Jo-Ann

[18] *Id*. at 27.

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

[20] *Id*. at 42-43.

[21] *Id*. at 51-53.

[22] *Id*. at 59-61.

Carlos-Tabuton, Jacqueline Carlos-Dominguez and Jimmy N. Carlos to represent them in all cases involving their interests and shares in the properties of Juan;

3. a Special Power of Attorney[23] dated September 30, 2009 executed by Lorna A. Carlos, Jerusha Ann A. Carlos and Jan Joshua A. Carlos to represent them in all cases involving their interests and shares in the properties of Juan;

4. a Special Power of Attorney[24] dated May 2013 executed by Porfirio C. Rillo and Jose Rillo to sell their shares consisting of 200 square meter portion and 199 square meter portion, respectively, of the subject property;

5. a Special Power of Attorney[25] dated October 15, 2009 executed by Jocelyn N. Carlos and Jennifer N. Carlos to represent them in all cases involving their interests and shares in the properties of Juan;

6. a Special Power of Attorney[26] dated May 28, 2010 executed by Bernard Rillo in favor of Alicia D. Carlos to sell his share in the subject property by virtue of a Compromise Agreement dated September 3, 1987 in the case of Bernard Rillo, et al. vs. Teofilo Carlos, et al., Civil Case No. 11975, Regional Trial Court of Makati City, Branch CXLIV.

On November 28, 2015, Helen issued several checks[27] in varying amounts either made payable to Cash or to Jaime S. Linsangan or Lorna O. Linsangan and simultaneous thereto, Atty. Linsangan released the owner's duplicate original of TCT No. 139061 to Helen.[28] It further appears that in lieu of one

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[23] *Id*. at 63-67.

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

[25] *Id*. at 71-73.

[26] *Id*. at 76-77.

[27] China Banking Corporation Check Nos. 0002585043, 0002585044, 0002585046, 0002585047, 0002585048, 0002585049, 0002585050 and RCBC Check Nos. 9000008, 9000009, 9000010, 9000011 and 9000012; *id*. at 96.

[28] *Id*.

check in the amount of PhP2,500,000, Atty. Linsangan received, in cash, the amounts of PhP2,000,000 on December 4, 2015,[29] and PhP500,000 on December 10, 2015,[30] from Helen.

Upon learning of the sale, complainants allegedly requested from Atty. Linsangan for their shares in the proceeds and for the copies of the Special Power of Attorney as well as the case records, but that Atty. Linsangan refused.[31] Complainants also requested from Atty. Linsangan, this time through another lawyer, Atty. Victor D. Aguinaldo, that their shares in the subject property be at least segregated from the portion sold.[32]

On August 20, 2016, complainants wrote a letter[33] to Atty. Linsangan revoking the Special Power of Attorney which they executed in the latter's favor. In said letter, complainants accused Atty. Linsangan of conniving with their mother, Bella N. Vda. De Carlos, in submitting the Compromise Agreement and in selling the subject property. Complainants, however, recognized Atty. Lisangan's services for which they proposed that the latter be paid on the basis of *quantum meruit* instead of fifty percent (50%) of the subject property.[34]

Subsequently, or in September 2016, complainants filed the instant administrative complaint[35] against Atty. Linsangan accusing the latter of forcing them to sign pleadings filed in court, copies of which were not furnished them; of selling the subject property in cahoots with their mother; of evading the payment of income taxes when he apportioned his share in the subject property to his wife and children.[36]

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[29] *Id*. at 85.

[30] *Id*. at 86.

[31] *Id*. at 135.

[32] *Id*. at 146, 148.

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

[34] *Id*. at 16.

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

[36] *Id*. at 2.

By way of Comment,[37] Atty. Linsangan avers that the Supplemental Compromise Agreement was never questioned by the complainants until now[38] and that they had never requested for a copy thereof from him. Atty. Linsangan admits that the subject of the sale with Helen is the property in Alabang, Muntinlupa City and that complainants were not given a share from the payments because such were specifically made applicable to his and his family's share in the subject property only.[39] Atty. Linsangan also contends that the proposal that he be paid on the basis of *quantum meruit* is only for the purpose of reducing his 50% share as stated in the Contract for Professional Services he executed with Juan, so that the balance thereof may accrue to complainants.[40]

The Issue

The threshold issue to be resolved is whether respondent is guilty of violating his lawyer's oath.

The Ruling of this Court

After a careful review of the record of the case, the Court finds that respondent committed acts in violation of his oath as an attorney thereby warranting the Court's exercise of its disciplinary power.

We begin by emphasizing that the practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.[41] Whether or not a lawyer is still entitled to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct

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[37] *Id*. at 103-116.

[38] *Id*. at 110.

[39] *Id*. at 110-111.

[40] *Id*. at 112.

[41] *Mecaral v. Atty. Velasquez*, 636 Phil. 1, 6 (2010), p. 4, citing *Mendoza v. Atty. Deciembre,* 599 Phil. 182, 191 (2009)*; Yap-Paras v. Atty. Paras*, 491 Phil. 382, 390 (2005).

rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. The avowed purpose of suspending or disbarring an attorney is not to punish the lawyer, but to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of an attorney, and thus to protect the public and those charged with the administration of justice.[42] The lawyer's oath is a source of obligations and its violation is a ground for suspension, disbarment or other disciplinary action.[43]

The record shows and Atty. Linsangan does not deny, that while the cases involving the subject property were still pending resolution and final determination, Atty. Linsangan entered into a Contract for Professional Services with Juan wherein his attorney's fees shall be that equivalent to 50% of the value of the property, or a portion thereof, that may be recovered. It is likewise not denied by Atty. Linsangan that he apportioned upon himself, and to his wife and children, half of the property awarded to complainants as heirs of Juan, through a Supplemental Compromise Agreement. Similarly, such Supplemental Compromise Agreement was entered into by Atty. Linsangan and the heirs of Juan concurrently with the pendency of several cases before the CA and this Court[44] involving the very same property. What is more, Atty. Linsangan, probably anticipating that he may be charged of having undue interest over his client's property in litigation, caused another lawyer to appear but all the while making it absolutely clear to Juan that the latter's appearance was nevertheless under Atty. Linsangan's "direct control and supervision."

Plainly, these acts are in direct contravention of Article 1491(5)[45] of the Civil Code which forbids lawyers from acquiring,

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[42] *Atty. Alcantara, et al. v. Atty. De Vera,* 650 Phil. 214, 221 (2010), citing *Marcelo v. Atty. Javier, Sr.*, 288 Phil. 762, 776-777.

[43] *Reyes v. Gaa,* 316 Phil. 97, 102 (1995).

[44] *Supra* note 14.

[45] Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

by purchase or assignment, the property that has been the subject of litigation in which they have taken part by virtue of their profession. While Canon 10 of the old Canons of Professional Ethics, which states that "[t]he lawyer should not purchase any interests in the subject matter of the litigation which he is conducting," is no longer reproduced in the new Code of Professional Responsibility (CPR), such proscription still applies considering that Canon 1 of the CPR is clear in requiring that *"a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal process"* and Rule 138, Sec. 3 which requires every lawyer to take an oath to "obey the laws as well as the legal orders of the duly constituted authorities therein."[46] Here, the law transgressed by Atty. Linsangan is Article 1491(5) of the Civil Code, in violation of his lawyer's oath.

While jurisprudence provides an exception to the above proscription, *i.e.,* if the payment of contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer,[47] such is not applicable to the instant case. To reiterate, the transfer to Atty. Linsangan was made while the subject property was still under litigation, or at least concurrently with the pendency of the *certiorari* proceedings in the CA and the petitions for review in this Court.[48] As

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(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

[46] See *Angel L. Bautista v. Atty. Ramon A. Gonzales*, A.M. No. 1625, February 12, 1990, 182 SCRA 151, 160.

[47] See *Biascan v. Atty. Lopez*, 456 Phil. 173, 180 (2003).

[48] See *Valencia v. Atty. Cabanting*, 273 Phil. 534, 542-543 (1991),where the Court suspended respondent for six (6) months from the practice of law

mentioned, there was nothing in the record which would show that these cases were likewise dismissed with finality either before the execution of, or by virtue of, the Compromise Agreement and the Supplemental Compromise Agreement between complainants and Atty. Linsangan.

What is more, Atty. Linsangan, at the guise of merely waiving portions of the subject property in favor of his wife and children, actually divided his attorney's fee with persons who are not licensed to practice law in contravention of Rule 9.02,[49] Canon 9[50] of the CPR.

Another misconduct committed by Atty. Linsangan was his act of selling the entire 12,331 square meters property and making it appear that he was specifically authorized to do so by complainants as well as by the other persons[51] to whom portions of the property had been previously adjudicated. However, a perusal of the supposed Special Power of Attorney attached to the Deed of Absolute Sale, save for that executed by his wife and children, only authorizes Atty. Linsangan to represent complainants in the litigation of cases involving Juan's properties. Nothing in said Special Power of Attorney authorizes Atty. Linsangan to sell the entire property including complainants' undivided share therein.

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when he purchased his client's property which was still the subject of a pending *certiorari* proceeding.

[49] Rule 9.02 - A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

(a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to persons specified in the agreement; or

(b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

(c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan even if the plan is based in whole or in part, on a profit sharing agreement.

[50] CANON 9 - A LAWYER SHALL NOT, DIRECTLY OR INDIRECTLY, ASSIST IN THE UNAUTHORIZED PRACTICE OF LAW.

[51] Namely, Felicidad Carlos, Pedro Balbanero, and Bernard Rillos.

Atty. Linsangan's reasoning that he only took it upon himself to sell the property because complainants were unfamiliar with real estate transactions does not exculpate him from liability. If indeed that were the case, then it is incumbent upon Atty. Linsangan to make it clear to the complainants that he was acting in such capacity and not as their lawyer.[52] But even this, Atty. Linsangan failed to do.

Worse, Atty. Linsangan does not deny having received the downpayment for the property from Helen. Atty. Linsangan does not also deny failing to give complainants' share for the reason that he applied said payment as his share in the property. In so doing, Atty. Linsangan determined all by himself that the downpayment accrues to him and immediately appropriated the same, without the knowledge and consent of the complainants. Such act constitutes a breach of his client's trust and a violation of Canon 16[53] of the CPR. Indeed, a lawyer is not entitled to unilaterally appropriate his client's money for himself by the mere fact that the client owes him attorney's fees.[54] The failure of an attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice and violation of the general morality, as well as of professional ethics; it also impairs public confidence in the legal profession and deserves punishment. In short, a lawyer's unjustified withholding of money belonging to his client, as in this case, warrants the imposition of disciplinary action.[55]

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[52] Rule 15.08 of the CPR provides:

A lawyer who is engaged in another profession or occupation concurrently with the practice of law shall make it clear to his client whether he is acting as lawyer or in another capacity.

[53] CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

[54] *Cabigao and Yzquierdo v. Fernando Rodrigo*, 57 Phil. 20, 23 (1932).

[55] *Sencio v. Atty. Calvadores*, 443 Phil. 490, 494 (2003); *Reyes v. Maglaya*, 313 Phil. 1, 7 (1995).

Pointedly, the relationship of attorney and client has consistently been treated as one of special trust and confidence. An attorney must therefore exercise utmost good faith and fairness in all his relationship with his client. Measured against this standard, respondent's act clearly fell short and had, in fact, placed his personal interest above that of his clients. Considering the foregoing violations of his lawyer's oath, Article 1491(5) of the Civil Code, Rule 9.02, Canon 9, and Canon 16 of the CPR, the Court deems it appropriate to impose upon respondent the penalty of six (6) months suspension from the practice of law.[56]

WHEREFORE, We find Atty. Jaime S. Linsangan **LIABLE** for violations of his lawyer's oath, Article 1491(5) of the Civil Code, Rule 9.02, Canon 9, and Canon 16 of the Code of Professional Responsibility and he is hereby **SUSPENDED** from the practice of law for **SIX (6) months** effective from the date of his receipt of this Decision. Let copies of this Decision be circulated to all courts of the country for their information and guidance, and spread in the personal record of Atty. Linsangan.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 207193. July 24, 2017]

ROBLE BARBOSA and RAMDY BARBOSA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[56] *Supra* note 44.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The prosecution successfully established the elements of the crime of homicide, which are: (1) a person was killed; (2) the accused killed that person without justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or that of parricide or infanticide. The Certificate of Death of Artemio Betita, Jr. shows that the underlying cause of his death was a gunshot wound. Petitioners were seen holding firearms immediately after the victim was shot and his fatal injury was caused by a bullet fired from one of the firearms of petitioners. Petitioners' criminal intent is conclusively presumed due to the death of the victim. They only desisted from further shooting the victim after Betita pleaded for them to stop. In the absence of any of the qualifying circumstances of murder, parricide and infanticide, treachery having been properly disregarded by the courts below, the crime committed by petitioners was homicide.

2. **ID.; ID.; ID.; THE GUILT OF THE ACCUSED MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE; REQUISITES.—** The guilt of the petitioners was sufficiently established by circumstantial evidence, which has the following requisites: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. There are several pieces of circumstantial evidence in this case that form an unbroken chain leading to a fair and logical conclusion that petitioners committed the crime of homicide. x x x There is also nothing in the records that would show that Betita was actuated by improper motive, and absent any compelling reason to conclude otherwise, her testimony will be given full faith and credence. Her positive identification of petitioners as the persons last seen with the victim immediately after the commission of the crime combined with other pieces of circumstantial evidence were sufficient to establish that petitioners fatally shot the victim.

3. **ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, WHEN PROPER; CASE AT BAR.—** The award of

₱200,000.00 as actual damages must be deleted. "To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts." In lieu of actual damages, temperate damages in the amount of ₱50,000.00 is awarded. Temperate damages are awarded due to the loss suffered, even if the amount cannot be ascertained. On the other hand, attorney's fees and litigation expenses can only be recovered when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded. It was therefore incorrect for the RTC to award attorney's fees and litigation expenses since these circumstances do not exist in this criminal action for homicide. The award of ₱50,000.00 as civil indemnity was proper. Moral damages in the amount of ₱50,000.00 must also be awarded pursuant to prevailing jurisprudence. Moreover, an interest at the rate of 6% *per annum* must also be imposed on all amounts of damages from the date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

Teodosio Daquilanea Ventilacion & Avera Law Offices for petitioners.

The Solicitor General for respondent.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This Petition for Review assails the February 22, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 00686 which affirmed the September 20, 2006 Decision[2] of the Regional Trial Court (RTC), Branch 66, Barotac Viejo, Iloilo, finding petitioners Roble Barbosa (Roble) and Ramdy

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[1] CA *rollo*, pp. 117-127; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes.

[2] Records, pp. 518-522; penned by Judge Rogelio J. Amador.

Barbosa (Ramdy) guilty beyond reasonable doubt of the crime of homicide.

The facts of the case are as follows:

An Information[3] for murder was filed against petitioners for the death of Artemio Betita, Jr. (the victim). Petitioners pleaded "not guilty" during their respective arraignments.

The prosecution established that at 2:45 p.m. on May 16, 1998, Arnem Betita (Betita) was inside their family home when she heard her father, the victim, mumbling the words: "*Nagsalig lang na sila, kay mahisaon nga mga tawo*" (They are confident of themselves, and they are envious people). Minutes later, she heard a man outside their house shouting "Get out". Her father responded to the challenge and stepped out of their house. Three gunshots erupted, which prompted Betita to investigate. When she went outside, she saw petitioner Ramdy running away with a gun in his hand. She also noticed petitioner Roble on the terrace of his house holding a long firearm. Betita rushed towards her wounded father who was slumped on the floor. She knelt and embraced him, then shouted to Roble "*tama na, tama na*" (that's enough, that's enough). The victim's mother and neighbors arrived and brought him to the hospital where he was pronounced "dead on arrival". The autopsy on the cadaver of the victim revealed that his death was due to a gunshot wound in his left eyebrow caused by a bullet fired from a caliber .25 firearm.

Petitioners, on the other hand, manifested that they would not present evidence and submitted the case for decision.

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[3] The accusatory portion reads:

That on or about May 16, 1998, in the Municipality of Carles, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and working together, armed with firearms, with deliberate intent and with decided purpose to kill and by means of treachery, did then and there willfully, unlawfully and feloniously shoot Artemio Betita, Jr. with the firearms which the accused were then provided, hitting the victim in his left eyebrow medial-entrance which caused his death. *Id*. at 1.

Ruling of the Regional Trial Court

In its Decision dated September 20, 2006, the RTC ruled that while prosecution witness Betita was unable to actually see the person who shot the victim, there were several pieces of evidence sufficient to prove that petitioners were guilty beyond reasonable doubt of killing him. The RTC held that the circumstantial evidence, when combined, constituted an unbroken chain that warranted a conclusion that petitioners were responsible for the killing. The RTC considered the following: (1) the houses of the victim and petitioners were adjacent and separated only by a wall; (2) they were business rivals in hauling and trucking; (3) prior to the incident, petitioners and the victim had an altercation regarding a cargo; (4) petitioner Roble was angered and mauled the driver of the victim's truck; (5) the victim was heard murmuring "they are confident of themselves and they are envious people" in response to petitioner's mauling of the driver while inside his house a few minutes before he was killed; (6) someone outside the victim's house challenged the victim to "get out!" and show himself; (7) when the victim emerged from his house, three gunshots erupted; (8) after the victim fell from a fatal bullet wound, petitioner Roble was seen on the terrace of his house holding a long firearm while petitioner Ramdy was at the post at the concrete wall near the crime scene also holding a firearm; (9) petitioner Ramdy ran away thereafter; and (10) the petitioners are father and son.

The RTC ruled that conspiracy was evident from the fact that petitioners: (1) were both armed during the incident; (2) were strategically positioned while waiting for their prey; (3) were both near the victim during the incident; and (4) desisted after the victim's daughter pleaded for them to stop. However, the RTC held that the prosecution failed to prove the qualifying circumstance of treachery since the victim had been forewarned of the impending assault of the petitioners by accepting the challenge for him to get out of his house.

Thus, the RTC convicted petitioners only of homicide and sentenced each one to suffer an indeterminate prison term of 8 years and 1 day of *prision mayor*, as minimum, to 14 years

and 8 months of *reclusion temporal*, as maximum. It also ordered petitioners to pay the heirs of the victim the amounts of ₱50,000.00 as civil indemnity, ₱200,000.00 as actual expenses spent for the wake and burial of the victim, attorney's fees, litigation expenses, and costs of suit.

Ruling of the Court of Appeals

In its Decision dated February 22, 2012, the CA affirmed the RTC's ruling that petitioners are guilty beyond reasonable doubt of homicide. It concurred with the findings of the RTC that the evidence were sufficient to establish that petitioners were responsible for the shooting incident that resulted in the death of the victim.

Dissatisfied, petitioners filed a Petition for Review under Rule 45. They insist that the testimony of Betita should not be considered against them for being unreliable and insufficient. Petitioners contend that there was no conspiracy between them since nobody actually saw the commission of the crime.

Our Ruling

The Petition lacks merit.

The prosecution successfully established the elements of the crime of homicide, which are: (1) a person was killed; (2) the accused killed that person without justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or that of parricide or infanticide.[4] The Certificate of Death of Artemio Betita, Jr.[5] shows that the underlying cause of his death was a gunshot wound. Petitioners were seen holding firearms immediately after the victim was shot and his fatal injury was caused by a bullet fired from one of the firearms of petitioners. Petitioners' criminal intent is conclusively presumed due to the death of the victim. They

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[4] *Wacoy vs. People*, 761 Phil. 570, 578 (2015).

[5] Records, p. 41.

only desisted from further shooting the victim after Betita pleaded for them to stop. In the absence of any of the qualifying circumstances of murder, parricide and infanticide, treachery having been properly disregarded by the courts below, the crime committed by petitioners was homicide.

The guilt of the petitioners was sufficiently established by circumstantial evidence, which has the following requisites: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[6] There are several pieces of circumstantial evidence in this case that form an unbroken chain leading to a fair and logical conclusion that petitioners committed the crime of homicide.

First, when the victim arrived in his house, he was heard murmuring the words: "They are confident of themselves and they are envious people". Second, within a few minutes, a man challenged the victim to come out of his house. Third, when the victim emerged from his house, three gunshots were fired. Fourth, when Betita went out to investigate, she found the victim's body slumped on the ground. Fifth, petitioners were holding firearms and both were within the vicinity of the crime scene. Betita saw petitioner Ramdy near the concrete wall of their house holding a gun. She also saw petitioner Roble holding a rifle at the terrace of his house. Sixth, petitioners were inexplicably holding firearms. Seventh, petitioners were the only persons seen at the scene of the crime. Taken together, these circumstantial evidence lead to an acceptable inference that petitioners perpetrated the crime.

The RTC and the CA were correct in ruling that petitioners were in conspiracy in killing the victim. The circumstantial evidence showed that petitioners are father and son, and both carried firearms when they confronted the victim. During the confrontation, three gunshots were heard, which made it possible that both of them fired a gun. Petitioner Roble was at the terrace

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[6] RULES OF COURT, Rule 133, Sec. 4.

of his house while petitioner Ramdy sought cover at the wall which was closer to the victim. Their assault ceased after the victim's daughter pleaded for them to stop. After shooting the victim, Ramdy fled while Roble sought refuge inside his house instead of lending assistance to the victim. They clearly acted in unison to achieve the common objective of killing the victim.

There is also nothing in the records that would show that Betita was actuated by improper motive, and absent any compelling reason to conclude otherwise, her testimony will be given full faith and credence. Her positive identification of petitioners as the persons last seen with the victim immediately after the commission of the crime combined with other pieces of circumstantial evidence were sufficient to establish that petitioners fatally shot the victim.

The CA was therefore correct in affirming the RTC's Decision finding petitioners guilty beyond reasonable doubt of homicide and sentencing them accordingly.

However, the maximum period of the indeterminate penalty imposed upon petitioners must be modified to 14 years, 8 months **and 1 day** of *reclusion temporal*. The award of ₱200,000.00 as actual damages must be deleted. "To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts."[7] In lieu of actual damages, temperate damages in the amount of ₱50,000.00 is awarded.[8] Temperate damages are awarded due to the loss suffered, even if the amount cannot be ascertained.[9] On the other hand, attorney's fees and litigation expenses can only be recovered when a separate civil action to recover civil liability has been filed or when

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[7] *People v. Villar*, 757 Phil. 675, 684 (2015). Citation omitted.

[8] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 388.

[9] *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, 748 Phil. 692, 702 (2014).

exemplary damages are awarded.[10] It was therefore incorrect for the RTC to award attorney's fees and litigation expenses since these circumstances do not exist in this criminal action for homicide. The award of ₱50,000.00 as civil indemnity was proper. Moral damages in the amount of ₱50,000.00 must also be awarded pursuant to prevailing jurisprudence.[11] Moreover, an interest at the rate of 6% *per annum* must also be imposed on all amounts of damages from the date of finality of this Resolution until fully paid.

WHEREFORE, the Petition for Review is **DENIED**. The assailed February 22, 2012 Decision of the Court of Appeals in CA-G.R. CEB-CR No. 00686 is **AFFIRMED with MODIFICATIONS** that petitioners shall suffer the indeterminate penalty of imprisonment of 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. The award of ₱200,000.00 as actual damages, is deleted. Temperate damages in the amount of ₱50,000.00 shall be awarded in lieu thereof. The awards for attorney's fees and litigation expenses are likewise deleted for lack of basis. Aside from the award of ₱50,000.00 as civil indemnity, an award of ₱50,000.00 as moral damages is also proper. An interest of 6% *per annum* shall be imposed on damages awarded from the finality of this Resolution until fully paid.

SO ORDERED.

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

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[10] *Heirs of Raymundo Castro v. Bustos*, 136 Phil. 553, 562 (1969).

[11] *People v. Jugueta*, *supra* at 386.

FIRST DIVISION

[G.R. No. 215332. July 24, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARK GAMBA *y* NISSORADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— The elements of the special complex crime of robbery with homicide are: "(1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. x x x The robbery is the [main] purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery." The prosecution successfully established these elements. Appellant, together with his three companions, boarded the public utility jeepney and declared a "hold-up". The passengers, including Sandagan, were forced at gunpoint to turnover their cash and possessions. When Cerbito refused to be divested of his cellphone, appellant kicked him three or four times with such force that he fell off the jeepney. Still dissatisfied with the violence he vented on Cerbito, appellant fired at him twice, hitting him in his chest and abdomen resulting in his untimely death. Appellant and his three cohorts then fled together with their loot. Undoubtedly, their main objective was to rob the passengers of the jeepney; the fatal shooting of Cerbito was merely incidental, resulting by reason of or on the occasion of the robbery. Appellant therefore committed the crime of robbery with homicide as charged in the Information.

2. ID.; ID.; ID.; DEFENSES OF DENIAL AND ALIBI ARE THE WEAKEST DEFENSES AND ARE EASY TO CONCOCT AND DIFFICULT TO DISPROVE; CASE AT BAR.— Against the prosecution's evidence, appellant's defenses of denial and alibi are worthless. These are the weakest defenses and

are easy to concoct and difficult to disprove. Besides, appellant's alibi that he was in a *videoke* bar during the commission of the crime was not substantiated by evidence. Appellant also failed to prove that it was physically impossible for him to have been at the scene of the crime when it occurred.

3. **ID.; ID.; ID.; CIVIL LIABILITY; DAMAGES AWARDED, MODIFIED.—** All told, the appeal must be denied. Appellant's conviction for the complex crime of robbery with homicide was indeed proved beyond reasonable doubt. The imposition of the penalty of *reclusion perpetua* was therefore warranted. The award of actual damages in the amount of ₱66,047.10 to the heirs of Cerbito is proper. However, the awards of civil indemnity, moral damages and exemplary damages for his death must be increased to ₱75,000.00 each in line with prevailing jurisprudence. As regards Sandagan, the award of ₱50,000.00 as moral damages must be deleted since this kind of damages can only be given when the criminal offense results in physical injuries. In this case, Sandagan did not suffer any physical injury from the robbery. As regards the award of ₱3,000.00 as temperate damages, the same must be reduced to ₱1,100.00, which is equivalent to the amount of the belongings divested from Sandagan. Finally, legal interest of 6% *per annum* must be imposed on all the monetary awards, from the date of finality of the Resolution until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

DEL CASTILLO, *J.*:

On appeal is the June 19, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 05198 which affirmed

[1] CA *rollo*, pp. 134-145; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Amelita G. Tolentino and Leoncia Real-Dimagiba.

with modification the July 29, 2011 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 41, finding appellant Mark Gamba *y* Nissorada guilty of robbery with homicide.

The facts are as follows:

Appellant was charged with the special complex crime of robbery with homicide.[3] When arraigned, he pleaded "not guilty".

During trial, the prosecution adduced evidence showing that at around 1:00 a.m. of June 2, 2006, appellant and three unidentified men boarded a public utility jeepney. When the vehicle was traversing along Tejeron corner Paco Roman Streets, Sta. Ana, Manila, they announced a "hold-up". Appellant and one of his companions pulled out their guns and divested Esteban Sandagan *y* Tampos (Sandagan) of his cash and possessions in the amount of ₱1,100.00. John Mark Cerbito (Cerbito), the passenger who was seated beside the driver, refused to give his cellphone, hence appellant kicked him three to four times. As a result, Cerbito fell off the jeepney whereupon appellant shot him twice, hitting him in his chest and abdomen. Thereafter,

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[2] Records, pp. 367-382; penned by Presiding Judge Rosalyn D. Mislos-Loja.

[3] The accusatory portion of the Information reads as follows:

That on or about June 2, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another, with intent to gain and by means of force, violence and intimidation to wit: by then and there pretending to be passengers of a jeepney plying along Tejeron corner Paco Roman Street, Sta. Ana, Manila, this City, announcing a [holdup] and at gunpoint divested from, among others, ESTEBAN SANDAGAN *y* TAMPOS his ring, silver necklace and cash in the amount of ₱1,100.00, did then and there willfully and feloniously take, rob and carry away the same belonging to said Esteban Sandagan *y* Tampos against his will, to the damage and prejudice of the said owner in the amount of more than ₱1,100.00, Philippine Currency; that by reason of and on the occasion of said robbery, the said accused, with intent to kill, kicked JOHN MARK CERBITO *y* BOLISAY out of the said jeepney and shot him twice on the trunk with a gun thereby inflicting upon him gunshot wounds, which were the direct and immediate cause of his death thereafter. *Id*. at 1.

appellant and his three companions ran away with their loot. Cerbito died due to his gunshot wounds.

Two days later, police officers brought Sandagan to a hospital where he saw appellant, who was gunned down in the course of another robbery incident. Sandagan duly identified appellant as likewise the perpetrator of the June 2, 2006 robbery-homicide. Thus, appellant was arrested.

Appellant denied the charges against him. He claimed to have been engaged in a drinking session with a friend in a *videoke* bar and restaurant at the corner of Callejon and Tejeron Streets, Sta. Ana, Manila during the June 2, 2006 robbery-homicide incident.

Ruling of the Regional Trial Court

In its Decision dated July 29, 2011, the RTC found appellant guilty beyond reasonable doubt of the complex crime of robbery with homicide. It found the testimony of Sandagan sufficient to prove that appellant and his three companions conspired in divesting him at gunpoint of his cash and personal belongings, and in shooting Cerbito to death. The RTC gave full credence to the testimony of Sandagan since he saw appellant and his companions at close range during the incident. In addition, the jeepney, as well as the crime scene, was well-lighted. The RTC ruled that the positive identification of appellant and his companions as the perpetrators of the crime prevails over his defenses of denial and alibi. Moreover, the RTC noted no improper motive on the part of Sandagan to testify falsely against appellant or to accuse him of committing a heinous crime. The RTC thus sentenced appellant to suffer the penalty of *reclusion perpetua*, to pay the amount of ₱10,000.00 to Sandagan as moral damages, and the amounts of ₱25,000.00 as moral damages, ₱10,000.00 as exemplary damages, ₱66,047.10 as actual damages, and ₱75,000.00 as civil indemnity to the heirs of Cerbito.

Ruling of the Court of Appeals

In the assailed Decision dated June 19, 2014, the CA ruled that the prosecution successfully established all the elements

of the crime of robbery with homicide. It brushed aside appellant's argument that his identification in the hospital created prejudice in Sandagan's mind since he was the only person presented by the police. The CA held that the unwavering testimonies of the prosecution witnesses convincingly proved that said identification was not manipulated by the police. The CA therefore affirmed the penalty of *reclusion perpetua* imposed by the RTC on appellant but with modification as to the awards of damages. As modified, the award of moral damages to the heirs of Cerbito and to Sandagan was increased to ₱50,000.00 each. In addition, appellant was ordered to pay Sandagan temperate damages in the amount of ₱3,000.00. The awards of exemplary damages in the amount of ₱10,000.00; actual damages of ₱66,047.10; and civil indemnity of ₱75,000.00 to the heirs of Cerbito were retained.

Hence, this appeal.

Our Ruling

The appeal lacks merit.

The elements of the special complex crime of robbery with homicide are: "(1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. x x x The robbery is the [main] purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."[4] The prosecution successfully established these elements. Appellant, together with his three companions, boarded the public utility jeepney and declared a "hold-up". The passengers, including Sandagan, were forced at gunpoint to turnover their cash and possessions. When Cerbito refused to be divested of his cellphone, appellant kicked him three or four

[4] *People v. Baron*, 635 Phil. 608, 617 (2010).

times with such force that he fell off the jeepney. Still dissatisfied with the violence he vented on Cerbito, appellant fired at him twice, hitting him in his chest and abdomen resulting in his untimely death. Appellant and his three cohorts then fled together with their loot. Undoubtedly, their main objective was to rob the passengers of the jeepney; the fatal shooting of Cerbito was merely incidental, resulting by reason of or on the occasion of the robbery. Appellant therefore committed the crime of robbery with homicide as charged in the Information.

Against the prosecution's evidence, appellant's defenses of denial and alibi are worthless. These are the weakest defenses and are easy to concoct and difficult to disprove. Besides, appellant's alibi that he was in a *videoke* bar during the commission of the crime was not substantiated by evidence. Appellant also failed to prove that it was physically impossible for him to have been at the scene of the crime when it occurred.

All told, the appeal must be denied. Appellant's conviction for the complex crime of robbery with homicide was indeed proved beyond reasonable doubt. The imposition of the penalty of *reclusion perpetua* was therefore warranted. The award of actual damages in the amount of ₱66,047.10 to the heirs of Cerbito is proper. However, the awards of civil indemnity, moral damages and exemplary damages for his death must be increased to ₱75,000.00 each in line with prevailing jurisprudence.[5] As regards Sandagan, the award of ₱50,000.00 as moral damages must be deleted since this kind of damages can only be given when the criminal offense results in physical injuries.[6] In this case, Sandagan did not suffer any physical injury from the robbery. As regards the award of ₱3,000.00 as temperate damages, the same must be reduced to ₱1,100.00,

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[5] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[6] Article 2219 of the Civil Code reads:

> Art. 2219 – Moral damage may be recovered in the following and analogous cases:
>
> (1) A criminal offense resulting in physical injuries;
>
> x x x x x x x x x

which is equivalent to the amount of the belongings divested from Sandagan. Finally, legal interest of 6% *per annum* must be imposed on all the monetary awards, from the date of finality of the Resolution until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The assailed June 19, 2014 Decision of the Court of Appeals in CA-G.R. CR HC No. 05198 finding appellant Mark Gamba *y* Nissorada guilty beyond reasonable doubt of robbery with homicide and sentencing him to suffer the penalty of *reclusion perpetua,* is **AFFIRMED** with the **MODIFICATIONS** that the awards of moral damages and exemplary damages to the heirs of John Mark Cerbito *y* Bolisay are increased to ₱75,000.00 each; the award of moral damages to Esteban Sandagan *y* Bolisay is deleted while the award of temperate damages is reduced to ₱1,100.00. All damages awarded shall earn interest at the rate of *6% per annum* from date of finality of this Resolution until full payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220759. July 24, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO MENDOZA *y* POTOLIN *a.k.a.* "JOJO,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE

OF MARIJUANA; ELEMENTS.— In every prosecution for the illegal sale of marijuana, the following elements must be proved: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. x x x Peddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not. Moreover, drug-pushing when done on a small-scale, like the instant case, belongs to those types of crimes that may be committed any time and at any place.

2. ID.; ID.; 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 OPERATIONS; CASE AT BAR.— In this case, it was shown that there was a prior surveillance on appellant's illegal activities and it was confirmed that indeed appellant was selling illegal drugs, hence, a buy-bust operation was planned. The CI introduced PO2 Ricote to appellant as a buyer of marijuana. Appellant negotiated with PO2 Ricote as to the price of the marijuana to which the latter agreed and paid the same, and he was arrested. No doubt, what transpired was a typical buy-bust operation which is a form of entrapment. 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 operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. Appellant's argument that a reasonable doubt was created as to the identity of the marked money as it was not pre-recorded in the police blotter deserves a short rift. Suffice it to state that neither law nor jurisprudence requires that the buy-bust money be entered in the police blotter. In fact, the non-recording of the buy-bust money in the police blotter is not essential, since they are not elements in the illegal sale of dangerous drugs.

Notably, the buy-bust money was presented and identified in court by PO2 Ricote.

3. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE PURPOSE OF PROOF OF THE CHAIN OF CUSTODY TO ENSURE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED, AS THUS DISPEL UNNECESSARY DOUBTS AS TO THE IDENTITY OF THE EVIDENCE.—** The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized items are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the laboratory to determine its composition, and all the way to the time it was offered in evidence.

4. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; A DEFENSE OF DENIAL WHICH IS UNSUPPORTED AND UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE BECOMES NEGATIVE AND SELF-SERVING, DESERVING NO WEIGHT IN LAW, AND CANNOT BE GIVEN GREATER EVIDENTIARY VALUE OVER CONVINCING, STRAIGHT FORWARD AND PROBABLE TESTIMONY ON AFFIRMATIVE MATTERS.—** While it may be conceded that there were inconsistencies as to who made the markings on the seized drugs and the number of teabags sold by appellant, however, it does not necessarily follow from their disagreements that both or all of them are not credible and their testimonies completely discarded as worthless, especially so that the testimony of PO2 Ricote, the poseur-buyer, was consistent with the evidence on record. x x x All told, the positive testimonies of the prosecution witnesses prevail over appellant's defense of denial. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. We find no evidence that the police officers were inspired by any improper motive to falsely accuse the appellant of the crime.

In fact, appellant admitted that he did not know the police officers as he had no previous dealings, quarrels or misunderstandings with them. When the police officers involved in the buy-bust operation have no ill motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; IMPOSABLE PENALTY.— Under Section 5, Article II of RA No. 9165, the sale of dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. However, death penalty cannot be imposed as provided under RA No. 9346, so only life imprisonment can be meted out to appellant. We, therefore, sustain the CA's affirmance of the RTC's imposition of life imprisonment and the payment of fine of ₱1,000,000.00 upon appellant.

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 us is an appeal from the Decision[1] dated March 24, 2015 of the Court of Appeals (*CA*) issued in CA-G.R. CR-HC No. 00958, the dispositive portion of which reads:

WHEREFORE, the Decision dated September 18, 2008 rendered by the Regional Trial Court, Branch 13, Carigara, Leyte in Criminal Case No. 4638, convicting accused-appellant Armando Mendoza y Potolin a.k.a. "Jojo," of Violation of Section 5 of Article II of R.A. 9165, as amended, or the Dangerous Drugs Act is hereby AFFIRMED.

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[1] Penned by Associate Justice Marilyn B. Lagura-Yap, concurred in by Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez; *rollo*, pp. 4-18.

The accused-appellant's conviction in Criminal Case No. 4637 for Violation of Section 11 of Article II of R.A. 9165 is REVERSED and SET ASIDE. The accused-appellant is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.

Cost against accused-appellant.[2]

On April 24, 2006, appellant was charged in two separate Informations with violation of Sections 11 and 5 of Article II of Republic Act (*RA*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*. The accusatory portion of the Informations respectively provides:

Criminal Case No. 4637 (For violation of Section 11)

That on or about the 20th day of April 2006, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority, did then and there, unlawfully, willfully and feloniously, have in his control and possession two (2) teabags of marijuana, weighing 0.95g and 0.97g, respectively, a dangerous drug.[3]

Criminal Case No. 4638 (For violation of Section 5)

That on or about the 20th day of April 2006, in the Municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, unlawfully, willfully and feloniously sell, deliver and give away four (4) teabags of marijuana weighing 0.96g, 1.11g, 0.97g and 98g, respectively, a dangerous drug to poseur-buyer PO2 Elvin E. Ricote for ₱200.00 in two marked ₱100 bills with serial nos. SB226477 and XDO13891, without being authorized by law.[4]

When arraigned, appellant pleaded not guilty to both charges.[5] Trial thereafter ensued.

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

[3] Records (Criminal Case No. 4637), pp. 1-2.

[4] Records (Criminal Case No. 4638), pp. 1-2.

[5] *Id.* at 22.

The evidence for the prosecution established that in the morning of April 18, 2006, a confidential informant (*CI*) went to the Office of the Provincial Anti-Illegal Drugs Special Operation Task Group (*PAIDSOTG*) of the Leyte Provincial Police Office, San Jose, Tacloban City, with the information that appellant was selling illegal drugs in Carigara, Leyte.[6] The PAIDSOTG Chief, Police Inspector (*P/Insp.*) Jesus Son, coordinated with the Carigara Chief of Police, Police Chief Inspector (*P/C Insp.*) Felix Diloy, for the conduct of a surveillance on the appellant. As a result, it was confirmed that appellant was engaged in selling marijuana.[7] The PAIDSOTG then coordinated with the Philippine Drugs Enforcement Agency *(PDEA*) of the planned buy-bust operation.[8] On April 20, 2006, the PAIDSOTG and members of the Carigara PNP planned the buy-bust operation. PO2 Elvin Ricote (*PO2 Ricote*) of the PAIDSOTG was designated to act as the poseur-buyer, while PO3 Alberto Parena (*PO3 Parena*) of the Carigara PNP as his back up, and two pieces of one hundred peso bills were prepared, marked and subscribed before an administering officer.[9]

At 5:45 in the afternoon of the same day, the team proceeded to the location of appellant's house in Barangay Barugohay Norte in Carigara Leyte and positioned themselves around the vicinity.[10] Before reaching appellant's house, PO2 Ricote, together with the CI, met the appellant in a sari-sari store and the CI introduced PO2 Ricote as a buyer of marijuana.[11] Appellant then told PO2 Ricote that the price per teabag of marijuana was ₱50.00 to which the latter agreed to buy 4 teabags. Appellant then took out from his right pocket the four teabags of suspected dried marijuana leaves and handed them to PO2

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[6] TSN, October 9, 2006, p. 4.

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

[8] *Id.* at 5; Exhibit "K".

[9] *Id.*at 5-7.

[10] *Id.* at 7.

[11] *Id.* at 8.

Ricote who, in turn, gave the marked two pieces of one hundred peso bills to the former.[12] PO2 Ricote then scratched his head as a pre-arranged signal, and PO3 Parena, who was inside a parked vehicle which was three meters away from the sari-sari store, immediately run to help in arresting appellant.[13] PO3 Parena made a missed call to P/Insp. Son to inform him of the consummation of the sale and for assistance.[14] Appellant still tried to escape, but PO2 Ricote held his hand and was then informed of his constitutional rights and the crime he committed. He was also bodily frisked and found from his pocket the two one-hundred-peso bills and two teabags of marijuana.[15] Appellant and the items seized were brought to the barangay hall for inventory.[16] PO2 Ricote and PO3 Parena prepared and signed a receipt of property seized dated April 20, 2006 which consisted of four teabags of suspected dried marijuana leaves and the marked money and their serial numbers, which was signed by the Barangay Chairman Ernesto Dipa.[17] A certificate of inventory[18] was prepared and signed by P/Insp. Son, which was also signed by the barangay chairman as witness.[19] PO3 Ricote marked the items sold to him by appellant in the barangay hall in the presence of the appellant, the barangay chairman and P/Insp. Son.[20]

The team brought appellant and the seized items to the police station for blotter. The seized items were submitted to the PNP Crime Laboratory for chemical analysis. P/Insp. Son prepared the request for laboratory examination. A certain SPO1 Cesar

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[12] *Id.* at 9.

[13] *Id.* at 10; TSN, January 18, 2007, p. 4.

[14] *Ibid.*

[15] *Id.* at 12.

[16] *Id.* at 12.

[17] *Id.* at 14; Records of Exhibits, "Exhibit "C", p. 28.

[18] Records of Exhibit, Exhibit "B", p. 24.

[19] TSN, October 9, 2006, p. 13.

[20] TSN, September 25, 2007, pp. 5-6.

Cruda of the PDEA acknowledged receipt of the letter request and the items from PO2 Ricote and submitted them to the crime laboratory on April 20, 2006.[21] (*P/C Insp.*) Edwin Zata, the Forensic Chemist, examined the specimens submitted which yielded positive results for marijuana, a dangerous drug.[22] His findings was reduced to writing as Chemistry Report No. D-094-2006. PO2 Ricote identified in court the items bought from appellant.[23]

Appellant denied the charges and claimed that on April 20, 2006, he, together with Teting Tatgus and a certain Bokbok, were along the road fronting the Caragara School of Fisheries located in Barangay Barugohay Norte, repairing a pedicab.[24] Thereafter, they all went to the house of a photographer in Sidlawan and they were joined by a certain Andy Makabenta and they all went to a sari-sari store to rest.[25] He then saw the arrival of a white vehicle and a motorcycle with two people riding on it.[26] A person alighted from the motorcycle and held the wrist of Makabenta, while another police officer alighted from the vehicle and pointed to him saying "you also apprehend that."[27] While he was being held by the police officer, appellant asked him what crime he had committed to which he was told to just keep quiet and was handcuffed.[28] He was then brought to the barangay hall where the police officer took money from a jar and placed them on the table and took pictures of him with the items on the table.[29]

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[21] TSN, August 28, 2007, p. 10.

[22] *Id.* at 4.

[23] TSN, September 25, 2007, pp. 3-4.

[24] TSN, June 24, 2008, p. 4.

[25] *Id.* at 5.

[26] *Id.*

[27] *Id.* at 6.

[28] *Id.* at 7.

[29] *Id.* at 8.

On September 18, 2008, the RTC rendered a Decision,[30] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court found accused ARMANDO MENDOZA y POTOLIN, alias "Jojo", GUILTY beyond reasonable doubt in Criminal Case No. 4637, for Violation of Section 11(3) of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 as charged in the Information and sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY and to pay the fine of Three Hundred Thousand (PHP300,000.00) Pesos.
>
> In Criminal Case No. 4638, the Court found accused ARMANDO MENDOZA y POTOLIN, alias "Jojo," GUILTY beyond reasonable doubt for Violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive [Dangerous] Drugs Act of 2002 as charged in the Information and sentenced to suffer the maximum penalty of LIFE IMPRISONMENT and to pay the fine of One Million (PhP1,000,000.00) Pesos; and
>
> Pay the Cost.
>
> SO ORDERED.[31]

In so ruling, the RTC found that appellant's denial cannot override the positive identification in open court of his person by the police officers who apprehended him in the buy-bust operation.

Appellant filed a notice of appeal within the reglementary period, thus, the entire records of the case was forwarded to the CA, Cebu.

On March 24, 2015, the CA rendered its Decision which we quoted in the beginning of this decision. The CA affirmed appellant's conviction for violation of Section 5 of Article II of RA 9165, as amended, but acquitted him for violation of Section 11 for failure of the prosecution to prove his guilt beyond reasonable doubt.

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[30] Per Judge Crisostomo L. Garrido; CA *rollo*, pp. 57-70.

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

The CA affirmed the conviction of appellant for illegal sale of marijuana as all the elements of the crime were duly established; and that there was no break or gap in the chain of custody of the seized items. However, the CA found that in the case of illegal possession of marijuana, the prosecution failed to prove the *corpus delicti* of the crime. The two teabags of marijuana confiscated from appellant were never presented in court nor were there testimonies as to their whereabouts from the time they were confiscated and the markings made thereon.

Appellant filed a Notice of Partial Appeal and the records were forwarded to us for further review. In our Resolution[32] dated November 11, 2015, we noted the elevation of the records, accepted the appeal, and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both parties manifested that they are no longer filing supplemental briefs as they had refuted the issues in their respective briefs filed with the CA.[33]

Appellant raises the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE CORPUS DELICTI

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE ELEMENTS FOR THE PROSECUTION FOR SALE OF ILLEGAL DRUGS WERE NOT ESTABLISHED.

We find no merit in the appeal.

In every prosecution for the illegal sale of marijuana, the following elements must be proved: (1) the identities of the

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[32] *Rollo,* p. 25.

[33] *Id.* at 27-28; 36-37.

buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[34] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[35]

We agree with the CA that the prosecution had satisfactorily proven all these elements. PO2 Ricote, the poseur-buyer, positively identified appellant as the seller of the four teabags of suspected marijuana and to whom he handed the marked two pieces of one hundred peso bills as payment therefor. The substance sold by appellant to PO2 Ricote was sent to the PNP Crime Laboratory for analysis and upon the examination made by the Forensic Chemist, P/C Insp. Zata showed that the four teabags with a total weight of 4.02 grams yielded a positive result for marijuana, a dangerous drug. The marijuana was presented to the court and was identified by PO2 Ricote to be the marijuana he bought from appellant based on the markings he made thereon.

Appellant's claim that it was impossible for him to publicly deal with PO2 Ricote, an unfamiliar face, is not persuasive. Peddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not.[36] Moreover, drug-pushing when done on a small-scale, like the instant case, belongs to those types of crimes that may be committed any time and at any place.[37]

Appellant contends that his apprehension was not a product of entrapment but an instigation as it was admitted that it was

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[34] *People v. Arce,* G.R. No. 217979, February 22, 2017.

[35] *People v. Felipe,* 663 Phil. 132, 142 (2011).

[36] *People v. Dela Peña,* G.R. No. 207635, February 18, 2015, 751 SCRA 178, 195, citing *People v. Robelo*, 699 Phil. 392, 400 (2012); *People v. Casolocan*, 478 Phil. 363, 372 (2004).

[37] *Id.,* citing *People v. De Guzman,* 564 Phil. 282, 291 (2007), citing *People v. Isnani,* 475 Phil. 376, 396 (2004).

the asset who allegedly introduced PO2 Ricote to him as the buyer of marijuana; and that it was the asset who instructed him to sell marijuana to PO2 Ricote.

We find such contention unmeritorious.

In *People v. Dansico*,[38] we held:

x x x Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.

To determine whether there is instigation or entrapment, we held in *People v. Doria* that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:

> [I]n buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time,

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[38] G.R. No. 178060, February 23, 2011, 644 SCRA 151.

> however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[39]

In this case, it was shown that there was a prior surveillance on appellant's illegal activities and it was confirmed that indeed appellant was selling illegal drugs, hence, a buy-bust operation was planned. The CI introduced PO2 Ricote to appellant as a buyer of marijuana. Appellant negotiated with PO2 Ricote as to the price of the marijuana to which the latter agreed and paid the same, and he was arrested. No doubt, what transpired was a typical buy-bust operation which is a form of entrapment. 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 operations.[40] The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct.[41]

Appellant's argument that a reasonable doubt was created as to the identity of the marked money as it was not pre-recorded in the police blotter deserves a short rift.Suffice it to state that neither law nor jurisprudence requires that the buy-bust money be entered in the police blotter.[42] In fact, the non-recording of the buy-bust money in the police blotter is not essential, since they are not elements in the illegal sale of dangerous drugs.[43] Notably, the buy-bust money was presented and identified in court by PO2 Ricote.

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[39] *Id.* at 225-226. (Citations omitted)

[40] *People v. Bartolome*, 703 Phil. 148, 161-162 (2013).

[41] *Id.* at 162.

[42] *People v. Hernandez,* 607 Phil. 617, 641 (2009), citing *People v. Concepcion,* 578 Phil. 957, 976 (2008).

[43] *Id.*

Appellant asserts that there was a gap in the chain of custody of the seized items as provided under Section 1(b) of Dangerous Drugs Board Resolution No. 1, Series of 2002 which implements RA No. 9165, to wit:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;

We are not convinced.

The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized items are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the laboratory to determine its composition, and all the way to the time it was offered in evidence.[44]

Here, there is no showing that the chain of custody of the marijuana sold by appellant to PO2 Ricote had been broken. PO2 Ricote testified that after the arrest of the appellant, the latter and the items were brought to the barangay hall for purposes of inventory. At the barangay hall, PO2 Ricote and PO3 Parena executed a receipt of property seized with Barangay Chairman Ernesto Dipa affixing his signature as witness thereto. A certificate of inventory was also prepared by P/Insp. Son and also signed by Chairman Dipa as witness. At the same time,

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[44] *People v. Beran,* 724 Phil. 788, 814 (2014), citing *People v. Dela Rosa,* 655 Phil. 630, 650 (2011).

PO2 Ricote also marked the four teabags of suspected marijuana with "EA-1" to "EA-4", which are the initials of the first names of the arresting officers, Elvin Ricote and Alberto Parena. All these were done in the presence of the appellant. The team then brought appellant and the seized items to the police station for blotter purposes. P/Insp. Son prepared a memorandum to the Acting Regional Director PDEA RO8 requesting for laboratory examination of the items seized from appellant,[45] which request was received by SPO1 Cesar Cruda, who acknowledged to have received the seized items from PO2 Ricote.[46] SPO1 Cruda delivered the letter request and the seized items to the PNP Crime Laboratory Service Regional 8, Palo, Leyte, and which turnover was witnessed by PO2 Ricote.[47]

P/C Insp. Zata, the Forensic Chemist, testified that the four heat-sealed transparent plastic with markings "EA-1" to "EA-4" containing dried suspected marijuana leaves with 0.96 gram, 1.11 grams, 0.97 gram and 0.98 gram, respectively, were examined and yielded positive result to the tests for marijuana, a dangerous drug. His finding was embodied in his Chemistry Report No. D-094-2006,[48] and in his Certification[49] dated April 21, 2006. After his examination, P/CInsp. Zata resealed the specimens with a masking tape with inscription "EEZ" for "Edwin Emnas Zata" and Chemistry Report No. D-94-2006, and then marked the specimen with "ABCD," and turned them over to the evidence custodian.[50] The four teabags of marijuana were presented in court and were identified by PO2 Ricote based on the markings he earlier made thereon. Indeed, the integrity and evidentiary value of the seized items had been preserved.

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[45] Records of Exhibit, p. 33; Exhibit "D".

[46] *Id.* at 37, Exhibit "F".

[47] *Id.* at 35, Exhibit "E".

[48] *Id.* at 39, Exhibit "G".

[49] *Id.* at 40, Exhibit "J".

[50] TSN, August 28, 2007, p. 11.

Appellant raises the inconsistencies in the testimonies of PO2 Ricote and PO3 Parena as to who made the markings on the seized items, and the number of teabags bought and found in appellant's possession after his arrest; that PO3 Parena testified that it was the evidence custodian who marked the items with "MM" which is contrary to PO2 Ricote's testimony that he was the one who marked the items sold by appellant with "EA-1" to "EA-4"; and that per PO2 Ricote, he bought 4 teabags of suspected marijuana from appellant which was contradicted by PO3 Parena who claimed that only 2 teabags of suspected marijuana were sold by appellant.

While it may be conceded that there were inconsistencies as to who made the markings on the seized drugs and the number of teabags sold by appellant, however, it does not necessarily follow from their disagreements that both or all of them are not credible and their testimonies completely discarded as worthless,[51] especially so that the testimony of PO2 Ricote, the poseur-buyer, was consistent with the evidence on record. To stress, PO2 Ricote clearly testified that he bought 4 teabags of suspected marijuana from appellant which was listed, together with the marked money and their serial numbers, in the Receipt of the Property Seized prepared by PO2 Ricote and PO3 Parena as well as in the Certificate of Inventory of Property. PO3 Ricote marked the four teabags subject of sale with "EA-1" to "EA-4" in the barangay hall and in the presence of the appellant, Barangay Chairman Dipa and P/Insp. Son. Notably, these were the same markings which were written in the request for laboratory examination. Moreover, P/C Insp. Zata confirmed that the 4 heat-sealed transparent plastics which were submitted for laboratory examination were marked with "EA-1" to "EA-4". Thus, PO2 Ricote's testimony was corroborated by the documentary evidence on record.

All told, the positive testimonies of the prosecution witnesses prevail over appellant's defense of denial. A defense of denial which is unsupported and unsubstantiated by clear and convincing

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[51] See *People v. Manalansan,* 267 Phil. 651, 657 (1990).

evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.[52] We find no evidence that the police officers were inspired by any improper motive to falsely accuse the appellant of the crime. In fact, appellant admitted that he did not know the police officers as he had no previous dealings, quarrels or misunderstandings with them.[53] When the police officers involved in the buy-bust operation have no ill motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.[54]

We quote with approval what the RTC said in debunking appellant's denial, thus:

x x x x x x x x x

The vehement denial of the accused that he had not committed any crime when he was arrested by the combined PNP of Carigara, PDEA and the PAIDSOT[G], cannot override the positive identification in open court of his person by prosecution witnesses PO2 Ricote and PO3 Parena, the police officers who apprehended him in the buy-bust operation. It is beyond comprehension that the combined task force with ranking police officers supervising the buy-bust would concoct such a serious crime against the accused by mere conjecture or frame-up unless the police officers had prior confirmation on the illegal drug trade of the appellant.

The police officers would not waste government money and resources and several manpower just to arrest an innocent person.

The arrest of the accused as a result of the buy-bust operation is not just accidental but a product of days of surveillance by the PAIDSOT[G] on the accused, after PAIDSOT[G] received reports on his illegal drug trade. The accused is not even known to PO2 Ricote, the PDEA poseur- buyer who was only introduced to him by

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[52] *People v. Salvador,* 726 Phil. 389, 402 (2014).

[53] TSN, June 24, 2008, p. 11.

[54] *People v. Villanueva,* 536 Phil. 998, 1005 (2006), citing *People v. Valencia*, 439 Phil. 561, 567 (2002).

a PDEA confidential informant as the seller of Marijuana during the buy bust operation in the afternoon of April 20, 2006 at 5:30 P.M.

x x x x x x x x x.[55]

Under Section 5, Article II of RA No. 9165, the sale of dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. However, death penalty cannot be imposed as provided under RA No. 9346,[56] so only life imprisonment can be meted out to appellant. We, therefore, sustain the CA's affirmance of the RTC's imposition of life imprisonment and the payment of fine of ₱1,000,000.00 upon appellant.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated March 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 00958 finding appellant Armando Mendoza y Potolin a.k.a. "Jojo" guilty beyond reasonable doubt of the crime charged in Criminal Case No. 4638 for violation of Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.

SO ORDERED.

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

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[55] CA *rollo*, pp. 67-68.

[56] *AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES* .

THIRD DIVISION

[G.R. No. 222699. July 24, 2017]

MAUNLAD TRANS INC., CARNIVAL CRUISE LINES and/or AMADO CASTRO, *petitioners, vs.* **GABRIEL ISIDRO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED; ONE EXCEPTION IS WHEN THE FINDINGS OF THE LABOR ARBITER ARE IN CONFLICT OF THE NLRC AND THE CA.— As a rule, the Court does not conduct a re-examination of the facts and evidence on record as the function to do so properly belongs to the NLRC and the CA; that the Court is not a trier of facts applies with greater force in labor cases as questions of fact are for the labor tribunals to resolve. Further, the scope of this Court's judicial review under Rule 45 is confined only to errors of law and does not extend to questions of fact. Be that as it may, one of the recognized exceptions to the application of the above rule is when the findings of the LA are in conflict with those of the NLRC and the CA, as in instant case.

2. LABOR AND SOCIAL LEGISLATION; DISABILITY BENEFITS; CLAIMANT SEAFARER REQUIRED TO ESTABLISH HIS CLAIM BY SUBSTANTIAL EVIDENCE.— In a case of claims for disability benefits, the *onus probandi* falls on the seafarer as claimant to establish his claim with the right quantum of evidence; and as such, it cannot rest on mere speculations, presumptions or conjectures. Awards of compensation depend on the presentation of evidence to prove a positive proposition. The quantum of proof required is substantial evidence.

3. ID.; ID.; ID.; THE DOCTOR WHO HAVE HAD PERSONAL KNOWLEDGE OF THE ACTUAL MEDICAL CONDITION, ACTUALLY TREATING THE ILLNESS OF THE SEAFARER, IS MORE QUALIFIED TO ASSESS THE DISABILITY, THAN THE SINGLE MEDICAL REPORT OF RESPONDENT'S DOCTOR OF CHOICE.— The observations inescapably lead the Court to favor the medical

findings of the company-designated physician that respondent's disability is equivalent to Grade 12. Here, the findings of the company-designated doctor, together with a dermatologist, presumably an expert in skin conditions, who periodically treated respondent for months and monitored his condition, deserve greater evidentiary weight than the single medical report of respondent's doctor of choice. Indeed, "the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability."

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Carrera & Associates Law Office for respondent.

D E C I S I O N

TIJAM, *J.*:

Through this petition for review[1] under Rule 45, petitioners seek to nullify the Decision[2] dated October 15, 2015 and Resolution[3] dated January 22, 2016 of the Court of Appeals (CA)[4], in CA-G.R. SP No. 122148 which affirmed the ruling of the National Labor Relations Commission (NLRC) finding petitioners liable to pay permanent and total disability benefits in the amount of US$60,000 and 10% attorney's fees in favor of the respondent.

The Factual Antecedents

Petitioner Maunlad Trans Inc., (MTI), for and in behalf of its foreign principal, Carnival Cruise Lines, hired respondent

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[1] *Rollo*, pp. 27-43.

[2] *Id.* at 52-61.

[3] *Id.* at 63-64.

[4] Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino.

Gabriel Isidro as bartender with a basic salary of US$350, exclusive of overtime and other benefits, for a period of six (6) months. On July 27, 2009, respondent boarded the vessel "M/S Miracle".[5]

Sometime in November 2009, respondent figured in an accident while lifting heavy food provisions. When his right knee became swollen and he experienced pain, respondent reported his situation to the ship's physician for medical examination. On November 20, 2009, respondent's condition was diagnosed as "*Right Knee Synovitis, Meniscal, Chondromalacia*". He was given medication and was advised by the physician that he can continue working. He was then referred to the South Miami Hospital for further medication; however, the medication administered to him proved ineffective at improving his condition. Thus, on December 14, 2009, he was referred to the Jackson North Medical Center where he underwent a series of examinations and treatment. After his treatment, respondent went back to work. However, respondent began experiencing skin rashes on his right leg which later on spread to his left lower extremity, and to both his upper extremity and trunk by the last week of January 2010.[6] These skin eruptions were diagnosed by the ship's physician as "*psoriasis*".[7] Respondent was given medications and was advised to get dermatologic consultation upon completion of his contract.[8]

Consequently, on February 12, 2010, he was ordered repatriated to the Philippines. Respondent arrived on February 16, 2010.[9]

Three days after his repatriation or on February 19, 2010, respondent was admitted as an out-patient at the Metropolitan Medical Center (MMC) and was attended to by the company-designated doctor, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon).

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[5] *Id.* at 53.

[6] *Id.* at 67.

[7] *Id.* at 53.

[8] *Id.* at 67.

[9] *Id.*

On his initial evaluation on February 22, 2010, respondent's knee *synovitis* was not mentioned in his past medical history.[10] Respondent was instead referred to a dermatologist who opined that respondent has "*psoriaris vulgaris*" based on clinical history and physical examination. As such, respondent was given medications and was advised to come back on March 1, 2010 for re-evaluation.[11]

During his follow-up examination, respondent's *psoriatic* lesions on both lower extremities were noted to still be *erythematous*.[12] He was advised to continue his medications and to come back on April 7, 2010.[13] Still, there was no mention that respondent complained of a knee injury.

On April 16, 2010, respondent was referred to a cardiologist for evaluation of his blood pressure elevations.[14] The test results, however, showed to be normal. On April 21, 2010, respondent was again seen by a dermatologist who reviewed the histopath result of his skin biopsy.[15] Because the characteristic change in the *psoriaris* cannot be appreciated, the dermatologist recommended a temporary discontinuation of his medication and a repeat of his biopsy.[16] Respondent was advised to come back on May 4, 2010 for a repeat of laboratory tests and re-evaluation.[17] Again, during these examinations, there was no mention that respondent complained of his knee injury.

On June 28, 2010, respondent was reported to have been cleared cardiac-wise and the *psoriatic* lesions on both legs have decreased in size and redness. He was advised to continue

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[10] *Id*.

[11] *Id*. at 68.

[12] *Id*. at 69.

[13] *Id*.

[14] *Id*. at 71.

[15] *Id*.

[16] *Id*. at 72.

[17] *Id*.

applying topical cream on his legs.[18] In a follow-up report on July 20, 2010, or 121 days from his initial examination on February 19, 2010, less *erythema*[19] was noted on respondent's *psoriatic* lesions on his right leg. Nevertheless, respondent was advised to continue with his oral and topical medications.

While he was still undergoing medical treatment by the company-designated doctor, respondent sought the opinion of a private doctor, Dr. Manuel J. Jacinto (Dr. Jacinto) of the Sta. Teresita General Hospital. Dr. Jacinto assessed him to be suffering from *"psoriasis, chondromalacia*[20] *(medial femoral condy/tibial plateaus) right, grade II injury medial collateral ligament right knee, sprain, medial head of gastrocnemus with hemarthrosus."*[21] Respondent was advised to undergo Magnetic Resonance Imaging (MRI) and surgery. Dr. Jacinto also found respondent unfit to go back to work. For these reasons, respondent filed a complaint in July 2010 before the Labor Arbiter for full disability benefits.[22]

Because respondent claimed full disability benefits by reason of his knee injury and *psoriasis*, petitioners allegedly offered to conduct a laboratory examination on the respondent to verify his knee injury but the latter did not accede.[23]

Despite the filing of his complaint, it appears that respondent continued his medical treatment by the company-designated doctor. In fact, on August 5, 2010, respondent was observed to have only small areas of reddish *psoriatic* lesions on both legs

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[18] *Id*. at 73.

[19] *Erythema (from the Greek erythros, meaning red) is a superficial skin disease characterized by abnormal redness, but without swelling or fever; Webster Comprehensive Dictionary-Encyclopedic Edition,Volume One, p. 432.*

[20] Chondromalacia, or damage to the cartilage, is the formation of early arthritis; http://drrobertlaprademd.com/patellofemoral-chondromalacia/; last accessed: July 20, 2017.

[21] *Rollo*, p. 15.

[22] *Id*.

[23] *Id*. at 35.

and that most of his previous lesions were almost resolved. He was advised to continue with his oral and topical medications.[24]

On October 11, 2010, or 226 days after the initial referral to the company-designated doctor on February 19, 2010, the attending dermatologist, Dr. Mary Belly Gan-Chao, issued a disability grading of *"Grade 12 for slight residual or disorder"*.[25]

The Labor Arbiter (LA) issued his Decision dated January 27, 2011, finding respondent to be entitled to compensation equivalent to Grade 12 disability grading, or in the amount of US$5,225 and 10% attorney's fees. The LA thus disposed:

> **WHEREFORE**, premises considered, judgment is rendered ordering respondents in solidum to pay complainant the total sum of U.S. $5,225.00 or its peso equivalent at the time of payment, representing his disability benefits and, plus, 10% of the total award as attorney's fees.
>
> All other claims are dismissed.
>
> **SO ORDERED**.[26]

Consequently, respondent appealed to the NLRC which, in a Decision dated June 21, 2011, granted the appeal and modified the LA's award by granting full disability compensation benefits, as follows:

> **WHEREFORE**, premises considered, the appeal is GRANTED. The Decision appealed from is MODIFIED to grant full disability compensation benefits.
>
> Respondents are ordered to pay complainant the amount of US$60,000.00 and attorney's fees in the amount of US$6,000.00.
>
> **SO ORDERED**.[27]

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[24] *Rollo*, p. 75.

[25] *Id*. at 76.

[26] *Id.* p. 15.

[27] *Id*. at 16.

Upon denial of petitioners' motion for reconsideration, the case was elevated to the CA on *certiorari*. Petitioners argued that the alleged knee injury suffered by respondent was neither the cause of his repatriation nor was it examined by the company-designated physician. Petitioners contended that respondent never complained of said knee injury prior to the filing of his labor complaint.[28] In any case, petitioners argue that respondent is only entitled to a compensation equivalent to Grade 12 disability grading as certified to by the company-designated physician.[29]

The Ruling of the CA

The CA denied the petition for *certiorari*. Contrary to the petitioners' assertions, the CA held that respondent's knee injury was made known to petitioners, as respondent was in fact treated for such ailment while on board the vessel. The CA further noted that the company-designated physician, Dr. Cruz-Balbon, was cognizant of respondent's knee injury since the latter noted the existing skin rashes on his right leg that spread to his lower and upper extremities and on his trunk.[30]

Nevertheless, the CA held that it is not the injury *per se* which should be compensated but the respondent's incapacity to work. The CA held that respondent is permanently and totally disabled because his impairment or loss of earning capacity exceeded the maximum of 240 days. In so ruling, the CA disregarded the issuance of a disability grading by the company-designated physician on the 223rd day (reckoned from the initial evaluation on February 22, 2010) for having been haphazardly issued without the benefit of a thorough physical examination.

Petitioners' motion for reconsideration was similarly denied by the CA. Hence, it resorted to the instant petition.

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[28] *Id*.

[29] *Id*.

[30] *Id*. at 17.

The Ruling of the Court

As a rule, the Court does not conduct a re-examination of the facts and evidence on record as the function to do so properly belongs to the NLRC and the CA; that the Court is not a trier of facts applies with greater force in labor cases as questions of fact are for the labor tribunals to resolve.[31] Further, the scope of this Court's judicial review under Rule 45 is confined only to errors of law and does not extend to questions of fact.[32]

Be that as it may, one of the recognized exceptions to the application of the above rule is when the findings of the LA are in conflict with those of the NLRC and the CA, as in the instant case. As such, the Court is compelled to examine the evidence on record to determine if, indeed, respondent is entitled to full and permanent disability benefits. This question, We resolve in the negative and, instead, We find that respondent in this case is entitled only to partial disability compensation equivalent to Grade 12 as certified to by the company-designated physician.

Respondent failed to discharge his burden of proving entitlement to full and permanent disability benefits for his alleged knee injury

In a case of claims for disability benefits, the *onus probandi* falls on the seafarer as claimant to establish his claim with the right quantum of evidence; and as such, it cannot rest on mere speculations, presumptions or conjectures.[33] Awards of compensation depend on the presentation of evidence to prove a positive proposition. The quantum of proof required is substantial evidence.[34]

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[31] *Nahas v. Olarte*, 734 Phil. 569, 580 (2014).

[32] *Famanila v. Court of Appeals*, 531 Phil. 470, 476 (2006).

[33] *Gabunas, Sr. v. Scanmar Maritime Services Inc.*, 653 Phil. 457, 466 (2010).

[34] *Spouses Ponciano Aya-ay, Sr. and Clemencia Aya-ay v. Arpaphil Shipping Corp. and Magna Marine, Inc.,* G.R. No. 155359, 31 January 2006, 481 SCRA 282.

Given this standard, petitioners cannot be held liable for the alleged knee injury suffered by respondent. While the facts, as found by the CA and the NLRC, point to the existence of a knee injury which respondent suffered in November 2009, during the term of his employment contract and while on board the vessel, such knee injury was not the ailment complained of by respondent upon repatriation to the Philippines and is, likewise, not the illness for which he was given medical treatment. In fact, upon termination of his six-month contract, respondent was advised to consult a dermatologist for his skin eruptions which he started experiencing in December 2009 and which worsened by the last week of January 2010.

That respondent did not complain of, and was not treated for, the alleged knee injury is evident from the medical reports submitted by the company-designated physician detailing the progress of respondent's skin condition. The CA's observations that petitioners knew of respondent's knee injury and that the company-designated physician, Dr. Cruz-Balbon, was cognizant of the same are off-tangent as it may very well happen that the swelling of respondent's knee had been resolved, hence, the absence of further medical complaint from respondent. Also, the certification issued by Dr. Cruz-Balbon referred to by the CA does not at all pertain to respondent's alleged knee injury but solely on respondent's skin condition which was diagnosed to be *psoriasis vulgaris*.

The only instance when respondent's alleged knee injury again surfaced after repatriation was when respondent consulted his doctor of choice, Dr. Jacinto. But even then, We cannot lend credence to the certification issued by Dr. Jacinto in the manner and faith accorded thereto by the CA. For one, Dr. Jacinto examined respondent only once and only after four months have passed from his repatriation. For another, despite the alleged recommendation that respondent undergo an MRI and surgery, the record does not show that said procedures were ever conducted on respondent. At the very least, the results of said MRI, if one had been taken, should have been shown to establish the existence of the alleged unresolved knee injury,

but none appears to have been submitted. Neither was there any evidence of medical examinations or tests submitted that would support Dr. Jacinto's conclusion that respondent is unfit for sea duty, in whatever capacity as a seaman if respondent claims entitlement to permanent and total disabilty benefits.

Respondent is entitled to a disability grading of 12 as certified to by the company-designated physician for his *psoriasis*

The above observations inescapably lead the Court to favor the medical findings of the company-designated physician that respondent's disability is equivalent to Grade 12. Here, the findings of the company-designated doctor, together with a dermatologist, presumably an expert in skin conditions, who periodically treated respondent for months and monitored his condition, deserve greater evidentiary weight than the single medical report of respondent's doctor of choice. Indeed, "the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability."[35]

Despite the foregoing, the CA treated respondent's ailment as one rendering him permanently and totally disabled because the disability grading of the company-designated physician was released only on the 223rd day upon repatriation. Such reasoning is an unjustified departure from the application of the 120-day and the maximum 240-day rule found in the implementing rules of the Labor Code, as amended,[36] and as explained in the seminal

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[35] *Dalusong v. Eagle Clarc, Shipping, Inc., Norfred Offshore AS, and/or Capt. Leopoldo T. Arcillar, and Court of Appeals,* 742 Phil. 377, 378 (2014), citing *Philman Marine Agency, Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) and/or DOHLE (10M) Limited v. Cabanban,* 715 Phil. 454, 476 (2013).

[36] Article 192(3)(1), Chapter VI, Title II, Book IV of the Labor Code, as amended, which provides:

ART. 192. Permanent and total disability.

x x x x x x x x x

case of *Vergara v. Hammonia Maritime Services, Inc., et. al.,*[37] as follows:

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 because the seafarer requires further medical attention, 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

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(3) 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 for in the Rules[.]

x x x x x x x x x

Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, reads:

x x x x x x x x x

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

x x x x x x x x x

Rule X of the Implementing Rules of Title II, Book IV of the Labor Code which provides:

SECTION 2. Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an 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 any time 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.

[37] 588 Phil. 895 (2008).

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.[38] (citations omitted)

Since Vergara was promulgated in 2008 and the complaint *a quo* was filed by respondent in 2010, the maximum 240-day rule applies if the extension is due to the fact that the seaman required further medical attention.[39]

In this case, respondent's medical treatment lasted more than 120 days but less than 240 days, after which the company-designated doctor gave respondent a final disability grading of Grade 12 under the POEA schedule of disabilities. Clearly, before the maximum 240-day medical treatment period expired, respondent was issued a final disability Grade 12 which is merely permanent and partial disability, since under Section 32 of the POEA-SEC, only those classified under Grade 1 are considered permanent and total disability. Also, We do not agree with the CA's observation that said disability grading was haphazardly issued. As noted, the disability grading was issued well-within the maximum period allowed and only after a period and thorough examination of the respondent. Given this, the summary disregard by the CA of the grading issued by the company-designated physician within the maximum 240-day period is obviously not in accord with the law and jurisprudence.

Finally, We find merit in the petitioners' contention that respondent is not entitled to attorney's fees in the absence of bad faith on petitioners' part. All along, petitioners offered the compensation equivalent to a disability grading of 12 under the POEA-SEC and it was respondent who unjustifiably refused to accept the same. Lacking bad faith on petitioners' part, the award of attorney's fee is unwarranted.

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[38] *Id*. at 912.

[39] *Montierro v. Rickmers Marine Agency Phils., Inc.,* 750 Phil. 937, 945 (2015).

WHEREFORE, the petition is **GRANTED**. The Decision dated October 15, 2015 and Resolution dated January 22, 2016 of the Court of Appeals in CA-G.R. SP No. 122148 which affirmed the ruling of the National Labor Relations Commission finding petitioners liable to pay permanent and total disability benefits in the amount of US$60,000 and 10% attorney's fee in favor of respondent Gabriel Isidro are **REVERSED** and **SET ASIDE**.

Petitioners Maunlad Trans Inc., and Carnival Cruise Lines are ordered to jointly and severally pay respondent Gabriel Isidro the amount of US$5,225 or its equivalent amount in Philippine currency at the time of payment, representing permanent and partial disability benefits.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 223610. July 24, 2017]

CONCHITA S. UY, CHRISTINE UY DY, SYLVIA UY SY, JANE UY TAN, JAMES LYNDON S. UY, IRENE S. UY,[*] ERICSON S. UY, JOHANNA S. UY, and JEDNATHAN S. UY, *petitioners, vs.* **CRISPULO DEL CASTILLO, substituted by his heirs PAULITA MANATAD-DEL CASTILLO, CESAR DEL CASTILLO, AVITO DEL CASTILLO, NILA C. DUEÑAS, NIDA C. LATOSA, LORNA C. BERNARDO, GIL DEL CASTILLO, LIZA C. GUNGOB, ALMA DEL CASTILLO, and GEMMA DEL CASTILLO,** *respondents.*

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[*] Included in the petition as one of the petitioner. See *rollo*, p. 17.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS ARE CONCLUSIVE TO THE PARTY MAKING THEM AND REQUIRES NO FURTHER EVIDENCE TO PROVE THEM.—** "It is settled that judicial admissions made by the parties in the pleadings or in the course of the trial or other proceedings in the same case are conclusive and do not require further evidence to prove them. They are legally binding on the party making it, except when it is shown that they have been made through palpable mistake or that no such admission was actually made, neither of which was shown to exist in this case."

2. **ID.; CIVIL PROCEDURE; SUMMONS; VOLUNTARY SUBMISSION TO THE COURT'S AUTHORITY BY ACTIVE PARTICIPATION IN THE CASE SHALL BE EQUIVALENT TO SERVICE OF SUMMONS.—** Assuming *arguendo* that petitioners did not receive summons for the amended complaint, they were nonetheless deemed to have voluntarily submitted to the RTC's jurisdiction by filing an Answer to the amended complaint and actively participating in the case. x x x It is settled that the active participation of the party against whom the action was brought, is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and such will bar said party from later on impugning the court's jurisdiction. After all, jurisdiction over the person of the defendant in civil cases is obtained either by a valid service of summons upon him or by his voluntary submission to the court's authority.

3. **ID.; ID.; PARTIES TO CIVIL ACTIONS; DEATH OF A PARTY; RULE ON SUBSTITUTION NOT APPLICABLE AS THE PARTIES WERE IMPLEADED NOT AS SUBSTITUTES BUT IN THEIR PERSONAL CAPACITIES.—** [B]ased on the records, the Uy siblings were not merely substituted in Jaime's place as defendant; rather, they were impleaded in their personal capacities. Under Section 16, Rule 3 of the Rules of Court, substitution of parties takes place when the party to the action dies *pending* the resolution of the case and the claim is not extinguished, x x x Here, ***Jaime died on March 4, 1990, or six (6) years before private respondents filed the Quieting of Title Case***. Thus, after Conchita filed an Answer informing the RTC of Jaime's death in 1990, the

complaint was amended to implead the Uy siblings. Accordingly, the Rules of Court provisions on substitution upon the death of a party do not apply and the Uy siblings were not merely substituted in place of Jaime in the Quieting of Title Case. Instead, they were impleaded in their personal capacities.

4. ID.; ID.; DOCTRINE OF IMMUTABILITY OF JUDGMENT; MAY BE RELAXED TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE.— Time and again, the Court has repeatedly held that "a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle, known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied." However, this doctrine "is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (*a*) matters of life, liberty, honor, or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) that the other party will not be unjustly prejudiced thereby."

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina & Lopez for petitioners.
Layese & Associates Law Office for respondents.

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 Conchita S. Uy (Conchita) and her children, petitioners Christine Uy Dy, Sylvia Uy Sy, Jane Uy Tan, James Lyndon S. Uy, Irene S. Uy, Ericson S. Uy (Ericson), Johanna S. Uy, and Jednathan S. Uy (Uy siblings; collectively, petitioners), assailing the Decision[2] dated May 26, 2015 and the Resolution[3] dated February 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 07120, which affirmed the twin Orders[4] dated December 9, 2011 and the Order[5] dated May 17, 2012 of the Regional Trial Court of Mandaue City, Branch 55 (RTC) in Civil Case No. MAN-2797, denying petitioners' Omnibus Motion,[6] motion to quash the writ of execution,[7] and their subsequent motion for reconsideration.[8]

The Facts

The present case is an offshoot of an action[9] for quieting of title, reconveyance, damages, and attorney's fees involving a

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[1] *Id*. at 12-37.

[2] *Id*. at 41-57. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Renato C. Francisco and Germano Francisco D. Legaspi concurring.

[3] *Id*. at 58-60. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Edgardo L. Delos Santos and Germano Francisco D. Legaspi concurring.

[4] Records, pp. 931-934 and 936-937, respectively. Penned by Acting Presiding Judge Silvestre A. Maamo, Jr.

[5] *Id*. at 1012-1013.

[6] Dated April 27, 2011. *Rollo*, pp. 110-137.

[7] See Motion to Quash Writ of Execution on Jurisdictional Ground(s) dated June 10, 2011; *id*. at 147-177.

[8] See Consolidated Motion for Reconsideration dated January 27, 2012; *id*. at 230-290.

[9] See Complaint dated October 9, 1996; records, Vol. 1, pp. 1-7. See also Amended Complaint dated December 11, 1996; *id*. at 12-18.

parcel of land, known as Lot 791 and covered by Transfer Certificate of Title (TCT) No. 29129,[10] filed by Crispulo Del Castillo (Crispulo) against Jaime Uy (Jaime) and his wife, Conchita, on November 12, 1996, docketed as Civil Case No. MAN-2797 (Quieting of Title Case).[11] However, since Jaime had died six (6) years earlier in 1990,[12] Crispulo amended his complaint[13] and impleaded Jaime's children, *i.e.*, the Uy siblings, as defendants.[14] Meanwhile, Crispulo died[15] during the pendency of the action and hence, was substituted by his heirs, respondents Paulita Manalad-Del Castillo, Cesar Del Castillo, Avito Del Castillo, Nila C. Dueñas, Nida C. Latosa, Lorna C. Bernardo, Gil Del Castillo, Liza C. Gungob, Alma Del Castillo, and Gemma Del Castillo (respondents).[16]

After due proceedings, the RTC rendered a Decision[17] dated April 4, 2003 (RTC Decision) in respondents' favor, and accordingly: (*a*) declared them as the true and lawful owners of Lot 791; (*b*) nullified Original Certificate of Title No. 576,[18] as well as TCT No. 29129; and (*c*) ordered petitioners to pay respondents moral damages and litigation costs in the amount of ₱20,000.00 each, as well as attorney's fees equivalent to twenty-five percent (25%) of the zonal value of Lot 791.[19] Aggrieved, petitioners appealed before the CA,[20] and subsequently, to the

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[10] *Id*. at 8-9.

[11] *Rollo*, p. 42.

[12] See copy of Certificate of Death; records, Vol. 1, p. 337. See also paragraph 1 in the Answer dated February 19, 1997; *id*. at 28.

[13] See Second Amended Complaint dated June 16, 1997; *id*. at 47-54.

[14] *Rollo*, p. 42.

[15] See Notice of Death and Substitution of Party dated January 26, 2000; records, Vol. 1, pp. 102-103 and copy of Certificate of Death; *id*. at 104.

[16] *Rollo*, p. 42.

[17] *Id*. at 61-74. Penned by Judge Ulric R. Cañete.

[18] Records, Vol. 1, pp. 328-329.

[19] *Rollo*, p. 74.

[20] See Brief for the Defendant-Appellants dated September 16, 2004 before the CA, docketed as CA G.R. CV No. 81583; records, Vol. 2, pp. 451-517.

Court, but the same were denied for lack of merit.[21] The ruling became final and executory on April 8, 2010, thus, prompting the Court to issue an Entry of Judgment[22] dated May 4, 2010.

On August 17, 2010, respondents filed a Motion for Issuance of Writ of Execution,[23] manifesting therein that since the zonal value of Lot 791 at that time was ₱3,500.00 per square meter (sqm.) and that Lot 791 covers an area of 15,758 sqm., the total zonal value of Lot 791 was ₱55,153,000.00.[24] Hence, the attorney's fees, computed at twenty-five percent (25%) thereof, should be pegged at ₱13,788,250.00.[25]

Acting on the said motion, the RTC ordered[26] petitioners to file their comment or opposition thereto, which they failed to comply.[27] Accordingly, in an Order[28] dated November 22, 2010, the RTC granted the motion and ordered the issuance of a writ of execution. On December 13, 2010, a Writ of Execution[29] was issued, to which the sheriff issued a Notice of Garnishment[30] seeking to levy petitioners' properties in an amount sufficient to cover for the ₱13,788,250.00 as attorney's fees and ₱20,000.00 each as moral damages and litigation costs.

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[21] See Decision dated May 29, 2008 of the CA in CA-G.R. CV No. 81583, penned by Associate Justice Amy C. Lazaro with Associate Justices Francisco P. Acosta and Florito S. Macalino concurring (*rollo*, pp. 75-90) and the Resolution dated September 28, 2009 of the Court in G.R. No. 188618 issued by First Division Clerk of Court Enriqueta Esguerra-Vidal (*id.* at 91).

[22] *Id.* at 92-93.

[23] Dated August 10, 2010. *Id.* at 94-97.

[24] *Id.* at 95-96.

[25] *Id.* at 96.

[26] See Order dated September 3, 2010; *id.* at 103.

[27] See *id.* at 102.

[28] *Id.* Penned by Acting Presiding Judge Silvestre A. Maamo, Jr.

[29] *Id.* at 104-105. Issued by Branch Clerk of Court V Atty. Aurora N. Ventura-Villamor.

[30] Dated March 21, 2011. *Id.* at 107. Issued by Sheriff I Cesar D. Enoc, Jr.

Threatened by the Notice of Garnishment, petitioners filed an Omnibus Motion[31] praying that the writ of execution be quashed and set aside, and that a hearing be conducted to re-compute the attorney's fees.[32] Petitioners maintained that the Writ of Execution is invalid because it altered the terms of the RTC Decision which did not state that the zonal value mentioned therein referred to the zonal value of the property at the time of execution.[33] Before the RTC could act upon petitioners' Omnibus Motion, they filed a Motion to Quash Writ of Execution on Jurisdictional Ground(s) (motion to quash),[34] claiming that the RTC had no jurisdiction over the Uy siblings in the Quieting of Title Case as they were never served with summons in relation thereto.[35]

The RTC Proceedings

On December 9, 2011, the RTC issued two (2) orders: (*a*) one granting petitioners' Omnibus Motion, nullifying the Notice of Garnishment, and setting a hearing to determine the proper computation of the award for attorney's fees;[36] and (*b*) another denying their motion to quash, since they never raised such jurisdictional issue in the proceedings *a quo*.[37]

On January 20, 2012, a hearing was conducted for the determination of attorney's fees.[38] Thereafter, the parties were ordered to submit their respective position papers,[39] to which respondents complied with,[40] presenting the following alternative options upon which to base the computation of attorney's fees:

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[31] *Id*. at 110-137.

[32] *Id*. at 134.

[33] *Id*. at 132-133. See also *id*. at 44-45.

[34] *Id*. at 147-177.

[35] See *id*. at 172-173 and *id*. at 45.

[36] Records, Vol. 3, pp. 931-934.

[37] *Id*. at 936-937.

[38] See Order dated January 20, 2012; *id*. at 939.

[39] *Id*.

[40] See Plaintiff's Position Paper dated January 24, 2012; *id*. at 940-942.

(*a*) ₱3,387,970.00, equivalent to twenty-five percent (25%) of the zonal value of Lot 791 in 1996, the year when the Quieting of Title Case was filed; (*b*) ₱11,424,550.00, equivalent to twenty-five percent (25%) of the zonal value of Lot 791 in 2003, the year when the RTC rendered its Decision in the same case; or (*c*) ₱15,758,000.00, equivalent to twenty-five percent (25%) of the zonal value of Lot 791 in 2010, the year when the RTC Decision became final and executory.[41]

On the other hand, instead of filing the required position paper, petitioners filed a Consolidated Motion for Reconsideration[42] of the RTC's December 9, 2011 twin Orders. In said motion, petitioners contended that the RTC failed to definitely rule on the validity of the writ of execution, and that it erred in holding that the RTC Decision was already final and executory despite the absence of summons on the Uy siblings.[43]

In an Order[44] dated May 17, 2012, the RTC: (*a*) pegged the attorney's fees at ₱3,387,970.00,[45] using the zonal value of Lot 791 in 1996, the year when the Quieting of Title Case was instituted, it being the computation least onerous to petitioners; and (*b*) denied petitioners' Consolidated Motion for Reconsideration for lack of merit.

Dissatisfied, petitioners filed a petition for *certiorari*[46] with the CA, assailing the RTC's twin Orders dated December 9, 2011 and the Order dated May 17, 2012. Petitioners argued that instead of just declaring the Notice of Garnishment void, the RTC should have also declared the writ of execution void because the Uy siblings were never served with summons; and like the Notice of Garnishment, the Writ of Execution also altered

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[41] *Id*. at 941-942. See also *rollo*, p. 46.

[42] *Rollo*, pp. 230-290.

[43] See *id*. at 281-284. See also *id*. at 46-47.

[44] Records, Vol. 3, pp. 1012-1013.

[45] Inadvertently indicated as "₱3,387,470.00" in the said Order. See *id*. at 1013.

[46] Dated August 28, 2012. *Rollo*, pp. 291-358.

the terms of the RTC Decision. Petitioners further added that the writ of execution was void because it made them liable beyond their inheritance from Jaime. They maintain that the estate of Jaime should instead be held liable for the adjudged amount and that respondents should have brought their claim against the estate, in accordance with Section 20, Rule 3 of the Rules of Court.[47]

The CA Ruling

In a Decision[48] dated May 26, 2015, the CA affirmed the assailed Orders of the RTC. The CA found no merit in the claim that the Uy siblings were never served with summons, pointing out that in a Manifestation/Motion[49] dated November 26, 1997, their counsel in the trial proceedings, Atty. Alan C. Trinidad (Atty. Trinidad), stated that petitioners received the summons with a copy of the amended complaint.[50] It likewise refused to give credence to petitioners' denial of Atty. Trinidad's representation, observing that one of the Uy siblings, Ericson, even testified in court with the former's assistance, and that none of them showed any concern or apprehension before the court, which they would have if indeed Atty. Trinidad was not authorized to represent them.[51]

Anent petitioners' argument that they cannot be held personally liable with their separate property for Jaime's liability and that respondents should have filed a claim against Jaime's estate in accordance with Section 20, Rule 3 of the Rules of Court, the CA held that such provision only applies to contractual money claims and not when the subject matter is some other relief and the collection of any amount is merely incidental thereto, such as by way of damages, as in this case.[52] Besides,

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[47] See *id*. at 314-321. See also *id*. at 49-50.

[48] *Id*. at 41-57.

[49] Records, Vol. 1, pp. 64-65.

[50] *Rollo*, p. 52.

[51] *Id*. at 53.

[52] *Id*. at 55.

petitioners had all the opportunity to raise such perceived error when they elevated the case to the CA and to this Court, but they did not.[53] Following the principle of finality of judgment, the CA can no longer entertain such assignment of errors.[54]

With respect to the validity of the writ of execution, the CA ruled that since the Writ of Execution made express reference to the RTC Decision without adding anything else, the same was valid, unlike the Notice of Garnishment which expressly sought to levy ₱13,788,250.00 in attorney's fees and, in the process, exceeded the purview of the said Decision.[55]

Undaunted, petitioners moved for reconsideration,[56] which was, however, denied by the CA in its Resolution[57] dated February 22, 2016; hence, the present petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld the twin Orders dated December 9, 2011 and the Order dated May 17, 2012 of the RTC.

The Court's Ruling

The petition is partly meritorious.

At the outset, it is well to reiterate that petitioners are resisting compliance with the ruling in the Quieting of Title Case, on the grounds that: (*a*) they were never served with summons in relation thereto; and (*b*) they were merely impleaded as substitutes to Jaime therein, and as such, respondents should have proceeded against his estate instead, pursuant to Section 20, Rule 3 of the Rules of Court. However, a judicious review of the records would reveal that such contentions are untenable, as will be discussed hereunder.

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[53] *Id*.

[54] *Id*.

[55] *Id*. at 55-56.

[56] Dated June 18, 2015. *Id*. at 481-514.

[57] *Id*. at 58-60.

Anent petitioners' claim that they were never served with summons, the CA correctly pointed out that in the November 26, 1997 Manifestation/Motion,[58] petitioners, through their counsel, Atty. Trinidad, explicitly stated, among others, that they "received the Summons with a copy of the Second Amended Complaint" and that "the Answer earlier filed serves as the Answer to the Second Amended Complaint."[59] Having admitted the foregoing, petitioners cannot now assert otherwise. "It is settled that judicial admissions made by the parties in the pleadings or in the course of the trial or other proceedings in the same case are conclusive and do not require further evidence to prove them. They are legally binding on the party making it, except when it is shown that they have been made through palpable mistake or that no such admission was actually made, neither of which was shown to exist in this case."[60]

Assuming *arguendo* that petitioners did not receive summons for the amended complaint, they were nonetheless deemed to have voluntarily submitted to the RTC's jurisdiction by filing an Answer[61] to the amended complaint and actively participating in the case.[62] In fact, one of the petitioners and Uy siblings, Ericson, was presented as a witness for the defense.[63] Moreover, petitioners appealed the adverse RTC ruling in the Quieting of Title Case all the way to the Court. It is settled that the active participation of the party against whom the action was brought, is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and such will bar said party from later on impugning the court's

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[58] Records, Vol. 1, pp. 64-65.

[59] *Id*. at 64.

[60] See *Odiamar v. Valencia*, G.R. No. 213582, June 28, 2016, citing *Josefa v. Manila Electric Company*, 739 Phil. 114, 129 (2014) and *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp.*, G.R. No. 182864, January 12, 2015, 745 SCRA 98, 121.

[61] Records, Vol. 1, pp. 28-32.

[62] See Manifestation/Motion, *id*. at 64-65.

[63] TSN, December 12, 2001, p. 1.

jurisdiction.[64] After all, jurisdiction over the person of the defendant in civil cases is obtained either by a valid service of summons upon him or by his voluntary submission to the court's authority.[65]

In this regard, petitioners cannot also deny Atty. Trinidad's authority to represent them. As mentioned earlier, one of the petitioners, Ericson, even testified with the assistance of Atty. Trinidad.[66] Indeed, if Atty. Trinidad was not authorized to represent them, the natural reaction for petitioners was to exhibit concern. Based on the records, however, there is no indication that any of the petitioners or Ericson made even the slightest objections to Atty. Trinidad's representation. This only confirms the CA's finding that such denial was a mere afterthought and a desperate attempt to undo a final and executory judgment against them.[67]

As to petitioners' contention that respondents should have proceeded against Jaime's estate pursuant to Section 20, Rule 3 of the Rules of Court, it is well to point out that based on the records, the Uy siblings were not merely substituted in Jaime's place as defendant; rather, they were impleaded in their personal capacities. Under Section 16, Rule 3 of the Rules of Court, substitution of parties takes place when the party to the action dies *pending* the resolution of the case and the claim is not extinguished, *viz.*:

> Section 16. *Death of party*; *duty of counsel*. — Whenever **a party to a pending action dies, and the claim is not thereby extinguished**, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name

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[64] *Philippine Commercial International Bank v. Sps. Dy Hong Pi*, 606 Phil. 615, 635 (2009), citing *Meat Packing Corporation of the Philippines v. Sandiganbayan*, 411 Phil. 959, 977-978 (2001).

[65] *Ang Ping v. CA*, 369 Phil. 607, 614 (1999). See also Rule 14, Rules of Court.

[66] TSN, December 12, 2001, p. 1.

[67] See *rollo*, pp. 54-55.

and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphases supplied)

Here, ***Jaime died on March 4, 1990,***[68] ***or six (6) years before private respondents filed the Quieting of Title Case***. Thus, after Conchita filed an Answer[69] informing the RTC of Jaime's death in 1990, the complaint was amended[70] to implead the Uy siblings. Accordingly, the Rules of Court provisions on substitution upon the death of a party do not apply and the Uy siblings were not merely substituted in place of Jaime in the Quieting of Title Case. Instead, they were impleaded in their personal capacities.[71] In this regard, petitioners' argument that they cannot be held solidarily liable for the satisfaction of any monetary judgment or award must necessarily fail.[72]

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[68] See copy of Certificate of Death; records, Vol. 1, p. 337.

[69] *Id*. at 28-32.

[70] *Id*. at 47-54.

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

[72] See *Torres, Jr. v. CA*, 344 Phil. 348 (1997).

In this light, petitioners can no longer invoke Section 20, Rule 3 of the Rules of Court, which reads:

> Section 20. *Action and contractual money claims.* — When the action is for recovery of money arising from contract, express or implied, and the **defendant dies before entry of final judgment in the court in which the action was pending at the time of such death**, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person. (Emphasis supplied)

A cursory reading of the foregoing provision readily shows that like Section 16, Rule 3 of the Rules of Court, it applies in cases where the defendant dies **while the case is *pending* and not *before* the case was even filed in court**, as in this case.

At this point, the Court notes that if petitioners truly believed that Jaime's estate is the proper party to the Quieting of Title Case, they could and should have raised the lack of cause of action against them at the earliest opportunity. Obviously, they did not do so; instead, they actively participated in the case, adopted the answer earlier filed by Conchita, and even litigated the case all the way to the Court. Petitioners cannot now question the final and executory judgment in the Quieting of Title Case because it happened to be adverse to them.

Time and again, the Court has repeatedly held that "a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle, known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and

obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied."[73] However, this doctrine "is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (*a*) matters of life, liberty, honor, or property; (*b*) the existence of special or compelling circumstances; (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) that the other party will not be unjustly prejudiced thereby."[74]

In this case, a punctilious examination of the records, especially the Amended Complaint[75] in the Quieting of Title Case reveals that the disputed Lot 791 was covered by TCT No. 29129 in the names of Jaime and Conchita. Thus, while the Uy siblings were indeed impleaded in their personal capacities, the fact remains that they are merely succeeding to Jaime's interest in the said lot and title. As successors-heirs, they cannot be personally bound to respond to the decedent's obligations beyond their distributive shares.[76] Verily, this is a special or a compelling circumstance which would necessitate the relaxation of the doctrine of immutability of judgment, so as to somehow limit the liability of the Uy siblings in the payment of the monetary awards in favor of respondents in the Quieting of Title Case – *i.e.*, moral damages and litigation costs in the amount of ₱20,000.00 each, as well as attorney's fees, equivalent to twenty-

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[73] *National Housing Authority v. CA*, 731 Phil. 401, 405-406 (2014).

[74] *Bigler v. People*, G.R. No. 210972, March 2, 2016, 785 SCRA 479, 487-488, citing *Sumbilla v. Matrix Finance Corporation*, G.R. No. 197582, June 29, 2015, 760 SCRA 532, 543, further citing *Barnes v. Padilla*, 482 Phil. 903, 915 (2004).

[75] See Second Amended Complaint dated June 16, 1997; records, pp. 47-54.

[76] See Vitug, Jose C., *Civil Law Annotated*, Vol. II, Second Edition, p. 174 (2006).

five percent (25%) of the zonal value of Lot 791[77] – within the value of their inherited shares, notwithstanding the finality of the ruling therein.

In sum, while the courts *a quo* correctly ruled that the Uy siblings may be held answerable to the monetary awards in the Quieting of Title Case, such liability cannot exceed whatever value they inherited from their late father, Jaime. For this purpose, the RTC is tasked to ensure that the satisfaction of the monetary aspect of the judgment in the Quieting of Title Case will not result in the payment by the Uy siblings of an amount exceeding their inheritance from Jaime. After all, the other party, *i.e.*, respondents, shall not be unjustly prejudiced by the same since Jaime's spouse, Conchita, is still alive and the rest of the monetary awards may be applied against her, if need be.

WHEREFORE, the petition is **PARTLY GRANTED**. Accordingly, the Decision dated May 26, 2015 and the Resolution dated February 22, 2016 of the Court of Appeals in CA-G.R. SP No. 07120 are hereby **AFFIRMED** with **MODIFICATION** limiting the adjudged monetary liability of petitioners Christine Uy Dy, Sylvia Uy Sy, Jane Uy Tan, James Lyndon S. Uy, Irene S. Uy, Ericson S. Uy, Johanna S. Uy, and Jednathan S. Uy to the total value of their inheritance from Jaime Uy.

SO ORDERED.

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

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[77] *Rollo*, p. 74.

THIRD DIVISION

[G.R. No. 230664. July 24, 2017]

EDWARD M. COSUE, *petitioner, vs.* **FERRITZ INTEGRATED DEVELOPMENT CORPORATION, MELISSA TANYA F. GERMINO AND ANTONIO A. FERNANDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL LAW; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED.—** Only errors of law are generally reviewed in Rule 45 petitions assailing decisions of the CA, and questions of fact are not entertained. Accordingly, the Court does not re-examine conflicting evidence or re-evaluate the credibility of witnesses. The Court is not a trier of facts, and this doctrine applies with greater force in labor cases. When supported by substantial evidence, factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, more so when upheld by the CA.

2. **ID.; EVIDENCE; EVIDENCE NOT OBJECTED TO IS DEEMED ADMITTED AND MAY BE VALIDLY CONSIDERED BY THE COURT IN ARRIVING AT ITS JUDGMENT.—** The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.

3. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; BARE ALLEGATIONS, UNCORROBORATED BY EVIDENCE, CANNOT BE GIVEN CREDENCE.—** Petitioner's claim of constructive dismissal fails. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, as in this case, cannot be given credence. x x x In this case, records do not show any demotion in rank or a diminution in pay made against petitioner. Neither was there any act of clear discrimination, insensibility or disdain committed by respondents

against petitioner which would justify or force him to terminate his employment from the company. Respondents' decision to give petitioner a graceful exit is perfectly within their discretion. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record. The rule is that one who alleges a fact has the burden of proving it; thus, petitioner was burdened to prove his allegation that respondents dismissed him from his 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 petitioner. In illegal dismissal cases, while the employer bears the burden to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service. x x x In the absence of any showing of an overt or positive act proving that respondents had dismissed petitioner, the latter's claim of illegal dismissal cannot be sustained – as the same would be self-serving, conjectural and of no probative value.

4. ID.; ID.; WITH NEITHER DISMISSAL NOR ABANDONMENT, REINSTATEMENT BUT WITHOUT BACKWAGES IS PROPER; HOWEVER, MONETARY CLAIMS ALLEGED BY EMPLOYEE AND ADMITTED BY EMPLOYER MUST BE PAID.— Since there was neither dismissal nor abandonment, the CA correctly sustained the LA and the NLRC's decision to order petitioner's reinstatement but without backwages, consistent with the following pronouncement in *Danilo Leonardo v. National Labor Relations Commission and Reynaldo's Marketing Corporation, et al.* x x x Although not specified in the *pro forma* Complaint, petitioner's claim for underpayment of holiday pay, 13th month pay and service incentive leave pay was alleged in his Position Paper. In fact, respondents squarely addressed this issue in their Rejoinder, stating that "(w)hat is left therefore that respondent should pay are the underpayments which should now be computed properly." Thus, the labor tribunals were not precluded from passing upon this cause of action. Petitioner's cause of action "should be ascertained not from a reading of his complaint alone but also from a consideration and evaluation of both his complaint and position

paper." x x x Anent petitioner's claim for his 13th month pay for 2014, x x x raised for the first time in his partial appeal to the NLRC, x x x respondents effectively admitted in their Position Paper that petitioner was entitled to his *pro-rata* 13th month pay for 2014. To withhold this benefit from petitioner, despite respondents' admission that he should be paid the same, will not serve the ends of substantial justice. Hand in hand with the concept of admission against interest, the concept of estoppel, a legal and equitable concept, necessarily must come into play. Furthermore, it is settled that technical rules of procedure may be relaxed in labor cases to serve the demands of substantial justice.

5. **ID.; ID.; ID.; UNDERPAYMENT OF WAGES; ATTORNEY'S FEES AT TEN PERCENT (10%) OF THE TOTAL MONETARY AWARD IS WARRANTED.—** [P]etitioner failed to sufficiently establish that he had been dismissed, let alone in bad faith or in an oppressive or malevolent manner. Petitioner, thus, cannot rightfully claim moral and exemplary damages. Petitioner, however, is entitled to attorney's fees at ten percent (10%) of the total monetary award. It has been determined that petitioner was underpaid his wages. Attorney's fees may be recovered by an employee whose wages have been unlawfully withheld. There need not even be any showing that the employer acted maliciously or in bad faith; there need only be a showing that lawful wages were not paid accordingly, as in this case.

APPEARANCES OF COUNSEL

Legal Advocates for Worker's Interest (LAWIN) for petitioner.
Cherie Belmonte-Lim for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court, assailing the Court of Appeals' (CA's) Decision[1] dated

[1] Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting, *Rollo,* pp. 29-38.

December 2, 2016 and Resolution[2] dated February 23, 2017, in CA-G.R. SP No. 142491, which affirmed the Resolutions of the National Labor Relations Commission (NLRC)[3] upholding the Labor Arbiter's finding[4] that petitioner Edward M. Cosue was not illegally dismissed.

The Facts

Petitioner started working for respondent Ferritz Integrated Development Corporation (FIDC) on August 23, 1993 as a construction worker. He subsequently became a regular employee of FIDC, performing work as janitor/maintenance staff.

Around 5 p.m. of July 10, 2014, respondent Melissa Tanya Germino (Germino), as Head of FIDC's Property Management Division, asked petitioner to stay in the FIDC's building to watch over the generator due to the frequent power outage, and to assist the guards on duty since they were newly hired. Petitioner agreed.

According to petitioner, around 9 p.m. on July 10, 2014, he saw two security guards (the Officer-in-Charge and one Gomez), together with an unidentified man, on their way to the electrical room. They had a knapsack which did not look heavy. When they left the room, petitioner saw Gomez carrying the knapsack which, by this time, appeared to contain something heavy. The next morning, petitioner borrowed the key to the electrical room and together with fellow maintenance personnel, Joel Alcallaga (Alcallaga), looked for the electrical wires that were stored therein. Unfortunately, the wires were no longer there. Petitioner was convinced that the two guards and their unidentified companion took the wires. At 1 p.m., he was summoned by Germino who verbally informed him that he was suspended from July 16, 2014 to August 13, 2014 on suspicion that he stole the electrical wires. Beginning July 16, 2014 until August 13, 2014, he was no longer

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[2] *Id.* at 40-41.

[3] Penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez, *Rollo,* pp. 63-71.

[4] Reached by Labor Arbiter Beatriz T. De Guzman; *Id.* at 72-80.

allowed to work.[5] Thus, on October 9, 2014, he filed a Complaint against FIDC, Germino and FIDC President Antonio Fernando (collectively, respondents), for actual illegal dismissal and underpayment of salaries, with prayer for moral and exemplary damages and attorney's fees.[6] In his Position Paper, petitioner additionally made claims for underpayment of his holiday pay, 13th month pay and service incentive leave pay. He sought to recover on the alleged underpayments for the period covering "three (3) years backward from the time of the filing of (his) complaint."[7]

Refuting petitioner's version of the events, respondents alleged that at 7 p.m. on July 10, 2014, Alcallaga's bag was found to contain bundled wires when it was examined by the security personnel, per routine, as he checked out from his shift. Alcallaga returned the wires to the electrical room shortly after he was interrogated by the security personnel. The following day, petitioner and Alcallaga obtained the keys to the electrical room after misrepresenting to the key custodian that they had been ordered by the head of the FIDC electrical staff to inspect the room. Thereafter, it was discovered that the electrical wires returned by Alcallaga to the electrical room were nowhere to be found. Following an investigation, Germino issued a memorandum of suspension to petitioner for obtaining the keys to the electrical room and entering without permission, and for leaving his post and joining Alcallaga in the electrical room. Petitioner was suspended for twenty-five (25) days from July 16, 2014 to August 13, 2014, pending further investigation. Petitioner returned to FIDC on August 13, 2014, but was told to come back as Germino was on leave. When petitioner came back on August 27, 2014, he was able to speak to Germino and they agreed that he would voluntarily resign. However, petitioner did not file his resignation, and eventually instituted his Complaint for illegal dismissal.[8]

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[5] *Rollo*, p. 30.

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

[7] *Id.* at 93.

[8] *Rollo*, p. 31.

Respondents further averred that years ago, petitioner admitted to acting as messenger and depositing money in the bank for Rizza Alenzuela, the company accountant, who was later discovered to have stolen hundreds of thousands of pesos by collecting from tenants and depositing said collection to her account. However, because petitioner was the son of their longest-staying employee who died due to an illness, he was given a second chance on condition that another offense would lead to the termination of his employment.[9]

Respondents argued that there was no illegal dismissal as there was an agreement between FIDC and petitioner that the latter would just resign. As petitioner reneged on this agreement and chose to be absent, he should be considered absent without leave. As for petitioner's money claims, FIDC averred that petitioner was entitled to receive only his latest unpaid salary, if any, and his *pro rata* 13th month pay.[10] Respondents, however, would later concede that there were underpayments which would have to be computed.

The Labor Arbiter's Ruling

On February 12, 2015, the Labor Arbiter (LA) rendered her Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaint for illegal dismissal is dismissed for lack of evidence to support the same. Respondent Ferritz Integrated Development Corporation, is hereby ordered to reinstate complainant, Edward M. Cosue, to his former position, without loss of seniority rights but without backwages.
>
> The order of reinstatement is immediately executory and the respondents are hereby directed to submit a report of compliance to the said order without *(sic)* ten (10) calendar days from receipt of the said decision.
>
> Respondent Ferritz Integrated Development Corporation is further ordered to pay salary differentials in the amount of ₱8,819.01.

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[9] *Id*. at 30-31.

[10] *Id*.

All other claims are dismissed for lack of merit.

SO ORDERED.[11]

The LA held that other than petitioner's general assertion that he was dismissed, no evidence was presented to support such claim. Petitioner was admittedly suspended from July 16, 2014 to August 13, 2014. Thus, as of July 27, 2014, the date of dismissal as averred in petitioner's Complaint, he was still serving his preventive suspension. In fact, he was not barred from the premises or categorically informed that he was already dismissed from work.[12]

The LA stressed that the rule that the employer bears the burden of proof in illegal dismissal cases could not be applied as respondents denied dismissing petitioner.[13]

The LA, however, found no reason to conclude that petitioner abandoned his job, absent proof of petitioner's clear intention to sever the employer-employee relationship.

Backwages were not awarded as there was neither dismissal nor abandonment. However, finding that there was underpayment of salaries, the LA awarded salary differentials computed at PhP8,819.01.

Petitioner's Partial Appeal

In his partial appeal from the LA's Decision, petitioner asked the NLRC to declare him to have been "illegally (constructively) dismissed" and entitled to full backwages from the time of illegal dismissal up to actual reinstatement. He also prayed for the payment of his service incentive leave pay, underpaid 13th month pay, holiday pay and overtime pay, his 13th month pay for 2014, moral and exemplary damages, and attorney's fees.

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[11] *Rollo,* p. 80.

[12] *Id*. at 78.

[13] *Id*.

The NLRC's Resolutions

In its Resolution[14] dated May 29, 2015, the NLRC denied petitioner's partial appeal and affirmed the LA's Decision, holding that the established facts showed that petitioner was not dismissed by FIDC. The NLRC also held that since the claims for service incentive leave, overtime pay and 13th month pay were not indicated in the Complaint nor prayed for in petitioner's Position Paper, the LA did not gravely abuse her discretion in not awarding them. Furthermore, the NLRC found it improper to award damages and attorney's fees given its finding that there was no illegal dismissal.

The NLRC denied petitioner's Motion for Reconsideration in its Resolution[15] dated July 20, 2015.

The CA's Ruling

The NLRC's Resolutions were affirmed in the assailed Decision and Resolution of the CA issued in the *certiorari* proceeding instituted by petitioner under Rule 65 of the Rules of Court.

The CA found sufficient reasons to uphold respondents' position. It rejected petitioner's argument that he had been constructively dismissed, holding that petitioner was merely suspended for 25 days. Such suspension, said the CA, was a valid exercise of management prerogative pending administrative investigation on the incident of theft.

Hence, the instant Petition.

Petitioner's Arguments

Petitioner maintained that he was constructively dismissed because he reported to work immediately after his suspension but was not anymore allowed to work. He argued that mere absence or failure to report to work is not tantamount to abandonment of work. He also asserted that to be dismissed

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[14] *Rollo,* p. 63.

[15] *Id*. at 70.

for abandonment, an employee must be shown to have been absent without a valid or justifiable reason, and to have a clear intention to sever the employer-employee relationship, and that the burden of proof falls on the employer. Petitioner further averred that FIDC failed to show proof of payment of his other monetary claims.

The Court's Ruling

Only errors of law are generally reviewed in Rule 45 petitions assailing decisions of the CA, and questions of fact are not entertained.[16] Accordingly, the Court does not re-examine conflicting evidence or re-evaluate the credibility of witnesses.[17] The Court is not a trier of facts, and this doctrine applies with greater force in labor cases.[18] When supported by substantial evidence, factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, more so when upheld by the CA.[19]

Petitioner has not shown cause for the Court to depart from this rule.

As the LA, NLRC and the CA found, petitioner was not illegally dismissed. This common finding is supported by substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[20]

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[16] See *Peckson v. Robinsons Supermarket Corp., et al.,* 713 Phil. 471, 486 (2013); and *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1, 9 (2012); citing *Montoya v. Transmed Manila Corp/Mr. Ellena, et al.* 613 Phil. 696, 707 (2009).

[17] *Career Philippines Shipmanagement, Inc., et al. v. Serna*, supra note 4.

[18] *New City Builders, Inc. v. NLRC*, 499 Phil. 207 (2005); *Angeles, et al. v. Bucad, et al*., 739 Phil. 261, 262 (2014).

[19] See *Angeles, et al. v. Bucad, et al., supra* note 18; *Peckson v. Robinsons Supermarket Corp., et al., supra* note 16; and *New City Builders, Inc. v. NLRC*, *supra* note 18.

[20] *Skippers United Pacific, Inc. v. NLRC,* 527 Phil. 248, 257 (2006).

Petitioner himself alleged that he was suspended from July 16, 2014 to August 13, 2014 pending further investigation of the pilferage of electrical wires. Thus, on July 27, 2014, the date of dismissal alleged in his Complaint, petitioner was still serving his suspension; his employment was not terminated.

Petitioner's claim that he was not allowed to report for work after his suspension was unsubstantiated. Petitioner has not shown by any evidence that he was barred from the premises. Furthermore, an entry in the FIDC security logbook for August 27, 2014, which petitioner had not challenged, showed him informing security personnel that he came to FIDC because he was asked to report to the office. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[21] This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[22]

Petitioner's claim of constructive dismissal fails. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, as in this case, cannot be given credence.[23]

In *Jomar S. Verdadero v. Barney Autolines Group of Companies Transport, Inc., et al.*[24] the Court held that:

> Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so

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[21] *People v. Lopez,* 658 Phil. 647, 651 (2011); *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, 565 Phil. 766, 780-781 (2007).

[22] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, *supra* note 9.

[23] *Vicente v. Court of Appeals (Former 17th Div.),* 557 Phil. 777, 787 (2007).

[24] 693 Phil. 646, 656 (2012).

unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[25]

In this case, records do not show any demotion in rank or a diminution in pay made against petitioner. Neither was there any act of clear discrimination, insensibility or disdain committed by respondents against petitioner which would justify or force him to terminate his employment from the company.[26]

Respondents' decision to give petitioner a graceful exit is perfectly within their discretion. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record.[27]

The rule is that one who alleges a fact has the burden of proving it; thus, petitioner was burdened to prove his allegation that respondents dismissed him from his 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 petitioner.[28] In illegal dismissal cases, while the employer bears the burden to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service.[29]

In the instant case, other than petitioner's bare allegation of having been dismissed, there was no evidence presented to show

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[25] *Id*.

[26] See *Verdadero v. Barney Autolines Group of Companies Transport, Inc*., *supra* note 24**.**

[27] *Central Azucarera de Bais, Inc. v. Siason,* G.R. No. 215555, July 29, 2015, 764 SCRA 494, 495; *Willi Hahn Enterprises v. Maghuyop*, G.R. No. 160348, December 17, 2004, 447 SCRA349, 354.

[28] *MZR Industries, et al. v. Colambot,* 716 Phil. 617, 626 (2013); citing *Machica v. Roosevelt Services Center, Inc., and/or Dizon,* 523 Phil. 199 (2006).

[29] *Dee Jay's Inn and Café v. Rañeses,* G.R. No. 191825, October 5, 2016.

that his employment was indeed terminated by respondents. In the absence of any showing of an overt or positive act proving that respondents had dismissed petitioner, the latter's claim of illegal dismissal cannot be sustained – as the same would be self-serving, conjectural and of no probative value.[30]

Petitioner's insistence that he had been unjustifiably dismissed for abandonment of his job, without the benefit of due process, is untenable. *Firstly,* petitioner failed to establish that he had been dismissed. *Secondly*, it was not respondents' position that petitioner abandoned his job. As they were waiting for petitioner to tender his resignation conformably with their agreement, they did not consider petitioner's absence as an abandonment of his job which would necessitate the sending of a notice of abandonment or an order to return to work.[31]

In this regard, the Court's ruling in *Nightowl Watchman & Security Agency, Inc. v. Nestor Lumahan*,[32] reiterated in *Dee Jay's Inn and Café and/or Melinda Ferraris v. Ma. Lorina Rañeses,*[33] is instructive:

> We find that the CA erred in disregarding the NLRC's conclusion that there had been no dismissal, and in immediately proceeding to tackle Nightowl's defense that Lumahan abandoned his work.
>
> **The CA should have first considered whether there had been a dismissal in the first place. To our mind, the CA missed this crucial point as it presumed that Lumahan had actually been dismissed.** The CA's failure to properly appreciate this point - which led to its erroneous conclusion - constitutes reversible error that justifies the Court's exercise of its factual review power.
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> We agree with the NLRC that Lumahan stopped reporting for work on April 22, 1999, and never returned, as Nightowl sufficiently supported this position with documentary evidence.

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[30] See *MZR Industries, et al. v. Colambot*, *supra* note 28**.**

[31] CA's Decision, p. 10; *Rollo*, p. 35.

[32] G.R. No. 212096, October 14, 2015, 772 SCRA 638, 650-655.

[33] *Supra* note 29.

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In addition, we find that Lumahan failed to substantiate his claim that he was constructively dismissed when Nightowl allegedly refused to accept him back when he allegedly reported for work from April 22, 1999 to June 9, 1999. In short, Lumahan did not present any evidence to prove that he had, in fact, reported back to work.

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All told, we cannot agree with the CA in finding that the NLRC committed grave abuse of discretion in evaluating the facts based on the records and in concluding therefrom that Lumahan had not been dismissed.

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As no dismissal was carried out in this case, any consideration of abandonment - as a defense raised by an employer in dismissal situations - was clearly misplaced. To our mind, the CA again committed a reversible error in considering that Nightowl raised abandonment as a defense.

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The CA, agreeing with LA Demaisip, concluded that Lumahan was illegally dismissed because Nightowl failed to prove the existence of an overt act showing Lumahan's intention to sever his employment. To the CA, the fact that Nightowl failed to send Lumahan notices for him to report back to work all the more showed no abandonment took place.

The critical point the CA missed, however, was the fact that Nightowl never raised abandonment as a defense. What Nightowl persistently argued was that Lumahan stopped reporting for work beginning April 22, 1999; and that it had been waiting for Lumahan to show up so that it could impose on him the necessary disciplinary action for abandoning his post at Steelwork, only to learn that Lumahan had filed an illegal dismissal complaint. **Nightowl did not at all argue that Lumahan had abandoned his work, thereby warranting the termination of his employment.**

Significantly, the CA construed these arguments as abandonment of work under the labor law construct. **We find it clear, however, that Nightowl did not dismiss Lumahan; hence, it never raised the defense of abandonment.**

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Finally, failure to send notices to Lumahan to report back to work should not be taken against Nightowl despite the fact that it would have been prudent, given the circumstance, had it done so. Report to work notices are required, as an aspect of procedural due process, only in situations involving the dismissal, or the possibility of dismissal, of the employee. **Verily, report-to-work notices could not be required when dismissal, or the possibility of dismissal, of the employee does not exist.** *(Citation ommitted and emphasis ours.)*

Since there was neither dismissal nor abandonment, the CA correctly sustained the LA and the NLRC's decision to order petitioner's reinstatement but without backwages, consistent with the following pronouncement in *Danilo Leonardo v. National Labor Relations Commission and Reynaldo's Marketing Corporation, et al.*:[34]

Accordingly, given that FUERTE may not be deemed to have abandoned his job, and neither was he constructively dismissed by private respondent, the Commission did not err in ordering his reinstatement but without backwages. In a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[35] (Citation ommitted)

Although not specified in the *pro forma* Complaint, petitioner's claim for underpayment of holiday pay, 13th month pay and service incentive leave pay was alleged in his Position Paper.[36] In fact, respondents squarely addressed this issue in their Rejoinder, stating that "(w)hat is left therefore that respondent should pay are the underpayments which should now be computed properly."[37] Thus, the labor tribunals were not precluded from

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[34] 389 Phil. 118 (2000).

[35] *Id.* at 128.

[36] Petitioner's Position Paper, p. 9; *Rollo*, p. 93.

[37] Respondents' Rejoinder, p. 3; *Id.* at 148.

passing upon this cause of action.[38] Petitioner's cause of action "should be ascertained not from a reading of his complaint alone but also from a consideration and evaluation of both his complaint and position paper."[39]

Petitioner was found to have been paid salaries below the minimum wage rates and was, thus, awarded salary differentials in the amount of ₱8,819.01 for the period October 9, 2011 to July 27, 2014.[40] Holiday pay, 13th month pay and service incentive leave pay are all computed based on an employee's salary. Therefore, there is necessarily an underpayment if these benefits were computed and paid based on salaries below minimum wage rates.

Anent petitioner's claim for his 13th month pay for 2014, the same was not alleged in his Complaint or his Position Paper. It appears to have been raised for the first time in his partial appeal to the NLRC. However, it should be noted that respondents effectively admitted in their Position Paper that petitioner was entitled to his *pro-rata* 13th month pay for 2014.[41] To withhold this benefit from petitioner, despite respondents' admission that he should be paid the same, will not serve the ends of substantial justice. Hand in hand with the concept of admission against interest, the concept of estoppel, a legal and equitable concept, necessarily must come into play.[42] Furthermore, it is settled that technical rules of procedure may be relaxed in labor cases to serve the demands of substantial justice.[43]

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[38] *Our Haus Realty Development Corp. v. Parian, et al.*, 740 Phil. 699, 708 (2014).

[39] *Our Haus Realty Development Corp. v. Parian, et al., supra* note 38, citing *Samar-Med Distribution v. NLRC*, *et al.*, 714 Phil. 16, 27-28 (2013).

[40] Based on the LA's computation, however, underpayment commenced on June 3, 2012.

[41] Respondents' Position Paper, p. 2; *Rollo,* p. 109.

[42] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., et al.*, 636 Phil. 57, 92 (2010); See *L.C. Ordonez Construction v. Nicdao*, 528 Phil. 1124, 1133 (2006).

[43] *Iligan Cement Corp. v. Iliascor Employees and Workers Union-Southern Phils. Federation of Labor (IEWU-SPFL), et al.,* 604 Phil. 345, 347 (2009).

The LA is, thus, directed to determine any underpayment of holiday pay, 13th month pay and service incentive leave pay for the period covered by the award of salary differentials, and to compute the corresponding differentials. The LA is further directed to compute petitioner's *pro rata* 13th month pay for 2014.

In *San Miguel Corporation v. Eduardo L. Teodosio*[44], the Court held that:

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Moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. On the other hand, exemplary damages are proper when the dismissal was effected in a wanton, oppressive or malevolent manner, and public policy requires that these acts must be suppressed and discouraged.[45]

In the present case, petitioner failed to sufficiently establish that he had been dismissed, let alone in bad faith or in an oppressive or malevolent manner. Petitioner, thus, cannot rightfully claim moral and exemplary damages.[46]

Petitioner, however, is entitled to attorney's fees at ten percent (10%) of the total monetary award.[47] It has been determined that petitioner was underpaid his wages. Attorney's fees may be recovered by an employee whose wages have been unlawfully withheld.[48] There need not even be any showing that the employer

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[44] G.R. No. 163033, October 2, 2009, 602 SCRA 197-219.

[45] *Id*. at 200.

[46] See *Bilbao v. Saudi Arabian Airlines,* 678 Phil. 793 (2011).

[47] Article 111 of the Labor Code provides that "(i)n cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered." *Skippers United Pacific, Inc. v. Doza,* 681 Phil. 427, 445 (2012).

[48] See *San Miguel Corporation v. Teodosio*, *supra* note 44; *Dr. Reyes v. Court of Appeals*, 456 Phil. 520, 540 (2003); *Mayon Hotel & Restaurant v. Adana*, 497 Phil. 892, 931 (2005); *Our Haus Realty Development Corp. v. Parian, et al.*, *supra* note 39.

acted maliciously or in bad faith; there need only be a showing that lawful wages were not paid accordingly, as in this case.[49]

WHEREFORE, the Court of Appeals' Decision dated December 2, 2016 and Resolution dated February 23, 2017, in CA-G.R. SP No. 142491, are **AFFIRMED with MODIFICATION** in that petitioner is additionally entitled to: (a) differentials in any underpaid holiday pay, 13th month pay and service incentive leave pay for the period October 9, 2011 to July 27, 2014; (b) *pro rata* 13th month pay for 2014; and (c) attorney's fees at ten percent (10%) of the total monetary award.

The case is remanded to the Labor Arbiter for the determination of any underpayment of holiday pay, 13th month pay and service incentive leave pay for the period October 9, 2011 to July 27, 2014, and for the proper computation of the corresponding differentials. The Labor Arbiter is also directed to compute petitioner's *pro rata* 13th month pay for 2014. The Labor Arbiter shall report compliance with these directives within thirty (30) days from notice of this Decision.

SO ORDERED.

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

EN BANC

[A.C. No. 1346. July 25, 2017]

PACES INDUSTRIAL CORPORATION, *petitioner, vs.* **ATTY. EDGARDO M. SALANDANAN,** *respondent.*

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[49] *San Miguel Corporation v. Teodosio*, *supra* note 44; *Dr. Reyes v. Court of Appeals*, *supra* note 48.

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); CONFLICT OF INTEREST; A LAWYER IS PROHIBITED FROM REPERESENTING NEW CLIENTS WHOSE INTERESTS OPPOSE THOSE OF A FORMER CLIENT IN ANY MANNER, WHETHER OR NOT THEY ARE PARTIES IN THE SAME ACTION OR ON TOTALLY UNRELATED CASES.— Under Rule 15.03, Canon 15 and Canon 21 of the Code of Professional Responsibility (*CPR*), it is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. Conflict of interest exists when a lawyer represents inconsistent interests of two or more opposing parties. The test is whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In short, if he argues for one client, this argument will be opposed by him when he argues for the other client. This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance of said duty. The prohibition is founded on the principles of public policy and good taste. x x x Even the termination of the attorney-client relationship does not justify a lawyer to represent an interest adverse to or in conflict with that of the former client.

2. ID.; ID.; ID.; RATIONALE FOR THE PROHIBITION AGAINST CONFLICT OF INTEREST, ENUMERATED.— The prohibition against conflict of interest rests on the following five (5) rationales: *First,* the law seeks to assure clients that their lawyers will represent them with undivided loyalty. A

client is entitled to be represented by a lawyer whom the client can trust. Instilling such confidence is an objective important in itself. *Second,* the prohibition against conflicts of interest seeks to enhance the effectiveness of legal representation. To the extent that a conflict of interest undermines the independence of the lawyer's professional judgment or inhibits a lawyer from working with appropriate vigor in the client's behalf, the client's expectation of effective representation could be compromised. *Third,* a client has a legal right to have the lawyer safeguard confidential information pertaining to it. Preventing the use of confidential information against the interests of the client to benefit the lawyer's personal interest, in aid of some other client, or to foster an assumed public purpose, is facilitated through conflicts rules that reduce the opportunity for such abuse. *Fourth,* conflicts rules help ensure that lawyers will not exploit clients, such as by inducing a client to make a gift or grant in the lawyer's favor. *Finally,* some conflict-of-interest rules protect interests of the legal system in obtaining adequate presentations to tribunals. In the absence of such rules, for example, a lawyer might appear on both sides of the litigation, complicating the process of taking proof and compromise adversary argumentation.

3. ID.; ID.; ID.; VIOLATION; IMPOSABLE PENALTY.— The Court agrees with the IBP's finding that Salandanan represented conflicting interests and, perforce, must be held administratively liable for the same. **WHEREFORE, IN VIEW OF THE FOREGOING,** the Court **SUSPENDS** Atty. Edgardo M. Salandanan from the practice of law for three (3) years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

APPEARANCES OF COUNSEL

Emiliano S. Samson and *Mary Anne B. Samson* for petitioner.

D E C I S I O N

PERALTA, *J.*:

This is a complaint which Paces Industrial Corporation (*Paces*) filed against its former lawyer, Atty. Edgardo M. Salandanan,

for allegedly committing malpractice and/or gross misconduct when he represented conflicting interests.

The procedural and factual antecedents of the instant case are as follows:

Sometime in October 1973, Salandanan became a stockholder of Paces, and later became its Director, Treasurer, Administrative Officer, Vice-President for Finance, then its counsel. As lawyer for Paces, he appeared for it in several cases such as in *Sisenando Malveda, et al. v. Paces Corporation* (NLRC R-04 Case No. 11-3114-73) and *Land & Housing Development Corporation v. Paces Corporation* (Civil Case No. 18791). In the latter case, Salandanan failed to file the Answer, after filing a Motion for a Bill of Particulars, which the court had denied. As a result, an order of default was issued against Paces. Salandanan never withdrew his appearance in the case nor notified Paces to get the services of another lawyer. Subsequently, a decision was rendered against Paces which later became final and executory.

On December 4, 1973, E.E. Black Ltd., through its counsel, sent a letter to Paces regarding the latter's outstanding obligation to it in the amount of ₱96,513.91. In the negotiations that transpired thereafter, Salandanan was the one who represented Paces. He was likewise entrusted with the documents relative to the agreement between Paces and E.E. Black Ltd.

Meanwhile, disagreements on various management policies ensued among the stockholders and officers in the corporation. Eventually, Salandanan and his group were forced to sell out their shareholdings in the company to the group of Mr. Nicolas C. Balderama on May 27, 1974.

After said sell-out, Salandanan started handling the case between E.E. Black Ltd. and Paces, but now, representing E.E. Black Ltd. Salandanan then filed a complaint with application for preliminary attachment against Paces for the collection of its obligation to E.E. Black Ltd. He later succeeded in obtaining an order of attachment, writ of attachment, and notices of garnishment to various entities which Paces had business dealings with.

Thus, Paces filed a complaint against Salandanan. It argued that when he acted as counsel for E.E. Black Ltd., he represented conflicting interests and utilized, to the full extent, all the information he had acquired as its stockholder, officer, and lawyer. On the other hand, Salandanan claimed that he was never employed nor paid as a counsel by Paces. There was no client-lawyer contract between them. He maintained that his being a lawyer was merely coincidental to his being a stockholder-officer and did not automatically make him a lawyer of the corporation, particularly with respect to its account with E.E. Black Ltd. He added that whatever knowledge or information he had obtained on the operation of Paces only took place in the regular, routinary course of business as him being an investor, stockholder, and officer, but never as a lawyer of the company.

After a thorough and careful review of the case, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended Salandanan's suspension for one (1) year on November 2, 2011.[1] On September 28, 2013, the IBP Board of Governors passed Resolution No. XX-2013-120[2] adopting and approving, with modification, the aforementioned recommendation, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that the Respondent violated the conflict of interest rule, Atty. Edgardo M. Salandanan is hereby* ***SUSPENDED from the practice of law for three (3) years****.*

On August 8, 2014, the IBP Board of Governors passed Resolution No. XXI-2014-413,[3] denying Salandanan's motion for reconsideration and affirming Resolution No. XX-2013-120.

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[1] Report and Recommendation submitted by Commissioner Oliver A. Cachapero, dated November 2, 2011; *rollo*, pp. 224-228.

[2] *Rollo*, p. 223.

[3] *Id*. at 231.

The Court's Ruling

The Court finds no justifiable reason to deviate from the findings and recommendations of the IBP.

Rule 15.03, Canon 15 and Canon 21 of the Code of Professional Responsibility (*CPR*) provide:

CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

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Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

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CANON 21 – A LAWYER SHALL PRESERVE THE CONFIDENCES AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED.

Under the aforecited rules, it is explicit that a lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases.[4] Conflict of interest exists when a lawyer represents inconsistent interests of two or more opposing parties. The test is whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In short, if he argues for one client, this argument will be opposed by him when he argues for the other client. This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first

[4] *Orola, et al. v. Atty. Ramos*, 717 Phil. 536, 544 (2013).

client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance of said duty.[5] The prohibition is founded on the principles of public policy and good taste.[6]

The prohibition against conflict of interest rests on the following five (5) rationales:[7]

First, the law seeks to assure clients that their lawyers will represent them with undivided loyalty. A client is entitled to be represented by a lawyer whom the client can trust. Instilling such confidence is an objective important in itself.

Second, the prohibition against conflicts of interest seeks to enhance the effectiveness of legal representation. To the extent that a conflict of interest undermines the independence of the lawyer's professional judgment or inhibits a lawyer from working with appropriate vigor in the client's behalf, the client's expectation of effective representation could be compromised.

Third, a client has a legal right to have the lawyer safeguard confidential information pertaining to it. Preventing the use of confidential information against the interests of the client to benefit the lawyer's personal interest, in aid of some other client, or to foster an assumed public purpose, is facilitated through conflicts rules that reduce the opportunity for such abuse.

Fourth, conflicts rules help ensure that lawyers will not exploit clients, such as by inducing a client to make a gift or grant in the lawyer's favor.

Finally, some conflict-of-interest rules protect interests of the legal system in obtaining adequate presentations to tribunals. In the absence of such rules, for example, a lawyer might appear

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[5] *Id.*

[6] *Id.*

[7] *Samson v. Atty. Era,* 714 Phil. 101, 112-113 (2013).

on both sides of the litigation, complicating the process of taking proof and compromise adversary argumentation.

Even the termination of the attorney-client relationship does not justify a lawyer to represent an interest adverse to or in conflict with that of the former client. The spirit behind this rule is that the client's confidence once given should not be stripped by the mere expiration of the professional employment. Even after the severance of the relation, a lawyer should not do anything that will injuriously affect his former client in any matter in which the lawyer previously represented the client. Nor should the lawyer disclose or use any of the client's confidences acquired in the previous relation. In this regard, Canon 17 of the CPR expressly declares that: "A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." The lawyer's highest and most unquestioned duty is to protect the client at all hazards and costs even to himself. The protection given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the client's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client.[8]

It must, however, be noted that a lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.[9]

Here, contrary to Salandanan's futile defense, he sufficiently represented or intervened for Paces in its negotiations for the payment of its obligation to E.E. Black Ltd. The letters he sent to the counsel of E.E. Black Ltd. identified him as the Treasurer of Paces. Previously, he had likewise represented Paces in two (2) different cases. It is clear, therefore, that his

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[8] *Id*.

[9] *Orola, et al. v. Atty. Ramos*, s*upra* note 4, at 545.

duty had been to fight a cause for Paces, but it later became his duty to oppose the same for E.E. Black Ltd. His defense for Paces was eventually opposed by him when he argued for E.E. Black Ltd. Thus, Salandanan had indisputably obtained knowledge of matters affecting the rights and obligations of Paces which had been placed in him in unrestricted confidence. The same knowledge led him to the identification of those attachable properties and business organizations that eventually made the attachment and garnishment against Paces a success. To allow him to utilize said information for his own personal interest or for the benefit of E.E. Black Ltd., the adverse party, would be to violate the element of confidence which lies at the very foundation of a lawyer-client relationship.

The rule prohibiting conflict of interest was fashioned to prevent situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. In the same way, a lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation of loyalty. Throughout the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. Knowledge and information gathered in the course of the relationship must be treated as sacred and guarded with care.[10] It behooves lawyers, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.[11] The nature of that relationship is, therefore, one of trust and confidence of the highest degree.[12]

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[10] *Supra* note 7, at 111.

[11] *Supra* note 4.

[12] *Supra* note 7, at 112.

In the absence of the express consent from Paces after full disclosure to it of the conflict of interest, Salandanan should have either outrightly declined representing and entering his appearance as counsel for E.E. Black Ltd., or advised E.E. Black Ltd. to simply engage the services of another lawyer. Unfortunately, he did neither, and must necessarily suffer the dire consequences.[13]

Applying the above-stated principles, the Court agrees with the IBP's finding that Salandanan represented conflicting interests and, perforce, must be held administratively liable for the same.[14]

WHEREFORE, **IN VIEW OF THE FOREGOING**, the Court **SUSPENDS** Atty. Edgardo M. Salandanan from the practice of law for three (3) years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

Let copies of this decision be included in the personal record of Atty. Edgardo M. Salandanan and entered in his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines for its guidance.

SO ORDERED.

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

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[13] *Id*. at 113.

[14] *Orola, et al. v. Atty. Ramos*, *supra* note 4, at 545.

EN BANC

[A.M. No. MTJ-16-1886. July 25, 2017]
(Formerly OCA IPI No. 16-2869-MTJ)

ANONYMOUS COMPLAINT, *complainant, vs.* **PRESIDING JUDGE EXEQUIL L. DAGALA, MUNICIPAL CIRCUIT TRIAL COURT, DAPA-SOCORRO, DAPA, SURIGAO DEL NORTE,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; A DISCIPLINARY CASE AGAINST A JUDGE OR JUSTICE BROUGHT BEFORE THE SUPREME COURT IS AN ADMINISTRATIVE PROCEEDING, SUBJECT TO THE RULES AND PRINCIPLES GOVERNING ADMINISTRATIVE PROCEDURES.—** The Supreme Court has administrative supervision over all courts and their personnel. This supervision includes the power to discipline members of the Judiciary. Rule 140 of the Rules of Court outlines the process by which judges and justices of lower courts shall be held to answer for any administrative liability. A disciplinary case against a judge or justice brought before this Court is an administrative proceeding. Thus, it is subject to the rules and principles governing administrative procedures.

2. **ID.; ID.; THREE WAYS TO INSTITUTE PROCEEDINGS FOR THE DISCIPLINE OF JUDGES AND JUSTICES OF THE LOWER COURTS, DISTINGUISHED.—** Section 1 of Rule 140 states that proceedings for the discipline of judges and justices of lower courts may be instituted in three ways: by the Supreme Court *motu proprio*, through a verified complaint, and through an anonymous complaint. A verified complaint must be supported by affidavits of persons who have personal knowledge of the facts alleged or by documents which may substantiate the allegations. An anonymous complaint, on the other hand, should be supported by public records of indubitable integrity. While anonymous complaints should always be treated with great caution, the anonymity of the complaint does not, *in itself*, justify its outright dismissal. x x x Since a disciplinary case is an administrative proceeding, technical rules of procedure

and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. Administrative due process essentially means "an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of." When the Court acts *motu proprio*, this opportunity arises through the filing of a comment upon order of the Court. In a case where the proceedings are initiated by a complaint, the Rules of Court state that the complaint must state the acts or omissions constituting a violation of our ethical rules. To our mind, this is the standard of what suffices as information as to the allegations against a respondent. It is sufficient that the acts or omissions complained of are clearly identified.

3. ID.; ID.; WHEN GUILTY OF GROSS MISCONDUCT; MISCONDUCT IS CONSIDERED GRAVE WHERE THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF ESTABLISHED RULES ARE PRESENT; CASE AT BAR.— There is sufficient evidence to hold Judge Dagala accountable for gross misconduct in connection with the September 29 incident, as recounted in the anonymous complaint. The OCA identified Judge Dagala as the man brandishing an M-16 armalite rifle in the video footage. In his comment and manifestation, however, Judge Dagala failed to deny or refute the allegation. We emphasize that Judge Dagala was given sufficient notice of this allegation against him because the anonymous letter-complaint was included in the OCA's Indorsement. Although Judge Dagala was informed of the existence of the accusation and ought to have understood the implications, he made no efforts to refute the claims against him. We thus rule that there is substantial evidence before us to prove that Judge Dagala brandished a high-powered firearm during an altercation in Siargao. This finding of fact has various consequences. A certification issued by the PNP Firearms and Explosives Office also disclosed that Judge Dagala is not a licensed/registered firearm holder of any kind and caliber. x x x In light of these findings, we concur with the OCA's conclusion that Judge Dagala is guilty of gross misconduct. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. Misconduct is considered grave where the elements of corruption,

clear intent to violate the law, or flagrant disregard of established rules are present. Judge Dagala's actuations, as recorded in the video, are unacceptable for a member of the bench and should merit a finding of administrative liability. This is without prejudice to any criminal action that may also be filed against him.

4. ID.; ID.; IMMORALITY IS A RECOGNIZED GROUND FOR THE DISCIPLINE OF JUDGES AND JUSTICES UNDER THE RULES OF COURT.— In his Comment, Judge Dagala has admitted "without any remorse" that he "was able to impregnate" three different women. This is an admission that he is the father of "B's" son, who was born on March 24, 2008, while his marriage with "A" was subsisting. x x x Under the above facts, we find Judge Dagala guilty of immorality, for siring a child out of wedlock during the subsistence of his marriage. We have repeatedly said that members of the Judiciary are commanded by law to exhibit the highest degree of moral certitude and is bound by the highest standards of honesty and integrity. x x x Immorality is a recognized ground for the discipline of judges and justices under the Rules of Court. The New Canon of Judicial Conduct for the Philippine Judiciary requires judges to avoid "impropriety and the appearance of impropriety in all their activities." In *Castillo v. Calanog, Jr.* (*Castillo*), we laid down the **doctrine of no dichotomy of morality**. We explained why judges as public officials are also judged by their private morals: x x x Thus, in *Castillo*, we dismissed a judge from service for siring a child outside of wedlock and for engaging in an extramarital affair. The absence of a public and private dichotomy when it comes to the ethical standards expected of judges and justices has since become an unyielding doctrine as consistently applied by the Court in subsequent cases.

5. ID.; ID.; ID.; ABSENCE OF CRIMINAL LIABILITY DOES NOT PRECLUDE DISCPILINARY ACTION; RATIONALE.— The Court has consistently held that absence of criminal liability does not preclude disciplinary action. As in the case of disciplinary action of lawyers, acquittal of criminal charges is not a bar to administrative proceedings. In *Pangan v. Ramos*, we held that "[t]he standards of the legal profession are not satisfied by conduct which merely enables one to escape the penalties of criminal law. Moreover, this Court in disbarment

proceedings is acting in an entirely different capacity from that which courts assume in trying criminal cases." x x x Time and again, this Court has reminded judges that their acts of immorality are proscribed and punished, even if committed in their private life and outside of their *salas*, because such acts erode the faith and confidence of the public in the administration of justice and in the integrity and impartiality of the judiciary. The public's continued faith and confidence in our justice system is no less a victim of the commission of acts of immorality by a judge. The resulting harm to the justice system vests the State with the interest to discipline judges who commit acts of immorality, independent of the view or feelings of the judge's spouse and their children. For society, judges are the most tangible representation of the Judiciary. Judges, in particular, are not just magistrates who hear and decide cases; they are immersed in the community and, therefore, in the best position to either bolster or weaken the judicial system's legitimacy.

6. ID.; ID.; ID.; IMMORALITY IS A VALID GROUND FOR SANCTIONING MEMBERS OF THE JUDICIARY BECAUSE IT CHALLENGES HIS OR HER CAPACITY TO DISPENSE JUSTICE, ERODES THE FAITH AND CONFIDENCE OF THE PUBLIC IN THE ADMINISTRATION OF JUSTICE, AND IMPACTS THE JUDICIARY'S LEGITIMACY; CASE AT BAR.— To be clear, we do not seek to interfere with a judge's relationships. Thus, while we have sanctioned lawyers, judges, and even justices, who have extramarital affairs, we have refused to do so in cases where the parties, without any legal impediment, live together without the benefit of marriage. We have also been adamant in holding that a person's homosexuality does not affect his or her moral fitness. Nevertheless, immorality is a valid ground for sanctioning members of the Judiciary because it (1) challenges his or her capacity to dispense justice, (2) erodes the faith and confidence of the public in the administration of justice, and (3) impacts the Judiciary's legitimacy. Finally, while a disciplinary case for immorality may proceed even without the participation of the spouse, the children or the alleged paramour, steps must be taken to protect their decision not to air out their grievances in administrative proceedings before us. As a matter of policy, in cases such as this, the names of concerned parties who are not before the Court should not be

used. Care should be taken so as not to disclose personal information and circumstances that are not relevant to the resolution of the case. If necessary, aliases should be used when referring to these parties. Taking all these into consideration, we find that Judge Dagala is also guilty of committing acts of immorality.

7. ID.; ID.; IMMORALITY AND GRAVE MISCONDUCT; IMPOSABLE PENALTY IN CASE AT BAR.— Under Section 8 of Rule 140 of the Rules of Court, immorality and gross misconduct each constitute a serious charge. x x x We affirm the recommendation of the OCA to impose on Judge Dagala the supreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave benefits. Because of the gravity of Judge Dagala's infractions, we also impose on him the penalty of perpetual disqualification from reinstatement or appointment to any public office, including government owned or controlled corporations. x x x No one is forced to be a judge. The judiciary is an institution reserved for those who, when they apply for a judicial position, are expected to have a thorough understanding of community standards and values which impose exacting standards of decorum and strict standards of morality. We highlight that judges are bound to uphold secular, not religious, morality. Thus, the values that a judge must uphold are those in consonance with the dictates of the conscience of his or her community. Among these community values is respect for the sanctity of marriage. All applicants to the Judiciary must, therefore, decide for themselves whether the community values that the Court has recognized conform to their own personal values, lifestyle, or proclivities. All who desire to be part of the Judiciary must first decide if he or she can live up to the highest standards of morality expected of judges and justices.

LEONEN*, J.*, *concurring and dissenting opinion*:

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; ANONYMOUS COMPLAINTS; DUE PROCESS FOR OUR OWN JUDGES, EVEN AT THE FACE OF OSTENSIBLE CULPABILITY, DEMANDS MORE SPECIFICITY IN THE CHARGES; NOT ESTABLISHED IN CASE AT BAR.— At the very least, the Office of the Court Administrator should have issued a more

specific order for the respondent to comment on, to give him a chance to answer the accusations of dishonesty in his Personal Data Sheet, his use of and access to a high-powered firearm not owned by him, as well as the charges of illegal logging, intimidation, grave threats, and coercion. These were, after all, the contents of the Anonymous Complaint. Due process for our judges, even at the face of ostensible culpability, demands more specificity in the charges. x x x The Court Administrator's report did not disclose his discovery of missing entries in the respondent's Personal Data Sheet. The Court Administrator also did not mention whether his findings as regards the respondent's records with the Firearms and Explosives Unit were transmitted to the respondent for his comment. There was nothing in his report which showed that he requested the respondent judge to produce any license for any firearm or to confirm that he was the person shown in the photographs and the video clips in his possession. It used to be that administrative cases against judges charged with grave offenses were in the nature of criminal or penal proceedings. In recent years, this Court has recognized that judges were not a special species of public servants that needed a higher quantum of proof to be held accountable. Administrative cases against judges then took a turn for requiring merely substantial proof, a lower quantum than proof beyond reasonable doubt. However, this development did not compromise the requirement of due process. To be informed of the accusations against him and be given the opportunity to answer are constitutional guarantees that eluded Judge Dagala in the proceedings before the Office of the Court Administrator. Charges of dishonesty in his Personal Data Sheet, his use of and access to a high-powered firearm that he was not authorized to own, and the video footage of acts as specified in the Anonymous Complaint were not presented to Judge Dagala. Neither was respondent informed of the manner in which these pieces of evidence were obtained against him.

2. ID.; ID.; THE EASIEST AND MOST OBJECTIVE CONCEPTION OF THE KIND OF IMMORALITY SUFFICIENT TO REMOVE A JUDGE IS ONE WHICH ALSO AMOUNTS TO AN ILLEGAL ACT; IN CASE AT BAR, NONE OF THE ELEMENTS OF CONCUBINAGE OR ADULTERY WERE SUFFICIENTLY PROVEN.— The easiest and most objective conception of the kind of immorality

> sufficient to remove a judge is one which also amounts to an illegal act. Following this strand of logic, the evidence presented does not seem to be sufficient. The Revised Penal Code punishes indiscretion through the offenses of Concubinage or Adultery. None of the elements of these offenses were sufficiently proven in the records of this case. Concubinage is committed by a married man who has carnal knowledge of a woman not his spouse under scandalous circumstances. It is not simply the presence of illicit carnal knowledge that the law requires. There must be separate proof that this was done "under scandalous circumstances," different from the act of sexual intercourse. Obviously, there is no evidence in the record that can remotely be considered as sufficient for this purpose. Adultery, on the other hand, is committed by a married woman who has a relationship with a man who is not her husband. For adultery to happen, it is not material that the man is likewise married. Likewise, the man may be convicted on the basis of conspiracy with the married woman. Again, the records of the case are bereft of proof that the women, with whom the respondent had his children, were married. The lack of this evidence, thus, leads to a reasonable conclusion that adultery may not have been committed.

D E C I S I O N

***PER CURIAM*:**

This administrative case arose from an anonymous letter-complaint[1] filed against Judge Exequil L. Dagala (Judge Dagala), presiding judge, Municipal Circuit Trial Court, Dapa-Socorro, Dapa, Surigao Del Norte, filed before the Office of the Ombudsman and indorsed to the Office of the Court Administrator (OCA) for appropriate action.

In a letter-complaint dated September 30, 2015, an unnamed resident of San Isidro, Siargo Island, Surigao Del Norte, wrote to report, among others, an altercation involving his neighbors and Judge Dagala. According to the unnamed complainant, on September 29, 2015, he was in his hut when he witnessed an

[1] *Rollo*, pp. 84-85.

argument between his neighbors and Judge Dagala over the ownership of his neighbor's lot and the trees planted thereon (September 29 incident). There, he saw Judge Dagala walking back and forth, shouting invectives at the lot's occupants and brandishing an M-16 armalite rifle to intimidate them.[2] He further claims that while police officers were at the scene, they did nothing to pacify the situation. Complainant alleged that no inquiries were made as to the legality of the logging activities being undertaken at Judge Dagala's apparent behest nor his authority to carry a high-powered firearm. According to the complainant, while his neighbors were able to take photos and make a video recording of the incident, they were too afraid to file a complaint against Judge Dagala and instead wanted to arrange for a confidential transmittal of their evidence to the Office of the Ombudsman. The complainant also recounted rumors of Judge Dagala's involvement in illicit activities, namely: illegal drugs, illegal fishing, illegal gambling, illegal logging, maintaining a private army, owning high-powered firearms and having several mistresses.[3]

The Office of the Ombudsman indorsed the letter-complaint to the OCA for appropriate action.[4] The OCA, in turn, directed Executive Judge Victor A. Canoy (Judge Canoy) of the Regional Trial Court of Surigao City, Surigao Del Norte, to conduct a discreet investigation.[5]

In his report, Judge Canoy reported that the altercation described in the complaint arose from an existing boundary dispute among owners of adjacent lots in the area. One of the disputants allegedly sold the trees planted on the contested lot to Dagala. According to Judge Canoy, the chief of police could not confirm whether Judge Dagala was armed with a high-powered weapon at the time but that the incident was subject of an ongoing police investigation. He concluded, however,

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[2] *Id.* at 84.

[3] *Id.*

[4] *Rollo*, p. 104.

[5] *Id.* at 80.

that unless the anonymous complainant comes forward and substantiates his allegations, the complaint should be dismissed.[6]

On November 13, 2015, the OCA also requested the National Bureau of Investigation (NBI) to conduct further discreet investigation.[7] The investigation yielded the following findings, among others: (1) Judge Dagala is legally married to "A," on July 18, 2006, in Del Carmen, Surigao del Norte; (2) they have no children; (3) Judge Dagala sired children with three different women; (4) these children were born on October 13, 2000, March 5, 2007, and March 24, 2008, respectively; (5) in 2008, Judge Dagala and "A" agreed to live separately; (6) "A" is currently working in the City Treasury Office and receiving ₱10,000.00 as monthly support from him; (7) "B," the mother of Judge Dagala's youngest child, appeared before the Department of Environment and Natural Resources (DENR) relative to certain hardwood furniture confiscated by the government; (8) Sergio Tiu Commendador[8] (Commendador), a court interpreter in Judge Dagala's court, was arrested during a recent buy-bust operation; (9) Judge Dagala is alleged to be the owner of Sugba Cockpit in Del Carmen, Surigao del Norte, and thereafter sold the same to one Marites Borchs[9] (Borchs).[10]

In an Indorsement dated April 25, 2016, the OCA required Judge Dagala to file his comment in relation to the anonymous letter-complaint as well as the findings of its preliminary investigation. Attached to the Indorsement were a copy of the anonymous letter-complaint, a certificate of marriage between Judge Dagala and "A," and the certificates of live birth of his alleged children.[11]

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

[7] *Id.* at 78.

[8] Also referred to as "Comendador" in some parts of the record.

[9] Also referred to as "Boerchs" in some parts of the record.

[10] *Rollo*, pp. 69-71.

[11] *Id.* at 66.

In his comment,[12] Judge Dagala admitted that he was married to "A" but that, due to their constant fighting, they decided to separate. "A" returned to Surigao City while Judge Dagala stayed in Siargao Island.[13] Judge Dagala also admitted, "without any remorse," that he has three children with three different women. He added that his wife knew about his children and that she has already forgiven and forgotten him for his unfaithfulness.[14] He denied any involvement in illegal logging, asserting that it was "B" who managed a furniture business.[15] He also denies engaging in any illegal drug activity, asserting that the only connection linking him to the same is Commendador, who simply happened to work as a court interpreter in his *sala.* Judge Dagala also admitted to having owned a cockpit but asserts that he had sold it to Borchs in 2008 to dispel any suspicion that he was involved in illegal gambling.[16]

Earlier, however, Judge Dagala submitted a letter[17] "irrevocably resigning" his post but this was rejected by the Court on August 9, 2016 because he was still under investigation.[18] On August 19, 2016, the OCA received a Universal Serial Bus (USB) flash disk by mail from "a concerned citizen" containing a video recording of the September 29 incident complained of.[19]

According to the OCA, while Judge Dagala may be "excused" for having sired two children prior to his marriage, the record is clear that he had his third child with "B" during the subsistence of his marriage with "A." The OCA found it morally reprehensible for Judge Dagala, a married man, to maintain intimate relations

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[12] *Id.* at 24-27.

[13] *Id.* at 25.

[14] *Id*.

[15] *Rollo*, pp. 25-26.

[16] *Id.* at 27.

[17] *Id*. at 63.

[18] *Id*. at 4.

[19] *Id.* at 5, 28.

with a woman other than his spouse. That he has already separated from his wife and that she had forgiven him for his extramarital affair do not justify his conduct. The OCA asserted that Judge Dagala's act of successively siring children with different women displays his proclivity to disregard settled norms of morality.[20]

The OCA also noted Judge Dagala's failure to disclose that he already had a child in his Personal Data Sheet (PDS) which he filed with the Judicial and Bar Council for his application to the Judiciary in 2006. For the OCA, this omission is a deliberate attempt to mislead. As a former prosecutor, Judge Dagala knew or ought to know that making false statements in the PDS amounts to dishonesty and falsification of a public document. Hence, his failure to disclose the fact that he fathered a child in his PDS constitutes dishonesty.[21]

The OCA also found that Judge Dagala committed gross misconduct for openly carrying a high-powered firearm during the reported altercation of September 29, 2015. Republic Act No. 10591[22] (RA 10591) provides that only small arms may be registered by licensed citizens or juridical entities for ownership, possession, and concealed entry. The OCA noted that Judge Dagala neither refuted the allegation that he brandished a high-powered weapon nor questioned the veracity of the video recording of the September 29, 2015 incident. A certification from the Philippine National Police (PNP) Firearms and Explosives Office further disclosed that, per their records, Judge Dagala is not a licensed/registered firearm holder of any kind or caliber.[23]

I.

a.

The Supreme Court has administrative supervision over all courts and their personnel.[24] This supervision includes the power

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

[21] *Id.* at 7.

[22] Comprehensive Firearms and Ammunition Regulation Act.

[23] *Rollo*, pp. 8, 13.

[24] CONSTITUTION, Art. VIII, Sec. 6.

to discipline members of the Judiciary. Rule 140 of the Rules of Court outlines the process by which judges and justices of lower courts shall be held to answer for any administrative liability. A disciplinary case against a judge or justice brought before this Court is an administrative proceeding. Thus, it is subject to the rules and principles governing administrative procedures.

Section 1 of Rule 140 states that proceedings for the discipline of judges and justices of lower courts may be instituted in three ways: by the Supreme Court *motu proprio*, through a verified complaint, and through an anonymous complaint. A verified complaint must be supported by affidavits of persons who have personal knowledge of the facts alleged or by documents which may substantiate the allegations. An anonymous complaint, on the other hand, should be supported by public records of indubitable integrity.[25]

While anonymous complaints should always be treated with great caution, the anonymity of the complaint does not, *in itself,* justify its outright dismissal.[26] The Court will act on an anonymous complaint—

> x x x provided its allegations can be reliably verified and properly substantiated by competent evidence, like public records of indubitable integrity, "thus needing no corroboration by evidence to be offered by the complainant, whose identity and integrity could hardly be material where the matter involved is of public interest," or the declarations by the respondents themselves in reaction to the allegations, where such declarations are, properly speaking, admissions worthy of consideration for not being self-serving.[27] (Citations omitted.)

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[25] RULES OF COURT, Rule 140, Sec. 1.

[26] *Samahan ng mga Babae sa Hudikatura (SAMABAHU) v. Untalan*, A.M. No. RTJ-13-2363, February 25, 2015, 751 SCRA 597, 611.

[27] *Re: Anonymous Letter-Complaint on the Alleged Involvement and for Engaging in the Business of Lending Money at Usurious Rates of Interest of Ms. Dolores T. Lopez, SC Chief Judicial Staff Officer, and Mr. Fernando M. Montalvo, SC Supervising Judicial Staff Officer, Checks Disbursement Division, Fiscal Management and Budget Office*, A.M. No. 2010-21-SC, September 30, 2014, 737 SCRA 195, 203-204.

Since a disciplinary case is an administrative proceeding, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[28] Administrative due process essentially means "an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of."[29] When the Court acts *motu proprio*, this opportunity arises through the filing of a comment upon order of the Court. In a case where the proceedings are initiated by a complaint, the Rules of Court state that the complaint must state the acts or omissions constituting a violation of our ethical rules. To our mind, this is the standard of what suffices as information as to the allegations against a respondent. It is sufficient that the acts or omissions complained of are clearly identified.

b.

In this case, the OCA's Indorsement informed Judge Dagala: (1) that an anonymous letter-complaint was filed against him; and (2) that it conducted a preliminary investigation "on the matter [anonymous letter-complaint]." It thereafter informed Judge Dagala of the results of its preliminary investigation,[30] attaching copies of the anonymous letter-complaint, the certificate of marriage[31] between "A" and Judge Dagala, and the birth certificates[32] of his alleged children. Judge Dagala was directed to comment "on the matter" within ten (10) days from receipt of the Indorsement.[33]

Plainly, when the OCA referred to the "matter," it meant not only the information that the preliminary investigation yielded

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[28] *Puse v. Delos Santos-Puse*, G.R. No. 183678, March 15, 2010, 615 SCRA 500, 518.

[29] *Id*.

[30] *Rollo*, pp. 65-66.

[31] *Id*. at 123.

[32] *Id*. at 124-129.

[33] *Id*. at 66.

and were stated in the Indorsement, but also the allegations of the anonymous letter-complaint. In its first sentence, the OCA defined "matter" to be the anonymous letter-complaint. The last sentence of the Indorsement therefore directed Judge Dagala to comment on the "matter," it was using that word as a defined term.

To recall, the anonymous complaint stated that Judge Dagala "carried [an] armalite firearm" during the September 29 incident and that he "maintained several mistresses."[34] The anonymous letter-complaint also stated that there were pictures and a video recording of Judge Dagala's participation in the September 29 incident.

Justice Leonen admits, in his Concurring and Dissenting Opinion, that Judge Dagala's act of brandishing an M-16 armalite rifle and his lack of registration for the firearm would be sufficiently proven with the photographs and video on file. He nevertheless faults the OCA for failing to specifically require Judge Dagala to comment on these photographs and videos. **We disagree**. The duty to disprove the allegation of the anonymous letter-complaint that he carried a firearm, as supported by photographs and a video, rested on Judge Dagala. In fact, we note that Judge Dagala never denied the allegation that he carried an M-16 armalite rifle during the September 29 incident. Under these circumstances, the Court finds that Judge Dagala was reasonably informed of allegations of fact which, if left uncontroverted or unexplained, may constitute ground for disciplinary action.

Justice Leonen argues that "immorality as a ground was not properly pleaded."[35] **Again, the Court disagrees**. The anonymous letter-complaint clearly alleged that Judge Dagala was known for maintaining "several mistresses." The certificate of marriage between Judge Dagala and "A" on July 18, 2006 and the certificate of live birth of an alleged child born to "B"

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[34] *Id.* at 84.

[35] Concurring and Dissenting Opinion, *J.* Leonen, p. 3.

on March 24, 2008 also clearly allege that Judge Dagala sired a child *not with his wife* during the subsistence of his marriage. To the Court's mind, all these sufficiently plead the commission of acts of immorality as to enable Judge Dagala to properly prepare his defense.

We agree, however, that Judge Dagala was not sufficiently warned that he may be charged with dishonesty in connection with how he accomplished his PDS. His PDS was not mentioned in either the OCA Indorsement or the anonymous letter-complaint. Penalizing him for a charge he was not reasonably informed of will violate his right to due process. Nevertheless, considering that this Court here finds Judge Dagala liable for the separate counts of immorality and grave misconduct, no useful purpose will be served by remanding the charge of dishonesty to the OCA.

II.

a.

We agree with the findings of the OCA that Judge Dagala committed acts amounting to gross misconduct.

There is sufficient evidence to hold Judge Dagala accountable for gross misconduct in connection with the September 29 incident, as recounted in the anonymous complaint. The OCA identified Judge Dagala as the man brandishing an M-16 armalite rifle in the video footage. In his comment and manifestation, however, Judge Dagala failed to deny or refute the allegation. We emphasize that Judge Dagala was given sufficient notice of this allegation against him because the anonymous letter-complaint was included in the OCA's Indorsement. Although Judge Dagala was informed of the existence of the accusation and ought to have understood the implications, he made no efforts to refute the claims against him. We thus rule that there is substantial evidence before us to prove that Judge Dagala brandished a high-powered firearm during an altercation in Siargao.

This finding of fact has various consequences. A certification issued by the PNP Firearms and Explosives Office also disclosed

that Judge Dagala is not a licensed/registered firearm holder of any kind and caliber. Even assuming that he *is* licensed to own, possess, or carry firearms, he can only carry those classified by law as small arms pursuant to RA 10591 which provides that only small arms may be registered by licensed citizens or juridical entities for ownership, possession, and concealed carry. Small arms refer to firearms intended to be, or primarily designed for, individual use or that which is generally considered to mean a weapon intended to be fired from the hand or shoulder, which are not capable of fully automatic bursts or discharge. An M-16 armalite rifle does not fall within this definition. Being a light weapon, only the Armed Forces of the Philippines, PNP, and other law enforcement agencies authorized by the President in the performance of their duties can lawfully acquire or possess an M-16 armalite rifle. It baffles us how Judge Dagala came to possess such a high-powered weapon. Worse, he had the audacity to brandish it in front of the police and other civilians.

In light of these findings, we concur with the OCA's conclusion that Judge Dagala is guilty of gross misconduct. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. Misconduct is considered grave where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present.[36]

Judge Dagala's actuations, as recorded in the video, are unacceptable for a member of the bench and should merit a finding of administrative liability. This is without prejudice to any criminal action that may also be filed against him.

b.

We also agree with the OCA's findings that Judge Dagala is guilty of immorality.

In his Comment, Judge Dagala has admitted "without any remorse" that he "was able to impregnate" three different

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[36] *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 506.

women.[37] This is an admission that he is the father of "B's" son, who was born on March 24, 2008,[38] while his marriage with "A" was subsisting.[39] He is listed as the father in the child's certificate of live birth.[40] Dagala, in an obvious appeal directed to the Court, pleads: [T]o err is human **your honors** and to forgive is divine."[41] He claims he is separated from his wife, "A," because of "constant fighting in our married life" and claims that she knew about his children out of wedlock. She did not object because she understood his desire to have children. "A" has learned to "forgive" and "forget" him because she impliedly submits to the "notion that we are not really meant for each and for eternity."[42]

Under the above facts, we find Judge Dagala guilty of immorality, for siring a child out of wedlock during the subsistence of his marriage.

We have repeatedly said that members of the Judiciary are commanded by law to exhibit the highest degree of moral certitude and is bound by the highest standards of honesty and integrity.[43] In *Regir v. Regir*,[44] we held:

> It is morally reprehensible for a married man or woman to maintain intimate relations with a person other than his or her spouse. Moreover, immorality is not based alone on illicit sexual intercourse. It is not confined to sexual matters, but includes conducts inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the

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[37] *Rollo*, p. 25.

[38] *Id*. at 128.

[39] *Id*. at 123.

[40] *Id*. at 128.

[41] *Id*. at 25. Emphasis supplied.

[42] *Id*.

[43] *Concerned Employees Of The RTC Of Dagupan City v. Falloran-Aliposa*, A.M. No. RTJ-99-1446, March 9, 2000, 327 SCRA 427, 447.

[44] A.M. No. P-06-2282, August 7, 2009, 595 SCRA 455.

community, and an inconsiderate attitude toward good order and public welfare.[45]

Immorality is a recognized ground for the discipline of judges and justices under the Rules of Court.[46] The New Canon of Judicial Conduct for the Philippine Judiciary requires judges to avoid "impropriety and the appearance of impropriety in all their activities."[47]

In *Castillo v. Calanog, Jr.*[48] (*Castillo*), we laid down the **doctrine of no dichotomy of morality**. We explained why judges as public officials are also judged by their private morals:

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. **There is no dichotomy of morality: a public official is also judged by his private morals**. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge's official life [cannot] simply be detached or separated from his personal existence. Thus:
>
> > Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
> >
> > A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.[49]

Thus, in *Castillo*, we dismissed a judge from service for siring a child outside of wedlock and for engaging in an extramarital

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[45] *Id.* at 462. Citations omitted.

[46] RULES OF COURT, Rule 140, Sec. 8.

[47] NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, Canon 4, Sec. 1.

[48] A.M. No. RTJ-90-447, July 12, 1991, 199 SCRA 75.

[49] *Id.* at 83-84. Citations omitted; emphasis and underlining supplied.

affair. The absence of a public and private dichotomy when it comes to the ethical standards expected of judges and justices has since become an unyielding doctrine as consistently applied by the Court in subsequent cases.[50]

Here, the record is clear. The certificate of live birth of "B's" male child indicates that Judge Dagala is the father as shown by his signature in the affidavit of acknowledgment of paternity.[51]

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[50] *Tuvillo v. Laron*, A.M. No. MTJ-10-1755, October 18, 2016; *Office of the Court Administrator v. Ruiz*, A.M. No. RTJ-13-2361, February 2, 2016, 782 SCRA 630; *Tormis v. Paredes*, A.M. No. RTJ-13-2366, February 4, 2015, 749 SCRA 505; *Rivera v. Blancaflor*, A.M. No. RTJ-11-2290, November 18, 2014, 740 SCRA 528; *Lopez v. Lucmayon*, A.M. No. MTJ-13-1837, September 24, 2014, 736 SCRA 291; *Sison-Barias v. Rubia*, A.M. No. RTJ-14-2388, June 10, 2014, 726 SCRA 94; *Decena v. Malanyaon*, A.M. No. RTJ-10-2217, April 8, 2013, 695 SCRA 264; *Angping v. Ros*, A.M. No. 12-8-160-RTC, December 10, 2012, 687 SCRA 390; *Perfecto v. Desales-Esidera*, A.M. No. RTJ-11-2270, January 31, 2011, 641 SCRA 1; *Toledo v. Toledo*, A.M. No. P-07-2403, February 6, 2008, 544 SCRA 26; *Tan v. Pacuribot*, A.M. No. RTJ-06-1982, December 14, 2007, 540 SCRA 246; *Jamin v. De Castro*, A.M. No. MTJ-05-1616, October 17, 2007, 536 SCRA 359; *Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006, 492 SCRA 1; *Court Employees of the MCTC, Ramon Magsaysay, Zamboanga del Sur v. Sy*, A.M. No. P-93-808, November 25, 2005, 476 SCRA 127; *Kaw v. Osorio*, A.M. No. RTJ-03-1801, March 23, 2004, 426 SCRA 63; *Office of the Court Administrator v. Sanchez*, A.M. No. RTJ-99-1486, June 26, 2001, 359 SCRA 577; *Agarao v. Parentela, Jr.*, A.M. No. RTJ-00-1561, November 21, 2001, 370 SCRA 27; *Re: Complaint of Mrs. Rotilla A. Marcos and Her Children Against Judge Ferdinand J. Marcos, RTC, Br. 20, Cebu City*, A.M. No. 97-2-53-RTC, July 6, 2001, 360 SCRA 539; *Dela Cruz v. Bersamira*, A.M. No. RTJ-00-1567, January 19, 2001, 349 SCRA 626; *Yu v. Leanda*, A.M. No. RTJ-99-1463, January 16, 2001, 349 SCRA 58; *Calilung v. Suriaga*, A.M. No. MTJ-99-1191, August 31, 2000, 339 SCRA 340; *Dela Cruz v. Bersamira*, A.M. No. RTJ-00-1567, July 24, 2000, 336 SCRA 353; *Marquez v. Clores-Ramos*, A.M. No. P-96-1182, July 19, 2000, 336 SCRA 122; *Vedaña v. Valencia*, A.M. No. RTJ-96-1351, September 3, 1998, 295 SCRA 1; *Magarang v. Jardin, Sr.*, A.M. No. RTJ-99-1448, April 6, 2000, 330 SCRA 79; *Concerned Employees Of The RTC Of Dagupan City v. Falloran-Aliposa*, *supra*; *Naval v. Panday*, A.M. No. RTJ-95-1283, July 21, 1997, 275 SCRA 654; *Talens-Dabon v. Arceo*, A.M. No. RTJ-96-1336, July 25, 1996, 259 SCRA 354; *Imbing v. Tiongson*, A.M. No. MTJ-91-595, February 7, 1994, 229 SCRA 690.

[51] *Rollo*, p. 129.

The date of birth (March 24, 2008) is during the subsistence of Judge Dagala's marriage to "A," there being neither proof nor allegation that said marriage was annulled or voided in the meantime. Judge Dagala himself admits to the paternity of his son with "B." He does not dispute the entry in the certificate of live birth attesting to his paternity. He admits his mistake and merely pleads for the Court's forgiveness.

Justice Leonen opines that even if the filiation of the child is proven, this fact alone is insufficient to prove immorality on the part of Dagala. He suggests that only evidence which would qualify to prove the commission of an illegal act, *e.g.* concubinage or adultery under the Revised Penal Code, the Anti-Sexual Harassment Act of 1995,[52] and the Anti-Violence Against Women and Their Children Act of 2004[53] (VAWC), will suffice to establish immorality.

Again, we reject this argument.

While we agree with Justice Leonen that the circumstances in this case may not be sufficient to successfully prosecute Judge Dagala for the crime of concubinage, the spirit that moves our criminal law in penalizing criminal infidelity is not the same as the rationale which compels us to sanction acts of immorality.

The Court has consistently held that absence of criminal liability does not preclude disciplinary action.[54] As in the case of disciplinary action of lawyers, acquittal of criminal charges is not a bar to administrative proceedings. In *Pangan v. Ramos*,[55] we held that "[t]he standards of the legal profession are not satisfied by conduct which merely enables one to escape the penalties of criminal law. Moreover, this Court in disbarment proceedings is acting in an entirely different capacity from that which courts assume in trying criminal cases."[56]

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[52] Republic Act No. 7877 (1995).

[53] Republic Act No. 9262 (2004).

[54] *Leynes v. Veloso*, A.M. No. 689-MJ, April 13, 1978, 82 SCRA 325, 329.

[55] A.C. No. 1053, August 31, 1981, 107 SCRA 1.

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

Justice Leonen next argues that a complaint for immorality should be commenced only by its victims, namely, the spouse betrayed, the paramour who has been misled, or the children who have to live with the parent's scandalous indiscretions. According to Justice Leonen, a third party is not a victim, so he/she cannot initiate the complaint unless there is a showing that he/she is doing so for the benefit of the victims. The inability of these victims to press the charges themselves must likewise be pleaded and proven.[57]

For the avoidance of doubt, the Court, in the clearest terms, strongly holds otherwise.

Time and again, this Court has reminded judges that their acts of immorality are proscribed and punished, even if committed in their private life and outside of their *salas*, because such acts erode the faith and confidence of the public in the administration of justice and in the integrity and impartiality of the judiciary. The public's continued faith and confidence in our justice system is no less a victim of the commission of acts of immorality by a judge. The resulting harm to the justice system vests the State with the interest to discipline judges who commit acts of immorality, independent of the view or feelings of the judge's spouse and their children.

For society, judges are the most tangible representation of the Judiciary. Judges, in particular, are not just magistrates who hear and decide cases; they are immersed in the community and, therefore, in the best position to either bolster or weaken the judicial system's legitimacy. In *Tuvillo v. Laron*[58] (*Tuvillo*), we said:

> As the judicial front-liners, judges must behave with propriety at all times as they are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. These most exacting standards of decorum are demanded from the magistrates in order to promote public confidence in the integrity and impartiality

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[57] Concurring and Dissenting Opinion, *J.* Leonen, p. 14.

[58] *Supra*.

of the Judiciary. **No position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench. As the epitome of integrity and justice, a judge's personal behavior, both in the performance of his official duties and in private life should be above suspicion**. For moral integrity is not only a virtue but a necessity in the judiciary.[59] (Citations omitted; emphasis supplied.)

We reiterate what Justice Leonen said in his well-reasoned dissent in *Tuvillo*, "[a]nyone applying for the judiciary is expected to have a thorough understanding of community standards and values."[60] How a judge behaves impacts the Judiciary's legitimacy. Society communicates not just through language but through symbols as well. Judges are symbols of justice. They are symbols not only when they are in the actual performance of our duties but also when they move through social circles in a community. When a judge exhibits a willingness to flout the accepted standards of society, the Judiciary's legitimacy takes a hit. There arises a dissonance between the notion that they are symbols of justice and the fact that they do not act *with justice* in their own lives. When the Judiciary chooses to dispense justice through a judge who refuses to respect the fundamental values of a society, it effectively sends out a message that its judges can tell society to observe the law and excuse themselves from it at the same time. As we held in *Leynes v. Veloso*,[61] "[a] judge suffers from moral obtuseness or has a weird notion of morality in public office when he labors under the delusion that he can be a judge and at the same time have a mistress in defiance of the mores and sense of morality of the community."[62]

We see no cogent reason in law or policy to depart from our time-tested procedure for the discipline of judges and justices of lower courts which allows complaints to be instituted in three

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[59] *Id.*

[60] A.M. No. MTJ-10-1755, October 18, 2016 (*J.* Leonen, Concurring Opinion).

[61] A.M. No. 689-MJ, April 13, 1978, 82 SCRA 325.

[62] *Id.* at 328-329.

ways: by the Court *motu proprio*, through a verified complaint, or through an anonymous complaint.[63]

Any citizen or member of the public who knows a judge who commits acts of immorality qualifies as, and has the civic duty to be, a complainant or a witness against the errant judge. These persons, usually members of the community whom the judge serves, have a direct interest in preserving the integrity of the judicial process and in keeping the faith of the public in the justice system. The harm inflicted by the judge upon the members of his family is distinct from the harm wreaked by an erring judge upon the judicial system. The family and the State are each imbued with the autonomy to exact their response to acts of immorality by a rogue judge. The State cannot intrude into the family's autonomy any more than the family cannot intrude upon the autonomy of the State.

Justice Leonen ominously warns the Court not to be complicit to the "State's over-patronage through its stereotype of victims."[64]

The Court cannot agree with this rather constricting view.

First. He appears to proceed from the notion that the State stereotypes all women to be victims who are weak and cannot address patriarchy by themselves.

Second. This view is based on a faulty presumption that all erring judges are husbands who victimize their wives. Thus, if the argument is to be pursued, when we discipline judges even in cases where the wife did not file the complaint, we "over-patronize" women because we believe that they are not capable of invoking legal remedies on their own and, thus, the Court must step in to protect them. This is an unfortunately limited view.

The disciplinary procedure adopted by the Court is gender-neutral. The prohibition against immorality applies to all judges regardless of gender or sexual orientation.

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[63] RULES OF COURT, Rule 140, Sec. 1.

[64] Concurring and Dissenting Opinion, *J*. Leonen, p. 15.

Further, in resolving immorality cases, the Court does not discourage or prevent the spouse and the children of the erring judge from exercising their autonomy to come before us and express their sentiments. Nevertheless, we proceed despite their absence because, as we said, administrative proceedings against judges do not dwell on private injuries inflicted by judges on private people. Administrative proceedings do not exist so that a betrayed spouse can seek redress of his or her grievance. Administrative proceedings are not a remedy for a judge's betrayal of his or her marital vows. These proceedings go into the question of whether a judge, by his or her actions and choices, is still fit to dispense justice and encourage the people's faith in the judiciary.

Moreover, we reject the position that proceeding in cases such as this, where the wife does not bring the action herself, amounts to the "over-patronage" of women because we allegedly feel the need to hear the case to protect a victim who cannot look out for herself. This position is out of touch with reality.

Women empowerment is an advocacy taken seriously by the Judiciary. We have made consistent efforts to make our ranks more inclusive to female judges and justices. The Court itself is headed by our first-ever female Chief Justice. Similar efforts are being made in other branches of the government. There are efforts, as well, in our communities to provide equal opportunities for women. The status of women in our society has improved. We agree with Justice Leonen that there are women in our society who are perfectly capable of not only protecting themselves from the oppression of the patriarchy but even of shattering gender glass ceilings. However, this is a very limited view of the plight of women empowerment in this country.

Violence against women is a serious and prevalent problem in the Philippines. This is, in fact, the spirit that compelled the passing of the VAWC, which recognizes the need to provide further protection to women and that violence against them can take many forms.

In 2013, this Court, speaking through Associate Justice Estela M. Perlas-Bernabe, affirmed the constitutionality of the VAWC.

In *Garcia v. Drilon*,[65] we explained:

> The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for **real differences** justifying the classification under the law. x x x
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> x x x x x x x x x
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> According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the **unequal power relationship between women and men** otherwise known as "gender-based violence[."] Societal norms and traditions dictate people to think men are the leaders, pursuers, providers and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads men to gaining more power over women. With power comes the need to control to retain that power. And VAW is a form of men's expression of controlling women to retain power.[66] (Emphasis in the original; citations omitted.)

Statistics from the Philippine National Demographic and Health Survey 2013[67] show that one in every five women aged 15-49 years old has experienced physical violence. Forty-four percent (44%) of the married women who participated in this survey and claimed that they have suffered physical violence revealed that their current husbands or partners are the perpetrators.[68] Violence is, however, not only physical, and in this survey, about 26% of the married women interviewed revealed that they suffered some form of emotional, physical, and/or sexual violence from their husbands or partners.[69]

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[65] G.R. No. 179267, June 25, 2013, 699 SCRA 352.

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

[67] See <https://psa.gov.ph/sites/default/files 2013 % 20 % 20 National % 20 Demographic%20and%20Health%20Survey-Philippines.pdf>, last accessed on June 16, 2017.

[68] *Id*.

[69] *Id*.

The inequality does not end there.

These same statistics show that almost three in five married women earn less than their husbands. Only 10% of women own a house alone, while 19% own a house jointly with someone else. Further, only 18% of women own land, either alone or co-owned.[70]

While there are indeed serious efforts to empower women in this country, the foregoing remains to be our reality. Much work remains to be done. It is the height of insensitivity and a display of a limited view to insist that when we are perceived to take the cudgels for women, we are over-patronizing them. To even go as far as to say that the State over-patronizes women by stereotyping them as victims is unacceptable. The reality—as shown by the Congress' decision to enact the VAWC and the statistics showing the imbalance of power in this country—is that there are women in this country who are in peril and are in real need of protection. While it is true that there are certain groups of women who are able to protect themselves and even to successfully compete in a male-dominated society, this is not the reality for many women in the Philippines. To say that the State is over-patronizing and stereotyping women just because some of our women are empowered is, to borrow the words of United States Supreme Court Justice Ruth Bader Ginsburg, "throwing away your umbrella in a rainstorm because you are not getting wet."[71] **We are not over-patronizing women when we take measures to help them.** We are simply doing our part in the great endeavor of women empowerment.

Finally, we reject the proposal because it will cause the Court to be beset with intractable problems of proof. It will require the Court to inquire into whether the "victims" are genuinely exercising their autonomy, an invasive process that will, in turn, intrude into the family's autonomy. To illustrate, a judge who

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[70] *Id*.

[71] *Shelby County v. Holder*, 570 US 2 (2013), *J*. Ginsburg, Dissenting Opinion.

sires innumerable children outside of wedlock, maintains multiple mistresses, and flaunts these misdeeds, is immunized from the Court's disciplinary authority should the spouse and children choose not to press charges. Authorizing private attorney generals to act on behalf of the Court to vindicate the public's interest is no solution. Justice Leonen himself recognizes that violence against women and children may prevent them from coming forward. Thus, he concedes that third parties *may* be allowed to act on behalf of the State provided they can plead and prove that they are acting for the benefit of the victims, not "as a means to cause more harm on them."[72] How can this be shown to the satisfaction of the Court without resolving, as a triable question of fact, the question of whether the wife and children truly and freely exercised their individual autonomy? What about the reality of the violence of economic need and dependence, which arguably prompts far more wives and children into silently accepting the wrong done them? This is a quagmire the Court is not wont to enter.

It is safer to go back to basics. Simply put, the State does not recognize any sexual autonomy on the part of judges to have children with persons other than their spouses or to have extramarital affairs. It would be completely unprincipled for the Court to reward a judge's commission of such grievous a wrong to the public with an absolution based on the forgiveness of the spouse and child. This is, of course, assuming we will ever have the ability to ascertain whether their forgiveness flows from the free exercise of their autonomy. In the case of male judges, such a result will abet the very patriarchy that Justice Leonen wants the Court to reject. No one is forced to be a judge, just as Justice Leonen pointed out in his concurring opinion in *Tuvillo*.[73] To add to that, no judge is forced to remain one.

The Judiciary, to maintain its legitimacy, must be able to convince that it makes principled decisions.[74] This requires that

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[72] Concurring and Dissenting Opinion, *J.* Leonen, p. 14.

[73] See A.M. No. MTJ-10-1755, October 18, 2016 (*J.* Leonen, Concurring Opinion).

[74] See *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

the Judiciary resolve cases fairly, impartially, and convincingly. Decisions must be based on a logical interpretation and application of laws. The Judiciary's institutional legitimacy is also impacted by its members. Members of the Judiciary must act in a way that will encourage confidence among the people.

To be clear, we do not seek to interfere with a judge's relationships. Thus, while we have sanctioned lawyers, judges, and even justices, who have extramarital affairs, we have refused to do so in cases where the parties, without any legal impediment, live together without the benefit of marriage.[75] We have also been adamant in holding that a person's homosexuality does not affect his or her moral fitness.[76] Nevertheless, immorality is a valid ground for sanctioning members of the Judiciary because it (1) challenges his or her capacity to dispense justice, (2) erodes the faith and confidence of the public in the administration of justice, and (3) impacts the Judiciary's legitimacy.

Finally, while a disciplinary case for immorality may proceed even without the participation of the spouse, the children or the alleged paramour, steps must be taken to protect their decision not to air out their grievances in administrative proceedings before us. As a matter of policy, in cases such as this, the names of concerned parties who are not before the Court should not be used. Care should be taken so as not to disclose personal information and circumstances that are not relevant to the resolution of the case. If necessary, aliases should be used when referring to these parties.

Taking all these into consideration, we find that Judge Dagala is also guilty of committing acts of immorality.

III.

Under Section 8 of Rule 140 of the Rules of Court, immorality and gross misconduct each constitute a serious charge. Section 11 of the same Rule provides that serious charges are punishable by:

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[75] *Toledo v. Toledo*, A.M. No. P-07-2403, February 6, 2008, 544 SCRA 26.

[76] *Campos v. Campos*, A.M. No. MTJ-10-1761, February 8, 2012, 665 SCRA 238.

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) years but not exceeding six (6) months; or

3. A fine of more than [₱]20,000.00 but not exceeding [₱]40,000.00.

We affirm the recommendation of the OCA to impose on Judge Dagala the supreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave benefits. Because of the gravity of Judge Dagala's infractions, we also impose on him the penalty of perpetual disqualification from reinstatement or appointment to any public office, including government owned or controlled corporations.

Without staking a position on the proper penalty to impose on Judge Dagala on the immorality charge, Justice Leonen discusses circumstances that may be considered mitigating or aggravating in the determination of an immorality case.[77] We will comment only on one circumstance cited, namely, where the "marriage does not work."[78]

The Court unequivocally reminds justices and judges that until the Congress grants absolute divorce, or unless they have secured a court annulment of their marriage or a judgment of nullity, a failed marriage does not justify acts of immorality.

Judge Dagala seeks this Court's forgiveness. He claims that he and his wife separated because of "constant fighting;" that his wife knew of his children with other women but did not interpose any objection because she knew of his desire to have children; his wife had learned to "forgive and forget" him; and both have arrived at the "notion that [they] are not really meant for each other and for eternity."[79]

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[77] Concurring and Dissenting Opinion, *J.* Leonen, p. 15.

[78] *Id.*

[79] *Rollo*, p. 25.

We understand the undeniable sadness of a failed marriage. We commiserate with Judge Dagala and his wife, as well as his children, who must live with circumstances far different from what society recognizes as ideal. We understand the pain of accepting certain stark realities—that some relationships must come to an end and not even the legal ties of marriage can save them; that some married couples soon discover that they are not right for each other; that in certain cases, not even the legal bonds of marriage can fill the void; that sometimes, happiness can be found in finding the strength to get out of a relationship and begin again. We understand that judges and justices are also human, and are naturally inclined to search for what is good and what gives meaning, including happy and fulfilling relationships. In this case, we do not seek to pontificate that there is only one honorable way to live. Judges are free to choose how to live their lives. Nevertheless, **choices are made within particular contexts and in consideration of duties and obligations that must be honored. More importantly, choices have consequences.** Judge Dagala made his choice. He must now face the repercussions. Thus, as much as we commiserate with Judge Dagala, we remain a court of law with a mandate to dispense even-handed justice.

We thus compare the grounds offered by Judge Dagala in mitigation of his wrong to similar pleas made by judges similarly situated, namely, married judges who sired children outside of wedlock or engaged in affairs during the subsistence of their marriage.

Only last year, in *Tuvillo*, the Court rejected a plea in mitigation by a judge. The judge explained that both he and his mistress were "mature lonely people" whose marriage to their legally wed spouses had "lessened sheen" and that his mistress brought him a "soul connection, understanding and great company." Further, his own wife "was distant to him."

In *Re: Complaint of Mrs. Rotilla Marcos*,[80] which Justice Leonen also quotes in his dissent in *Tuvillo*, we dismissed a judge who publicly carried on a relationship with a woman not

[80] A.M. No. 97-2-53-RTC, July 6, 2001, 360 SCRA 539.

his wife. We found him liable notwithstanding the fact that he had already been physically separated from his wife for three (3) years.[81]

In *Anonymous v. Achas*,[82] we reprimanded a judge for going out in public with a woman not his wife. We imposed this penalty notwithstanding the fact that Judge Achas had been estranged from his wife for the last 26 years. We held that the fact remains that he is still legally married to her. It was not therefore commendable, proper, or moral for a married judge to be perceived as going out with a woman not his wife.[83]

In *Resngit-Marquez v. Llamas, Jr.*,[84] we dismissed a judge upon finding that he had a long standing relationship with a married woman. We found the judge liable in spite of the fact that both he and his partner were estranged from their respective husband and wife. Notably, we took cognizance of the complaint in this case even if neither the estranged husband nor wife of the parties participated in the proceedings.[85]

In *Perfecto v. Esidera*,[86] the Court, through Justice Leonen, disciplined a female judge who carried on a relationship with a man not her husband, even if the judge had never lived with her legal husband and had long been estranged from him.

The reason for the Court's consistent position is not difficult to discern. The Philippines is a society that values monogamy in marriages, except as to certain ethnicities and religions where monogamy is not the norm. Our legal system is replete with laws that enforce monogamy in a marriage and penalize those who go against it. Save for religions that accept and embrace multiple marriages, bigamy in the Philippines is a crime.[87] In

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[81] *Id*. at 562.

[82] A.M. No. MTJ-11-1801, February 27, 2013, 692 SCRA 18.

[83] *Id*. at 23-24.

[84] A.M. No. RTJ-02-1708, July 23, 2002, 385 SCRA 6.

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

[86] A.M. Mo. RTJ-15-2417, July 22, 2015, 763 SCRA 323.

[87] REVISED PENAL CODE, Art. 349.

the same vein, our criminal law penalizes adultery[88] and concubinage.[89]

No less than the Constitution emphasizes the value of a marriage as the foundation of the family.[90] The Philippines is a legal regime that intensely protects marriages by limiting the grounds for its nullity or annulment. Until today, we do not have divorce, with the exception provided for in the Code of Muslim Personal Laws of the Philippines. We only recognize legal separation. There have been calls for allowing divorce here but no law has been passed so far. Ultimately, we are the branch of government tasked with interpreting the law. We do not meddle with policies or with the endeavor to have our laws reflect the developments in our values and morality. It is not our place to ascertain whether our laws on marriage have failed to adjust to the demands of the times.

For the Judiciary, this is the legal and social context within which we must understand immorality in connection with extramarital affairs. In penalizing judges for engaging in extramarital affairs, we merely seek to dis-incentivize judges' propensity to disregard accepted standards of morality because these acts impact their capacity to properly perform their jobs. These acts affect the judiciary's legitimacy—an element essential in its role as a branch of government charged with interpreting rules. We value monogamous marriages and consider them worthy of strict legal protection. A judge who disregards this fundamental value opens himself or herself up to questions about his or her capacity to act with justice in his or her own dealings. This affects the people's perception of his or her moral fitness. As we said in *Resngit-Marquez v. Llamas, Jr.*, a magistrate "cannot judge the conduct of others when his own needs judgment."[91]

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[88] REVISED PENAL CODE, Art. 333.

[89] REVISED PENAL CODE, Art. 334.

[90] CONSTITUTION, Art. XV, Sec. 2.

[91] *Supra* note 84 at 8.

No one is forced to be a judge.[92] The judiciary is an institution reserved for those who, when they apply for a judicial position, are expected to have a thorough understanding of community standards and values which impose exacting standards of decorum and strict standards of morality.[93] We highlight that judges are bound to uphold secular, not religious, morality. Thus, the values that a judge must uphold are those in consonance with the dictates of the conscience of his or her community. Among these community values is respect for the sanctity of marriage.[94] All applicants to the Judiciary must, therefore, decide for themselves whether the community values that the Court has recognized conform to their own personal values, lifestyle, or proclivities. All who desire to be part of the Judiciary must first decide if he or she can live up to the highest standards of morality expected of judges and justices.

How applicants to the Judiciary will choose to construe the values that this Court upholds is their choice. Those who have a fervent belief in a God may find that the values of this Court compel them to live the lives of the faithful. Those who are predisposed to pursue a strict code of morality may choose to perceive our values as moral codes, proper and worthy of being adhered to. Those who have the inclinations to bend the rules or to live outside societal norms may find that these rules are like straightjackets—pretentious, unreasonable, or constricting.

Whether applicants to the Judiciary will choose to construe these secular strictures as rules that require them to live the life of a saint, or of a priest, imam, or other religious person, is a purely personal decision. They are free to choose their own metaphors. But once a lawyer joins the Judiciary, he or she should abide by the rules. We remind all judges that no position demands greater moral righteousness and uprightness from its occupant than the judicial office. A judge's personal

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[92] A.M. No. MTJ-10-1755, October 18, 2016 (*J.* Leonen, Concurring Opinion).

[93] A.M. No. MTJ-10-1755, October 18, 2016.

[94] *Id.*

behavior outside the court, not only while in the performance of his official duties, must be beyond reproach, for he is perceived to be the personification of law and justice.[95]

WHEREFORE, premises considered, Judge Exequil L. Dagala is hereby found **GUILTY** of **IMMORALITY and GROSS MISCONDUCT.** Accordingly, he is **DISMISSED** from the service with **FORFEITURE** of his retirement and other benefits except accrued leave credits, and **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

SO ORDERED.

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

Leonen, J., see concurring and dissenting opinion.

Velasco, Jr., J., no part, prior action in OCA.

CONCURRING AND DISSENTING OPINION

LEONEN, *J*:

I have no problems concurring in the finding that respondent committed at least two (2) counts of serious misconduct. Taken together, he should be dismissed from service with forfeiture of all benefits. He should also be perpetually disqualified for appointment or election to any public office.

The basis of this penalty is clear:

First, he could be shown to have misled the Judicial and Bar Council (JBC) through a Personal Data Sheet he submitted which did not disclose all the names of his children.[1] This is a breach of the lawyer's oath not to do falsehood in court. This breach

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[95] *Id*.

[1] *Rollo*, p. 7, Office of the Court Administrator's Report.

would be sufficiently proven by the documents presented in this case.

Second, respondent brandished his M-16 armalite rifle in order to assert his position regarding a boundary dispute with a neighbor.[2] I agree that this act showed that he violated Republic Act No. 10591, which does not allow a judge a permit to carry this kind of high-powered weapon. Also, his act of brandishing the rifle against a neighbor, at the very least, constituted grave threats or even grave coercion, which is defined and punished under the Revised Penal Code. Likewise, the act constituted abuse of his judicial position.

His act of brandishing a rifle and his lack of registration for the firearm would be sufficiently proven with the photo and video on file.[3] The Office of the Court Administrator's Report[4] shows that neither registration papers nor a permit to carry was submitted by the respondent to justify his possession and carrying of the weapon used.

I

However, for future reference, I note some gaps in the procedure followed in this case and the tenor of the Office of the Court Administrator's Indorsement[5] for respondent to file his Comment. The Indorsement did not require respondent judge to comment on his Personal Data Sheet or on the video, which were used as basis for his coercive acts. The Court Administrator also did not require comment on whether respondent judge had any kind of firearm or on whether this was registered.[6]

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[2] *Id.* at 8.

[3] *Id.* at 84, Office of the Ombudsman of Mindanao's Letter dated September 30, 2015.

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

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

[6] *Id.* Judge Dagala was only required to comment upon the issue of impregnating three (3) women other than his wife, alleged illegal logging, illegal drugs, and illegal gambling activities.

The Court Administrator's Indorsement also did not specify the provisions in the Code of Judicial Conduct which respondent judge was supposed to have violated. He was asked to comment on a number of acts that were based on rumors and testimonies of unnamed sources. Unless we would require a better specification of the charges against the judge, we would be party to a gross violation of due process.

The records of this case seem to reveal that the judge had been the subject of shifting offenses. The Anonymous Complaint[7] focused on the coercive acts of the judge as a result of illegal cutting of trees in a specific incident. The report[8] of the Executive Judge focused on general grounds of illegal logging and participation in illegal drugs. It also mentioned that the police investigation against the judge was still ongoing. The Memorandum[9] of the National Bureau of Investigation seemed to have highlighted the judge as having "impregnated three (3) different women"[10] and not the judge's incomplete Personal Data Sheet or his lack of registration for any firearm. It did not report on the incident mentioned in the Anonymous Complaint.

At the very least, the Office of the Court Administrator should have issued a more specific order for the respondent to comment on, to give him a chance to answer the accusations of dishonesty in his Personal Data Sheet, his use of and access to a high-powered firearm not owned by him, as well as the charges of illegal logging, intimidation, grave threats, and coercion. These were, after all, the contents of the Anonymous Complaint. Due process for our judges, even at the face of ostensible culpability, demands more specificity in the charges.

However, I agree with the majority that acts of grave misconduct were substantially proven.

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[7] *Id*. at 84-85.

[8] *Id*. at 59, Office of the Court Administrator's Memorandum.

[9] *Id*. at 69-71. The Memorandum was submitted by Agent Cyril June B. Yparraguirre.

[10] *Id*. at 70.

II

In my view, the evidence to include immorality as a ground for dismissal in this case is insufficient. Immorality as a ground was not properly pleaded and proved. On this aspect, I dissent from the majority.

This case was initiated after the Office of the Court Administrator received a transmittal from the Office of the Ombudsman on October 14, 2015.[11] The Anonymous Complaint dated September 30, 2015 and filed with the Ombudsman of Mindanao reads in its most significant parts as follows:

> I am a native of the Municipality of San Isidro, Siargao Island, Surigao del Norte. Although I am a college graduate but I opted to stay in the peaceful hometown in Siargao Island, tilling my piece of land to sustain the educational needs of my six children and for our subsistence.
>
> It was in the afternoon of September 29, 2015 when my outlook towards a respected official of the government has changed. Around 1:30pm of the said date, I rested my in small farm hut, then I heard a loud noise of a chainsaw. Few minutes later, trees from my adjacent land smashed on the ground. Due to said disturbance, I went near to the said area to verify the activity. It was much unexpected that I was able to witness two groups of people arguing themselves on the ownership of land and the slashed trees. From the other side that I knew was the owner of my adjacent land who refused their identity to be divulged. What is very intimidating to me was the person of the other group who is very well known to me as Siargao MCTC Judge Exequil Dagala who walked back and forth, shouting and with a carried armalite firearm. I also witnessed some policemen of San Isidro doing nothing to pacify the situation but they talked in favour to Judge Dagala. No arrests of the illegal loggers to include Judge Dagala who were there supervising the illegal logging activity, no confiscation of chainsaw and the slashed trees and no verification as to the authority of Judge Dagala to bring armalite firearm were made by the police. Several times in the past I heard rumours that Judge Exequil Dagala is the mastermind of illegal logging, illegal drugs, illegal fishing and illegal gambling in Siargao Island. I just

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[11] *Id.* at 1, Office of the Court Administrator's Report.

don't pick and value those rumours because the sources are not credible and I guessed that they only watched some Tagalog movie with portrayed bad judge in the story. There were also rumours from nearby towns that Siargao MCTC Judge Exequil Dagala maintained private armed men and owned some high powered firearms, he furthermore maintained several mistresses. Some of those rumours were accidentally discovered personally be me on that day of September 29, 2015.

After both sides was advised by the policemen to settle the concern to barangay office, I initiated to talked with my neighbour who was the owner of lot wherein Judge Dagala recently made illegal logging activity. She then revealed that his son was able to take picture and video of the misconduct made by Judge Dagal but she was afraid to make a complain. I then encourage her to do so but she suggested making a secret transmittal of the evidence to the Ombudsman because she was very afraid of the consequence and she asked my assistance.

In this regard, we are respectfully forwarding the attached email pictures and video of unimaginable actuation of Judge Exequil Dagala. He led the illegal logging activity in the land he doesn't own. He intimidated the peaceful loving residents of San Isidro by his carried armalite firearm. We don't believe that those deeds of Judge Dagala are within the bounds of the law and the custom of a public official and as a Judge of the court.[12] (Grammatical errors in the original)

The photos and video clips were later transmitted to the Office of the Obudsman, where the anonymous complaint was initially filed.[13]

The complaint was mainly about the illegal logging activity and the use of a firearm by Judge Exequil Dagala (Judge Dagala). The anonymous letter mentioned rumors about "illegal logging, illegal drugs, illegal fishing and illegal gambling" as well as maintenance of "private armed men and . . . some high powered firearms." It also mentioned that he "maintained several mistresses." The complainant, however, labelled all these as rumors, which he or she did not take seriously. Complainant

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[12] *Id.* at 84, Office of the Ombudsman of Mindanao's Letter dated September 30, 2015.

[13] *Id.* at 2, Office of the Court Administrator's Report.

mentioned, "I just don't pick and value those rumours because the sources are not credible and I guessed that they only watched some Tagalog movie with portrayed bad judge in the story."

The relationship to Judge Dagala and the motive of the complainant was not apparent in the letter. The complainant also did not raise the alleged immorality of the judge. If at all, he or she mentioned it only in passing, qualifying the matter as a rumor.

On October 12, 2015, acting on the Ombudsman's Indorsement, the Office of the Court Administrator directed then Executive Judge Victor A. Canoy (Executive Judge Canoy) of the Regional Trial Court of Surigao City in Surigao del Norte "to conduct a discreet investigation and submit a report on the allegations against Judge Dagala."[14]

Executive Judge Canoy submitted a report to the Office of the Court Administrator on January 29, 2016.[15] The Office of the Court Administrator summarized his findings as follows:

> On 29 January 2016, then Executive Judge Canoy submitted a Report (with enclosures) to this Office which essentially stated that after an investigation, he found that - a) the complainant was a certain Luzminda Pacellos Matugas, a teacher from Brgy. Nuevo Campo, San Benito, Surigao del Norte; b) the cutting of trees took place in Sanglay, Brgy. Pelaez, San Isidro, Surigao del Norte; c) the "hambabayod trees" involved were claimed by Ms. Matugas, while the adjacent landowner, Nathaniel Requirme, also claimed the same as his; d) police investigation reveals that the subject trees were allegedly sold by Requirme to Judge Dagala; hence, it is for this reason that he was present during the subject incident; e) the Chief of Police could not confirm the allegation that Judge Dagala was armed at that time; f) the incident is still subject of an ongoing police investigation; and g) the alleged illegally cut trees were still in the area. Executive Judge Canoy posits that unless Ms. Matugas comes forward and present evidence to support her allegations, her complaint, as well as that of the anonymous complainant, will not prosper.[16]

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[14] *Id.* at 59, Office of the Court Administrator's Memorandum.

[15] *Id.*

[16] *Id.*

The report of Executive Judge Canoy noted the ongoing investigation relating to illegal cutting of trees. It also mentioned that the "Chief of Police could not confirm the allegation that Judge Dagala was armed at that time." Also, it clearly did not cover substantiation of rumors relating to the alleged immorality of Judge Dagala.

In the meantime, on November 13, 2015, the Office of the Court Administrator requested the National Bureau of Investigation of CARAGA Region XIII to conduct its own discreet investigation on Judge Dagala.[17] It was this report that seemed to introduce details regarding his alleged immorality.

The report dated February 11, 2016 of the agent in charge of the National Bureau of Investigation substantially reads as follows:

> 01. This refers to a complaint being transmitted by the Office of the Court Administrator of Supreme Court, Manila for discreet investigation and report against MCTC Dapa-Socorro, Surigao del Norte Judge Exequil L. Dagala for alleged involvement in illegal drugs, illegal logging and other illegal activities.
>
> 02. This case was assigned to the undersigned on December 14, 2015 and come up with the following findings:
>
> a) Judge Exequil Longos Dagala (Judge Dagala) is a resident of San Jose St., Del Carmen, Surigao del Norte, Siargao Island, Mindanao;
>
> b) As a result of the Investigation and verification conducted from the Philippine Statistics Authority (PSA), Judge Dagala was legally married to Gilgie Consigo Gersara on July 18, 2006 and this marriage was solemnized at the Office of the Municipal Mayor of Del Carmen, Surigao del Norte. However, they have no children in their marriage;
>
> c) Further, Judge Dagala had impregnated three (3) different women respectively describe as follows:

[17] *Id.* at 2, Office of the Court Administrator's Report.

Name of children	Date of birth	Gender	Name of mothers	Document	Registry number
1. Lovelle Fatima Escuyos Dagala	October 13, 2000	Female	Lovella Madamba Escuyos	Cert. of Live Birth	Registry no. 2005-24
2. Letti Duane Erong Dagala	March 5, 2007	Female	Crissan Roselle Mullanida Erong	Certificate of Live Birth	Registry no. 2007-5007
3. Vince Ezekiel Petallo Dagala	March 24, 2008	Male	Genylou Cortez Petallo	Certificate of Live Birth	Registry no. 2008-3920

03. Before, Judge Dagala was married to Gilgie, he begot a child from Lovella Madamba Escuyos on October 13, 2000. The child was acknowledged on January 3, 2005 pursuant to R.A. 9255;

04. On March 5, 2007, Letti Duanne Erong Dagala was born to a 21 years old student named Crissan Roselle Mullanida Erong. In the said birth certificate, the name of the father is Exequil Longos Dagala whose occupation is Judge;

05. Then, on March 24, 2008, Exequil Dagala had sired a son named Vince Ezekiel Dagala from Genelou Cortez Petallo, an incumbent Barangay Captain in Barangay Halian, Del Carmen, Surigao del Norte;

06. After two years of Exequil's married to Gilgie Gersara Dagala, they agreed to live separately. His wife is presently working as Local Treasury Operation Officer IV at the City Treasury Office in Surigao del Norte. Judge Dagala provided monthly support to his wife Gilgie amounting to Php 10,000.00;

07. Verification conducted on the alleged illegal logging activities of Judge Dagala, the undersigned had found out that an incident in the year 2014, a certain Genelou C. Petallo, mother of his son Vince Exequil, appeared at the Office of the Department of Environment and Natural Resources (DENR) in Del Carmen, Surigao del Norte (see DENR reports and documents) when hardwood furnitures were confiscated by their personnel;

08. The said furnitures being confiscated were believed to be owned by both Judge and Genelou Petallo because in the place they were known collectors of driftwoods and hardwoods. In fact, hardwood lumbers and driftwoods were utilized as fence in his house (see pictures);

09. Residents of Siargao Island alleged that Bgy. Captain Genelou C. Petallo and Judge Dagala are living together in their house at Del Carmen, Surigao del Norte;

10. On the other hand, Mr. Sergio Tiu Comendador, Judge Dagala's court (MCTC) Interpreter at Del Carmen, Surigao del Norte was recently arrested during the buy bust operation conducted by Philippine National Police of Dapa, Surigao del Norte;

11. Finally, Judge Dagala is alleged to be the owner of Sugba cockpit in Km. 1, Del Carmen, Surigao del Norte, a name similar to his beach resort near Del Carmen, Surigao del Norte. The cockpit was allegedly sold to Marites Borchs for about Php550,000[.][18] (Grammatical errors in the original)

On April 25, 2016, Judge Dagala was asked to comment on the Anonymous Complaint dated September 30, 2015.[19] The order from the Office of the Court Administration reads in its material portions as follows:

A preliminary investigation was conducted on the matter which yielded the following information:

1) that on July 18, 2006, you were legally married to Gilgie Consigo Gersara, but had no children;

2) that you have impregnated three (3) different women and sired the following children, who are named below:

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[18] *Id.* at 69-71.

[19] *Id.* at 65-66, Office of the Court Administrator's 1st Indorsement.

Name of Mother	Name and Date of Birth of the Child	Certificate of Live Birth Registry Number
1) Lovelle Madamba Escuyos	Lovelle Fatima Escuyos-Dagala-October 13, 2000	Reg. No. 2005-24
2) Crissan Roselle Mallanida Erong	Letti Duane Erong Dagala- March 5, 2007	Reg. No. 2007-3007
3) Genelou Cortez Petallo	Vince Ezekiel Petallo Dagala- March 24, 2008	Reg. No. 2008-39203

3) that upon investigation conducted on your alleged illegal logging activities, it was found out that in 2014, a certain Genelou C. Petallo appeared at the office of the Department of Environment and Natural Resources (DENR), Del Carmen, Surigao Del Norte because the latter confiscated the hardwood furniture which was believed to be owned by you and Ms. Petalla given that you are known collectors of driftwood and hardwood in Del Carmen, Surigao Del Norte, and in fact, the fence of your house are made of hardwoods and driftwoods;

4) that on the allegation of illegal drugs activities, the investigation report shows that Sergio Tiu Comendador, Court Interpreter at the MCTC, San Isidro, Siargao Island, Surigao del Norte, was recently arrested in the buy bust operation conducted by Philippine National Police, Dapa, Surigao del Norte; and

5) that you are known to be the owner of Sugba cockpit located at Km. 1, Del Carmen, Surigao Del Norte, a name similar to your nearby beach resort which was sold to Marites Borchs for around Five Hundred Fifty Thousand Pesos (₱550,000.00).

In this regard, you are hereby directed to COMMENT on the matter within ten (10) days from receipt of this Indorsement. A copy of the said anonymous letter-complaint, certificate of marriage and three (3) Certificate[s] of Live Birth are herewith attached. Preferential attention on this matter is expected.[20]

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[20] *Id.*

Though the order to comment attached a copy of the Anonymous Complaint, it did not mention his missing entries in his Personal Data Sheet. It focused on his allegedly having "impregnated three (3) different women." Neither did it mention his possession of any unregistered firearm. The Court Administrator did not reveal that he had photos and video clips in his possession. It appears that he also did not furnish copies of these pieces of evidence to the respondent. His focus was only on the children of the respondent.

Judge Dagala filed his Comment[21] on August 21, 2016.

Understandably, he had no comment regarding the incident which led to the anonymous complaint, the alleged unregistered firearm, and his missing entries in his Personal Data Sheet. The Court Administrator did not require him to comment on these matters.

His manifestation regarding his marriage to Gilgie Gersana[22] and his three children (3) was as follows:

> It is of public knowledge that I was married on July 15, 2006 to Gilgie Gersana not July 18, 2006 as alleged on the anonymous letter. My wife and I had been sweetheart for almost 2 years. Before our wedding I had no idea that she cannot give me a baby of our own. Till after months of our co-habitation she was diagnosed to have tumor in her ovary. I accompanied her to Cebu for medication hoping that God will ultimately give us a blessing that we want. Not long after, her doctor advised to (detach) her uterus to prevent further damage, but will incapacitate her to give birth. Before our marriage tough, I already have a daughter named Fatima Lovelle Dagala born in the year 2000 with Lovelle Escuyos as mother but Fatima lives in her mother's house and the latter exercise parental authority over her. During our marriage GILGIE and I were able to build our cockpit arena at the Municipality of Del Carmen because she also earn income as market supervisor of the town. I was then a prosecutor assign at

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[21] *Id.* at 24-27.

[22] Judge Dagala referred to his wife as "Gilgie Gersana" in his Comments and Manifestation while the 1st Indorsement of the Office of the Court Administrator and the Memorandum of the National Bureau of Investigation, CARAGA Region XIII named her as "Gilgie Gersara."

Cebu during our marriage and Gilgie lives at Surigao City, her place of residence. Because of constant fighting in our married life, Gilgie decides to go back to Surigao City for good, while I stay solo in the house of my parents at Del Carmen. Admittedly, without any remorse, I was able to impregnate the above mentioned lads. To err is human your honors and to forgive is divine, My wife Gilgie knows of the existence of my son and daughter, before and after our marriage, but did not interpose any objection, knowing fully my desire and ambition to have babies. She learned to forgive and forget me, and impliedly submits to the notion that we are not really meant for each other and for eternity. I have a sister named Maritess who permanently lives in turkey and married a citizen thereat. The house were I live in Del Carmen is owned by my sister she renovated the said house and spend over half a million pesos to make it presentable. I am just an administrator of the same with privilege to stay and use the said house, while my sister is in Turkey.[23] (Grammatical errors in the original)

The Court Administrator's report did not disclose his discovery of missing entries in the respondent's Personal Data Sheet. The Court Administrator also did not mention whether his findings as regards the respondent's records with the Firearms and Explosives Unit were transmitted to the respondent for his comment. There was nothing in his report which showed that he requested the respondent judge to produce any license for any firearm or to confirm that he was the person shown in the photographs and the video clips in his possession.

It used to be that administrative cases against judges charged with grave offenses were in the nature of criminal or penal proceedings.[24] In recent years, this Court has recognized that judges were not a special species of public servants that needed a higher quantum of proof to be held accountable.[25] Administrative cases against judges then took a turn for requiring merely substantial proof, a lower quantum than proof beyond reasonable

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[23] *Id.* at 24-25.

[24] *Macias v. Judge Macias*, 617 Phil. 18, 26-27 (2009) [Per *J.* Nachura, Third Division].

[25] *Id.*

doubt.[26] However, this development did not compromise the requirement of due process.

To be informed of the accusations against him and be given the opportunity to answer are constitutional guarantees that eluded Judge Dagala in the proceedings before the Office of the Court Administrator. Charges of dishonesty in his Personal Data Sheet, his use of and access to a high-powered firearm that he was not authorized to own, and the video footage of acts as specified in the Anonymous Complaint were not presented to Judge Dagala. Neither was respondent informed of the manner in which these pieces of evidence were obtained against him.

It was not on record when the Office of the Court Administrator obtained a copy of Judge Dagala's Personal Data Sheet dated October 18, 2006.[27] Meanwhile, on August 19, 2016, the Office of the Court Administrator received the video recording of the incident in the Anonymous Complaint.[28] Judge Dagala filed his Comment four (4) days later, on August 23, 2016.[29] On August 25, 2016, the Philippine National Police Firearms and Explosives Office issued a Certification that Judge Dagala was not a licensed or registered "firearm holder of any kind and caliber."[30] Records disclose that he was not required to comment on these matters and was not even made aware that these pieces of evidence existed and were in the Office of the Court Administrator's possession.

I have no issues about the supervisory role this Court has over all other courts and personnel, the manner in which complaints against erring judges may be filed, and our mandate to conduct preliminary investigations. What I have qualms about

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[26] *Id*., *See* also *Avanceña v. Judge Liwanag*, 454 Phil. 20 (2003) [*Per Curiam, En Banc*]; *Resngit-Marquez v. Judge Llamas*, 434 Phil. 184 (2002) [*Per Curiam, En Banc*].

[27] *Rollo*, pp. 7, 14-17.

[28] *Id*. at 5, 28.

[29] *Id*. at 24-27.

[30] *Id*. at 13.

is the piecemeal erosion of due process by the very people who must be at the forefront of ensuring its diligent application.

III

We must distinguish between the standards we require of judges on one hand and those that are required of priests, imams, and other religious leaders on the other. A lawyer and a judge take a specific oath of office. A lawyer and a judge should not be required to be saints. We should not confuse the morality of our secular law with the ethical requirements of our religious faiths.

The vulnerability of having committed mistakes in the past even assists the human incumbents of our judicial offices. Past mistakes properly acknowledged, addressed, and atoned broaden the understanding of a judge of human frailty and the possibility of forgiveness from those he or she has wronged. Properly addressed, human sins inscribe compassion for our judges. Within the limits of the law, he or she will be able to calculate the proper reliefs of penalties appropriate to the action.

Implicit in this understanding is the view that our judiciary is not simply a mechanical cog that dispenses specific penalties without full regard for the context of the facts proven. If this were so, current technology could simply be harnessed to substitute judges and justices, even for this Court, with robots. The legal system composed of the branches that promulgate, execute, and interpellate the law should not be seen as less than human institutions.

Justices should be able to see the general norms that would apply given the set of facts that can be reasonably inferred from the evidence. However, in interpreting the facts, we should always examine the premises we have that are articulated by our conception of our realities that provide us with the basis for our inferences.

Judge Dagala admitted that he has sired children with women other than his wife.[31] However, this admission, taken alone, is inadequate to prove immorality.

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[31] *Id.* at 25.

IV

The easiest and most objective conception of the kind of immorality sufficient to remove a judge is one which also amounts to an illegal act. Following this strand of logic, the evidence presented does not seem to be sufficient.

The Revised Penal Code punishes indiscretion through the offenses of Concubinage or Adultery. None of the elements of these offenses were sufficiently proven in the records of this case.

Concubinage is committed by a married man who has carnal knowledge of a woman not his spouse under scandalous circumstances.[32] It is not simply the presence of illicit carnal knowledge that the law requires. There must be separate proof that this was done "under scandalous circumstances," different from the act of sexual intercourse.[33] Obviously, there is no evidence in the record that can remotely be considered as sufficient for this purpose.

Adultery, on the other hand, is committed by a married woman who has a relationship with a man who is not her husband.[34] For

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[32] REV. PEN. CODE, Art. 334 provides:

Article 334. Concubinage. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of destierro.

[33] *Id*.

[34] REV. PEN. CODE, Art. 333 provides:

Article 333. Who are Guilty of Adultery. — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by *prision correccional* in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next

adultery to happen, it is not material that the man is likewise married.[35] Likewise, the man may be convicted on the basis of conspiracy with the married woman.[36]

Again, the records of the case are bereft of proof that the women, with whom the respondent had his children, were married. The lack of this evidence, thus, leads to a reasonable conclusion that adultery may not have been committed.

More importantly, the offenses of concubinage or adultery cannot be committed because, in my view, it violates the equal protection clause of the Constitution. The provisions, promulgated in 1939, are now anathema to the requirement of "fundamental equality before the law of men and women"[37] now prescribed in the Constitution, required by our treaty commitments,[38] and exacted as standard by our statutes.[39] Should evidence have been presented to amply prove concubinage or adultery in this case, the offenses would still have had to hurdle doubt as to its constitutionality and illegality. These would have been sufficient even to create reasonable doubt that should be appreciated in favor of the respondent.

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lower in degree than that provided in the next preceding paragraph shall be imposed.

[35] See *The United States v. Topiño*, 35 Phil. 901 (1916) [Per *J.* Trent, Second Division].

[36] *Id.*

[37] CONST., Art. II, Sec. 14.

[38] See *Charter of the United Nations*, 1 UNTS XV (1945), Art. 1(3). The Charter was ratified by the Philippines on October 11, 1945.

See *Universal Declaration of Human Rights*, 217 A (III) (1948), Preamble, Arts. 1, 7, and 16. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948 where the Philippines voted for its approval;

See *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, p. 13 (1979), Art. 15. The Convention was ratified by the Philippines on August 5, 1981.

[39] Rep. Act No. 9710 (2009) or The Magna Carta of Women.

Besides, no prosecution for adultery or concubinage could prosper unless it is brought by the offended party.[40] This acknowledges the choices of the offended party, the desire to assert autonomy, the desire to settle the indiscretions within the confines of family, or the wish not to add more to the suffering of all the children involved. All these purposes would be undermined if we were to allow a stranger, like the neighbor in this case, to initiate the complaint.

Ratio legis est anima.

V

The other laws that would have been violated are the statutes that hope to negate the patriarchy in our culture. Among these are the Anti-Sexual Harassment Act[41] and the Anti-Violence Against Women and Their Children Act.[42]

The Anti-Sexual Harassment Act would apply if there was a power relationship present as characterized by the law.[43] For example, it would have been breached if there was evidence

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[40] REV. PEN. CODE, Art. 344, paragraphs 1 and 2 provide:

Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. — The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

[41] Rep. Act No. 7877 (1995).

[42] Rep. Act No. 9262 (2004).

[43] Rep. Act No. 7877, Sec. 3 provides:

Section 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, *or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment*, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act. (Emphasis supplied)

that respondent took advantage of his official position to entice carnal knowledge of a woman who was not his spouse. Again, there is no iota of evidence that will lead this Court to properly infer that this statute was breached.

The Anti-Violence Against Women and Children Act proscribes many forms of abuses. Section 5, paragraphs (h) and (i) describe those that can be present in the context of extra-marital affairs. Thus:

> Section 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:
>
> . . . .
>
> (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child...
>
> . . . .
>
> (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

Again, the records of this case are bereft of evidence to conclude that there are sufficient acts which constitute all the elements of all the offenses enumerated in these provisions. Clearly, extramarital affairs do not per se cause abuse to either women or the children in each of these relationships.

In any of these offenses, the participation of the victimized woman or child to present the evidence would be necessary. Again, in this case, none of the women or the children involved was presented in evidence. The complaint was anonymous.

VI

I propose the following guidelines:

If at all, any complaint for immorality should not be entertained except when it is commenced by its victims. That is, the betrayed spouse, the paramour who has been misled, or the children who have to live with the parent's scandalous indiscretions.

I accept that in some cases, especially where there is some form of violence against women and children within the families affected, it would be difficult for the victims to come forward. It should only be then that a third party's complaint may be entertained. The third party must show that it acts for the benefit of the victims, not as a means to cause more harm on them. Furthermore, the inability of the victims must be pleaded and proven.

In my separate opinion in *Tuvillo v. Laron*,[44] I concurred with the dismissal of a judge for immorality and gross misconduct based on the complaint of the parties directly affected—the mistress and her husband. In *Perfecto v. Esidera*,[45] this Court through my ponencia, did not sanction a judge for immorality based on the complaint of a third person. She was suspended for violating Canon 1 of the Code of Professional Responsibility when she knowingly contracted a marriage before a solemnizing officer who had no license to do so. I remain consistent in my view that immorality, as basis for administrative complaints, cannot be based on religious grounds:

> Thus, for purposes of determining administrative liability of lawyers and judges, "immoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the public's confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court's supervision. At best, religious morality weighs only persuasively on us.[46]

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[44] *See* Separate Opinion of *J.* Leonen in *Tuvillo v. Laron*, A.M. No. MTJ-10-1755, October 18, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/MTJ-10-1755_leonen.pdf> [*Per Curiam*, *En Banc*].

[45] 764 Phil. 384 (2015) [Per *J.* Leonen, Second Division].

[46] *Id.* at 399-400.

I appreciate the ponente's acknowledgment that "immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice."[47] This affirms this Court's principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people's confidence in the Rule of Law.[48] There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country's predominantly religious sensibilities.

We should not accept the stereotype that all women, because they are victims, are weak and cannot address patriarchy by themselves. The danger of the State's over-patronage through its stereotype of victims will be far reaching. It intrudes into the autonomy of those who already found their voice and may have forgiven.

The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are prima facie shown to have violated the law. The negligence or utter lack of callousness of spouses who commit indiscretions as shown by their inability to ask for forgiveness, their concealment of the act from their legitimate relationships, or their lack of support for the children born out of wedlock should be aggravating and considered for the penalty to be imposed.

VII

Many of us hold the view that it is unethical to breach one's fervent commitments in an intimate relationship. At times

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[47] *Per Curiam* p. 17.

[48] *Perfecto v. Esidera*, 764 Phil. 384, 407 (2015) [Per *J.* Leonen, Second Division].

however, the breach is not concealed and arises as a consequence of the couple's often painful realization that their marriage does not work. In reality, there are couples who already live separately and whose children have grown and matured understanding that their environment best nurtured them when their natural parents do not live with each other with daily pain.

In this case, the wife of the judge may have chosen to live separately. They have been childless due to an unfortunate disease suffered by the wife. It appears from the report of the National Bureau of Investigation that the wife had been regularly receiving support from the judge. There are no complaints from any of the children fathered by the respondent. Finally, there is the unrebutted manifestation of the judge that his wife has forgiven and even forgotten him.

It appears that the judge's indiscretions, which were rumors from the point of view of the Anonymous Complaint and unmentioned in the report of the investigating judge but which became the main basis for the interim report of the male agent of the National Bureau of Investigation, are now the main basis for dismissing the respondent. All these without consulting the spouse or any of his children. All these without regard to whether their lives should again be disrupted.

It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.

ACCORDINGLY, I concur in the result in so far as Judge Exequil L. Dagala is found GUILTY of GROSS MISCONDUCT and in the penalties imposed.

EN BANC

[G.R. No. 181953*. July 25, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **RURAL BANK OF HERMOSA (BATAAN), INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (REPUBLIC ACT NO. 6657, AS AMENDED); WHEN THE AGRARIAN REFORM PROCESS IS STILL INCOMPLETE, JUST COMPENSATION SHOULD BE DETERMINED AND THE PROCESS BE CONCLUDED UNDER RA 6657, AS AMENDED.— "Settled is the rule that when the agrarian reform process is still incomplete, such as in this case where the just compensation due the landowner has yet to be settled, just compensation should be determined and the process be concluded under RA 6657," as amended. **"For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking,"*** or the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred in the name of the Republic of the Philippines (Republic), or Certificates of Land Ownership Award (CLOAs) are issued in favor of the farmer-beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e., (a)* the acquisition cost of the land, *(b)* the current value of like properties, *(c)* the nature and actual use of the property, and the income therefrom, *(d)* the owner's sworn valuation, *(e)* the tax declarations, *(f)* the assessment made by government assessors, *(g)* the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and *(h)* the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.

2. ID.; ID.; JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION;

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

EXPLAINED.— It is well to emphasize that the determination of just compensation is a judicial function. Thus, the "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic DAR formula, and the "justness" of the components (and their weights) that flow into such formula, are all matters for the courts to decide. Nonetheless, to settle the perennial objections to the use of Section 17 and the resulting DAR formulas in the valuation of acquired properties under the CARP, the Court in *Alfonso v. LBP (Alfonso)* ruled: x x x If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.

3. **ID.; ID.; ID.; JUST COMPENSATION MUST BE VALUED AT THE TIME OF TAKING, SUCH AS WHEN TITLE IS TRANSFERRED IN THE NAME OF THE REPUBLIC, OR CLOA'S ARE ISSUED IN FAVOR OF THE FARMER-BENEFICIARIES.—** It bears to reiterate that **just compensation must be valued at the time of taking,** such as when title is transferred in the name of the Republic, or CLOAs are issued in favor of the farmer-beneficiaries. Accordingly, the just compensation for the subject land should have been computed based on the values prevalent for like agricultural lands in accordance with the pertinent DAR regulations effective during such time of taking.

4. **ID.; ID.; ID.; REMAND OF THE CASE FOR RECEPTION OF FURTHER EVIDENCE IS NECESSARY IN ORDER THAT THE REGIONAL TRIAL COURT, ACTING AS A SPECIAL AGRARIAN COURT, CAN DETERMINE JUST COMPENSATION; GUIDELINES.—** [T]he veracity of the facts and figures which the LBP used under the circumstances involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari* since the Court is not a trier of facts. Thus, a remand of this case for reception of further evidence is necessary in order for the RTC, acting as a SAC, to determine just compensation in accordance with Section 17 of RA 6657, as amended, and the applicable DAR regulations. To this end, the RTC is hereby directed to observe

the following guidelines in the remand of the case: **1.** ***Just compensation must be valued at the time of taking,*** or the time when the owner was deprived of the use and benefit of his property, such as when title is transferred in the name of the Republic or CLOAs were issued in favor of the farmer-beneficiaries. Hence, the evidence to be presented by the parties before the RTC for the valuation of the subject land must be based on the values prevalent on such time of taking for like agricultural lands. **2.** ***Courts should consider the factors in Section 17 of RA 6657, as amended, prior to its amendment by RA 9700, as translated into the applicable DAR formula.*** However, if the RTC finds that a strict application of the relevant DAR formulas is not warranted, it may depart therefrom upon a reasoned explanation. **3.** ***Interest may be awarded as may be warranted by the circumstances of the case and based on prevailing jurisprudence.*** In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Thus, legal interest on the unpaid balance shall be pegged at the rate of 12% per annum from the date of taking, as shall be determined by the RTC, until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% per annum in line with the amendment introduced by *Bangko Sentral ng Pilipinas*-Monetery Board Circular No. 799, Series of 2013.

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

LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (REPUBLIC ACT NO. 6657, AS AMENDED); DAR (DEPARTMENT OF AGRARIAN REFORM) FORMULAS TRANSLATING THE FACTORS IN DETERMINING JUST COMPENSATION; THE COURTS ARE MERELY STATUTORILY REQUIRED TO CONSIDER THE DAR FORMULAS, HOWEVER, THE COURTS ARE NOT BOUND BY LAW TO IMPLEMENT THE DAR FORMULAS.— I submit this Separate Concurring Opinion to point out the gravely erroneous statement in *Alfonso v. LBP* that "the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself x x x."

> x x x The statement in *Alfonso* that the DAR formulas partake of the nature of statutes is wrong for two reasons. *First,* the DAR formulas are embodied in administrative issuances merely for the guidance of the courts in the determination of just compensation, and therefore they clearly do not partake of the nature of laws. Statutes are written laws passed by the legislature that courts construe and apply to specific situations. Congress did not craft the DAR formulas. As such, the DAR formulas are not statutes and therefore, the courts, which construe and apply laws, are not bound by such formulas. x x x *Second,* under the 2009 amendment of Section 17 of RA 6657, the DAR formulas never "became law," contrary to the statement in *Alfonso* that the DAR formulas "became law" under the 2009 amendment. Nowhere in the amended Section 17 of RA 6657 did the DAR formulas become law to be mandatorily implemented by the courts. x x x This provision merely states that the DAR formulas translating the factors in determining just compensation **shall be considered, but remain subject to the final decision of the courts.** The DAR formulas did not become law in the amended Section 17 of RA 6657 to be followed mandatorily without deviation by the courts. **The courts are merely statutorily required to consider the DAR formulas; however, the courts are not bound by law to implement the DAR formulas.** If the DAR formulas "became law" under the 2009 RA 9700 amendment, then the DAR formulas could no longer be changed by the courts, and the phrase "subject to the final decision of the courts" in the amendment would be a superfluity. To insist that the DAR formulas "became law" not only goes beyond the express language and intent of the law, such insistence also defies reason.

JARDELEZA, *J., separate concurring opinion*:

LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (REPUBLIC ACT NO. 6657, AS AMENDED); THE DAR (DEPARTMENT OF AGRARIAN REFORM) FORMULAS PARTAKE OF THE NATURE OF STATUTES; THE ALLEGED OBJECTIONABLE STATEMENT HAS APPEARED IN ONE FORM OR ANOTHER IN PREVIOUS CASES DECIDED BY THE COURT AND THE OBJECTIONS RAISED HAVE BEEN COMPLETELY REJECTED BY THE COURT IN ITS

MOST RECENT DECIDED CASE, HENCE, THERE IS NO REASON TO REVISIT THE ESTABLISHED RULE.— I **concur** with the *ponencia.* I write this Opinion, however, to respond to the Separate Concurring Opinion referring to a "gravely erroneous" statement made by this Court in its Decision in *Alfonso v. Land Bank of the Philippines (Alfonso).* The Separate Concurring Opinion took particular exception to the Court's statement in *Alfonso* to the effect that "the DAR formulas partake of the nature of statutes" which under Republic Act No. 9700, became law itself." *First.* The allegedly objectionable statement has, in fact, appeared in one form or another in previous cases decided by the Court. The Court in *Alfonso* merely affirmed the prevailing, and in its view, correct, rule. *Second,* and in my view more importantly, the objections raised in the Separate Concurring Opinion have already been completely (and soundly) rejected by the Court in *Alfonso.* x x x This Court decided *Alfonso* barely a year ago. Absent any change in law, I see no reason why the established rule should be revisited so soon.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Eduardo P. Ocampo for respondent.

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 28, 2007 and the Resolution[3] dated February 20, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96701, which affirmed the Decision[4] dated June 19, 2006 and the Order[5] dated October 4, 2006 of the Regional

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[1] *Rollo*, pp. 26-54.

[2] *Id.* at 15-21. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario concurring.

[3] *Id*. at 8-13.

[4] *Id*. at 104-111. Penned by Judge Benjamin T. Vianzon.

[5] *Id*. at 123.

Trial Court of Bataan, Branch 1 (RTC) in Civil Case No. 6428 fixing the just compensation for respondent Rural Bank of Hermosa (Bataan), Inc.'s (respondent) 1.572 hectares (has.) agricultural land acquired by the government (subject land) at ₱30.00 per square meter (sq. m.).

The Facts

Respondent is the registered owner of two (2) parcels of agricultural land situated in Saba, Hermosa, Bataan, with a total area of 2.1718 hectares, covered by Transfer Certificate of Title (TCT) Nos. T-114713[6] and T-114714.[7] Respondent voluntarily offered to sell (VOS) the same to the government but only the subject land was acquired, and placed under the Comprehensive Agrarian Reform Program (CARP) pursuant to Republic Act No. (RA) 6657,[8] as amended.[9]

Petitioner the Land Bank of the Philippines (LBP) valued the subject land at ₱28,282.09[10] using the formula under Department of Agrarian Reform (DAR) Administrative Order No. (AO) 17, Series of 1989,[11] as amended by DAR AO 03, Series of 1991 (DAR AO 17, Series of 1989, as amended),[12]

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[6] Records, p. 369 (including dorsal portion).

[7] *Id*. at 368.

[8] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," approved on June 10, 1988.

[9] See *rollo*, pp. 16 and 104. See also Notice of Land Valuation dated January 2, 1992 and CARP (VOF) Form No. 1 dated July 25, 1989; records, pp. 370 and 566, respectively.

[10] *Rollo*, p. 16. See also Claims Processing Form dated October 30, 1991; records, pp. 506-509.

[11] Entitled "RULES AND REGULATIONS AMENDING VALUATION OF LANDS VOLUNTARILY OFFERED PURSUANT TO EO 229 AND RA 6657 AND THOSE COMPULSORILY ACQUIRED PURSUANT TO RA 6657."

[12] Entitled "RULES AND REGULATIONS AMENDING CERTAIN PROVISIONS OF AO 17 WHICH GOVERNS THE VALUATION OF LANDS VOLUNTARILY OFFERED PURSUANT TO EO 229 AND RA 6657 AND COMPULSORILY ACQUIRED PURSUANT TO RA 6657" dated April 25, 1991. See *rollo*, p. 195.

i.e., **LV = (CNI x .70) + (MV x .30)**,[13] but respondent rejected the said valuation, prompting the LBP to deposit the said amount in the latter's name.[14]

After the summary administrative proceedings for the determination of just compensation, the Office of the Provincial Adjudicator of Dinalupihan, Bataan rendered a Decision[15] dated December 13, 1994 in DARAB Case No. 035-92 adopting the LBP's valuation.[16] Respondent moved for reconsideration,[17] which was, however, denied in an Order[18] dated August 8, 1995.

Dissatisfied, respondent filed before the RTC, sitting as a Special Agrarian Court (SAC), a petition[19] seeking the determination of just compensation for the subject land, or in the alternative, to be allowed to withdraw its VOS should the valuation arrived at be unacceptable to it.[20]

The RTC Ruling

In a Decision[21] dated June 19, 2006, the RTC found the LBP's valuation as too low and unrealistic, and based on a mere government valuation policy and not on its market value as

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[13] Where:

LV = Land Value
CNI = Capitalized Net Income
MV = Market Value per Tax Declaration

See *id*. at 291.

[14] See *id*. at 16-17.

[15] *Id*. at 178-181. Penned by Provincial Adjudicator Benjamin M. Yambao.

[16] See *id*. at 181.

[17] See "Motion for Reconsideration and/or to Set Aside Decision dated December 13, 1994" dated December 27, 1994; *id*. at 182-183.

[18] *Id*. at 184.

[19] Dated August 28, 1995 and docketed as Civil Case No. 6428. *Id*. at 185-188.

[20] See *id*. at 187.

[21] *Id*. at 104-111.

reflected on the tax declarations for the two (2) parcels of land. It gave credence to the testimony of the geodetic engineer who made the relocation survey and claimed that he would be willing to pay the price of ₱30.00 per sq. m. therefor considering its accessibility to the national road and its location which is a mere ½ kilometer away from a school and about 50 meters away from a Catholic church. Consequently, it fixed the just compensation for the subject land at ₱30.00 per sq. m.[22]

The LBP moved for reconsideration,[23] which was, however, denied in an Order[24] dated October 4, 2006.

Unperturbed, the LBP elevated the matter before the CA.[25]

The CA Ruling

In a Decision[26] dated September 28, 2007, the CA upheld the RTC's valuation as being in accord with the guidelines set forth under Section 17 of RA 6657, as amended, since the RTC considered not only the testimony of the parties' respective witnesses, but also the nature of the land's use and its assessed value based on the tax declarations. It rejected the LBP's contention that DAR AO 17, Series of 1989, as amended, should control the computation of just compensation, holding that the said AOs are mere guidelines to be used by the LBP, and are not binding on the courts.[27]

Aggrieved, the LBP filed a motion for reconsideration,[28] but the same was denied in a Resolution[29] dated February 20, 2008; hence, the instant petition.

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[22] See *id*. at 111.

[23] See Motion for Reconsideration dated July 6, 2006; *id*. at 112-122.

[24] *Id*. at 123.

[25] See petition for review dated November 17, 2006; *id*. at 124-147.

[26] *Id*. at 15-21.

[27] See *id*. at 18-20.

[28] Dated October 17, 2007. *Id*. at 71-79.

[29] *Id*. at 8-13.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the RTC's valuation fixing the just compensation for the subject land at ₱30.00 per sq. m.

The Court's Ruling

"Settled is the rule that when the agrarian reform process is still incomplete, such as in this case where the just compensation due the landowner has yet to be settled, just compensation should be determined and the process be concluded under RA 6657,"[30] as amended.

"For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking*," or the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred in the name of the Republic of the Philippines (Republic),[31] or Certificates of Land Ownership Award (CLOAs) are issued in favor of the farmer-beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e.*, (*a*) the acquisition cost of the land, (*b*) the current value of like properties, (*c*) the nature and actual use of the property, and the income therefrom, (*d*) the owner's sworn valuation, (*e*) the tax declarations, (*f*) the assessment made by government assessors, (*g*) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (*h*) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.[32]

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[30] *LBP v. Heirs of Jesus Alsua*, 753 Phil. 323, 332 (2015).

[31] See *DAR v. Sps. Sta. Romana*, 738 Phil. 590, 600-601 (2014); and *DAR v. Beriña*, 738 Phil. 605, 619-620 (2014).

[32] See *Heirs of Pablo Feliciano, Jr. v. LBP*, G.R. No. 215290, January 11, 2017; *LBP v. Kho*, G.R. No. 214901, June 15, 2016; *DAR v. Sps. Sta. Romana*, *id*.; and *DAR v. Beriña*, *id*.

It is well to emphasize that the determination of just compensation is a judicial function. Thus, the "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic DAR formula, and the "justness" of the components (and their weights) that flow into such formula, are all matters for the courts to decide.[33] Nonetheless, to settle the perennial objections to the use of Section 17 and the resulting DAR formulas in the valuation of acquired properties under the CARP, the Court in *Alfonso v. LBP* (*Alfonso*)[34] ruled:

> For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[35]

In the present case, the CA merely upheld the just compensation fixed by the RTC which considered only the nature of the land's use, and its assessed value based on the tax declarations, without a showing, however, that the other factors under Section 17 of RA 6657, as amended, were taken into account or otherwise found to be inapplicable, and completely disregarded the pertinent DAR formula contrary to what the law requires. On this score alone, the CA clearly erred in sustaining the RTC's valuation as having been made in accordance with Section 17 of RA 6657, as amended.

Nonetheless, the Court cannot likewise adopt the LBP's computation. It bears to reiterate that **just compensation must**

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[33] See *Alfonso v. LBP*, G.R. Nos. 181912 & 183347, November 29, 2016.

[34] *Id*.

[35] See *Alfonso v. LBP*, *supra* note 33.

be valued at the time of taking, such as when title is transferred in the name of the Republic,[36] or CLOAs are issued in favor of the farmer-beneficiaries. Accordingly, the just compensation for the subject land should have been computed based on the values prevalent for like agricultural lands[37] in accordance with the pertinent DAR regulations effective during such time of taking. However, while the subject land was placed under CARP coverage in 1991, records do not bear out the date when title was issued in the name of the Republic or CLOAs were issued in favor of the farmer-beneficiaries.

Moreover, during the pendency of the proceedings, DAR AO 17, Series of 1989, as amended, which was used by the LBP in computing the just compensation for the subject land, was repealed by DAR AO 6, Series of 1992[38] that was amended by DAR AO 11, Series of 1994,[39] and subsequently superseded by DAR AO 5, Series of 1998,[40] which was, in turn, revoked by DAR AO 2, Series of 2009.[41] It must be pointed out, however, that DAR AO 2, Series of 2009 implementing RA 9700[42]

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[36] See *DAR v. Sps. Sta. Romana*, *supra* note 31, at 601; *DAR v. Beriña*, *supra* note 31, at 620.

[37] See *Heirs of Pablo Feliciano, Jr. v. LBP*, *supra* note 32; *LBP v. Kho*, *supra* note 32; *DAR v. Sps. Sta. Romana*, *id.*; and *DAR v. Beriña*, *id.*

[38] Entitled "RULES AND REGULATIONS AMENDING THE VALUATION OF LANDS VOLUNTARILY OFFERED AND COMPULSORILY ACQUIRED AS PROVIDED FOR UNDER ADMINISTRATIVE ORDER NO. 17, SERIES OF 1989, AS AMENDED, ISSUED PURSUANT TO REPUBLIC ACT NO. 6657," adopted on October 30, 1992.

[39] Entitled "REVISING THE RULES AND REGULATIONS COVERING THE VALUATION OF LANDS VOLUNTARILY OFFERED AND COMPULSORILY ACQUIRED AS EMBODIED IN ADMINISTRATIVE ORDER NO. 06, SERIES OF 1992," dated September 13, 1994.

[40] Entitled "REVISED RULES AND REGULATIONS GOVERNING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED PURSUANT TO REPUBLIC ACT NO. 6657," dated April 15, 1998.

[41] Entitled "RULES AND PROCEDURES GOVERNING THE ACQUISITION AND DISTRIBUTION OF AGRICULTURAL LANDS UNDER REPUBLIC ACT (R.A.) NO. 6657, AS AMENDED BY R.A. NO. 9700," dated October 15, 2009.

[42] Entitled "AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION

expressly declared that all claim folders received by the LBP prior to July 1, 2009, as in this case, shall be valued in accordance with Section 17 of RA 6657, as amended, prior to its further amendment by RA 9700.[43]

Records further show that during the summary administrative proceedings before the PARAD,[44] the subject land was revalued in accordance with DAR AO 6, Series of 1992 and DAR AO 11, Series of 1994,[45] but resulted to a lower valuation on both instances.[46] Nonetheless, the records are bereft of showing why the LBP insisted upon the applicability of DAR AO 17, Series of 1989, as amended, instead of the said AOs.

Consequently, despite the propriety of setting aside the just compensation fixed by the RTC, and affirmed by the CA, the Court cannot automatically adopt the LBP's own computation as prayed for in the instant petition. Notably, other than the Land Valuation Worksheet[47] for the land covered by TCT No. T-114714, and the Field Investigation Reports for the lands covered by TCT No. T-114713[48] and TCT No. T-114714,[49] no competent evidence was adduced by the LBP to support the amounts used in arriving at the just compensation, not having attached any certification from the concerned government agency showing the relevant industry data on the average gross production (AGP) of palay in the locality for purposes of

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OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR," approved on August 7, 2009.

[43] See *Heirs of Pablo Feliciano, Jr. v. LBP*, *supra* note 32.

[44] See *rollo*, p. 184.

[45] See *id*. at 105, 179, 184, and 209.

[46] See *id*. at 105. See also records, pp. 101 and 372.

[47] Records, pp. 510-513.

[48] *Id*. at 515-519.

[49] *Id*. at 520-524.

computing the capitalized net income (CNI),[50] and the tax declarations from which it derived the market values used.[51] Besides, the veracity of the facts and figures which the LBP used under the circumstances involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari* since the Court is not a trier of facts. Thus, a remand of this case for reception of further evidence is necessary in order for the RTC, acting as a SAC, to determine just compensation in accordance with Section 17 of RA 6657, as amended, and the applicable DAR regulations.[52] To this end, the RTC is hereby directed to observe the following guidelines in the remand of the case:

1. ***Just compensation must be valued at the time of taking***, or the time when the owner was deprived of the use and benefit of his property, such as when title is transferred in the name of the Republic or CLOAs were issued in favor of the farmer-beneficiaries. Hence, the evidence to be presented by the parties before the RTC for the valuation of the subject land must be based on the values prevalent on such time of taking for like agricultural lands.[53]

2. ***Courts should consider the factors in Section 17 of RA 6657, as amended, prior to its amendment by RA 9700, as translated into the applicable DAR formula.*** However, if the RTC finds that a strict application of the relevant DAR formulas is not warranted, it may depart therefrom upon a reasoned explanation.[54]

3. ***Interest may be awarded as may be warranted by the circumstances of the case and based on prevailing jurisprudence.***

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[50] See *id*. at 511.

[51] See *id*. at 512.

[52] See *LBP v. Heirs of Lorenzo Tañada*, G.R. No. 170506, January 11, 2017.

[53] See *Heirs of Pablo Feliciano, Jr. v. LBP*, *supra* note 32; *LBP v. Kho*, supra note 32; *DAR v. Sps. Sta. Romana*, *supra* note 31, at 601; and *DAR v. Beriña*, *supra* note 31, at 620.

[54] See *Heirs of Pablo Feliciano, Jr. v. LBP*, *supra* note 32; and *Alfonso v. Land Bank of the Philippines*, *supra* note 33.

In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Thus, legal interest on the unpaid balance shall be pegged at the rate of 12% per annum from the date of taking, as shall be determined by the RTC, until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% per annum[55] in line with the amendment introduced by *Bangko Sentral ng Pilipinas*-Monetary Board Circular No. 799,[56] Series of 2013.[57]

WHEREFORE, the Decision dated September 28, 2007 and the Resolution dated February 20, 2008 of the Court of Appeals in CA-G.R. SP No. 96701 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 6428 is **REMANDED** to the Regional Trial Court of Bataan, Branch 1 (RTC) for reception of evidence on the issue of just compensation in accordance with the guidelines set in this Decision. The RTC is directed to conduct the proceedings in said case with reasonable dispatch, and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Leonen, Caguioa, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Carpio and *Jardeleza, JJ.,* see separate concurring opinions.

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[55] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

[56] "Rate of interest in the absence of stipulation" (July 1, 2013).

[57] See *Heirs of Pablo Feliciano, Jr. v. LBP*, *supra* note 32; *LBP v. Kho*, *supra* note 32; *DAR v. Sps. Sta. Romana*, *supra* note 31, at 601; and *DAR v. Beriña*, *supra* note 31, at 620.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

In this case, the Court of Appeals upheld the Regional Trial Court's valuation of just compensation as being in accord with the guidelines set forth under Section 17 of Republic Act No. 6657 (RA 6657), as amended. It rejected the Land Bank of the Philippines' contention that DAR AO 17, Series of 1989, as amended, should control the computation of just compensation, holding that the said administrative orders are mere guidelines to be used by the LBP, and are not binding on the courts.

The *ponencia* reversed the Court of Appeals and remanded Civil Case No. 6428 to the Regional Trial Court for reception of evidence to determine just compensation in accordance with the guidelines set in the *ponencia,* which pertinently state that "[c]ourts should consider the factors in Section 17 of RA 6657, as amended, prior to its amendment by RA 9700, as translated into the applicable DAR formula, x x x."

I submit this Separate Concurring Opinion to point out the gravely erroneous statement in *Alfonso v. LBP*[1] that "the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself x x x." While the *ponencia* does not cite this particular statement in its discussion, it nevertheless stated that the Court supposedly "settle[d] the perennial objections to the use of Section 17 and the resulting DAR formulas in the valuation of acquired properties under the CARP" in *Alfonso.* With a fallacious statement that "the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself x x x," *Alfonso* incorrectly settled the various objections to the use of the DAR formulas.

The statement in *Alfonso* that the DAR formulas partake of the nature of statutes is wrong for two reasons.

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[1] G.R. Nos. 181912 & 183347, 29 November 2016.

First, the DAR formulas are embodied in administrative issuances merely for the guidance of the courts in the determination of just compensation, and therefore they clearly do not partake of the nature of laws. Statutes are written laws passed by the legislature that courts construe and apply to specific situations. Congress did not craft the DAR formulas. As such, the DAR formulas are not statutes and therefore, the courts, which construe and apply laws,[2] are not bound by such formulas.

In the same case of *Alfonso,* the majority stressed that "courts should x x x consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. **In other words, courts of law possess the power to make a final determination of just compensation."** If the DAR formulas "partake of the nature of statutes," then courts will have to mandatorily implement the DAR formulas without deviation. The fact that the Court in *Alfonso* declared that courts can deviate from the DAR formulas proves that these formulas do not partake of the nature of statutes.

Clearly, the majority in *Alfonso* admit that the DAR formulas are not binding on the courts. There is no dispute that the courts must consider the DAR formulas in determining just compensation. However, the courts may depart or deviate from the DAR formulas. In other words, while the courts are bound to **consider** the DAR formulas in determining just compensation, the courts are **not bound to implement** the DAR formulas in computing just compensation. Otherwise, the courts serve merely as rubber stamps of the DAR, obligated to give their *imprimatur* to the DAR formulas. To hold that courts are bound by DAR's valuation makes resort to the courts an empty exercise.

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[2] See *United States v. Ang Tang Ho,* 43 Phil. 1 (1922).

Second, under the 2009 amendment of Section 17 of RA 6657, the DAR formulas never "became law," contrary to the statement in *Alfonso* that the DAR formulas "became law" under the 2009 amendment. Nowhere in the amended Section 17 of RA 6657 did the DAR formulas become law to be mandatorily implemented by the courts.

Section 17 of RA 6657, as amended by RA 9700, reads:

> SEC. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature; actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into **a basic formula by the DAR shall be considered, subject to the final decision of the proper court.** The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasis supplied)

This provision merely states that the DAR formulas translating the factors in determining just compensation **shall be considered, but remain subject to the final decision of the courts.** The DAR formulas did not become law in the amended Section 17 of RA 6657 to be followed mandatorily without deviation by the courts. **The courts are merely statutorily required to consider the DAR formulas; however, the courts are not bound by law to implement the DAR formulas.** If the DAR formulas "became law" under the 2009 RA 9700 amendment, then the DAR formulas could no longer be changed by the courts, and the phrase "subject to the final decision of the courts" in the amendment would be a superfluity. To insist that the DAR formulas "became law" not only goes beyond the express language and intent of the law, such insistence also defies reason.

As I stated in my Separate Concurring Opinion in *Alfonso,* the clause "a basic formula by the DAR shall be considered, subject to the final decision of the proper court" means that the law

requires the courts to consider the DAR formula in determining just compensation, but the courts are not bound by the DAR formula since the determination of just compensation is essentially a judicial function. This amendment recognizes that the DAR has adopted a formula for determining just compensation. **However, the same amendment recognizes that any DAR formula is always, in the appropriate case, "subject to the final decision of the proper court."** This is an express recognition by the legislature that the DAR formulas are neither mandatory nor binding on the courts, and that the determination of just compensation is essentially a judicial function.

In *Land Bank of the Philippines v. Yatco Agricultural Enterprises*[3] and *Land Bank of the Philippines v. Eusebio, Jr.,*[4] the Court held that the SACs must consider the DAR formulas in determining just compensation; however, the SACs are not strictly bound to apply the DAR formulas, thus:

> When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.

I reiterate my Separate Concurring Opinion in *Alfonso.* The application of the DAR formulas is not mandatory on Special Agrarian Courts (SACs) in the determination of just compensation. The first paragraph of Section 18 of RA 6657 or the *Comprehensive Agrarian Reform Law of 1988* reads:

> Section 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amounts **as may be agreed upon by the landowner and the DAR and the LBP,** in accordance with the criteria provided for in Sections 16 and 17, and other pertinent

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[3] 724 Phil. 276, 287-288 (2014).

[4] 738 Phil. 7, 22 (2014).

provisions hereof, **or as may be finally determined by the court, as the just compensation for the land.** (Emphasis supplied)

This provision on valuation of just compensation consists of two parts. The first part refers to the amount of just compensation "as may be agreed upon by the landowner and the DAR and the LBP" while the second part pertains to the amount of just compensation "as may be finally determined by the court." **In other words, the amount of just compensation may either be (1) by an agreement among the parties concerned; or (2) by a judicial determination thereof.**

In the first case, there must be an **agreement** on the amount of just compensation between the landowner and the DAR. Such **agreement** must be in accordance with the criteria under Sections 16 and 17 of RA 6657.[5] Section 16 outlines the

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[5] Section 16 of RA 6657 provides:

SECTION 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other monuments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested

procedure for acquiring private lands while Section 17 provides for the factors to be considered in determining just compensation.

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parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Section 17 of RA 6657 provides:

SECTION 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Republic Act No. 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 to read as follows:

SEC. 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

To translate such factors, the DAR devised a formula, which is embodied in DAO No. 5.[6] The DAR, using the formula in DAO No. 5, will make an initial determination of the value of the land and thereafter offer such amount to the landowner. If the landowner accepts the DAR's offer, he shall be paid the amount of just compensation as computed by the DAR. If the landowner rejects the DAR's offer, he may opt to file an action before the courts to finally determine the proper amount of just compensation.[7] **Clearly, the DAR cannot mandate the value of the land because Section 18 expressly states that the landowner shall be paid the amount of just compensation "as may be agreed upon" by the parties.** In other words, the DAR's valuation of the land is not final and conclusive upon the landowner. **Simply put, the DAR's computation of just compensation is not binding on the landowner.**

Since the landowner is not bound to accept the DAR's computation of just compensation, with more reason are courts not bound by DAR's valuation of the land. To mandate the courts to adhere to the DAR's valuation, and thus require the courts to impose such valuation on the landowner, is contrary to the first paragraph of Section 18 which states that the DAR's valuation is not binding on the landowner. If the law intended courts to be bound by the DAR's valuation, and to impose such valuation on the landowner, then Section 18 should have simply directly stated that the landowner is bound by DAR's valuation. To avoid violating Section 18, courts must be given the discretion to accept, modify, or reject the DAR's valuation.

In my Separate Concurring Opinion, I also emphasized that the law itself vests in the Regional Trial Courts, sitting as SACs, the original and exclusive jurisdiction over actions for the

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[6] DAO No. 5, entitled *Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657,* amended DAO No. 11, series of 1994, which in turn amended DAO No. 6, series of 1992, entitled the *Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired.*

[7] *Republic v. Court of Appeals,* 331 Phil. 1070, 1077 (1996).

determination of just compensation. Section 57 of RA 6657 reads:

> Section 57. *Special Jurisdiction.* — **The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners,** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied)

Since the SACs exercise exclusive jurisdiction over petitions for determination of just compensation, the valuation by the DAR, presented before the agrarian courts, should only be regarded as initial or preliminary. As such, the DAR's computation of just compensation is not binding on the courts. In *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines,*[8] the Court held:

> **In fact, RA 6657 does not make DAR's valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and not the DAR, make the final determination of just compensation.** It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function. (Emphasis supplied)

I likewise cited in my Separate Concurring Opinion the case of *Apo Fruits Corporation v. Court of Appeals,*[9] which enunciated that the DAR formula is not controlling on the courts, thus:

> x x x **[T]he basic formula and its alternatives – administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) – although referred**

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[8] 634 Phil. 9, 31 (2010).

[9] 565 Phil. 418, 433-434 (2007).

to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. **Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance.** The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors[.] x x x. (Emphasis supplied)

To adhere to the DAR formula, in every instance, constitutes an undue restriction of the power of the courts to determine just compensation. This is clear from the case of *Land Bank of the Philippines v. Heirs of Puyat*[10] which stated:

As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

To repeat, the DAR valuation of just compensation is not binding or mandatory on the courts. No administrative order can deprive the courts of the power to review with finality the

[10] 689 Phil. 505, 522 (2012).

DAR's determination of just compensation in the exercise of what is admittedly a judicial function.[11] What the DAR is empowered to do is only to determine in a preliminary manner the amount of just compensation, leaving to the courts the ultimate power to decide the final just compensation.

ACCORDINGLY, I vote to remand Civil Case No. 6428 to the Regional Trial Court of Bataan, Branch 1 for reception of evidence on the issue of just compensation.

SEPARATE CONCURRING OPINION

JARDELEZA, *J.*:

I **concur** with the *ponencia.* I write this Opinion, however, to respond to the Separate Concurring Opinion referring to a "gravely erroneous" statement made by this Court in its Decision in *Alfonso v. Land Bank of the Philippines (Alfonso).*[1]

The Separate Concurring Opinion took particular exception to the Court's statement in *Alfonso* to the effect that "the DAR formulas partake of the nature of statutes" which under Republic Act No. 9700,[2] became law itself."

First. The allegedly objectionable statement has, in fact, appeared in one form or another in previous cases decided by the Court.[3] The Court in *Alfonso* merely affirmed the prevailing, and in its view, correct, rule.

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[11] See *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* 256 Phil. 777, 815 (1989).

[1] G.R. Nos. 181912 & 183347, November 29, 2016.

[2] An Act Strengthening the Comprehensive Agrarian Reform Program, Extending the Acquisition and Distribution of All Agricultural Land, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise, Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefore.

[3] See *Land Bank of the Philippines v. Yatco Agricultural Enterprises (Yatco),* G.R. No. 172551, January 15, 2014, 713 SCRA 370; *Land Bank*

Second, and in my view more importantly, the objections raised in the Separate Concurring Opinion have already been completely (and soundly) rejected by the Court in *Alfonso.* I quote:

> Arguing against the binding nature of the DAR formula, Justice Carpio in his Separate Concurring Opinion, cites *Apo Fruits* which held, to wit:
>
> > What is clearly implicit thus, is that the basic formula and its alternatives— administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998)—although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. x x x
> >
> > The argument of *Apo Fruits* that the DAR formula is a mere administrative order has, however, been completely swept aside by the amendment to Section 17 under RA 9700. To recall, Congress amended Section 17 of RA 6657 by expressly providing that the valuation factors enumerated be "translated into a basic formula by the DAR x x x." This amendment converted the DAR basic formula into a requirement of the law itself. In other words, the formula ceased to be merely an administrative rule, presumptively valid as *subordinate legislation* under the DAR's rule-making power. The formula, now part of the *law* itself, is entitled to the presumptive constitutional validity of a *statute.* More important, *Apo Fruits* merely states that the formula cannot "strictly" bind the courts. The more reasonable reading of *Apo Fruits* is that the formula does not strictly apply in certain circumstances. *Apo Fruits* should, in other words, be read together with *Yatco.*[4] (Italics in the original, citations omitted.)

In fact, the Court in *Alfonso* has already rejected similar proposals (from no less than members of the Court) to abandon the doctrine as set forth in *Banal,*[5] *Celada,* and *Yatco.* In giving

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of the Philippines v. Celada (Celada), G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[4] *Alfonso v. Land Bank of the Philippines, supra* note 1.

[5] *Land Bank of the Philippines v. Banal,* G.R. No. 143276, July 20, 2004, 434 SCRA 543.

full constitutional presumptive weight and credit to Section 17 of Republic Act No. 6657,[6] as amended, Department of Agrarian Reform (DAR) Administrative Order No. 5 (1998)[7] and the resulting DAR basic formulas, the Court thus explained:

> The determination of just compensation *is* a judicial function. The "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic formula, and the "justness" of the components (and their weights) that flow into the basic formula, are all matters for the courts to decide. As stressed by *Celada,* however, until Section 17 or the basic formulas are declared invalid in a proper case, they enjoy the presumption of constitutionality. This is more so now, with Congress, through RA 9700, expressly providing for the mandatory consideration of the DAR basic formula. In the meantime, *Yatco,* akin to a legal safety net, has tempered the application of the basic formula by providing for deviation, where supported by the facts and reasoned elaboration.
>
> While concededly far from perfect, the enumeration under Section 17 and the use of a basic formula have been the principal mechanisms to implement the just compensation provisions of the Constitution and the CARP for many years. **Until a direct challenge is successfully mounted against Section 17 and the basic formulas, they and the collective doctrines in *Banal, Celada* and *Yatco* should be applied to all pending litigation involving just compensation in agrarian reform.** This rule, as expressed by the doctrine of *stare decisis,* necessary for securing certainty and stability of judicial decisions x x x.[8] (Italics in the original, emphasis supplied.)

This Court decided *Alfonso* barely a year ago. Absent any change in law, I see no reason why the established rule should be revisited so soon.

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[6] Comprehensive Agrarian Reform Law of 1988.

[7] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[8] *Alfonso v. Land Bank of the Philippines, supra* note 1.

EN BANC

[G.R. No. 227757. July 25, 2017]

REPRESENTATIVE TEDDY BRAWNER BAGUILAT, JR., REPRESENTATIVE EDCEL C. LAGMAN, REPRESENTATIVE RAUL A. DAZA, REPRESENTATIVE EDGAR R. ERICE, REPRESENTATIVE EMMANUEL A. BILLONES, REPRESENTATIVE TOMASITO S. VILLARIN, and REPRESENTATIVE GARY C. ALEJANO, *petitioners, vs.* **SPEAKER PANTALEON D. ALVAREZ, MAJORITY LEADER RODOLFO C. FARIÑAS, and REPRESENTATIVE DANILO E. SUAREZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; THE METHOD OF CHOOSING WHO WILL BE SUCH OTHER OFFICERS, OTHER THAN THE SPEAKER, MUST BE PRESCRIBED BY THE HOUSE ITSELF, NOT BY THE COURT.— Under Section 16 (1), Article VI of the 1987 Constitution, the Speaker of the House of Representatives shall be elected by a majority vote of its entire membership. Said provision also states that the House of Representatives may decide to have officers other than the Speaker, and that the method and manner as to how these officers are chosen is something within its sole control. In the case of *Defensor-Santiago v. Guingona*, which involved a dispute on the rightful Senate Minority Leader during the 11th Congress (1998-2001), this Court observed that "[w]hile the Constitution is explicit on the manner of electing x x x [a Speaker of the House of Representative,] it is, however, dead silent on the manner of selecting the other officers [of the Lower House]. All that the Charter says is that '[e]ach House shall choose such other officers as it may deem necessary.' [As such], the method of choosing who will be such other officers is merely a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Therefore, such method must be prescribed by the [House of Representatives] itself, not by [the] Court."

2. ID.; ID.; ID.; THE CONSTITUTION VESTS IN THE HOUSE OF REPRESENTATIVES THE SOLE AUTHORITY TO DETERMINE THE RULES OF ITS PROCEEDINGS, HENCE, AS A GENERAL RULE THE SUPREME COURT HAS NO AUTHORITY TO INTERFERE AND UNILATERALLY INTRUDE INTO THAT EXCLUSIVE REALM; GRAVE ABUSE OF DISCRETION, AS AN EXCEPTION, EXPLAINED.— Corollary thereto, Section 16 (3), Article VI of the Constitution vests in the House of Representatives the sole authority to, *inter alia*, "determine the rules of its proceedings." These "legislative rules, unlike statutory laws, do not have the imprints of permanence and obligatoriness during their effectivity. In fact, they 'are subject to revocation, modification or waiver at the pleasure of the body adopting them.' Being merely matters of procedure, their observance are of no concern to the courts, for said rules may be waived or disregarded by the legislative body at will, upon the concurrence of a majority [of the House of Representatives]." Hence, as a general rule, "[t]his Court has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of [C]onstitutional principles that it is bound to protect and uphold x x x. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the [House of Representatives]." Of course, as in any general rule, there lies an exception. While the Court in taking jurisdiction over petitions questioning an act of the political departments of government, will not review the wisdom, merits or propriety of such action, it will, however, strike it down on the ground of grave abuse of discretion. This stems from the expanded concept of judicial power, which, under Section 1, Article VIII of the 1987 Constitution, expressly "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Case law decrees that "[t]he foregoing text emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government including Congress. It is an innovation in our political law. x x x Accordingly, this Court "will not shirk, digress from or abandon its sacred duty

and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government."

LEONEN, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; THE CONSTITUTION GIVES CONGRESS THE POWER TO ADOPT ITS OWN RULES; ONCE PROMULGATED, ANY CLEAR AND PATENT VIOLATION OF ITS RULES WILL AMOUNT TO GRAVE ABUSE OF DISCRETION; PRESENT IN CASE AT BAR.— Courts generally do not intervene in matters internal to Congress, such as the manner of choosing its own officers or leaders. Indeed, Article VI, Section 16(1) of the Constitution gives Congress the power to adopt its own rules: x x x Once promulgated, any clear and patent violation of its rules will amount to grave abuse of discretion. The House of Representatives has rules on who forms part of the Majority or Minority, or who is considered an independent member. The rules are also clear with respect to how affiliations change. It was grave abuse of discretion for the House of Representatives to disregard the first, second, fourth to eighth, and last paragraphs of Rule II, Section 8 of the Rules of the House of Representatives. x x x Representative Suarez even declares that *Defensor-Santiago* is "on all fours" in this case. The ponencia similarly relies on the pronouncements in *Defensor-Santiago*. x x x This Court held that it had no jurisdiction to intervene as there were "no specific, operable norms and standards" by which the issue could be resolved. Simply put, *Defensor-Santiago* does not involve any violation—there was no constitutional or statutory provision, Senate rules, or parliamentary practice that would make the defeated candidate for Senate presidency *ipso facto* the Senate Minority Leader. In this case, there are existing Rules of the House of Representatives that disqualify respondent Representative Suarez from being the Minority Leader and exclude the 20 abstaining members from Minority membership. There is also an established parliamentary practice of the House of Representatives, evidencing their current collective interpretation, which makes Representative Teddy Brawner Baguilat, Jr. (Representative Baguilat) of the Lone District of

Ifugao Province automatically the Minority Leader. x x x In contrast, the petitioners have ably established the presence of grave abuse of discretion. Truly, the justiciability of the issue is anchored on the capricious, whimsical, and arbitrary judgment committed by respondents in neglecting and refusing to recognize Representative Baguilat as the *ipso facto* Minority Leader, in accordance with a long-established parliamentary practice and Rules of the House of Representatives.

2. STATUTORY CONSTRUCTION; STATUTES; IT IS A BASIC LEGAL PRINCIPLE THAT THOSE NOT INCLUDED IN THE ENUMERATION ARE DEEMED EXCLUDED.— It is a basic legal principle that those not included in the enumeration are deemed excluded. A person or thing omitted from an enumeration must be held to have been omitted intentionally. As the definition of Minority omitted those representatives who abstained or opted for a "no-vote," then they are deemed intentionally omitted from the definition.

3. CIVIL LAW; ESTOPPEL; ESTOPPEL BY SILENCE MAY ONLY BE INVOKED IF THE PERSON'S FAILURE TO SPEAK OUT CAUSED PREJUDICE OR INJURY TO THE OTHER; NOT ESTABLISHED IN CASE AT BAR.— Estoppel bars a person who admitted or represented something from later on denying or disproving that thing in *any litigation* arising from such admission or representation. The sessions before the House are not litigations; the election of its Minority Leader does not approximate a proceeding in court. Article VI, Section 16(3) of the Constitution allows the House to determine its own rules during its deliberations. In view of this, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House of Representatives. The proceedings in the House are guided by the Rules to which the House "has pledge[d] faithful obedience." In contrast, estoppel is a civil law concept found under Article 1431 of the Civil Code and Rule 131, Section 2(a) of the Revised Rules on Evidence. Neither of these provisions on estoppel forms part of the House Rules, whether directly or by reference. x x x even assuming that "estoppel by silence" is recognized in House proceedings, this doctrine does not apply to the situation at bar. In *Santiago Syjuco, Inc. v. Castro*: x x x Estoppel by silence may only be invoked if the person's failure to speak out caused prejudice or injury to the other. For instance, a

property owner who knowingly allows another to sell the property without objecting to the transaction is estopped from setting up his title as against a third person who was misled by and suffered an injury from that transaction. Representative Fariñas failed to show how his reliance on petitioners' alleged silence to his wrong interpretation of the Rules on July 25, 2016 prejudiced him. Petitioners' silence did not injure his rights; rather, it was his insistence on this mistaken interpretation that has injured petitioners' rights.

4. POLITICAL LAW; DECLARATION OF PRINCIPLES; THE PHILIPPINES AS A DEMOCRATIC AND REPUBLICAN STATE; IN A REPRESENTATIVE DEMOCRACY, THERE IS PLURALITY IN GOVERNANCE AND NO SINGLE PARTY HAS THE SOLE POWER ABOVE ALL.— Article II, Section 1 of the Constitution states that "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." The people, in their sovereign capacity, delegate their government authority to their duly-elected representatives who will speak for them during deliberations and sessions of Congress, among others. In a representative democracy, there is plurality in governance and no single party has the sole power above all. Opposition is integral in a democracy. Our system goes out of its way to give every person an equal footing, to institutionalize the people, and to allow their voices to be heard. For instance, the people's "freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances" are protected and guaranteed by the Constitution. x x x The rule of law must still prevail in curbing any attempt to suppress the minority and eliminate dissent. x x x Any attempt by the dominant to silence dissent and take over an entire institution finds no room under the 1987 Constitution. Parliamentary practice and the Rules of the House of Representatives cannot be overruled in favor of personal agenda. It is understandable for the majority in any deliberative body to push their advantages to the consternation of the minority. However, in a representative democracy marked with opportunities for deliberation, the complete annihilation of any dissenting voice, no matter how reasonable, is a prelude to many forms of authoritarianism. While politics speaks in numbers, many among our citizens can only

hope that those political numbers are the result of mature discernment. Maturity in politics is marked by a courageous attitude to be open to the genuine opposition, who will aggressively point out the weaknesses of the administration, in an orderly fashion, within parliamentary forums. After all, if the true interest of the public is in mind, even the administration will benefit by criticism.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; *MANDAMUS* LIES TO COMPEL THE BOARD, OFFICER, OR PERSON TO DO A MINISTERIAL ACT OR DUTY WHICH THE BOARD, OFFICER, OR PERSON UNLAWFULLY NEGLECTS TO DO; NOT APPLICABLE IN CASE AT BAR.— Mandamus is available when a person is excluded from the use and enjoyment of a right or office to which he or she is entitled. As a rule, mandamus requires the exhaustion of administrative remedies available to the petitioner. However, prior resort to exhaustion of administrative remedies is not required where the questions raised are purely legal. Mandamus lies to compel the board, officer, or person to do a ministerial act or duty which the board, officer, or person unlawfully neglects to do. x x x An act is considered ministerial where the public officer must do it, out of a legal obligation, without having any right to decide on the manner, time, or propriety of doing it. On the other hand, an act is considered discretionary where the public officer has the right to exercise his or her judgment or official discretion in doing the act. x x x To emphasize, for about 30 years since the 1987 Constitution was promulgated and the bicameral Congress was restored, the House has collectively considered the votes for the second placer for House Speaker as the votes of the Minority for its Minority Leader. Thus, it is up to the House leadership to extend recognition to the duly-designated Minority Leader. Mandamus, however, does not lie to allow this Court to choose the Minority Leader. With deep regret, in the absence of a showing of a clear and unmistakable present right on the part of petitioners, considering the possibility of shifting political alliances, I cannot vote to issue the writ of mandamus, even as I find that there was grave abuse of discretion.

APPEARANCES OF COUNSEL

Lagman Lagman & Mones Law Firm for petitioners.
The Solicitor General for respondents.
Roque and Butuyan Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for *mandamus*[1] filed by petitioners Representatives Teddy Brawner Baguilat, Jr., (Rep. Baguilat), Edcel C. Lagman (Rep. Lagman), Raul A. Daza, Edgar R. Erice, Emmanuel A. Billones, Tomasito S. Villarin, and Gary C. Alejano (collectively, petitioners), all members of the House of Representatives, essentially praying that respondents Speaker Pantaleon D. Alvarez (Speaker Alvarez), Majority Leader Rodolfo C. Fariñas (Rep. Fariñas), and Representative Danilo E. Suarez (Rep. Suarez; collectively, respondents), also members of the House of Representatives, be compelled to recognize: (*a*) Rep. Baguilat as the Minority Leader of the 17th Congress of the House of Representatives; and (*b*) petitioners as the legitimate members of the Minority.

The Facts

The petition alleges that prior to the opening of the 17th Congress on July 25, 2016, several news articles surfaced about Rep. Suarez's announcement that he sought the adoption or anointment of President Rodrigo Roa Duterte's Administration as the "Minority Leader" to lead a "cooperative minority" in the House of Representatives (or the House), and even purportedly encamped himself in Davao shortly after the May 2016 Elections to get the endorsement of President Duterte and the majority partisans. The petition further claims that to ensure Rep. Suarez's election as the Minority Leader, the supermajority coalition in the House allegedly "lent" Rep. Suarez some of its

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[1] *Rollo*, Vol. I, pp. 3-51.

members to feign membership in the Minority, and thereafter, vote for him as the Minority Leader.[2]

On July 25, 2016, which was prior to the election of the Speaker of the House of Representatives, then-Acting Floor Leader Rep. Fariñas and Rep. Jose Atienza (Rep. Atienza) had an interchange before the Plenary, wherein the latter elicited the following from the former: **(*a*) all those who vote for the winning Speaker shall belong to the Majority and those who vote for the other candidates shall belong to the Minority; (*b*) those who abstain from voting shall likewise be considered part of the Minority; and (*c*) the Minority Leader shall be elected by the members of the Minority.**[3] Thereafter, the Elections for the Speakership were held, "[w]ith 252 Members voting for [Speaker] Alvarez, eight [(8)] voting for Rep. Baguilat, seven [(7)] voting for Rep. Suarez, 21 abstaining and one [(1)] registering a no vote,"[4] thus, resulting in Speaker Alvarez being the duly elected Speaker of the House of Representatives of the 17th Congress.

Petitioners hoped that as a "long-standing tradition" of the House – where the candidate who garnered the second (2nd)-highest number of votes for Speakership automatically becomes the Minority Leader — Rep. Baguilat would be declared and recognized as the Minority Leader. However, despite numerous follow-ups from respondents, Rep. Baguilat was never recognized as such.[5]

On August 1, 2016, one of the "abstentionists," Representative Harlin Neil Abayon, III (Rep. Abayon), manifested before the Plenary that on July 27, 2016, those who did not vote for Speaker Alvarez (including the 21 "abstentionists") convened and elected Rep. Suarez as the Minority Leader.[6] Thereafter, on August

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[2] *Id*. at 12. See also *id*. at 57-63.

[3] *Id*. at 13-14.

[4] *Id*. at 14.

[5] See *id*. at 14-15.

[6] *Id*. at 17.

15, 2016, Rep. (now, Majority Leader) Fariñas moved for the recognition of Rep. Suarez as the Minority Leader. This was opposed by Rep. Lagman essentially on the ground that various "irregularities" attended Rep. Suarez's election as Minority Leader, particularly: (*a*) that Rep. Suarez was a member of the Majority as he voted for Speaker Alvarez, and that his "transfer" to the Minority was irregular; and (*b*) that the "abstentionists" who constituted the bulk of votes in favor of Rep. Suarez's election as Minority Leader are supposed to be considered independent members of the House, and thus, irregularly deemed as part of the Minority.[7] However, Rep. Lagman's opposition was overruled, and consequently, Rep. Suarez was officially recognized as the House Minority Leader.

Thus, petitioners filed the instant petition for *mandamus*, insisting that Rep. Baguilat should be recognized as the Minority Leader in light of: (*a*) the "long-standing tradition" in the House where the candidate who garnered the second (2nd)-highest number of votes for Speakership automatically becomes the Minority Leader; and (*b*) the irregularities attending Rep. Suarez's election to said Minority Leader position.

For his part, Rep. Suarez maintains that the election of Minority Leader is an internal matter to the House of Representatives. Thus, absent any finding of violation of the Constitution or grave abuse of discretion, the Court cannot interfere with such internal matters of a coequal branch of the govemment.[8] In the same vein, the Office of the Solicitor General (OSG), on behalf of Speaker Alvarez and Majority Leader Fariñas contends, *inter alia*, that the election of Minority Leader is within the exclusive realm of the House of Representatives, which the Court cannot intrude in pursuant to the principle of separation of powers, as well as the political question doctrine. Similarly, the OSG argues that the recognition of Rep. Suarez as the House Minority Leader

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[7] *Id*. at 22.

[8] See portions Rep. Suarez's Comment dated January 17, 2017; *id*. at 222-231.

was not tainted with any violation of the Constitution or grave abuse of discretion and, thus, must be sustained.[9]

The Issue Before the Court

The essential issue for resolution is whether or not respondents may be compelled via a writ of *mandamus* to recognize: (*a*) Rep. Baguilat as the Minority Leader of the House of Representatives; and (*b*) petitioners as the only legitimate members of the House Minority.

The Court's Ruling

The petition is without merit.

"*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law."[10] In *Special People, Inc. Foundation v. Canda*,[11] the Court explained that the peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief **to one who has a clear legal right to the performance of the act to be compelled**.[12]

After a judicious study of this case, the Court finds that petitioners have no clear legal right to the reliefs sought. Records disclose that prior to the Speakership Election held on July 25,

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[9] See portions of the OSG's Comment dated February 15, 2017; *rollo*, Vol. II, pp. 738-739 and 747-755.

[10] *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, 455 Phil. 956, 962 (2003), citing Section 3, Rule 65 of the Rules of Court.

[11] 701 Phil. 365 (2013).

[12] See *id*. at 386.

2016, then-Acting Floor Leader Rep. Fariñas responded to a parliamentary inquiry from Rep. Atienza as to who would elect the Minority Leader of the House of Representatives. Rep. Fariñas then articulated that: **(*a*) all those who vote for the winning Speaker shall belong to the Majority and those who vote for other candidates shall belong to the Minority; (*b*) those who abstain from voting shall likewise be considered part of the Minority; and (*c*) the Minority Leader shall be elected by the members of the Minority.**[13] Thereafter, the election of the Speaker of the House proceeded **without any objection** from any member of Congress, including herein petitioners. Notably, the election of the Speaker of the House is the essential and formative step conducted at the first regular session of the 17th Congress to determine the constituency of the Majority and Minority (and later on, their respective leaders), considering that the Majority would be comprised of those who voted for the winning Speaker and the Minority of those who did not. The unobjected procession of the House at this juncture is reflected in its Journal No. 1 dated July 25, 2016,[14] which, based on case law, is conclusive[15] as to what transpired in Congress:

PARLIAMENTARY INQUIRY OF REP. ATIENZA

Recognized by the Chair, Rep. Atienza inquired as to who would elect the Minority Leader of the House of Representatives.

REMARKS OF REP. FARIÑAS

In reply, Rep. Fariñas referred to Section 8 of the Rules of the house on membership to the Majority and the Minority. He explained that the Members who voted for the winning candidate for the Speaker shall constitute the Majority and shall elect from among themselves the Majority Leader, while those who voted against the winning Speaker

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[13] *Rollo*, Vol. I, pp. 13-14.

[14] I JOURNAL, HOUSE 17th Congress 1st Session 16-17 (July 25, 2016).

[15] "The Journal is regarded as conclusive with respect to matters that are required by the Constitution to be recorded therein. With respect to other matters, in the absence of evidence to the contrary, the Journals have also been accorded conclusive effect." (*Arroyo v. De Venecia*, 343 Phil. 42, 74 [1997]).

or did not vote at all shall belong to the Minority and would thereafter elect their Minority Leader.

NOMINAL VOTING ON THE NOMINEES FOR SPEAKER OF THE HOUSE

Thereafter, on motion of Rep. Fariñas, ***there being no objection***, the Members proceeded to the election of the Speaker of the House of Representatives. The Presiding Officer then directed Deputy Secretary General Adasa to call the Roll for nominal voting for the Speaker of the House and requested each Member to state the name of the candidate he or she will vote for.

The result of the voting was as follows:

For Rep. Pantaleon D. Alvarez:

x x x x x x x x x

For Rep. Teddy Brawner Baguilat Jr.

x x x x x x x x x

For Rep. Danilo E. Suarez

x x x x x x x x x

Abstained

x x x x x x x x x

With 252 Members voting for Rep. Alvarez (P.), eight voting for Rep. Baguilat, seven voting for Rep. Suarez, 21 abstaining and one registering a no vote, the Presiding Officer declared Rep. Alvarez (P.) as the duly elected Speaker of the House of Representatives for the 17th Congress.

COMMITTEE ON NOTIFICATION

On motion of Rep. Fariñas, there being no objection, the Body constituted a committee composed of the following Members to notify Rep. Alvarez (P.) of his election as Speaker of the House of Representatives and to escort the Speaker-elect to the rostrum for his oath-taking: Reps. Eric D. Singson, Mercedes K. Alvarez, Fredenil "Fred" H. Castro, Raneo "Ranie" E. Abu, Lucy T. Gomez, Nancy A. Catamco, Elenita Milagros "Eileen" Ermita-Buhain, Rose Marie "Baby" J. Arenas, Mylene J. Garcia-Albano, Gwendolyn F. Garcia, Marlyn L. Primicias-Agabas, Emmeline Aglipay-Villar, Sarah Jane I. Elago and Victoria Isabel G. Noel.

SUSPENSION OF SESSION

The Presiding Officer *motu proprio* suspended the session at 12:43 p.m.[16]

After Speaker Alvarez took his oath of office, he administered the oath of office to all Members of the House of the 17th Congress.[17] On the same day, the Deputy Speakers, and other officers of the House (among others, the Majority Leader) were elected and all took their respective oaths of office.[18]

During his privilege speech delivered on July 26, 2016, which was a full day after all the above-mentioned proceedings had already been commenced and completed, Rep. Lagman questioned Rep. Fariñas' interpretation of the Rules.[19] Aside from the belated timing of Rep. Lagman's query, Rep. Suarez aptly points out that the Journal for that session does not indicate any motion made, seconded and carried to correct the entry in the Journal of the previous session (July 25, 2016) pertinent to any recording error that may have been made, as to indicate that in fact, a protest or objection was raised.[20]

Logically speaking, the foregoing circumstances would show that the House of Representatives had effectively adopted Rep. Fariñas' proposal anent the new rules regarding the membership of the Minority, as well as the process of determining who the Minority Leader would be. More significantly, this demonstrates the House's deviation from the "legal bases" of petitioners' claim for entitlement to the reliefs sought before this Court,

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[16] See *rollo*, Vol. I, pp. 266-269; italics, underscoring, and emphasis supplied.

[17] See *id*. at 113 (dorsal portion). See also I JOURNAL, HOUSE 17th Congress 1st Session 21 (July 25, 2016).

[18] See *rollo*, p. 113 (dorsal portion)-114. See also I JOURNAL, HOUSE 17th Congress 1st Session 21-22 (July 25, 2016).

[19] See *rollo*, pp. 14-15 and 125-126. See also I JOURNAL, HOUSE 17th Congress 1st Session 78-79 (July 25, 2016).

[20] See portions in Rep. Suarez's Comment dated January 17, 2017; *id*. at 452.

namely: (*a*) the "long-standing tradition" of automatically awarding the Minority Leadership to the second placer in the Speakership Elections, *i.e.*, Rep. Baguilat; and (*b*) the rule[21] that those who abstained in the Speakership Elections should be deemed as independent Members of the House of

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[21] Section 8, Rule II of the Rules of the House of Representatives, 16th Congress (December 10, 2014) reads:

> Section 8. *The Majority and the Minority*. — Members who vote for the winning candidate for Speaker shall constitute the Majority in the House and they shall elect from among themselves the Majority Leader. The Majority Leader may be changed, at any time, by a majority vote of all the Majority Members.
>
> The Minority Leader shall be elected by the Members of the Minority and can be changed, at any time, by a majority vote of all the Minority Members.
>
> The Majority and Minority shall elect such number of Deputy Majority and Minority Leaders as the rules provide.
>
> A Member may transfer from the Majority to the Minority, or vice versa, at any time: *Provided*, That:
>
> a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be. The Secretary General shall be furnished a copy of the request to transfer;
>
> b. The Majority or Minority, as the case may be, accepts the concerned Member in writing; and
>
> c. The Speaker shall be furnished by the Majority or the Minority Leaders, as the case may be, a copy of the acceptance in writing of the concerned Member.
>
> In case the Majority or the Minority declines such request to transfer, the concerned Member shall be considered an independent Member of the House.
>
> In any case, whether or not the request to transfer is accepted, all committee assignments and memberships given the concerned Member by the Majority or Minority, as the case may be, shall be automatically forfeited.
>
> Members who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House. They may, however, choose to join the Majority or Minority upon written request to and approval thereof by the Majority or Minority, as the case may be.

Representatives, and thus, they could not have voted for a Minority Leader in the person of Rep. Suarez.[22] As will be explained hereunder, the deviation by the Lower House from the aforesaid rules is not averse to the Constitution.

Section 16 (1), Article VI of the 1987 Constitution reads:

> Section 16. (1) The Senate shall elect its President and the House of Representatives, its Speaker, by a majority vote of all its respective Members.
>
> Each house shall choose such other officers as it may deem necessary.

Under this provision, the Speaker of the House of Representatives shall be elected by a majority vote of its entire membership. Said provision also states that the House of Representatives may decide to have officers other than the Speaker, and that the method and manner as to how these officers are chosen is something within its sole control.[23] In the case of *Defensor-Santiago v. Guingona*,[24] which involved a dispute on the rightful Senate Minority Leader during the 11th Congress (1998-2001), this Court observed that "[w]hile the Constitution is explicit on the manner of electing x x x [a Speaker of the House of Representative,] it is, however, dead silent on the manner of selecting the other officers [of the Lower House]. All that the Charter says is that '[e]ach House shall choose such other officers as it may deem necessary.' [As such], the method of choosing who will be such other officers is merely a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Therefore, such method must be prescribed by the [House of Representatives] itself, not by [the] Court."[25]

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[22] See *rollo*, Vol. I, pp. 34-42.

[23] See Bernas, Joaquin, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 2003 Edition, pp. 711-712.

[24] *Defensor-Santiago v. Guingona*, 359 Phil. 276 (1998).

[25] *Id*. at 299.

Corollary thereto, Section 16 (3), Article VI[26] of the Constitution vests in the House of Representatives the sole authority to, *inter alia*, "determine the rules of its proceedings." These "legislative rules, unlike statutory laws, do not have the imprints of permanence and obligatoriness during their effectivity. In fact, they 'are subject to revocation, modification or waiver at the pleasure of the body adopting them.' Being merely matters of procedure, their observance are of no concern to the courts, for said rules may be waived or disregarded by the legislative body at will, upon the concurrence of a majority [of the House of Representatives]."[27] Hence, as a general rule, "[t]his Court has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of [C]onstitutional principles that it is bound to protect and uphold x x x. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the [House of Representatives]."[28]

Of course, as in any general rule, there lies an exception. While the Court in taking jurisdiction over petitions questioning an act of the political departments of government, will not review the wisdom, merits or propriety of such action, it will, however, strike it down on the ground of grave abuse of discretion.[29] This stems from the expanded concept of judicial power, which, under Section 1, Article VIII of the 1987 Constitution, expressly "includes the duty of the courts of justice to settle actual

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[26] Section 16 (3), Article VI of the 1987 Constitution reads:

SECTION 16. x x x.

x x x x x x x x x

(3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

[27] *Defensor-Santiago v. Guingona*, *supra* note 24, at 300.

[28] See *id*. at 301.

[29] See *id*. at 294, citing *Tañada v. Angara*, 338 Phil. 546, 575 (1997).

controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Case law decrees that "[t]he foregoing text emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government including Congress. It is an innovation in our political law. As explained by former Chief Justice Roberto Concepcion:[30]

> [T]he judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.[31]

Accordingly, this Court "will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government."[32]

However, as may be gleaned from the circumstances as to how the House had conducted the questioned proceedings and its apparent deviation from its traditional rules, the Court is hard-pressed to find any attending grave abuse of discretion which would warrant its intrusion in this case. By and large, this case concerns an internal matter of a coequal, political branch of government which, absent any showing of grave abuse of discretion, cannot be judicially interfered with. To rule otherwise would not only embroil this Court in the realm of politics, but also lead to its own breach of the separation of powers doctrine.[33] Verily, "[i]t would be an unwarranted invasion

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[30] *Tañada v. Angara, id*. at 574-575.

[31] *Id*.

[32] *Id*. at 575.

[33] See *Santiago v. Guingona*, *supra* note 24, at 301.

of the prerogative of a coequal department for this Court either to set aside a legislative action as void [only] because [it] thinks [that] the House has disregarded its own rules of procedure, or to allow those defeated in the political arena to seek a rematch in the judicial forum when petitioners can find their remedy in that department itself."[34]

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Jardeleza, Caguioa, Martires, Tijam, and *Reyes, Jr., JJ.*, concur.

Leonen, J., see separate concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur in the result.

While there was a violation of the rules of the House of Representatives, a writ of mandamus does not lie to compel the Speaker and the House to recognize a specific member to be the Minority Leader.

I

Courts generally do not intervene in matters internal to Congress, such as the manner of choosing its own officers or leaders. Indeed, Article VI, Section 16(1) of the Constitution gives Congress the power to adopt its own rules:

> Section 16. (1). The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members.
>
> Each House shall choose such other officers as it may deem necessary.

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[34] *Id*. at 295, citing *Arroyo v. De Venecia*, 343 Phil. 42, 74 (1997).

Once promulgated, any clear and patent violation of its rules will amount to grave abuse of discretion. The House of Representatives has rules on who forms part of the Majority or Minority, or who is considered an independent member. The rules are also clear with respect to how affiliations change. It was grave abuse of discretion for the House of Representatives to disregard the first, second, fourth to eighth, and last paragraphs of Rule II, Section 8 of the Rules of the House of Representatives.

Article VIII, Section 1 states:

> Section 1. Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and *to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.* (Emphasis supplied)

Respondent Representative Danilo E. Suarez (Representative Suarez) wrongly invokes *Avelino v. Cuenco*[1] to assail the jurisdiction of this Court.[2] *Avelino* resolved the matter of whether a senator's election as Senate President was attended by a quorum.[3]

It was the 1935 Constitution that governed when *Avelino* was decided in 1949. In *Avelino*, however, four (4) of 10 Justices dissented in the belief that the case was justiciable.[4]

Justice Gregorio Perfecto (Justice Perfecto), who himself was a member of the Constitutional Convention that drafted the 1935 Constitution,[5] stated in his dissent that it was for this

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[1] *Avelino v. Cuenco*, 83 Phil. 17 (1949) [*En Banc*].

[2] *Rollo*, pp. 222–223, Comment.

[3] *Avelino v. Cuenco*, 83 Phil. 17, 22 (1949) [*En Banc*].

[4] *Id*. at 18.

[5] See ARUEGO, JOSE, *THE FRAMING OF THE PHILIPPINE CONSTITUTION*, <https://archive.org/details/the-framing-of-the-philippine-constitution> (1936).

Court to determine whether the election of Senator Mariano J. Cuenco to the Senate Presidency was attended by a *quorum,* thus:[6]

> The questions raised in the petition, although political in nature, are justiciable because they involve the enforcement of legal precepts, such as the provisions of the Constitution and of the rules of the Senate.[7]

Justice Perfecto further stated that "[i]f the controversy should be allowed to remain unsettled, it would be impossible to determine who is right and who is wrong, and who really represent[ed] the Senate."[8]

Acts of the legislature relating to its internal procedures may fall under this Court's power of judicial review. In *Tañada v. Cuenco*,[9] this Court passed upon the Senate's election of two (2) senators to the Senate Electoral Tribunal. In *Macias v. Commission on Elections*,[10] this Court held that the apportionment of legislative districts is a justiciable controversy. In *Cunanan v. Tan,*[11] this Court nullified the resolution of the allied Majority of the House, which declared as vacant the seats of 12 members in the Commission on Appointments and appointed other members in lieu of those whose seats were vacated.

Respondents Representative Pantaleon D. Alvarez (Representative Alvarez), Representative Rodolfo C. Fariñas (Representative Fariñas),[12] and Representative Suarez[13] substantially quote this Court's ruling in *Defensor-Santiago v. Guingona*[14] to argue that

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[6] *Avelino v. Cuenco*, 83 Phil. 17 (1949) [*En Banc*].

[7] *Id*. at 36.

[8] *Id*.

[9] 100 Phil. 1101 (1957) [Per *J*. Concepcion, *En Banc*].

[10] 113 Phil. 1 (1961) [Per *J*. Bengzon, *En Banc*].

[11] G.R. No. L-19721, May 10, 1962 [*En Banc*].

[12] *Rollo,* p. 749, OSG Comment.

[13] *Id*. at 226-229, Suarez Comment.

[14] 359 Phil. 276 (1998) [Per *J*. Panganiban, *En Banc*].

the matters raised by petitioners are "non-justiciable precisely because they belong to the realm of party politics[.]"[15] Representative Suarez even declares that *Defensor-Santiago* is "on all fours" in this case.[16] The ponencia similarly relies on the pronouncements in *Defensor-Santiago*.

However, in *Defensor-Santiago*:[17]

> It is well *within the power and jurisdiction of the Court* to inquire whether indeed the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives.[18]

Defensor-Santiago involves a dispute on who was the rightful Senate Minority Leader during the 11th Congress (1998-2001). The Senate was composed of 23 members, majority of whom were from Laban ng Masang Pilipino (LAMP) with 10 members.[19] Seven (7) senators were from Lakas-National Union of Christian Democrats-United Muslim Democrats of the Philippines (Lakas-NUCD-UMDP) were considered as the Minority, while the other senators—one (1) from the Liberal Party, one (1) from Aksyon Demokrasya, one (1) from the People's Reform Party, one (1) from Gabay Bayan, and two (2) without party affiliations—were considered as independents.[20]

Senators Marcelo B. Fernan and Francisco S. Tatad ran for Senate President. Twenty senators, who constituted the Majority or more than half of the Senate members, voted for Senator Fernan. Meanwhile, only two (2) senators, including Senator Miriam Defensor-Santiago (Sen. Defensor-Santiago), voted for Senator Tatad as Senate President.[21]

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[15] *Rollo*, p. 231, Suarez Comment.

[16] *Id*. at 226.

[17] 359 Phil. 276 (1998) [Per *J*. Panganiban, *En Banc*].

[18] *Id*. at 296.

[19] *Id*. at 286.

[20] *Id*.

[21] *Id*. at 287.

The seven (7) senators who constituted the Minority then recognized Senator Teofisto T. Guingona (Senator Guingona) as Minority Leader. However, Senators Tatad and Defensor-Santiago sought the ouster of Senator Guingona, alleging that Senator Tatad, who lost the race for Senate presidency, should have been the rightful Minority Leader.[22]

This Court dismissed the petition, ruling that the Senate validly recognized Senator Guingona as Minority Leader.[23] Senators Tatad and Defensor-Santiago's allegations had no basis in the Constitution, the statutes, the Senate Rules, and the parliamentary practices of the Senate itself.[24] Thus:

> [T]he interpretation proposed by petitioners [Senators Tatad and Santiago] finds no clear support from the Constitution, the laws, the *Rules of the Senate* or even from *practices* of the Upper House.[25] (Emphasis supplied)

This led to this Court's conclusion that:

> [I]n the absence of constitutional or statutory guidelines or *specific rules*, this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto.[26]

This Court held that it had no jurisdiction to intervene as there were "no specific, operable norms and standards" by which the issue could be resolved.[27] Simply put, *Defensor-Santiago* does not involve any violation—there was no constitutional or statutory provision, Senate rules, or parliamentary practice that would make the defeated candidate for Senate presidency *ipso facto* the Senate Minority Leader.[28]

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[22] *Id*.

[23] *Id*. at 305.

[24] *Id*.

[25] *Id*. at 297.

[26] *Id*. at 300.

[27] *Id*.

[28] *Id*.

In this case, there are existing Rules of the House of Representatives that disqualify respondent Representative Suarez from being the Minority Leader and exclude the 20 abstaining members from Minority membership. There is also an established parliamentary practice of the House of Representatives, evidencing their current collective interpretation, which makes Representative Teddy Brawner Baguilat, Jr. (Representative Baguilat) of the Lone District of Ifugao Province automatically the Minority Leader.

II

The 1973 Constitution under Ferdinand E. Marcos abolished Congress, changed the presidential form of government to a modified parliamentary form of government, and instituted a unicameral legislature known as the National Assembly or *Batasang Pambansa*.[29] During the 1986 EDSA Revolution, his ouster ushered in new political institutions. The 1987 Constitution abolished the unicameral legislature and installed a bicameral Congress, which is composed of the Senate and the House of Representatives.

For nearly three (3) decades since the promulgation of 1987 Constitution, the House of Representatives has practiced the tradition of having the second placer for House Speaker automatically become the Minority Leader.[30] From what was then the 8th Congress (1987-1992) to the 16th Congress (2013-2016), this practice was enshrined not only in the Rules that the House adopted for all of its sessions but also in the traditions and precedents of the House of Representatives itself.[31] Petitioners quote the Body's ruling during the 11th Congress:

"Rules, traditions and precedents of the House provide that the losing candidate for Speaker with the second highest number of votes becomes the Minority Leader."[32]

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[29] *Legislative Information*, HOUSE OF REPRESENTATIVES, 17TH CONGRESS, <http://www.congress.gov.ph/about/?about=history> (last visited July 24, 2017), *citing* R. Velasco and M. Sylvano, *The Philippine Legislative Reader* 41 (1989).

[30] *Rollo*, pp. 31-32.

[31] *Id*. at 33, citing Rulings of the Chair, 3rd ed., 2010, p. XXXVIII.

[32] *Id*. The official website of the House of Representatives does not contain a copy of the Journal of the 11th Congress; only those from the 12th

For instance, during the 13th Congress, four (4) candidates ran for House Speaker.[33] Representative Jose De Venecia, Jr. (Representative De Venecia) bested the other candidates, namely, Representative Francis Escudero (Representative Escudero), Representative Jacinto Paras, and Representative Ronaldo Zamora (Representative Zamora), in the bid for House speakership. The second placer, then Representative Escudero, automatically became the Minority Leader.[34]

Within these past 30 years, there were only two (2) instances when the runner-up for House speakership did not sit as Minority Leader. During the 9th Congress, second placer Representative Jose Cojuangco gave up his Minority Leadership in favor of his party mate, Representative Hernando Perez. During the 14th Congress, Representative De Venecia ran unopposed, leaving out the possibility of having any second placer become the Minority Leader.[35]

Both circumstances do not apply here: the second placer, Representative Baguilat, has not given up his seat in favor of his party mate, and the winning speaker, Representative Alvarez, did not run unopposed.

An unopposed candidate for Speaker during the 14th Congress presented a challenge for the determination of a Minority Leader. Thus, the House amended the Rules of the 14th Congress so that the Minority Leader could be voted for separately.[36] Under the amendment, "[t]he Minority Leader shall be elected by the members of the Minority and can be changed by a majority vote of all the Minority members at any time."[37] The Minority members elected Representative Zamora as the Minority Leader.[38]

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to the present Congresses. *See* House Journals, HOUSE OF REPRESENTATIVES (17TH CONGRESS), <http://www.congress.gov.ph/legisdocs/?v=journals> (Last accessed July 25, 2017).

[33] *Id*. at 177, TSN dated August 24, 2016.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Id*. at 24.

The express provision on electing the Minority Leader during the 14th Congress did not prevent the House from continuing the practice of making the second placer *ipso facto* its Minority Leader during the subsequent 15th and 16th Congresses. Thus, the current interpretation is that when there are several candidates for Speaker, the same election is also the selection for the Minority Leader. Those who voted for the second placer became the Minority.

Thus, the 15th Congress (2010-2013) adopted the Rules of the 14th Congress. The long-standing parliamentary practice constituting the interpretation of the Rules of the House prevailed. Three (3) members then contended for speakership: Representative Feliciano R. Belmonte, Jr. (Representative Belmonte), Representative Edcel C. Lagman (Representative Lagman), and Representative Martin Romualdez (Representative Romualdez).[39] Representative Belmonte won as Speaker while Representative Lagman placed second in the election.[40] The House gave weight to tradition and precedent and recognized second placer Representative Lagman as its Minority Leader.[41]

The same thing happened during the 16th Congress (2013-2016),[42] where the House respected the tradition and interpretation by the body that the second placer will be the House Minority Leader.[43]

This is a clear indication that the House itself accords due reverence to its established practices and traditions as its collective interpretation of its rules. Where there can be an ambiguity, practice and tradition should also be read into its Rules. Rule XXV, Section 161 of the Rules of the House of Representatives also provides that "[t]he parliamentary practices of . . . the House of Representatives . . . shall be suppletory to these Rules."

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[39] *Id*. at 24.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 178.

[43] *Id*.

The House collectively considers the votes for the second placer for House Speaker as the votes of the Minority for its Minority Leader. Insofar as having the second placer automatically become the Minority Leader, this parliamentary practice was not merely suppletory to the Rules of the 15th and 16th Congresses—rather, it took primacy over the Rules themselves. There is no reason to treat the 17th Congress differently. Like the 15th and 16th Congresses, the 17th Congress involves a race among many candidates for Speaker and not simply one (1) unopposed candidate as in the 14th Congress.

III

On July 25, 2016, the House opened the First Regular Session of the 17th Congress (2016-2019).[44] The Presiding Officer[45] designated Representative Fariñas as Acting Floor Leader.[46] Upon Representative Fariñas' motion, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House of Representatives (Rules),[47] with the minor amendment particularly related only to the dress code.[48] The Rules took effect on the date of its adoption on July 25, 2016.[49]

There was no amendment relating to the process of selecting the Minority Leader.

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[44] *Id*. at 251, Journal No. 1 dated July 25, 2016.

[45] *Id*. at 215. Atty. Marilyn B. Barua-Yap, Secretary General under the 16th Congress.

[46] *Id*. at 215-216, Suarez Comment.

[47] *Id*. at 264, Journal No. 1 dated July 25, 2016.

[48] *Id*. at 719, Journal No. 10 dated August 15, 2016. The first sentence of Rule XII, Sec. 94, titled "Conduct and Attire During Sessions and Committee Meetings," shall be read as follows: MEMBERS SHALL WEAR PROPER ATTIRE WHICH IS BARONG FILIPINO OR COAT AND TIE, OR BUSINESS ATTIRE FOR MEN, AND FILIPINA DRESS OR BUSINESS SUIT FOR WOMEN, AND OBSERVE PROPER DECORUM DURING SESSIONS AND COMMITTEE MEETINGS.

[49] RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule XXVIII, Sec. 165 provides that "[t]hese rules shall take effect on the date of adoption."

The Body then proceeded with the period of nominations for the position of Speaker of the 17th Congress.[50] Three (3) persons were nominated: respondent Representative Alvarez, respondent Representative Suarez, and petitioner Representative Baguilat.[51] Petitioner Representative Raul A. Daza (Representative Daza) put on record that Representative Baguilat's endeavor for House speakership "was the first time that a member who belongs to the so-called cultural minority was nominated to the highest office of the chamber."[52]

After the Body closed the period for nominations, Representative Jose L. Atienza (Representative Atienza) inquired about the election of the Minority Leader of the House since the circumstances were similar to those in the 16th Congress, the Rules of which the 17th Congress adopted at the start of the plenary sessions.[53]

During the 16th Congress, there were also three (3) candidates for House Speaker. The second placer automatically became the Minority Leader, and all those who voted for the third candidate for Speaker became independents.[54] Representative Atienza wanted to know if the same practice would apply to the 17th Congress.[55]

Representative Fariñas replied by referring to Rule II, Section 8 of the Rules of the House of Representatives.[56] The first, second, and last paragraphs of Rule II, Section 8 provide:

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[50] *Rollo*, p. 264, Journal No. 1 dated July 25, 2016.

[51] *Id*. at 266, Journal No. 1 dated July 25, 2016. He was nominated by petitioner Representative Raul A. Daza, seconded by petitioner Representative Tom S. Villarin.

[52] *Id*.

[53] *Id*. at 251, Journal No. 1 dated July 25, 2016.

[54] *Rollo*, p. 816, OSG Comment, Annex 5.

[55] *Id*.

[56] *Rollo*, p. 266, Journal No. 1 dated July 25, 2016.

Members who vote for the winning candidate for Speaker shall constitute the Majority in the House and they shall elect from among themselves the Majority Leader . . .

The Minority Leader shall be elected by the Members of the Minority and can be changed, at any time, by a majority vote of all the Minority Members.

x x x x x x x x x

Members who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House.

Interpreting Rule II, Section 8, Representative Fariñas explained to Representative Atienza that:

[T]he Members who voted for the winning candidate for the Speaker shall constitute the Majority and shall elect from among themselves the Majority Leader, while those who voted against the winning Speaker or did not vote at all shall belong to the Minority and would thereafter elect their Minority Leader.[57]

There was no vote taken to confirm the interpretation of Representative Fariñas.

The House then proceeded to elect the House Speaker.[58] A total of 252 members voted for Representative Alvarez, eight (8) voted for Representative Baguilat, seven (7) voted for Representative Suarez, 21 abstained including Representative Alvarez, and one (1) registered a "no vote."[59] Representative Suarez, who himself ran for House Speaker, voted for Representative Alvarez.[60]

Representative Alvarez was declared duly-elected Speaker of the 17th Congress, Representative Baguilat came in second, and Representative Suarez trailed behind them.[61]

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[57] *Rollo*, p. 266, Journal No. 1 dated July 25, 2016.

[58] *Id*.

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

[60] *Id*. at 40-42, Petition.

[61] *Id*. at 269.

More than half of the total House membership who voted for House Speaker Alvarez, including Representative Suarez, became Majority members. [62]

In a letter[63] dated July 26, 2016, Representative Suarez clarified to Speaker Alvarez that he voted for Speaker Alvarez in line with the alleged practice of not voting for oneself. He also revealed to the House Speaker his desire to change his affiliation in order to become the Minority Leader. Representative Suarez then sought permission from the Majority to be accepted in the Minority. On the same day, Majority Leader Representative Fariñas granted Representative Suarez's application to become a Minority member.[64]

Representative Suarez did not ask leave from the Minority to become its member.

A plenary session was held on July 26, 2016. Representative Lagman took the floor to avert that second placer Representative Baguilat should automatically be the Minority Leader.[65] Thus:

> Like in the 16th Congress when Representative Zamora won by three votes over Representative Romualdez, Representative Zamora was automatically recognized as the Minority Leader, and *there was no need for an election among the Minority Members* [in line with parliamentary practice].[66]

According to Representative Lagman:

> The validity of this practice has never been questioned.
>
> The practice has been invariably adopted and acquiesced in from one Congress to another that it has acquired the character of law or

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[62] *See* RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule II, Sec. 8 provides:

> Section 8. Members who vote for the winning candidate for Speaker shall constitute the Majority in the House[.]

[63] *Rollo*, p. 140.

[64] *Id*.

[65] *Id*. at 119, TSN dated July 26, 2016.

[66] *Id*. at 117.

binding rule on the Majority, Minority, or the independent Members of the House of Representatives.[67]

Representative Lagman was also the second placer during the 15th Congress; as such, he automatically obtained the position of Minority Leader.[68] *He stated that the customary practice of the House is part of the Rules of the House*.[69]

Likewise, Representative Lagman corrected Representative Suarez's statement that candidates for House Speaker were prohibited from voting for themselves as Speaker.[70] He reminded Representative Suarez that in the 16th Congress, Representatives Zamora and Romualdez, who both contended for the speakership, voted for themselves as House Speaker.[71]

Representative Lagman further asserted that Representative Fariñas' interpretation of Rule II, Section 8 violated the spirit and the letter of the Rules of the House of Representatives.[72] He then read the relevant paragraphs of Rule II, Section 8 that distinguish among the Majority, the Minority, and the independent members of the House.[73]

Citing Rule II, Section 8, Representative Lagman stated that "[m]embers who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House[.]" Thus, the 20 abstaining members, as well as the one (1) who registered a no-vote for House Speaker,[74] are neither with the Majority nor the Minority.[75]

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[67] *Id*. at 116-117.

[68] *Id*. at 24, Petition.

[69] *Id*. at 809, TSN dated July 26, 2016.

[70] *Id*. at 117.

[71] *Id*.

[72] *Id*. at 119, TSN dated July 26, 2016.

[73] *Id*. at 118, TSN dated July 26, 2016.

[74] Except for the House Speaker himself, as he is automatically part of the Majority.

[75] *Rollo*, p. 118.

Petitioner Representative Edgar R. Erice (Representative Erice) also made a manifestation and a parliamentary inquiry.[76] He revealed having received an invitation for a meeting to elect a Minority Leader from the Majority bloc.[77] According to Representative Erice, the "[r]epresentatives who expressed their support to the Speaker. Now, they are calling themselves part of the Minority."[78]

For his part, Representative Fariñas faulted Representative Erice for not objecting to the former's opinion the previous day in response to Representative Atienza's query on the composition of Minority membership.[79] Representative Fariñas claimed that such non-objection amounted to "estoppel by silence."[80] He also defended the Majority's distribution of the Minority's invitation for the special election for the *Minority* Leader, stating that all that happens in the plenary must have the Majority Leader's permission.[81]

On July 27, 2016, the election for Minority Leader was held.[82] Most of the House representatives who abstained from voting for House Speaker voted for Representative Suarez as Minority Leader:[83]

Name of Representative	Party Affiliation	Vote for the Majority Floor Leader	Vote for the Minority Floor Leader During the July 27, 2016 Minority Leader Election
1. Abayon, Harlin Neil III J.	AANGAT TAYO / Nacionalista Party (NP)	Abstain	Suarez

[76] *Id*. at 773-774, TSN dated July 26, 2016.

[77] *Id*. at 774, TSN dated July 26, 2016.

[78] *Id*.

[79] *Id*. at 775, TSN dated July 26, 2016.

[80] *Id*. at 781, TSN dated July 26, 2016

[81] *Id*. at 780, TSN dated July 26, 2016.

[82] *Id*. at 132, Representative Lagman's Letter dated August 1, 2016.

[83] *Rollo*, p. 132, Lagman Letter dated August 1, 2016.

2. Aggabao, Ma. Lourdes R.	National People's Coalition (NPC)	Abstain	Abstain
3. Alonte-Naguiat, Marlyn B.	PDP-LABAN	Abstain	Suarez
4. Aragones, Sol	PDP-LABAN	Abstain	Vote not mentioned in the Court's record
5. Arcillas, Arlene B.	PDP-LABAN	Abstain	Suarez
6. Atienza, Lito	Buhay	Suarez	Suarez
7. Bagatsing, Cristal L.	PDP-LABAN	Abstain	Suarez
8. Batocabe, Rodel M.	AKO-BICOL Party List	Abstain	Abstain
9. Bernos, Joseph Sto. Niño B.	PDP-LABAN	Abstain	Suarez
10. Bertiz, Aniceto "John" III D.	ACTS-OFW Party List	Abstain	Suarez
11. Bravo, Anthony M.	COOP-NATCO Party List	Abstain	Suarez
12. Campos, Luis	Makati, 2nd District	Suarez	Suarez
13. Cerafica, Arnel M.	PDP-LABAN	Abstain	Suarez
14. Chavez, Cecilia Leonila V.	BUTIL Party List	Abstain	Suarez
15. Co, Christopher S.	AKO-BICOL Party List	Abstain	Vote not mentioned in the Court's record
16. Cortuna, Julieta R.	A TEACHER Party List	Abstain	Suarez
17. Del Rosario, Monsour	Makati, 1st District	Suarez	Suarez
18. De Vera, Eugene Michael B.	ABS Party List	Abstain	Suarez
19. Eusebio, Richard C.	Nacionalista Party (NP)	Abstain	Suarez
20. Ferriol-Pascual, Abigail Faye C.	KALINGA Party List	Abstain	Abstain
21. Garbin, Alfredo Jr. A.	AKO-BICOL Party List	Abstain	Suarez
22. Garcia, Jose Enrique III S.	National Unity Party (NUP)	Abstain	Vote not mentioned in the Court's record
23. Garin, Sharon S.	AAMBIS-OWA Party List	Abstain	Abstain

24. Lee, Delphine	AGRI	Suarez	Suarez
25. Roque, Harry	Kabayan	Suarez	Suarez
26. Salon, Orestes	AGRI		
27. Suarez, Danilo	Quezon City, 3rd District	Fariñas	Suarez
28. Villaraza-Suarez	ALONA	Suarez	Suarez[84]

Petitioners point out that as early as May 23, 2016, Representative Suarez already sought for his anointment as Minority Leader in order to lead a "cooperative" opposition in the House.[85] Thus:

29. Shortly after the 09 May 2016 elections, Rep. Danilo Suarez encamped in Davao City, the then center of political activities and maneuverings of President-elect Rodrigo R. Duterte and his men.

30. Rep. Suarez publicly and unabashedly announced that he was seeking the adoption or anointment by the Duterte administration as [M[inority [L]eader in the House of Representatives because he would be leading a "cooperative" minority . . .

. . . . . .

32. In the weeks preceding the opening of the 17th Congress on 25 July 2016, incessant reports were afloat, which were not seriously denied, that the supermajority coalition would lend to Rep. Suarez some of the majority partisans to beef up his small number of minority congressmen to assure his election as the House Minority Leader.[86]

According to petitioners, six (6) of those who abstained belong to Partido Demokratiko Pilipino-Lakas ng Bayan (PDP-LABAN), the political party of President Duterte, Speaker Alvarez, and

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[84] *Id*. at 268-269 and 735. The votes of Representatives Aragones, Co, and Garcia are not mentioned in the files forwarded to this Court.

[85] *Rollo*, p. 12, Petition; *see* also *rollo,* pp. 61–62, Trishia Billiones, *Lagman blasts Suarez's "anointment" as minority leader,* ABS-CBN NEWS, July 25, 2016, <http://news.abs-cbn.com/news/07/25/16/lagman-blasts-suarezs-anointment-as-minority-leader> (last accessed July 24, 2017).

[86] *Id*.

Majority Leader Fariñas,[87] while the other abstaining members belong to political parties that "are all allied with the [House] supermajority."[88]

Petitioners question how the 20 abstaining members were only those with surnames starting from "A" to "G"[89] and not anyone else from "H," such as Representative Ferdinand L. Hernandez, to "Z," such as Rep. Manuel F. Zubiri. For petitioners, the "pre-arranged" alphabetical sequence of the abstaining members' names easily monitored their votes, and thus, assured Representative Suarez's election as Minority Leader.[90] Thus:

> 44. The alphabetical sequence of the "abstentionists" started with letter "A" (Abayon) and ended with the letter "G" (Garin) [wa]s pre-arranged because the infusion of 20 Representatives was deemed sufficient by the leadership of the supermajority to assure respondent Rep. Suarez's victory as "minority leader". "A" to "G" were also considered easy to monitor.[91]

On August 1, 2016, Representative Harlin Neil Abayon III (Representative Abayon) manifested to the Body that the meeting on July 27, 2016 resulted in the election of Representative Suarez as Minority Leader. Representative Juan Pablo Bondoc moved to refer Representative Abayon's manifestation to the Committee on Rules.[92]

Representative Rodante D. Marcoleta (Representative Marcoleta) stood on a point of order against Representative Abayon's manifestation, arguing that it violated Rule II, Section 8 of the Provisional Rules of the House. Representative Marcoleta

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[87] *Id*. at 16.

[88] *Id*.

[89] *Id*. at 15. They were Representatives Abayon, Aggabao, Alonte-Naguiat, Aragones, Arcillas, Bagatsing, Batocabe, Bernos, Bertiz, Bravo, Cerafica, Chavez, Co, Cortuna, De Vera, Eusebio, Ferriol-Pascual, Garbin, Garcia, and Garin.

[90] *Id*.

[91] *Id*.

[92] *Id*. at 680, Journal No. 4 dated August 1, 2016.

stated that the members who attended the election for Minority Leader on July 27, 2016 were the same members who abstained during the election for House Speaker. Their abstention aligned themselves with neither the Majority nor the Minority, thereby making them independent and disqualified from voting for a Minority Leader.[93]

Representative Marcoleta also explained that the non-objection to Representative Fariñas' erroneous interpretation of Rule II, Section 8 on July 25, 2016 does not negate the transgression of the Rules.[94]

In a letter dated August 1, 2016 to Speaker Alvarez, Representative Lagman underscored that no estoppel attaches to a wrong interpretation of the law, especially as such erroneous opinion "was not even submitted for adoption by the House or for a ruling from the Presiding Officer."[95] In Representative Lagman's letter:

> 3. The 20 Representatives who abstained from voting for or against the eventual winner as Speaker are indubitably considered independent members of the House pursuant to the last paragraph of Section 8 of Rule II. The remarks on 25 July 2016 of then acting[96] Floor Leader Rodolfo C. Fariñas is erroneous when he opined that all those who did not vote for the Speaker belong to the Minority, including all those who abstained. This remark is contrary to the unmistakable language and spirit of the aforecited rule. *Verily, there is no estoppel in favor of an erroneous interpretation which was not even submitted for adoption by the House or for a ruling from the Presiding Officer.*
>
> 4. Consequently, the said 20 abstaining Representatives did not have any authority to call for a "special election" for "minority leader", much more elect on 27 July 2016 a "minority leader" in the person of Rep. Suarez.[97] (Emphasis supplied)

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[93] *Id*.

[94] *Id*.

[95] *Id*. at 132.

[96] *Id*. at 136, Lagman Letter dated August 1, 2016.

[97] *Id*. at 132.

Representative Lagman reiterated that, under the last paragraph of Rule II, Section 8, those who abstained are not part of either the Majority or the Minority.[98] Therefore, the 20 abstaining Members lacked the authority to even elect a Minority Leader.[99] Representative Lagman also alleged that the so-called "abstentionists" were Majority allies[100] who engaged in a "sham aggrupation."[101] These members were part of a coalition with PDP-LABAN or were affiliated with political parties composing the House supermajority.[102]

Thus, in accordance with the pertinent provisions of the Rules and accepted tradition, the authentic Minority Leader should have been Representative Baguilat,[103] who obtained more votes than Representative Suarez did in the contest for House Speaker.[104]

Finally, Representative Lagman informed Speaker Alvarez that "Rep. Suarez disqualified himself from aspiring for the position of Minority Leader."[105] In voting for Speaker Alvarez, Representative Suarez became part of the Majority, pursuant to the first paragraph of Rule II, Section 8.[106]

Representative Lagman's letter to Speaker Alvarez dated August 1, 2016 was subsequently made a part of the Journal of the House on the same day.[107] Neither Speaker Alvarez nor Majority Leader Fariñas officially replied to his letter.[108]

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[98] *Id*. at 133, Lagman Letter dated August 1, 2016.

[99] *Id*.

[100] *Id*. at 134, Lagman Letter dated August 1, 2016.

[101] *Id*. at 133.

[102] *Id*. at 134.

[103] *Id*. at 132.

[104] *Id*.

[105] *Id*.

[106] *Id*.

[107] *Id*. at 682, Journal No. 4 dated August 1, 2016.

[108] *Id*. at 17, Petition.

Petitioners aver that after Representative Suarez's "sham"[109] election as Minority Leader, 10 of the abstaining representatives returned to the supermajority coalition.[110] These 10 representatives addressed their requests to transfer to the Majority, as follows:

1. Representatives Sharon S. Garin (AAMBIS-OWA Party List)[111] and Ma. Lourdes R. Aggabao (NPC)[112] on August 1, 2016;
2. Representatives Len B. Alonte-Naguiat (PDP-LABAN),[113] Sol Aragones (PDP-LABAN),[114] Rodel M. Batocabe (AKO BICOL Party List),[115] Joseph Sto. Niño B. Bernos (PDP-LABAN),[116] Christopher S. Co (AKO BICOL Party List),[117] and Jose Enrique S. Garcia III (NUP)[118] on August 2, 2016;
3. Representative Cristal L. Bagatsing (PDP-LABAN) on August 3, 2016;[119] and
4. Representative Arnel M. Cerafica (PDP-LABAN)[120] on August 8, 2016.

Majority Leader Fariñas accepted[121] all their requests to transfer or return to the Majority.

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[109] *Id*. at 133.

[110] *Id*. at 18-20, Petition.

[111] *Id*. at 160, Annex Y of Petition.

[112] *Id*. at 158, Annex X of Petition.

[113] *Id*. at 148, Annex S of Petition.

[114] *Id*. at 142, Annex P of Petition.

[115] *Id*. at 156, Annex W of Petition.

[116] *Id*. at 152, Annex U of Petition.

[117] *Id*. at 144, Annex Q of Petition.

[118] *Id*. at 146, Annex R of Petition.

[119] *Id*. at 150, Annex T of Petition.

[120] *Id*. at 154, Annex V of Petition.

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

On August 15, 2016, the Body elected Majority members to various commissions and committees.[122] The 10 "returning" members received what petitioners describe as "plum positions"—ranging from Deputy Speaker to Member of the House Electoral Tribunal, Committee Chairpersons, and Committee Vice-Chairpersons.[123] Thus:

1. Sharon Garin	Deputy Speaker
2. Rodel M. Batocabe	Member of the House Electoral Tribunal (HRET)
3. Sol Aragones	• Chairperson, Committee on Population and Family Relations • Vice Chairperson, Committee on Women and Gender Equality
4. Christopher S. Co	Chairperson, Special Committee on Climate Change
5. Ma. Lourdes R. Aggabao	• Vice Chairperson, Committee on Population and Family Relations • Vice Chairperson, Committee on Rural Development
6. Len B. Alonte-Naguiat	•Vice Chairperson, Committee on Health • Vice Chairperson, Committee on Women and Gender Equality
7. Joseph B. Bernos	Vice Chairperson, Committee on Public Order and Safety
8. Jose Enrique S. Garcia	•Vice Chairperson, Committee on Energy • Vice Chairperson, Committee on Health
9. Cristal L. Bagatsing	• Vice Chairperson, Committee on Basic Education and Culture • Member, Committee on Appropriations • Member, Committee on Foreign Affairs

[122] *Id*. at 713, Journal No. 10 dated August 15, 2016.

[123] *Id*. at 21-22, Petition.

10. Arnel M. Cerafica	•Vice Chairperson, Committee on Health • Vice Chairperson, Committee on Public Works and Highway

Representative Fariñas then moved to recognize Representative Suarez as Minority Leader.[124] Before the Body could act on the motion, Representative Lagman asked why the Body was recognizing Representative Suarez as Minority Leader when the latter voted for the winning House Speaker.[125]

Representative Fariñas replied that Representative Suarez already transferred to the Minority[126] upon securing the permission of the Majority Leader.[127]

Representative Lagman differed, stating that if one wanted to become a member of the Minority, the "letter of application should [have] be[en] addressed to the Minority Leader, and not to the Speaker or Majority Leader."[128] To support his statement, Representative Lagman read Rule II, Section 8 and directed the Body's attention to the operative phrase, "as the case may be."[129] Thus:

A Member may transfer from the Majority to the Minority, or vice versa, at any time: Provided, That:

a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, *as the case may be*. The Secretary General shall be furnished a copy of the request to transfer;

b. The Majority or Minority, *as the case may be*, accepts the concerned Member in writing; and

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[124] *Id*. at 716, Journal No. 10 dated August 15, 2016.

[125] *Id*.

[126] *Id*. at 716-717, Journal No. 10 dated August 15, 2016.

[127] *Id*. at 140, Fariñas First Letter dated July 26, 2016.

[128] *Id*. at 717.

[129] *Id*.

c. The Speaker shall be furnished by the Majority or the Minority Leaders, *as the case may be*, a copy of the acceptance in writing of the concerned Member. (Emphasis supplied)

The Chair[130] brushed aside Representative Lagman's objection and held that Representative Suarez had already transferred to the Minority.[131] Representative Lagman appealed[132] the ruling of the Chair[133] but his appeal was denied.[134]

Representative Marcoleta next raised a parliamentary inquiry on who were considered independent members of the House under the last paragraph of Rule II, Section 8.[135] He reiterated that the Body did not adopt Representative Fariñas' erroneous opinion on July 25, 2016,[136] which categorized the House members only into the Majority and Minority without mentioning independent membership.[137]

The Chair recognized Representative Suarez as Minority Floor Leader, notwithstanding the questions raised.[138] Representative

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[130] *Id*. at 713. The Chair was Deputy Speaker Raneo E. Abu.

[131] *Id*. at 140, Fariñas First Letter dated July 26, 2016.

[132] RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule XIII, Sec. 109 provides:

Section 109. Appeal from Ruling of the Chair. — Any Member may appeal from the ruling of the Chair and may be recognized by the Chair, even though another Member has the floor. No appeal is in order when another appeal is pending. The Member making the appeal shall state the reasons for the appeal subject to the five-minute rule. The Chair shall state the reasons for the ruling and forthwith submit the question to the body. An appeal cannot be amended and shall yield only to a motion to adjourn, to a point of order, to a question of personal privilege or to recess.

[133] *Rollo*, pp. 717-718, Journal No. 10 dated August 15, 2016.

[134] *Id*. at 718.

[135] *Id*.

[136] *Id*. at 719.

[137] *Id*. at 266, Journal No. 1 dated July 25, 2016.

[138] *Id*. at 221, Suarez Comment.

Suarez and other members of the Minority were then elected into various offices and House committees.[139]

Petitioners Representatives Teddy Brawner Baguilat, Jr., Edcel C. Lagman, Raul A. Daza, Edgar R. Erice, Emmanuel A. Billones, Tomasito S. Villarin, and Gary C. Alejano (petitioners) have since sought recourse against respondents House Speaker Pantaleon D. Alvarez, Majority Leader Rodolfo C. Fariñas, and Representative Danilo E. Suarez (respondents) before this Court through this Petition for Mandamus.[140]

For resolution are the issues on whether the House leadership committed grave abuse of discretion in installing Representative Danilo E. Suarez as Minority Leader, and whether respondents may be compelled to recognize Representative Teddy Brawner Baguilat, Jr. as Minority Leader.

IV

The ponencia cites *Arroyo v. De Venecia*[141] to state that this Court cannot set aside a legislative action as void simply because it thinks that the House violated the latter's internal rules. The question in *Arroyo* was whether Republic Act No. 8240 (Sin Tax Law) was null and void as it was passed despite a senator's failure to question the presence of a quorum.[142] This Court dismissed that case because there was no grave abuse of discretion—the quorum was actually met:

> To repeat, the claim is not that there was no quorum but only that Rep. [Joker P.] Arroyo was effectively prevented from questioning the presence of a quorum. Rep. Arroyo's earlier motion to adjourn for lack of quorum had already been defeated, as the roll call established the existence of a quorum. The question of quorum cannot be raised repeatedly—especially when the quorum is obviously present—for the purpose of delaying the business of the House.[143]

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[139] *Id*.

[140] *Id*. at 3-56.

[141] *Arroyo v. De Venecia*, 343 Phil. 42 (1997) [Per *J*. Mendoza, *En Banc*].

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

[143] *Id*. at 70.

In contrast, the petitioners have ably established the presence of grave abuse of discretion. Truly, the justiciability of the issue is anchored on the capricious, whimsical, and arbitrary judgment committed by respondents in neglecting and refusing to recognize Representative Baguilat as the *ipso facto* Minority Leader, in accordance with a long-established parliamentary practice and Rules of the House of Representatives.

There was also grave abuse of discretion in counting the votes of Representative Suarez and those of the independent members in the election for Minority Leader. On July 27, 2016, the day of the election for Minority Leader, Representative Suarez himself belonged to the Majority and was thus disqualified from being the Minority Leader. Likewise, the 20 abstaining members and the one (1) who registered a no-vote were independent members. Not being part of the Minority, these independent members were disqualified from electing a Minority Leader.

Rule II, Section 8 of the Rules states in full:

> Members who vote for the winning candidate for Speaker shall constitute the Majority in the House and they shall elect from among themselves the Majority Leader. The Majority Leader may be changed, at any time, by a majority vote of all the Majority Members.
>
> The Minority Leader shall be elected by the Members of the Minority and can be changed, at any time, by a majority vote of all the Minority Members.
>
> The Majority and Minority shall elect such number of Deputy Majority and Minority Leaders as the rules provide.
>
> A Member may transfer from the Majority to the Minority, or vice versa, at any time: Provided, That:
>
> a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be. The Secretary General shall be furnished a copy of the request to transfer;
>
> b. The Majority or Minority, as the case may be, accepts the concerned Member in writing; and

c. The Speaker shall be furnished by the Majority or the Minority Leaders, as the case may be, a copy of the acceptance in writing of the concerned Member.

In case the Majority or the Minority declines such request to transfer, the concerned Member shall be considered an independent Member of the House.

In any case, whether or not the request to transfer is accepted, all committee assignments and memberships given the concerned Member by the Majority or Minority, as the case may be, shall be automatically forfeited.

Members who choose not to align themselves with the Majority or the Minority shall be considered as independent Members of the House. They may, however, choose to join the Majority or Minority upon written request to and approval thereof by the Majority or Minority, as the case may be.

Rule II, Section 8 has two (2) major components: (a) the first, second, and last paragraphs provide for the different kinds of members of the House of Representatives, and (b) the fourth to eighth paragraphs provide for the manner by which a Majority, Minority, or independent member may change affiliation.

The first paragraph of Rule II, Section 8 states that the representatives who vote for the winning candidate for Speaker shall constitute the Majority. The second paragraph declares that the Minority Leader shall be elected by Members of the Minority. The last paragraph confirms that "[m]embers who choose not to align themselves with the Majority or the Minority [i.e. those who abstained or registered a no-vote] shall be considered as independent Members of the House." Thus:

Members who vote for the winning candidate for Speaker shall constitute the *Majority* in the House and they shall elect from among themselves the Majority Leader . . .

The Minority Leader shall be elected by the Members of the *Minority* and can be changed, at any time, by a majority vote of all the Minority Members.

. . . . . .

Members who choose not to align themselves with the Majority or the Minority shall be considered as *independent* Members of the House. (Emphasis supplied)

Even the official website of the House of Representatives gives notice to the public that the Minority members are only those who voted for the Speaker's opponent but do not include those who abstained from voting:

Those who voted for the Speaker belong to the Majority while those who voted for the Speaker's opponent belong to the Minority. Representatives belonging to the Majority choose the Majority Floor Leader who automatically chairs the Committee on Rules, and those in the Minority choose the Minority Floor Leader.[144]

It is a basic legal principle that those not included in the enumeration are deemed excluded.[145] A person or thing omitted from an enumeration must be held to have been omitted intentionally.[146] As the definition of Minority omitted those representatives who abstained or opted for a "no-vote," then they are deemed intentionally omitted from the definition.

Representative Fariñas himself mentioned the importance of following the Rules. According to him, "[a] law or a regulation is not repealed by non-observance. It can only be repealed by express repeal. *Kung hindi sinusunod iyan, batas pa rin iyan*."[147]

Ironically, in insisting on his July 25, 2016 interpretation[148] of Rule II, Section 8, the Majority Leader was flouting the Rules

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[144] *Legislative Information,* HOUSE OF REPRESENTATIVES, 17TH CONGRESS, <http://www.congress.gov.ph/legisinfo/?v=students> (last visited July 25, 2017).

[145] *Expressio unius est exclusion alterius*: the express mention of one person, thing or consequence implies the exclusion of all others. See *Romualdez v. Marcelo*, 529 Phil. 90, 109 (2006) [Per J. Ynares-Santiago, Special First Division].

[146] *Cassus omissus pro omisso habendus est.* See *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, 570 Phil. 395, 417 (2008) [Per J. Reyes, *En Banc*].

[147] *Rollo*, p. 777, Annex 1 of OSG Comment.

[148] *Id*. at 266, Journal No. 1 dated July 25, 2016. On July 25, 2016, then Acting Floor Leader Representative Fariñas expressed his view that there

himself. He cannot simply cling to a mistaken opinion without running afoul of the express provisions of the Rules. Neither Representative Fariñas' erroneous interpretation of Rule II, Section 8 nor petitioners' alleged silence cured the violation of the Rules and parliamentary practice of the House.

First, the records do not show that Representative Fariñas' own interpretation of Rule II, Section 8 was submitted for adoption by the requisite number of members or was ruled upon by the Presiding Officer on July 25, 2016. Rather, the records show that after giving his own interpretation of Rule II, Section 8, Representative Fariñas simply moved to proceed to the election for House Speaker without asking for a vote on whether the Body would adopt his opinion or not.

The House of Representatives Journal No. 1 dated July 25, 2016 narrates the events that transpired:

DESIGNATION OF REP. FARIÑAS AS ACTING FLOOR LEADER

In the interest of orderly proceedings, the Presiding Officer designated Representative Rodolfo C. Fariñas of the First District of Ilocos Norte as Acting Floor Leader.

ADOPTION OF THE RULES OF THE HOUSE, AS AMENDED

On motion of Rep. Fariñas, there being no objection, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House to govern its proceedings until the adoption of the Rules for the 17th Congress, subject to the amendment that the first sentence of Section 94, Rule 12, entitled, "Conduct and Attire During Sessions and Committee Meetings," shall read as follows: MEMBERS SHALL WEAR PROPER ATTIRE WHICH IS BARONG FILIPINO OR COAT AND TIE OR BUSINESS ATTIRE FOR MEN, AND FILIPINA DRESS OR BUSINESS SUIT FOR WOMEN, AND OBSERVE PROPER DECORUM DURING SESSIONS AND COMMITTEE MEETINGS.

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were only two (2) categories: those in favor of Speaker Alvarez were considered as Majority members, while the rest were considered as Minority members, with no third category of independent membership.

PERIOD OF NOMINATIONS FOR THE POSITION OF THE SPEAKER OF THE HOUSE

In accordance with the constitutional duty of the House to organize and receive the President's State of the Nation Address later in the day, on motion of Rep. Fariñas, there being no objection, the Body proceeded to the period of nominations for the position of Speaker of the House.

POINT OF CLARIFICATION OF REP. ATIENZA

Upon recognition by the Chair, Rep. Jose L. Atienza Jr. said that he wanted to ask clarificatory questions on the election process. Rep. Fariñas said that he will entertain the same after the nomination period which the Chair thereafter adopted.

POINT OF ORDER OF REP. FUENTEBELLA

Recognized by the Chair, Rep. Arnulfo P. Fuentebella asked that the Chamber proceed to the oath-taking of the Members before the election of the Speaker, as was stated in the Order of Business.

RULING OF THE CHAIR

The Chair ruled that in accordance with (1) parliamentary tradition and practice and (2) the amended Rules of the House that the 17th Congress had adopted, it is the Speaker of the House that administers the oath to the new Members. She added that the oath-taking before the Speaker at the commencement of the First Regular Session is an affirmation of the oaths they had already taken before noontime of June 30, 2016. She explained that in accordance with several Supreme Court decisions, the Members had already complied with the three requirements for membership into the Chamber, namely, a valid certificate of proclamation; oath-taking before any duly authorized officer; and assumption into office without any question by noontime of June 30[,] 2016. She also stressed that the House's highest constitutional privilege was to organize itself before proceeding with its business.

MOTION OF REP. FUENTEBELLA

As he appealed the ruling of the Chair, Rep. Fuentebella said that it was anomalous for the House to elect the Speaker before the oath-taking of the Members. He then asked for a suspension of session as well as a voting on his point of order.

REMARKS OF REP. FARIÑAS

Upon recognition by the Chair, Rep. Fariñas read into the records Section 1, Rule 1 of the aforecited House Rules as he observed that Rep. Fuentebella did not cite any rule that was being violated.

Thereupon, Rep. Fariñas moved that the Body recognize Rep. Feliciano Belmonte Jr. from the Fourth District of Quezon City for his nomination speech.

MANIFESTATION OF REP. FUENTEBELLA

For his part, Rep. Fuentebella said that he will discuss his position at the proper time.

NOMINATION SPEECH OF REP. BELMONTE (F.)

In nominating Rep. Pantaleon D. Alvarez from the First District of Davao del Norte to be the Speaker of the 17th Congress, Rep. Belmonte cited his personal and professional relationship with the former who was a Member of the 11th Congress and then the Secretary of Transportation and Communications under the administration of former President Gloria Macapagal Arroyo . . .

SECONDING NOMINATION SPEECH OF REP. SINGSON

. . . . . .

SECONDING NOMINATION SPEECH OF REP. ALVAREZ (M.)

. . . . . .

SECONDING NOMINATION SPEECH OF REP. CASTRO

. . . . . .

SECONDING NOMINATION SPEECH OF REP. ABU

. . . . . .

NOMINATION SPEECH OF REP. ROQUE

Upon motion of Rep. Fariñas, the Chair recognized Rep. H. Harry L. Roque Jr. from Kabayan Party-List for his nomination speech for Rep. Danilo E. Suarez from the Third District of Quezon to be the Speaker of the 17th Congress . . .

SECONDING NOMINATION SPEECH OF REP. CAMPOS

. . . . . .

NOMINATION SPEECH OF REP. DAZA

Rep. Daza, a member of the Liberal Party for half a century and its President for five challenging years, nominated Rep. Teddy Brawner Baguilat Jr. from the Lone District of Ifugao Province as Speaker of the House of Representatives. For the record, he took pride in emphasizing that this was the first time that a Member who belongs to the so-called cultural minority was nominated to the highest office of the Chamber. He thereafter recalled Rep. Baguilat's political career and enumerated his achievements as a Governor and Representative of Ifugao Province . . .

SECONDING NOMINATION SPEECH OF REP. VILLARIN

. . . . . .

TERMINATION OF THE PERIOD FOR NOMINATIONS

On motion of Rep. Fariñas, there being no other nominations and there being no objection, the Body closed the period of nominations.

PARLIAMENTARY INQUIRY OF REP. ATIENZA

Recognized by the Chair, Rep. Atienza inquired as to who would elect the Minority Leader of the House of Representatives.

REMARKS OF REP. FARIÑAS

In reply, *Rep. Fariñas referred to Section 8 of the Rules of the House on membership to the Majority and the Minority.* He explained that the Members who voted for the winning candidate for the Speaker shall constitute the Majority and shall elect from among themselves the Majority Leader, while those who voted against the winning Speaker or did not vote at all shall belong to the Minority and would thereafter elect their Minority Leader.

NOMINAL VOTING ON THE NOMINEES FOR SPEAKER OF THE HOUSE

Thereafter, on motion of Rep. Fariñas, there being no objection, *the Members proceeded to the election of the Speaker of the House of Representatives.* The Presiding Officer then directed Deputy Secretary General Adasa to call the Roll for nominal voting for the

Speaker of the House and requested each Member to state the name of the candidate he or she will vote for.[149] (Emphasis supplied)

Second, while the House of Representatives may suspend or amend their rules, specific procedures must be followed for any suspension or amendment to be considered valid. Under Rule XIV, Sections 111, 112, and 114:

Section 111. Authority to Move – Only the Committee on Rules can move for the suspension of the rules.

Section 112. Vote Requirement – A voting of two-thirds (2/3) of the Members present, there being a quorum, is required to suspend any rule.

. . . . . .

Section 114. Debate; Effect of Suspension. – A motion to suspend the rules for the passage of a measure may be debated on for one (1) hour, which shall be divided equally between those in favor and those against.

The House shall proceed to consider the measure after voting to suspend the rules. A two-thirds (2/3) vote of the Members present, there being a quorum, shall be necessary for the passage of said measure.

Likewise, Rule XXVII, Section 164 provides:

Section 164. Amendments to the Rules. – Any provision of these Rules, except those that are also embodied in the Constitution, may be amended by a majority vote of all the Members of the House.

In ignoring the third category of independent membership and in allowing the independent members to intrude into the prerogative of the Minority to select its Minority Leader, Representative Fariñas clearly wanted to suspend or amend Rule II, Section 8 of the Rules.

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[149] *Id.* at 264-266.

Unfortunately, there was neither a Committee on Rules[150] that moved to suspend the Rules, as required by Section 111, nor a voting of two-thirds (2/3) of the Members present, as required by Section 112 of Rule XIV. There was also no vote taken by all members of the House to amend the Rules, as required by Rule XXVII, Section 164. Thus, Representative Fariñas' mere insistence on a different set of governing rules is invalid.

Third, there is no "estoppel by silence" that could amount to an amendment of the Rules.

Certainly, petitioners have not been silent. On July 26, 2016, a day immediately following Representative Fariñas' own interpretation of Rule II, Section 8, Representative Lagman raised a question of personal and collective privilege assailing such interpretation.[151] Representative Erice also made a manifestation and a parliamentary inquiry opposing it.[152]

On July 27, 2016, after Representative Suarez clinched the position of Minority Leader with the help of the abstaining members' votes, Representative Marcoleta questioned how these abstaining members could have validly elected Representative Suarez as Minority Leader under the Rules.[153]

On August 1, 2016, Representative Lagman also wrote to Speaker Alvarez, pointing out that Representative Fariñas erroneously interpreted Rule II, Section 8.[154]

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[150] See *rollo,* p. 266. When Representative Fariñas made his interpretation at the start of the First Regular Session of the 17th Congress on July 25, 2016, the Committee on Rules had not been constituted because the election for Speaker was yet to commence. The Committee on Rules is headed by the Majority Leader as the chairperson, with the Deputy Majority Leaders as the vice-chairpersons (Rule IX, Section 26 (ss)).

[151] *Rollo*, p. 116, TSN dated July 26, 2016.

[152] *Id*. at 772-773, TSN dated July 26, 2016.

[153] *Id*. at 680, Journal No. 4 dated August 1, 2016.

[154] *Id*. at 132, Lagman First Letter dated August 1, 2016.

On August 15, 2016, Representative Lagman differed from Representative Fariñas' view on how one becomes part of the Majority or the Minority.[155]

Then finally, before this Court, petitioners point to the irregular procedure by which Representative Suarez obtained the position as Minority Leader. Thus, in repeatedly making such inquiries, petitioners cannot be estopped by their alleged silence,[156] especially since there was no such silence.

Fourth, the Rules of the House of Representatives do not cover the doctrine of estoppel.

Estoppel bars a person who admitted or represented something from later on denying or disproving that thing in *any litigation* arising from such admission or representation.[157] The sessions before the House are not litigations; the election of its Minority Leader does not approximate a proceeding in court.

Article VI, Section 16(3) of the Constitution allows the House to determine its own rules during its deliberations. In view of this, the Body adopted the Rules of the 16th Congress as the Provisional Rules of the House of Representatives.[158] The proceedings in the House are guided by the Rules to which the House "has pledge[d] faithful obedience."[159]

In contrast, estoppel is a civil law concept found under Article 1431[160] of the Civil Code and Rule 131, Section 2(a)[161]

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[155] *Id*. at 717, Journal No. 10 dated August 15, 2016.

[156] See *Philippine Realty Holdings Corporation v. Firematic Philippines, Inc*., 550 Phil. 586, 608 (2007) [Per *J*. Callejo Sr., Third Division].

[157] *See* CIVIL CODE, Art. 1431 and RULES OF COURT, Rule 131, Sec. 2(a).

[158] *Rollo*, p. 264, Journal No. 1 dated July 25, 2016.

[159] RULES OF THE HOUSE OF REPRESENTATIVES (17th Congress), Preamble.

[160] CIVIL CODE, Art. 1431 provides:
Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

[161] RULES OF COURT, Rule 131, Sec. 2(a) states:

of the Revised Rules on Evidence. Neither of these provisions on estoppel forms part of the House Rules, whether directly or by reference.

Rule XXV, Section 161 explicitly states that only parliamentary practices of the Philippine Assembly, Congress, and the Batasang Pambansa apply suppletorily to the Rules.

Fifth, even assuming that "estoppel by silence" is recognized in House proceedings, this doctrine does not apply to the situation at bar. In *Santiago Syjuco, Inc. v. Castro*:[162]

> [A]n estoppel may arise from silence as well as from words. "Estoppel by silence" arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts *in reliance on which [a person] acts to his [or her] prejudice*.[163] (Emphasis supplied)

Estoppel by silence may only be invoked if the person's failure to speak out caused prejudice or injury to the other.[164] For instance, a property owner who knowingly allows another to sell the property without objecting to the transaction is estopped from setting up his title as against a third person who was misled by and suffered an injury from that transaction.[165]

Representative Fariñas failed to show how his reliance on petitioners' alleged silence to his wrong interpretation of the Rules on July 25, 2016 prejudiced him. Petitioners' silence

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Section 2. Conclusive presumptions. — The following are instances of conclusive presumptions:

(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

[162] *Santiago Syjuco, Inc. v. Castro*, 256 Phil. 621 (1989) [Per *J.* Narvasa, First Division].

[163] *Id*. at 644.

[164] *Id*.

[165] *Id*. at 645.

did not injure his rights; rather, it was his insistence on this mistaken interpretation that has injured petitioners' rights.

Neither was Speaker Alvarez nor Representative Suarez prejudiced by petitioners' lack of objection to Representative Fariñas' opinion on July 25, 2016. On that day, Speaker Alvarez's election for House Speaker was already guaranteed while Representative Suarez had yet to become Minority Leader. The election for a Minority Leader would arrive only two (2) days later, on June 27, 2016.

V

Majority Leader Representative Fariñas accepted the transfer of the 10 abstaining members to the *Majority*[166] and that of Representative Suarez to the *Minority*.[167] Curiously, in both instances of transfer of membership, the Majority Leader had a say in the matter.

Unfortunately, under Rule II, Section 8, while the Majority Leader has discretion to accept a representative applying to be a member of the Majority, he or she does not have the same discretion when a representative applies to be part of the Minority.

The fourth to eighth paragraphs, which constitute the second major component of Rule II, Section 8, state:

> A Member may transfer from the Majority to the Minority, or vice versa, at any time: *Provided*, That:
>
> a. The concerned Member submits a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be. The Secretary General shall be furnished a copy of the request to transfer;
>
> b. The Majority or Minority, as the case may be, accepts the concerned Member in writing; and
>
> c. The Speaker shall be furnished by the Majority or the Minority Leaders, as the case may be, a copy of the acceptance in writing of the concerned Member.

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[166] *Rollo*, pp. 18-21.

[167] *Id*. at 140, Fariñas' Letter dated July 26, 2016.

In case the Majority or the Minority declines such request to transfer, the concerned Member shall be considered an independent Member of the House.

The text of the provision reveals that before a member may transfer affiliation, he or she must first submit "a written request to transfer to the Majority or Minority, through the Majority or Minority Leaders, as the case may be."

Transferring from one (1) coalition to the other, thus, involves a two (2)-step process: a written request to transfer and a written acceptance. The phrase, "as the case may be," implies that there are alternative scenarios here—a member may be transferring from the Majority to the Minority, from the Minority to the Majority, or from independent membership to the Minority or Majority. Whatever course of action he or she takes will flow through to the sentences that follow.

Under the fourth to eighth paragraphs of Rule II, Section 8, a Member may transfer from the Majority to the Minority, provided that:

a. The concerned [Majority] Member submits a written request to transfer to the . . . Minority, through the . . . Minority Leader[.] The Secretary General shall be furnished a copy of the request to transfer;

b. The . . . Minority . . . accepts the concerned Member in writing; and

c. The Speaker shall be furnished by the . . . Minority [Leader] . . . a copy of the acceptance in writing of the concerned Member.

Stated otherwise, the Majority member seeking to transfer to the Minority must write to the Minority Leader and ask to be accepted in the Minority. The Minority must accept the applicant-representative in writing, with the Minority Leader copy-furnishing to the House Speaker his or her letter of acceptance. The same is true for independent members seeking to transfer to the Minority.

Under the first, second, and last paragraphs of Rule II, Section 8, the 20 abstaining Members are independent members. The fourth to eighth paragraphs further reveal that these abstaining members are considered independent until they are accepted in the Minority by the *ipso facto* Minority Leader Representative Baguilat. Moreover, Representative Suarez, who voted for Speaker Alvarez, is himself considered part of the Majority. His request to transfer to the Minority needed the permission of Minority Leader Representative Baguilat and not that of Majority Leader Representative Fariñas.

The Majority Leader's contrary observation is incongruous to the purpose of a Minority. It is absurd to require the permission of the Majority Leader before a member may be accepted in the Minority.

One cannot imagine the kind of Minority that is created when the Majority Leader, instead of the Minority Leader, is the deciding person on who would constitute the Minority. Such undermines the opposition. It yields the absurd result of having the opposition subject to the discretion of the dominant group.

Words ought to be more subservient to the intent and not the intent to the words.[168] In *Ty Sue v. Hord,*[169] this Court *En Banc* upheld its duty to select the interpretation "which best accords with the letter of the law and with [the law's] purpose."

In the Dissenting Opinion of J. Abad Santos in *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission,*[170] he stated:

> The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction

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[168] *Verba intentioni, non e contra, debent inservice*. *See* Dissenting Opinion of *J.* Abad Santos in *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission*, 216 Phil. 185, 207 (1984) [Per *J.* Makasiar, *En Banc*].

[169] 12 Phil. 485 (1909) [Per *J.* Tracey, *En Banc*].

[170] 216 Phil. 185 (1984) [Per *J.* Makasiar, *En Banc*].

which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the act. While the intention of the legislature must be ascertained from the words used to express it, *the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words*. Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be understood or what understanding do they convey as used in the particular act.[171] (Emphasis supplied)

The importance of the Minority Leader and an authentic Minority cannot be understated. The Minority Leader is the spokesperson of the Minority members of the House.[172] He or she is also an ex officio member of all 58[173] standing Committees[174] of the House, including Appropriations, Constitutional Amendments, Foreign Affairs, Good Government and Public Accountability, Government Reorganization, Human Rights, Justice, Local Government, Public Information, Revision of Laws, and Rules.

All House committees are represented not only by the Majority Leader and Deputy Majority Leaders but also by the Minority Leader and Deputy Minority Leaders. Both the administration and the opposition must have a voice and vote in all committees.[175]

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[171] *Id*. at 207.

[172] *House Leaders Information: Minority Leader,* HOUSE OF REPRESENTATIVES (17TH CONGRESS), <http://www.congress.gov.ph/leaders/?l=minority> (last accessed July 24, 2017).

[173] *House Committees,* HOUSE OF REPRESENTATIVES (17TH CONGRESS), <http://www.congress.gov.ph/committees/?v=standing> (last accessed July 24, 2017).

[174] *See* RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule IX, Secs. 27 and 33. The House has two kinds of committees, standing and special, whose members are generally chosen based on the proportional representation of the Majority and the Minority.

[175] RULES OF THE HOUSE OF REPRESENTATIVES (17TH CONGRESS), Rule IX, Sec. 30 states: Section 30. The Speaker, the Deputy Speakers3,

The House committees study, deliberate on, and act upon all measures presented to them such as bills, resolutions, and petitions.[176] They also recommend the approval and adoption of these measures if they will advance public interest and welfare.[177]

The Members of each committee comprising the Majority and the Minority are chosen by the Majority and the Minority, respectively,[178] based on proportional representation.[179] Only the Committee on Rules is not organized according to the proportional representation;[180] nevertheless, the Minority Leader and the Deputy Minority Leaders automatically become members of the Committee on Rules.[181]

The Committee on Rules is considered the most powerful of all committees, as it dictates all matters relating to the Rules of the House, the Rules of Procedure Governing Inquiries in Aid of Legislation, the Rules of Procedure in Impeachment

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the Majority Leader, the Deputy Majority Leaders, the Minority Leader and the five (5) Deputy Minority Leaders and the chairperson of the Committee on Accounts or a Member deputized by any of the aforementioned officials shall have voice and vote in all committees.

[176] Rule IX, Section 26, first sentence.

[177] Rule IX, Section 26, first sentence.

[178] Rule IX, Section 30.

[179] Under Section 27 of Rule IX of the Rules of the House:

Section 27. Kinds. - The House shall have standing and special committees that shall be organized, except for the Committee on Rules, *on the basis of proportional representation of the Majority and the Minority*. Standing committees shall have jurisdiction over measures relating to needs, concerns, issues and interests affecting the general welfare and which require continuing or comprehensive legislative study, attention and action. Special committees are intended to address measures relating to special or urgent needs, concerns, issues and interests of certain sectors or constituencies requiring immediate legislative action, or to such needs, concerns, issues and interests that may fall within the scope of the jurisdiction of a standing committee, but which the standing committee concerned is unable to act upon with needed dispatch.

[180] Rule IX, Section 27.

[181] Rule IX, Section 26 (ss).

Proceedings, referral of bills, and the creation of committees and their respective jurisdictions.[182] The Committee on Rules also recommends the organization of special committees and defines their membership and jurisdiction.[183]

The legislative branch is the branch solely entrusted with the creation and amendment of laws. Petitioners describe Representative Suarez as the "Minority" Leader of the Majority,[184] handpicked and chosen by the administration itself:[185]

> Consistent with the alliance of Respondent Rep. Suarez and the supermajority coalition in the House, as early as 01 July 2016 Respondent Rep. Suarez principally authored, together with Respondent Speaker Pantaleon Alvarez and Respondent Majority Leader Fariñas, key administration measures. Respondent Rep. Suarez is a principal author of H.B. No. 1 reinstituting capital punishment[,] H.B. No. 3 granting emergency powers to the President to address the traffic mess[,] and later House Resolution No. 105 calling for the investigation linking Sen. Leila de Lima to the proliferation of drug syndicates in the New Bilibid Prison[.] In fact[,] out of the 15 bills filed by Respondent Speaker Alvarez, Respondent Rep. Suarez is a principal author of 11 of them or three-fourths of all the bills filed by the Speaker.[186]
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> . . . . . .
>
> Respondents Speaker Alvarez and Majority Leader Fariñas found in Respondent Rep. Suarez the perfect Majority's "Minority Leader". He has faithfully complied with his commitment to be a cooperative, if not servile, "opposition" leader. His allegiance to the Respondent House officials and President Duterte finds no parallel.

Petitioner Representative Lagman, himself a veteran lawmaker, asserts that the House of Representatives should have a constructive fiscalizer — or a genuine opposition within the

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[182] Rule IX, Section 26 (ss).

[183] Rule IX, Section 33.

[184] *Rollo*, p. 47, Petition.

[185] *Rollo*, p. 6, Petition.

[186] *Rollo*, p. 13, Petition.

administration[187]— in order "that the policies of government will be the result of an extensive debate, not an orchestrated soliloquy."[188]

Article II, Section 1 of the Constitution states that "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." The people, in their sovereign capacity, delegate their government authority to their duly-elected representatives who will speak for them during deliberations and sessions of Congress, among others.

In a representative democracy, there is plurality in governance and no single party has the sole power above all. Opposition is integral in a democracy. Our system goes out of its way to give every person an equal footing, to institutionalize the people, and to allow their voices to be heard. For instance, the people's "freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government

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[187] The word "fiscalizer" comes from the Spanish verb "fiscalizar," which means "to criticize." Filipino lawmakers turned this into an English word to describe a person who is a critic of an alleged government wrongdoing. For example, in an article dated April 12, 2007 by the Philippine Information Agency, Senator Joker Arroyo used the term to refer to an "opposition within the administration:"

Tacloban City (12 April) — Re-electionist Senator Joker Arroyo defended his position in running under the Administration ticket during the Team Unity's campaign sortie here in Samar yesterday saying he will continue to act as "fiscalizer" of the Arroyo administration.

According to Senator Arroyo, his position of being an "opposition within the administration" will not change despite the fact that he is running under the Administration's Team Unity as there was no agreement at all that he will stop being critical to the Arroyo government in exchange for his being picked up as its candidate. (Joker stresses role as Administration's "fiscalizer," http://archives.pia.gov.ph/?m= 12& sec= reader&rp =7&fi=p070412. htm &no=59&date=04/12/2007)

[188] Trishia Billiones, *Lagman blasts Suarez's "anointment" as minority leader,* ABS-CBN NEWS, July 25, 2016, <http://news.abs-cbn.com/news/07/25/16/lagman-blasts-suarezs-anointment-as-minority-leader>(last accessed July 24, 2017).

for redress of grievances"[189] are protected and guaranteed by the Constitution.

The underrepresented and marginalized are given a voice in lawmaking through party-list representation.[190] Independent people's organizations are also given a role in "enabl[ing] the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations[.]"[191] In *The Diocese of Bacolod v. Commission on Elections*:[192]

> [T]he cornerstone of every democracy is that sovereignty resides in the people. To ensure order in running the state's affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people.[193]

The legislative branch of the government, in its most ideal form, is one that accommodates all voices. Drowning the voice of dissent restricts the right of the people to effective and reasonable participation in public affairs. Having a genuine Minority maintains the integrity of democracy.

A genuine Minority will express differences of opinion without fear. It does not easily hop on the bandwagon. Rather, it scrutinizes and debates on pending legislations from lenses typically opposed to those belonging in the mainstream. Such opinions of dissent may avert the possible prejudicial effects that a future legislation may have on the people or on the Philippines at large.

In determining the process of choosing the Minority Leader, the reason for the Rules and the parliamentary tradition observed by the House must be taken into context and adopted.

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[189] CONST., Art. III, Sec. 4.

[190] CONST, Art. VI, Sec. 5(1).

[191] CONST., Art. XIII, Sec. 15.

[192] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per *J*. Leonen, *En Banc*].

[193] *Id*. at 360.

To borrow the words of Justice Perfecto in *Avelino*,[194] respondents unfortunately decided to dilute the votes of the actual Minority "as soon as possible to wrest from [the Minority] the leadership which, upon democratic principles, rightly belongs to"[195] someone else.

VI

Petitioners claim to be the genuine and legitimate members of the House Minority as they voted for Representative Baguilat instead of electing House Speaker Alvarez or abstaining.[196] Petitioner Representative Baguilat, the second placer for House Speaker, seeks to be recognized as Minority Leader based on parliamentary practice and as duly chosen by the genuine Minority under Rule II, Section 8 of the Rules.

Petitioners have consistently protested against Representative Fariñas' erroneous interpretation—one that was not even submitted for voting—which made possible Representative Baguilat's exclusion from his entitlement as Minority Leader. Petitioners have also repeatedly objected to Representative Suarez's irregular transfer to the Minority, secured by the permission of the Majority Leader, instead of the Minority Leader.

Petitioners' numerous objections on different session dates and as contained in letters went unheeded. Left with no other recourse, they come before this Court assailing respondents' grave abuse of discretion.

In their view, Mandamus is the remedy for the violation of their rights. In *Militante v. Court of Appeals*:[197]

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[194] *Avelino v. Cuenco*, 83 Phil. 17 (1989) [Per *J*. Carson, *En Banc*].

[195] Dissenting Opinion of *J*. Perfecto in *Avelino v. Cuenco*, 83 Phil. 17, 48 (1989) [Per *J*. Carson, *En Banc*].

[196] *Rollo,* p. 49.

[197] *Militante v. Court of Appeals*, 386 Phil. 522 (2000) [Per *J*. Puno, *En Banc*].

Mandamus is a writ commanding a tribunal, corporation, board, officer or person to do the act required to be done when it or [the person] unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or *unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled*, there being no other plain, speedy, and adequate remedy in the ordinary course of law.[198] (Emphasis supplied)

Mandamus is available when a person is excluded from the use and enjoyment of a right or office to which he or she is entitled.[199] As a rule, mandamus requires the exhaustion of administrative remedies available to the petitioner.[200] However, prior resort to exhaustion of administrative remedies is not required where the questions raised are purely legal.[201]

Mandamus lies to compel the board, officer, or person to do a ministerial act or duty which the board, officer, or person unlawfully neglects to do.[202] In *Codilla Sr. v. De Venecia*:[203]

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[198] *Id*. at 537.

[199] *Id*. *See also* RULES OF COURT, Rule 65, Sec. 3:

Section 3. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner . . .

[200] *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City,* 455 Phil. 956 (2003) [Per *J*. Corona, Third Division].

[201] *Sunville Timber Products, Inc. v. Abad,* 283 Phil. 400, 407 (1992) [Per *J*. Cruz, First Division].

[202] *Velasco v. Belmonte, Jr.*, G.R. No. 211140, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/211140.pdf> [Per *J*. Leonardo-De Castro, *En Banc*].

[203] *Codilla, Sr. v. De Venecia*, 442 Phil. 139 (2002) [Per *J*. Puno, *En Banc*].

A *purely ministerial act* or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his [or her] own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him [or her] the right to decide how or when the duty shall be performed, such duty is *discretionary* and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[204]

An act is considered ministerial where the public officer must do it, out of a legal obligation, without having any right to decide on the manner, time, or propriety of doing it.[205] On the other hand, an act is considered discretionary where the public officer has the right to exercise his or her judgment or official discretion in doing the act.[206]

In *Codilla Sr.,*[207] the issue on the rightful representative of the 4th District of Leyte was already settled by the Commission on Elections En Banc. As the Commission on Elections En Banc Decision was not appealed before this Court, it became final and executory. Thus, the House of Representatives had to officially recognize petitioner as the duly-elected representative of the 4th District of Leyte, without having any discretion on how and when to do it.[208]

In *Velasco v. Hon. Speaker Belmonte*,[209] petitioner argued that the House Speaker and Secretary General unlawfully excluded him from enjoying his clear right as the duly-elected Representative of the Lone District of Marinduque.[210] The

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[204] *Id*. at 189.

[205] *Id*.

[206] *Id*.

[207] 442 Phil. 139 (2002) [Per *J*. Puno, *En Banc*].

[208] *Id*. at 190.

[209] *Velasco v. Belmonte, Jr.,* G.R. No. 211140, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/211140.pdf> [Per *J*. Leonardo-De Castro, *En Banc*].

[210] *Id*. at 8-9.

Commission on Elections En Banc had already affirmed petitioner's election, but the House refused to administer his oath and register him in the Roll of the House of Representatives.[211] This Court ruled that the House Speaker and the Secretary General unlawfully neglected their ministerial duties to recognize petitioner's election.[212]

In both cases, this Court granted the petition for mandamus and compelled the House Speaker to administer petitioner's oath, as well as the House Secretary General to register petitioner's name in the Roll of the House of Representatives.

To emphasize, for about 30 years since the 1987 Constitution was promulgated and the bicameral Congress was restored, the House has collectively considered the votes for the second placer for House Speaker as the votes of the Minority for its Minority Leader.

Thus, it is up to the House leadership to extend recognition to the duly-designated Minority Leader. Mandamus, however, does not lie to allow this Court to choose the Minority Leader.

VII

Caution must be exercised in having a complete hands-off approach on matters involving grave abuse of discretion of a co-equal branch. This Court has come a long way from our pronouncements in *Mabanag v. Vito*.[213]

In *Mabanag,* the Congress voted on the "Resolution of Both Houses Proposing an Amendment to the [1935] Constitution of the Philippines to be Appended as an Ordinance Thereto."[214] The Resolution proposed to amend the 1935 Constitution to give way for the American parity rights provision, which granted United States citizens equal rights with Filipinos[215] in the

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[211] *Id*.

[212] *Id*. at 21.

[213] *Mabanag v. Vito*, 78 Phil. 1 (1947) [Per *J*. Tuason, *En Banc*].

[214] *Id*. at 2.

[215] The Parity Amendment read as follows:

exploitation of our country's natural resources and the operation of public utilities, contrary to Articles XIII[216] and

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Notwithstanding the provision of section one, Article Thirteen [Sec. 1, Art. XIII], and section eight, Article Fourteen [Sec. 8, Art. XIV], of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, [July 4, 1946], pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, [July 3, 1974], the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coals, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if OPEN to any person, be *open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States* in the same manner as to and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

[216] CONST. (1935), Art. XIII, Sec. 1. All Agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water right for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Section 2. No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty-four hectares, or by lease in excess of one thousand and twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing not exceeding two thousand hectares, may be leased to an individual, private corporation, or association.

. . . . . .

XIV[217] of the 1935 Philippine Constitution.[218]

Article XV, Section 1[219] of the 1935 Constitution required the affirmative votes of three-fourths (3/4) of all members of the Senate and the House, voting separately, before a proposed constitutional amendment could be submitted to the people for approval or disapproval. The Senate was then composed of 24 members while the House had 98 members.[220] Two (2) House representatives later resigned, leaving the House membership with only 96 representatives.[221] Following the Constitutional mandate, the required votes to pass the Resolution were 18 Senators and 72 Representatives.[222]

Section 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

[217] Article XIV, Section 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.

[218] See *Republic v. Quasha*, 150-B Phil. 140-166 (1972) [Per *J*. Reyes, First Division].

[219] CONST. (1935), Art. XV, Sec. 1 provides:

Section 1. The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification.

[220] *See* Dissenting Opinion of *J*. Perfecto in *Mabanag v. Vito*, 78 Phil. 1, 29 (1947) [Per *J*. Tuason, *En Banc*].

[221] *Id*. at 38.

[222] *Id*.

The Senate suspended three (3) Senators from the Nacionalista Party, namely, Ramon Diokno, Jose O. Vera, and Jose E. Romero, for alleged irregularity in their elections.[223] Meanwhile, the House also excluded eight (8) representatives from taking their seats. Although these eight (8) representatives were not formally suspended, the House nevertheless excluded them from participating for the same reason.[224] Due to the suspension of the Senators and Representatives, only 16 out of the required 18 Senators and 68 out of the 72 Representatives voted in favor of the Resolution.[225]

Mabanag recognized that had the excluded members of Congress been allowed to vote, then the parity amendment that gave the Americans rights to our natural resources, which this Court ruled impacted on our sovereignty, would not have been enacted.[226]

Nevertheless, the absence of the necessary votes of three-fourths (3/4) of either branch of Congress, voting separately, did not prevent Congress from passing the Resolution. Petitioners thus assailed the Resolution for being unconstitutional. This Court, ruling under the 1935 Constitution, upheld the enactment despite the patent violation of Article XV, Section 1.[227]

Mabanag ruled that Congress in joint session already certified that both Houses adopted the Resolution, which was already an enrolled bill.[228] Thus, this Court had no more power to review as it was a political question:

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[223] See *Vera v. Avelino*, 77 Phil. 192 (1946) [Per *J*. Bengzon, *En Banc*].

[224] *Mabanag v. Vito,* 78 Phil. 1, 2-3 (1947) [Per *J*. Tuason, *En Banc*].

See PROF. H.W. BRANDS, *BOUND TO EMPIRE: THE UNITED STATES AND THE PHILIPPINES* 231 (1992). Dr. H.W. Brands, Professor of History at the University of Texas at Austin, describes the exclusion of the "announced opponents of parity" as a "strong-arm tactic" engineered "to narrow the odds" of the administration not getting the 3/4 assent required to amend the Constitution that would favor American nationals.

[225] *Id*. at 39-40.

[226] *Id*. at 3.

[227] *Id*. at 19.

[228] *Id*. at 3.

In view of the foregoing considerations, we deem it unnecessary to decide the question of whether the senators and representatives who were ignored in the computation of the necessary three-fourths vote were members of Congress within the meaning of Section 1 of Article XV of the Philippine Constitution.[229]

Justice Perfecto's dissent, however, considered the matter a constitutional question—that is to say, deciding whether respondents violated the requirements of Article XV of the 1935 Constitution was *within* this Court's jurisdiction. [230]

Subsequent rulings[231] have since delimited and clarified the political question doctrine, especially under the 1987 Constitution. It bears stressing that Article VIII, Section 1 explicitly grants this Court the power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of *any* branch or instrumentality of the Government."

We cannot again shy away from this constitutional mandate.

The rule of law must still prevail in curbing any attempt to suppress the minority and eliminate dissent.

In *Estrada v. Desierto*:[232]

To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it *expanded the power of judicial review of this [C]ourt* not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch

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[229] *Id*. at 19.

[230] *Id*. at 39-40.

[231] See *Senate of the Phils. v. Ermita,* 527 Phil. 500 (2006) [Per *J*. Carpio-Morales, *En Banc*], *Bayan v. Ermita*, 522 Phil. 201 (2006) [Per *J*. Azcuna, *En Banc*], *David v. Macapagal-Arroyo,* 522 Phil. 705 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[232] *Estrada v. Desierto*, 406 Phil. 1 (2001) [Per *J.* Puno, *En Banc*].

or instrumentality of government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, *courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government*. Clearly, the new provision did not just grant the Court power of doing nothing.[233] (Emphasis supplied)

Any attempt by the dominant to silence dissent and take over an entire institution finds no room under the 1987 Constitution. Parliamentary practice and the Rules of the House of Representatives cannot be overruled in favor of personal agenda.

It is understandable for the majority in any deliberative body to push their advantages to the consternation of the minority. However, in a representative democracy marked with opportunities for deliberation, the complete annihilation of any dissenting voice, no matter how reasonable, is a prelude to many forms of authoritarianism. While politics speaks in numbers, many among our citizens can only hope that those political numbers are the result of mature discernment. Maturity in politics is marked by a courageous attitude to be open to the genuine opposition, who will aggressively point out the weaknesses of the administration, in an orderly fashion, within parliamentary forums. After all, if the true interest of the public is in mind, even the administration will benefit by criticism.

VIII

The remedy petitioners have chosen is a Petition for a Writ of Mandamus. To succeed, however, they should not only be able show that respondents' acts acknowledging Representative Suarez as the Minority Leader are null and void; they must also show that at the time this Court acts, petitioner Representative Baguilat still has the clear and unmistakable right to be recognized as the Minority Leader.

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[233] *Id*. at 42-43.

In my view, writs of mandamus against Congress should only be granted when this Court is satisfied, with an abundance of caution, that petitioner still has a clear legal right. The House of Representatives is a political forum where alliances change as soon as the Majority reveals its position on pressing issues, which may have ripened after the House's opening session and which its members may not have anticipated then.

Certainly, at the beginning of the 17th Congress, the right of Representative Baguilat was clear. However, since then, several significant votes, such as those on the death penalty bill and the extension of Martial Law, have been taken. The proper recourse in a case like this should just have been an action for certiorari or prohibition to annul the actions of the respondents. The House would then proceed to allow its Minority to convene and select its leader in accordance with the Rules.

The best kinds of dissents are those that are voiced from a platform of principle. By its very nature, dissents are carried by minorities. If history is to be properly understood, the persistent but often drowned out voices of the minority may be heard better in the future.

For the minority, the present may be unforgiving: for they will be shunned and often times shamed by powerful forces. Yet, dissents by minorities are always expressions of hope. In the near future, with the benefit of hindsight, their views will attain clarity to most, sooner rather than later. The creativity and wisdom of those who took a stand will then be truly appreciated.

It will be then that they will take their turn to be the majority.

With deep regret, in the absence of a showing of a clear and unmistakable present right on the part of petitioners, considering the possibility of shifting political alliances, I cannot vote to issue the writ of mandamus, even as I find that there was grave abuse of discretion.

Accordingly, I vote to **DISMISS** the petition but only because it was the wrong remedy.

EN BANC

[G.R. No. 228628. July 25, 2017]

REP. REYNALDO V. UMALI, in his capacity as Chairman of the House of Representatives Committee on Justice and *Ex Officio* Member of the JBC, *petitioner, vs.* **THE JUDICIAL AND BAR COUNCIL, chaired by THE HON. MARIA LOURDES P.A. SERENO, Chief Justice and *Ex Officio* Chairperson,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC; COURTS DO NOT ENTERTAIN MOOT QUESTIONS; EXCEPTIONS.— As a rule, courts do not entertain moot questions. An issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. This notwithstanding, the Court in a number of cases held that the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will still decide cases otherwise, moot and academic if: (1) there is a grave violation of the Constitution; (2) the exceptional character of the situation and the paramount public interest is involved; (3) when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review. Considering that all the arguments herein once again boil down to the proper interpretation of Section 8(1), Article VIII of the 1987 Constitution on congressional representation in the JBC, this Court deems it proper to proceed on deciding this Petition despite its mootness to settle the matter once and for all.

2. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; DEFINED; A PARTY WILL BE ALLOWED TO LITIGATE ONLY WHEN HE CAN DEMONSTRATE THAT HE HAS PERSONALLY SUFFERED SOME ACTUAL OR THREATENED INJURY

BECAUSE OF THE ALLEGEDLY ILLEGAL CONDUCT OF THE GOVERNMENT, THE INJURY IS FAIRLY TRACEABLE TO THE CHALLENGED ACTION, AND THE INJURY IS LIKELY TO BE REDRESSED BY THE REMEDY BEING SOUGHT.— *Locus standi* or legal standing is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. It requires a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. With that definition, therefore, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought. Otherwise, he/she would not be allowed to litigate. Nonetheless, in a long line of cases, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court.

3. ID.; ID.; ID.; ID.; ID.; ID.; EACH MEMBER OF CONGRESS HAS A LEGAL STANDING TO SUE EVEN WITHOUT AN ENABLING RESOLUTION FOR THAT PURPOSE SO LONG AS THE QUESTIONED ACTS INVADE THE POWERS, PREROGATIVES, AND PRIVILEGES OF CONGRESS.— The legal standing of each member of Congress was also upheld in *Philippine Constitution Association v. Enriquez*, where this Court pronounced that: x x x. **We rule that a member of the Senate, and of the House of Representatives for that matter, has the legal standing to question the validity of a presidential veto or a condition imposed on an item in an appropriation bill.** Where the veto is claimed to have been made without or in excess of the authority vested on the President by the Constitution, the issue of an impermissible intrusion of the Executive into the domain of the Legislature arises. **To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution**. An act of the Executive which injures the institution of Congress causes a derivative but

nonetheless substantial injury, which can be questioned by a member of Congress (citation omitted). In such a case, any member of Congress can have a resort to the courts. x x x It is clear therefrom that each member of Congress has a legal standing to sue even without an enabling resolution for that purpose so long as the questioned acts invade the powers, prerogatives and privileges of Congress. Otherwise stated, whenever the acts affect the powers, prerogatives and privileges of Congress, anyone of its members may validly bring an action to challenge the same to safeguard and maintain the sanctity thereof. With the foregoing, this Court sustains the petitioner's legal standing as Member of the House of Representatives and as the Chairman of its Committee on Justice to assail the alternate representation of Congress in the JBC, which arrangement led to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, as it allegedly affects adversely Congress' prerogative to be fully represented before the said body.

4. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AS A MATTER OF POLICY, DIRECT RESORT TO THE COURT WILL NOT BE ENTERTAINED UNLESS THE REDRESS DESIRED CANNOT BE OBTAINED IN THE APPROPRIATE LOWER COURTS, AND EXCEPTIONAL AND COMPELLING CIRCUMSTANCES, SUCH AS IN CASES INVOLVING THE NATIONAL INTEREST AND THOSE OF SERIOUS IMPLICATIONS, JUSTIFY THE AVAILMENT OF THE EXTRAORDINARY REMEDY OF THE WRIT OF *CERTIORARI*, CALLING FOR THE EXERCISE OF ITS PRIMARY JURISDICTION.— Generally, the writ of *certiorari* can only be availed of in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law. In *Bordomeo v. Court of Appeals*, however, this Court clarified that it is inadequacy that must usually determine the propriety of *certiorari* and not the mere absence of all other remedies and the danger of failure of justice without the writ. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. In the same way, as a matter of policy, direct resort to this Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower

courts, and exceptional and compelling circumstances, such as in cases involving national interest and those of serious implications, justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction.

5. ID.; ID.; ID.; ID.; *CERTIORARI* AND PROHIBITION; THE WRITS MAY BE ISSUED TO CORRECT ERRORS OF JURISDICTION COMMITTED NOT ONLY BY A TRIBUNAL, CORPORATION, BOARD OR OFFICER EXERCISING JUDICIAL, QUASI-JUDICIAL OR MINISTERIAL FUNCTIONS BUT ALSO TO SET RIGHT, UNDO AND RESTRAIN ANY ACT OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT, EVEN IF THE LATTER DOES NOT EXERCISE JUDICIAL OR MINISTERIAL FUNCTIONS; THUS, THEY ARE APPROPRIATE REMEDIES TO RAISE CONSTITUTIONAL ISSUES AND TO REVIEW AND/OR PROHIBIT OR NULLIFY THE ACTS OF LEGISLATIVE AND EXECUTIVE OFFICIALS.— *Certiorari* and Prohibition under Rule 65 of the present Rules of Court are the two special civil actions used for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which necessarily includes the commission of grave abuse of discretion amounting to lack of jurisdiction. The burden is on the petitioner to prove that the respondent tribunal committed not merely a reversible error but also a grave abuse of discretion amounting to lack or excess of jurisdiction. Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. But, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach before this Court as the writs may be issued to correct errors of jurisdiction committed

not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Thus, they are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

6. ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; NOT COMMITTED BY THE JUDICIAL AND BAR COUNCIL WHEN IT ADOPTED THE ROTATIONAL REPRESENTATION OF CONGRESS.— Here, it is beyond question that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. Neither did it act in any judicial or quasi-judicial capacity nor did it assume any performance of judicial or quasi-judicial prerogative in adopting the rotational scheme of Congress, which was the reason for not counting the votes of the petitioner in its En Banc deliberations last December 2 and 9, 2016. But, despite this, its act is still not beyond this Court's reach as the same is correctible by *certiorari* if it is tainted with grave abuse of discretion even if it is not exercising judicial and quasi-judicial functions. Now, did the JBC abuse its discretion in adopting the six-month rotational arrangement and in not counting the votes of the petitioner? This Court answers in the negative. As correctly pointed out by the JBC, in adopting the said arrangement, it merely acted pursuant to the Constitution and the *Chavez* ruling, which both require only one representative from Congress in the JBC. It cannot, therefore, be faulted for simply complying with the Constitution and jurisprudence. Moreover, said arrangement was crafted by both Houses of Congress and the JBC merely adopted the same. By no stretch of imagination can it be regarded as grave abuse of discretion on the part of the JBC. With the foregoing, despite this Court's previous declaration that *certiorari* is the plain, speedy and adequate remedy available to petitioner, still the same cannot prosper for the petitioner's failure to prove that the JBC acted with grave abuse of discretion in adopting the rotational scheme.

7. ID.; ID.; ID.; ID.; ID.; MANDAMUS; LIES ONLY TO COMPEL AN OFFICER TO PERFORM A MINISTERIAL

DUTY, NOT A DISCRETIONARY ONE, AND THE WRIT DOES NOT ISSUE TO CONTROL OR REVIEW THE EXERCISE OF DISCRETION OR TO COMPEL A COURSE OF CONDUCT; DISCRETIONARY AND MINISTERIAL ACT, DISTINGUISHED.— It is essential to the issuance of a writ of mandamus that the applicant has a clear legal right to the tiling demanded and it must be the imperative duty of the respondent to perform the act required. The burden is on the petitioner to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act. **As an extraordinary writ, it lies only to compel an officer to perform a ministerial duty, not a discretionary one.** A clear line demarcates a discretionary act from a ministerial one. A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. On the other hand, if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive. Further, the writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct. In the case at bench, the counting of votes in the selection of the nominees to the judiciary may only be considered a ministerial duty of the JBC if such votes were cast by its rightful members and not by someone, like the petitioner, who is not considered a member during the En Banc deliberations last December 2 and 9, 2016. For during the questioned period, the lawful representative of Congress to the JBC is a member of the Senate and not of the House of Representatives as per their agreed rotational scheme. Considering that a member of the Senate already cast his vote therein, the JBC has the full discretion not to count the votes of the petitioner for it is mandated by both the Constitution and jurisprudence to maintain that Congress will only have one representative in the JBC. As the act of the JBC involves a discretionary one, accordingly, mandamus will not lie.

8. ID.; ID.; JUDGMENTS; DOCTRINE OF *STARE DECISIS ET NON QUIETA MOVERE*; WHEN A COURT HAS LAID DOWN A PRINCIPLE OF LAW AS APPLICABLE TO A CERTAIN STATE OF FACTS, IT WILL ADHERE TO THAT PRINCIPLE AND APPLY IT TO ALL FUTURE CASES IN WHICH THE FACTS ARE SUBSTANTIALLY THE SAME ONLY UPON SHOWING THAT CIRCUMSTANCES ATTENDANT IN A PARTICULAR CASE OVERRIDE THE GREAT BENEFITS DERIVED BY OUR JUDICIAL SYSTEM FROM THE DOCTRINE OF STARE DECISIS, CAN THE COURTS BE JUSTIFIED IN SETTING ASIDE THE SAME; DOCTRINE APPLIED TO THE CASE AT BAR.— This Court takes another glance at the arguments in *Chavez* and compares them with the present arguments of the petitioner. A careful perusal, however, reveals that, although the petitioner questioned the JBC's adoption of the six-month rotational representation of Congress leading to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, the supporting arguments hereof still boil down to the proper interpretation of Section 8(1), Article VIII of the 1987 Constitution. Hence, being mere rehash of the arguments in *Chavez*, the application of the doctrine of *stare decisis* in this case is inevitable. More so, the petitioner failed to present strong and compelling reason not to rule this case in the same way that this Court ruled *Chavez*. [*S*]*tare decisis et non quieta movere* is a doctrine which means to adhere to precedents and **not to unsettle things which are established**. This is embodied in Article 8 of the Civil Code of the Philippines x x x. The doctrine enjoins adherence to judicial precedents and requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that **once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. The same is grounded on the necessity for securing certainty and stability of judicial decisions, thus, time and again, the court has held that it is a very desirable and necessary judicial practice that **when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same**. It simply means that for the sake of

certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. The doctrine has assumed such value in our judicial system that the Court has ruled that "[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." **Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis* can the courts be justified in setting aside the same.** Here, the facts are exactly the same as in *Chavez*, where this Court has already settled the issue of interpretation of Section 8(1), Article VIII of the 1987 Constitution. Truly, such ruling may not be unanimous, but it is undoubtedly a reflection of the wisdom of the majority of members of this Court on that matter. *Chavez* cannot simply be regarded as an erroneous application of the questioned constitutional provision for it merely applies the clear mandate of the law, that is, Congress is entitled to only one representative in the JBC in the same way that its co-equal branches are.

9. STATUTORY CONSTRUCTION; CONSTITUTIONAL PROVISION; WHERE THE LAW SPEAKS IN CLEAR AND CATEGORICAL LANGUAGE, THERE IS NO ROOM FOR INTERPRETATION, ONLY APPLICATION; SECTION 8(1), ARTICLE VIII OF THE CONSTITUTION IS CLEAR, CATEGORICAL AND UNAMBIGUOUS.— As this Court declared in *Chavez*, Section 8(1), Article VIII of the 1987 Constitution is clear, categorical and unambiguous. Thus, it needs no further construction or interpretation. Time and time again, it has been repeatedly declared by this Court that **where the law speaks in clear and categorical language, there is no room for interpretation, only application**. The wordings

of Section 8(1), Article VIII of the 1987 Constitution are to be considered as indicative of the final intent of its Framers, that is, for Congress as a whole to only have one representative to sit in the JBC. This Court, therefore, cannot simply make an assumption that the Framers merely by oversight failed to take into account the bicameral nature of Congress in drafting the same. As further laid down in Chavez, the Framers were not keen on adjusting the provision on congressional representation in the JBC as it was not in the exercise of its primary function, which is to legislate. Notably, the JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function. No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution. Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch in the matter of its JBC representation.

10. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; SECTION 8 (1), ARTICLE VIII THEREOF; BROADENING THE SCOPE OF CONGRESSIONAL REPRESENTATION IN THE JUDICIAL AND BAR COUNCIL IS TANTAMOUNT TO THE INCLUSION OF A SUBJECT MATTER WHICH WAS NOT INCLUDED IN THE PROVISION AS ENACTED; THE SUPREME COURT CANNOT CRAFT AND TAILOR CONSTITUTIONAL PROVISIONS IN ORDER TO ACCOMMODATE ALL SITUATIONS NO MATTER HOW IDEAL OR REASONABLE THE PROPOSED SOLUTION MAY SOUND.— This Court cannot succumb to the argument that Congress, being composed of two distinct and separate chambers, cannot represent each other in the JBC. Again, as this Court explained in *Chavez*, such an argument is misplaced because in the JBC, any member of Congress, whether from the Senate or the House of Representatives, is constitutionally empowered to represent the entire Congress. It may be a constricted constitutional authority, but it is not an absurdity. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor

constitutional provisions in order to accommodate all situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.

11. ID.; ID.; ID.; ID.; TO ADD ANOTHER MEMBER IN THE JUDICIAL AND BAR COUNCIL OR TO INCREASE THE REPRESENTATIVE OF CONGRESS TO THE JBC, THE REMEDY IS NOT JUDICIAL BUT CONSTITUTIONAL AMENDMENT.— While it is true that Section 8(1), Article VIII of the 1987 Constitution did not explicitly state that the JBC shall be composed of seven members, however, the same is implied in the enumeration of who will be the members thereof. And though it is unnecessary for the JBC composition to be an odd number as no tie-breaker is needed in the preparation of a shortlist since judicial nominees are not decided by a "yes" or "no" vote, still, JBC's membership cannot be increased from seven to eight for it will be a clear violation of the aforesaid constitutional provision. To add another member in the JBC or to increase the representative of Congress to the JBC, the remedy is not judicial but constitutional amendment.

LEONEN, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*; DEFINED.— Every case brought to this Court must be filed by the party having the standing to file the case. The definition of legal standing is settled: Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "every action must be prosecuted or defended in the name of the real party in interest." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

2. ID.; ID.; ID.; ID.; ID.; ID.; EVERY MEMBER OF CONGRESS HAS STANDING TO QUESTION ACTS WHICH AFFECT THE POWERS, PREROGATIVES, AND PRIVILEGES OF CONGRESS.— Every member of Congress has standing to

question acts which affect the powers, prerogatives, and privileges of Congress. In *Pimentel v. Executive Secretary*: As regards Senator Pimentel, it has been held that "to the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution." Thus, *legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators*. xxx. Here, petitioner, as a member of Congress and the Chair of the House Committee on Justice, alleges that the rotational representation arrangement adopted by respondent Judicial and Bar Council impairs the prerogative of Congress to have full representation within the Council. Petitioner need not have the required House resolution to file his Petition.

3. ID.; ID.; ID.; ID.; ID.; ID.; PARTIES ARE VESTED BY THE SUPREME COURT WITH LEGAL STANDING WHEN CONSTITUTIONAL CHALLENGES HAVE BECOME JUSTICIABLE.— [P]arties are vested by this Court with legal standing when constitutional challenges have become justiciable, consistent with this Court's role in the constitutional order. While the parties must first establish their right to appear before us on a given question of law, they must, more importantly, present concrete cases and controversies. In this instance, the continuing problematic application of *Chavez* vests petitioner, as the current representative of the House to the Judicial and Bar Council, with sufficient standing to raise this issue before us.

4. ID.; ADMINISTRATIVE LAW; 1987 ADMINISTRATIVE CODE; THE OFFICE OF THE SOLICITOR GENERAL; THE OFFICE OF THE SOLICITOR GENERAL REPRESENTS THE PHILIPPINE GOVERNMENT IN ALL LEGAL PROCEEDINGS EXCEPT WHEN IT TAKES AN ADVERSE POSITION AND ACTS AS THE "PEOPLE'S TRIBUNE."— The Office of the Solicitor General's mandate is to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer." Thus, as a general rule, the Office of the Solicitor General represents the Philippine government in all legal

proceedings. The rule has exceptions, such as when it takes an adverse position and acts as the "People's Tribune." In *Pimentel v. Commission on Elections*: True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, *the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.*

5. ID.; ID.; ID.; ID.; THE OFFICE OF THE SOLICITOR GENERAL IS NOT PROHIBITED FROM TAKING A POSITION ADVERSE FROM THAT OF THE JUDICIAL AND BAR COUNCIL, AS ITS REPRESENTATION WILL BE ON BEHALF OF THE FILIPINO PEOPLE, INSTEAD OF A PARTICULAR GOVERNMENT INSTRUMENTALITY.— The Office of the Solicitor General is not prohibited from taking a position adverse from that of the Judicial and Bar Council. Its representation would be on behalf of the Filipino people, instead of a particular government instrumentality. Its representation in this case, however, is contradictory. It intends to represent Congress, a government instrumentality, and act as the People's Tribune; that is, it will be taking a position contrary to that of a government instrumentality. Obviously, the Office of the Solicitor General cannot represent both at the same time. Nevertheless, considering that the Office of the Solicitor General manifested that it would not be representing the Judicial and Bar Council as mandated and will instead be taking an adverse position, this Court will presume that it intends to act as the People's Tribune. In future cases, however, the Office of the Solicitor General should be more cautious in entering its appearance to this Court as the People's Tribune to prevent further confusion as to its standing.

6. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A DIRECT RESORT TO THE SUPREME COURT IS ALLOWED WHEN THERE ARE GENUINE ISSUES OF CONSTITUTIONALITY THAT MUST BE ADDRESSED AT THE MOST IMMEDIATE TIME.— A petition for certiorari under Rule 65 of the Rules

of Court primarily requires that there must be no appeal, or any other plain, speedy, and adequate remedy available before filing the petition x x x. Citing the rule on exhaustion of administrative remedies, respondent contends that the Petition is not the plain, speedy, and adequate remedy since petitioner should have first asked Congress to repudiate the rotational representation agreement. This rule, however, applies to *administrative* agencies, not to Congress. Respondent fails to cite any provision of law or Congressional rule that requires petitioner to have his concern addressed by Congress before filing a petition with this Court. There is also a time element to be considered that would allow the direct resort to this Court. In *Diocese of Bacolod v. Commission on Elections*, we stated that "a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time." We further recognized that "[e]xigency in certain situations would qualify as an exception for direct resort to this [C]ourt."

7. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; JUDICIAL DEPARTMENT; THE PRESIDENT HAS AN IMPERATIVE DUTY TO MAKE AN APPOINTMENT OF A MEMBER OF THE SUPREME COURT WITHIN 90 DAYS FROM THE OCCURRENCE OF THE VACANCY, AND THE FAILURE OF THE PRESIDENT TO DO SO WILL BE A CLEAR DISOBEDIENCE OF THE CONSTITUTION.— Under the Constitution, the President only has 90 days from the vacancy to appoint members of the Supreme Court. Thus, the Judicial and Bar Council must be able to submit its list of nominees before the running of the period. x x x. This 90-day period is mandatory. Failure to comply is considered a culpable violation of the Constitution. In *De Castro v. Judicial and Bar Council*: [T]he usage in Section 4 (1), Article VIII of the word *shall*—an imperative, operating to impose a duty that may be enforced—should not be disregarded. Thereby, Sections 4 (1) imposes on the President the *imperative duty* to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution.

8. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT; THE COURT WILL NOT DECIDE A CASE THAT HAS

ALREADY BECOME MOOT; EXCEPTIONS; PRESENT.— Admittedly, petitioner's prayer to have his vote counted in the December 2 and 9, 2016 En Banc Meetings has already become moot with the appointments of Associate Justice Samuel R. Martires and Associate Justice Noel G. Tijam. Nevertheless: Th[is] Court will decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review. An erroneous interpretation of a constitutional provision would be considered a grave violation of the Constitution. Judicial appointments are likewise of paramount public interest. This case will also settle, once and for all, the issue on the interpretation of Article VIII, Section 8(1). This issue will once again arise considering that two (2) more justices are set to retire this year. There is, thus, a limited amount of time for petitioner to question the lists of nominees submitted by respondent to the Office of the President. A direct resort to this Court would be warranted under the circumstances.

9. ID.; ID.; JUDGMENTS; PRINCIPLE OF *STARE DECISIS*; THE PRINCIPLE OF *STARE DECISIS* DOES NOT MEAN BLIND ADHERENCE TO PRECEDENTS, AS IT IS THE DUTY OF THE COURT TO FORSAKE AND ABANDON ANY DOCTRINE OR RULE FOUND TO BE IN VIOLATION OF THE LAW IN FORCE.— The principle of *stare decisis* is derived from the Latin maxim "*stare decisis, et non quieta movere*"; that is, "it is best to adhere to decisions and not to disturb questions put at rest." Its function is to ensure certainty and stability in the legal system. Ruling by precedent is meant to assure the public of the court's objectivity. *Stare decisis* provides the public with a reasonable expectation that courts will rule in a certain manner given a similar set of facts. Courts, however, are cautioned against "blind adherence to precedents." Decisions of this Court previously found to have been valid may become impractical, contrary to law, or even unconstitutional. It then becomes the duty of this Court to abandon that decision: The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound

it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.

10. ID.; ID.; ID.; ID.; RULING BY PRECEDENT REQUIRES MORE THAN A MECHANICAL APPLICATION.— Whenever this Court renders its decisions, the intended effects of those decisions to future cases are taken into consideration. The changing membership of the bench likewise contributes to the evolution of this Court's stand on certain issues and cases. Ruling by precedent, thus, requires more than a mechanical application: [T]he use of precedents is never mechanical. Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen. Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved. In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents will not be useful to achieve the purposes for which the law would have been passed.

11. ID.; ID.; ID.; ID.; DECISIONS MUST BE ABANDONED WHEN THE COURT DISCERNS, AFTER FULL DELIBERATION, THAT A CONTINUING ERROR IN THE INTERPRETATION OF THE SPIRIT AND INTENT OF A CONSTITUTIONAL PROVISION EXISTS. — There is also a need to abandon decisions "when this Court discerns, after full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists." Assuring the public of stability in the law and certainty of court actions is important. It is, however, more important for this Court to be right. Thus, it becomes imperative for this Court to re-examine previous decisions to avoid continuing its error. The rule of stare decisis is entitled to respect. Stability in the law . . . is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than

anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. Indeed, on at least one occasion has the court broken away from the revamped doctrine, while even in the last case in point the court was as evenly divided as it was possible to be and still reach a decision. *Chavez v. Judicial and Bar Council* was not a unanimous decision of this Court. Vigorous dissents accompanied not only the main decision but also the resolution on the motion for reconsideration. This Petition precisely assails *Chavez*'s outcome and its effect on the diminished representation of Congress in the vetting process of judicial nominees. Rather than dismiss this case on the basis of *stare decisis*, it would be more prudent for this Court to revisit *Chavez* in order to settle the issue.

12. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; THE LEGISLATIVE DEPARTMENT; THERE IS NO MEMBER OF CONGRESS THAT CAN REPRESENT *ALL* OF CONGRESS, AS CONGRESS IS REPRESENTED BY BOTH THE SENATE AND THE HOUSE OF REPRESENTATIVES, WHICH ARE CONSIDERED AS SEPARATE AND DISTINCT FROM EACH OTHER.— Under the Constitution, Congress is bicameral in nature. It consists of two (2) chambers: the Senate and the House of Representatives. x x x. The Constitution considers both chambers as separate and distinct from each other. The manner of elections, terms of office, and organization of each chamber is provided for under separate provisions of the Constitution. Senators are "elected at large by the qualified voters of the Philippines." Members of the House of Representatives are elected by their respective legislative districts or through the party-list system. The differing nature of its elections affects the scope of its representation. Senators represent a national constituency while the House of Representatives represents only a particular legislative district or marginalized and underrepresented sector. A Senator's term of office is for six (6) years while the term of office of a Member of the House of Representatives is for three (3) years. Each chamber chooses

its own officers. Each chamber promulgates its own rules of procedure. Each chamber maintains separate Journals. Each chamber keeps separate Records of its proceedings. Each chamber disciplines its own members. Each chamber even maintains separate addresses. There is no mechanism that would allow the two (2) chambers to represent the other x x x. Thus, there is no Member of Congress that can represent *all* of Congress. Congress is represented by both the Senate and the House of Representatives. The Constitution itself provides for only one (1) instance when both chambers must vote jointly.

13. STATUTORY CONSTRUCTION; CONSTITUTIONAL PROVISIONS; CONSTITUTIONAL PROVISIONS MUST BE HARMONIZED SO THAT ALL WORDS ARE OPERATIVE SECTIONS BEARING ON A PARTICULAR SUBJECT SHOULD BE CONSIDERED AND INTERPRETED TOGETHER AS TO EFFECTUATE THE WHOLE PURPOSE OF THE CONSTITUTION AND ONE SECTION IS NOT TO BE ALLOWED TO DEFEAT ANOTHER, IF BY ANY REASONABLE CONSTRUCTION, THE TWO CAN BE MADE TO STAND TOGETHER.— In *Chavez v. Judicial and Bar Council*, this Court, however, ruled that Congress is only entitled to one (1) seat in the Judicial and Bar Council, pursuant to its interpretation of Article VIII, Section 8(1) of the Constitution. x x x. A *verba legis* interpretation of Article VIII, Section 8(1) of the Constitution leads to an ambiguity and disregards the bicameral nature of Congress. *Chavez* presumes that one (1) member of Congress can vote on behalf of the entire Congress. It is a basic rule of statutory construction that constitutional provisions must be harmonized so that all words are operative. Thus, in *Civil Liberties Union v. Executive Secretary*: It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together. *In other words, the court must harmonize*

them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.

14. ID.; CONSTITUTIONAL INTERPRETATION SHOULD DEPEND ON THE UNDERSTANDING OF THE PEOPLE ADOPTING IT, RATHER THAN HOW THE FRAMERS INTERPRETED IT. — *Civil Liberties Union* also instructs us that constitutional interpretation should depend on the understanding of the people adopting it, rather than how the framers interpreted it: While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." *The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer[s'] understanding thereof.*

15. ID.; ID.; ID.; ARTICLE VIII, SECTION 8(1) OF THE CONSTITUTION MUST BE INTERPRETED ACCORDING TO THE UNDERSTANDING OF THE PEOPLE WHO RATIFIED IT.— Resort to the records of the Constitutional Commission to discern the framers' intent must always be with the understanding of its context and its contemporary consequences. Records show that Article VIII, Section 8(1) was approved by the Constitutional Commission on July 19, 1986. On July 21, 1986, the Commission voted to amend the proposal of a unicameral "National Assembly" to a bicameral "Congress." x x x. On October 8, 1986, the Article on the Judiciary was reopened to introduce amendments to the proposed Sections 3, 7, 10, 11, 13, and 14 only. The entire Article on the Legislature, meanwhile, was approved on October 9, 1986. By October 15, 1986, the Constitution was presented to the President of the Constitutional Commission, Cecilia Muñoz

Palma. The chronology of events shows that the provision on the composition of the Judicial and Bar Council had been passed at a time when the framers were still of the belief that there was to be a unicameral legislature. Thus, Section 8(1) provides for only "a representative" instead of "representatives." However, Section 8(1) must also be interpreted according to the understanding of the people who ratified it.

16. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL; FORCING ONE (1) CHAMBER OF CONGRESS TO ARROGATE UPON ITSELF ALL THE POWERS, PREROGATIVES, AND PRIVILEGES OF THE ENTIRE CONGRESS IN THE JUDICIAL AND BAR COUNCIL IS CONTRARY TO ITS BICAMERAL NATURE.— From the promulgation of the Constitution, Congress already recognized that "a representative of Congress" can only mean one (1) representative from each chamber. This interpretation was so prevalent that from 2001, each member from the Senate and the House of Representatives was given one (1) full vote. This is the representation of Congress contemplated in the Constitution. The current practice of alternate representation not only diminishes Congress' representation. It negates it. When a Senator sits in the Council, he or she can only represent the Senate. Likewise, when a Member of the House of Representatives sits in the Council, he or she can only represent the House of Representatives. Congress is not represented at all in this kind of arrangement. The composition of the Judicial and Bar Council is representative of the constituencies and sectors affected by judicial appointments. Hence, practicing lawyers, prosecutors, the legal academe, members of the Bench, and the private sector are represented in the Council. Members of Congress are the only officials within the Judicial and Bar Council that are elected. The rest of the officials are appointed by the President. Thus, their membership within the Council is the only genuine representation of the People. Their input in the possible candidates to the judiciary is as invaluable as that of a member of the legal academe or that of the private sector. x x x. *Chavez* forces one (1) chamber of Congress to arrogate upon itself all the powers, prerogatives, and privileges of the entire Congress in the Judicial and Bar Council. This is contrary to its bicameral nature. When members

of Congress sit in the Judicial and Bar Council, it may be with the instruction of their respective chambers, as Representative Tupas demonstrated in the July 23, 2013 En Banc Meeting. Their votes may likewise be constrained by resolutions and actions of the Congressional Committees they represent. They do not just represent themselves. They are "representatives of Congress" "*ex officio*."

17. ID.; ID.; ID.; ID.; ID.; ID.; INCREASING THE JUDICIAL AND BAR COUNCIL'S MEMBERSHIP TO EIGHT WILL NOT VIOLATE THE PROVISIONS OF THE CONSTITUTION.— *Chavez* deprives Congress its opportunity to fully represent its constituencies, whether at the national or at the local level. The purported reasons for having only one (1) representative of Congress to the Council are illusory. *Chavez* stated that Congress should be represented in the Council by only one (1) member "not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government." Within the Council, the Executive is represented by the Secretary of Justice, considered as the alter ego of the President. The Judiciary is represented by the Chief Justice. Congress, however, operates through a Senate and a House of Representatives. Two (2) separate and distinct chambers cannot be represented by a single individual. *Chavez* also implied that the framers intended for the Council's membership to be seven (7), not eight (8). Article VIII, Section 8(1), however, does not provide a numerical count for its membership unlike in other the provisions of the Constitution *Chavez* also insisted that the Council should have an odd-number representation so that one (1) member could function as a tie-breaker. Judicial nominees, however, are not decided by a "yes" or "no" vote. The Council submits to the President a list of at least three (3) potential nominees who garnered a plurality of the votes. Some nominees may even have the same number of votes, and the Council will still include all of those names in the shortlist. x x x. [N]o tie-breaker was needed in the preparation of the shortlist. Insisting that the composition of the Council should be an odd number is unnecessary. The Council will still be able to discharge its functions regardless of whether it is composed of seven (7) or eight (8) members.

18. ID.; ID.; ID.; ID.; JUDICIAL DECISIONS ASSUME THE SAME AUTHORITY AS A STATUTE ITSELF

AND, UNTIL AUTHORITATIVELY ABANDONED, NECESSARILY BECOME, TO THE EXTENT THAT THEY ARE APPLICABLE, THE CRITERIA THAT MUST CONTROL THE ACTUATIONS, NOT ONLY OF THOSE CALLED UPON TO ABIDE BY THEM, BUT ALSO OF THOSE DUTY-BOUND TO ENFORCE OBEDIENCE TO THEM; JBC'S ADOPTION OF THE SIX (6)-MONTH ROTATIONAL REPRESENTATION ARRANGEMENT DOES NOT AMOUNT TO GRAVE ABUSE OF DISCRETION.— Respondent Judicial and Bar Council, however, did not commit grave abuse of discretion when it adopted the six (6)-month rotational representation arrangement. Respondent Judicial and Bar Council was merely implementing a prior decision of this Court when it refused to count petitioner's votes. x x x. The method of reconstitution was left to the discretion of the Judicial and Bar Council, in recognition of its status as an independent constitutional body. The Council, in turn, implemented *Chavez* by requiring that Congress provide it with only one (1) representative. In the July 23, 2013 En Banc Meeting, Representative Tupas relayed the instructions of the House of Representatives. Then Senate President Drilon sent the instructions of the Senate through a letter to the Chief Justice. Both the Senate and the House of Representatives did not offer any other type of representation that may have been agreed upon. The Council, therefore, was merely complying with the directive in *Chavez*. In *De Castro v. Judicial and Bar Council*: Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.

19. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; MANDAMUS; MAY ISSUE TO COMPEL THE PERFORMANCE OF A MINISTERIAL DUTY, NOT A DISCRETIONARY ACT; IT IS AVAILABLE TO COMPEL ACTION, WHEN REFUSED, ON MATTERS INVOLVING DISCRETION, BUT NOT TO DIRECT THE EXERCISE OF JUDGMENT OR DISCRETION ONE WAY OR THE OTHER.— Mandamus is provided for under Rule 65, Section 3 of the Rules of Court x x x. Mandamus may issue to compel the performance of a ministerial duty. It cannot be issued to

compel the performance of a discretionary act. In *Metro Manila Development Authority v. Concerned Residents of Manila Bay*: Generally, the writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.

20. ID.; ID.; ID.; ID.; DISCRETIONARY AND MINISTERIAL ACT, DISTINGUISHED.— The difference between a discretionary act and a ministerial act is settled: The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.

21. ID.; ID.; ID.; ID.; A WRIT OF MANDAMUS CANNOT BE ISSUED TO COMPEL THE JUDICIAL BAR COUNCIL TO WITHDRAW A LIST ORIGINALLY SUBMITTED AND TO ADD OTHER NOMINEES THAT HAVE NOT PREVIOUSLY QUALIFIED, BUT A WRIT OF MANDAMUS MAY BE ISSUED TO COMPEL THE JBC TO COMPLY WITH ITS CONSTITUTIONAL MANDATE TO SUBMIT A LIST OF NOMINEES TO THE PRESIDENT BEFORE THE 90-DAY PERIOD TO APPOINT.— The determination of the qualifications and fitness of judicial applicants is discretionary on the part of the Judicial and Bar Council. A writ of mandamus cannot be issued to compel the council to withdraw a list originally submitted and to add other nominees that have not previously qualified. *De Castro v. Judicial and Bar Council*, however, states that a writ of mandamus may be issued to compel the Council to comply with its constitutional

mandate to submit a list of nominees to the President before the 90-day period to appoint: The duty of the JBC to submit a list of nominees before the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for mandamus herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty. For mandamus to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.

22. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL; SHOULD HAVE THE MINISTERIAL DUTY TO SEPARATELY COUNT THE VOTES OF BOTH CONGRESSIONAL REPRESENTATIVES IN THE COUNCIL.— The Judicial and Bar Council has the ministerial duty to count the votes of *all* its members. Petitioner, as the Chair of the House of Representatives Committee on Justice, should be considered a regular ex officio member of the Council, and his votes in the December 2 and 9, 2016 En Banc Meetings should have been counted. This relief, however, has already become moot in light of the recent appointments to this Court. In future deliberations, however, the Judicial and Bar Council should have the ministerial duty to separately count the votes of both Congressional representatives in the Council.

APPEARANCES OF COUNSEL

Charisse Gail D. Apatan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Stare decisis et non quieta movere. This principle of adherence to precedents has not lost its luster and continues to guide the bench in keeping with the need to maintain stability in the law.[1]

This Petition for *Certiorari* and Mandamus under Rule 65 of the Rules of Court filed directly with this Court by herein petitioner Rep. Reynaldo V. Umali, current Chair of the House of Representatives Committee on Justice, impugns the present-day practice of six-month rotational representation of Congress in the Judicial and Bar Council (JBC) for it unfairly deprives both Houses of Congress of their full participation in the said body. The aforementioned practice was adopted by the JBC in light of the ruling in *Chavez v. Judicial and Bar Council*.[2]

As an overview, in *Chavez*, the constitutionality of the practice of having two representatives from both houses of Congress with one vote each in the JBC, thus, increasing its membership from seven to eight, was challenged. With that, this Court examined the constitutional provision that states the composition of the JBC, that is, Section 8(1), Article VIII of the 1987 Constitution, which reads:

> SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and **a representative of the Congress** as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis supplied.)

Following a painstaking analysis, this Court, in a Decision dated July 17, 2012, declared the said practice of having two representatives from Congress with one vote each in the JBC

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[1] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 132051, June 25, 2001, 359 SCRA 469.

[2] G.R. No. 202242, July 17, 2012, 676 SCRA 579.

unconstitutional. This Court enunciated that the use of the singular letter "*a*" preceding "*representative of the Congress*" in the aforequoted provision is unequivocal and leaves no room for any other construction or interpretation. The same is indicative of the Framers' intent that Congress may designate only one representative to the JBC. Had it been otherwise, they could have, in no uncertain terms, so provided. This Court further articulated that in the context of JBC representation, the term "Congress" must be taken to mean the entire legislative department as no liaison between the two houses exists in the workings of the JBC. There is no mechanism required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Moreover, this Court, quoting the keen observation of Retired Supreme Court Associate Justice Consuelo Ynares-Santiago, who is also a JBC Consultant, stated that the *ex officio* members of the JBC consist of representatives from the three main branches of government, to wit: the Chief Justice of the Supreme Court representing the judiciary, the Secretary of Justice representing the executive, and a representative of the Congress representing the legislature. It can be deduced therefrom that the unmistakable tenor of Section 8(1), Article VIII of the 1987 Constitution was to treat each *ex officio* member as representing one co-equal branch of government having equal say in the choice of judicial nominees. Now, to allow the legislature to have more than one representative in the JBC would negate the principle of equality among these three branches of the government, which is enshrined in the Constitution.[3]

The subsequent motion for reconsideration thereof was denied in a Resolution dated April 16, 2013, where this Court reiterated that Section 8(1), Article VIII of the 1987 Constitution providing for "*a representative of the Congress*" in the JBC is clear and unambiguous and does not need any further interpretation. Besides, this Court is not convinced that the Framers simply failed to adjust the aforesaid constitutional provision, by sheer inadvertence, to their decision to shift to a bicameral form of

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[3] *Id.* at 597-606.

legislature. Even granting that there was, indeed, such omission, this Court cannot supply the same. Following the rule of *casus omissus*, that is, a case omitted is to be held as intentionally omitted, this Court cannot under its power of interpretation supply the omission even if the same may have resulted from inadvertence or it was not foreseen or contemplated for to do so would amount to judicial legislation. Ergo, this Court has neither power nor authority to add another member in the JBC simply by judicial construction.[4]

In light of these Decision and Resolution, both Houses of Congress agreed on a six-month rotational representation in the JBC, wherein the House of Representatives will represent Congress from January to June and the Senate from July to December.[5] This is now the current practice in the JBC. It is by reason of this arrangement that the votes cast by the petitioner for the selection of nominees for the vacancies of then retiring Supreme Court Associate Justices Jose P. Perez (Perez) and Arturo Brion (Brion) were not counted by the JBC during its *En Banc* deliberations held last December 2 and 9, 2016. Instead, the petitioner's votes were simply placed in an envelope and sealed subject to any further disposition as this Court may direct in a proper proceeding.[6] This is the root of the present controversy that prompted the petitioner to file the instant Petition for *Certiorari* and Mandamus based on the following grounds:

I.

THE WRIT OF *CERTIORARI* IS PROPER TO ENJOIN THE JBC TO CORRECT ITS UNWARRANTED DENIAL OF THE VOTES REGISTERED BY [HEREIN PETITIONER] DURING THE EN BANC DELIBERATIONS ON DECEMBER 2 AND 9, 2016 BECAUSE THE DECISION IN THE *CHAVEZ* CASE IS DEFECTIVE/FLAWED.

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[4] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, April 16, 2013, 696 SCRA 496.

[5] *Rollo*, pp. 42 & 45.

[6] Petition, *id.* at 9-10.

II.

THE WRIT OF MANDAMUS IS PROPER TO MANDATE THE JBC TO ACCEPT/COUNT SAID VOTES CAST BY [PETITIONER] BECAUSE THE RECONSTITUTION OF THE JBC IS DEFECTIVE/ FLAWED AND UNCONSTITUTIONAL.

III.

THE PRESENT PRACTICE OF THE JBC IN ALLOWING ONLY ONE REPRESENTATIVE FROM THE SENATE OR THE HOUSE OF [REPRESENTATIVES] TO PARTICIPATE AND VOTE ON A [6-MONTH] ROTATION BASIS IS IMPRACTICABLE, ABSURD AND UNCONSTITUTIONAL, CREATES AN [INSTITUTIONAL] IMBALANCE BETWEEN THE TWO INDEPENDENT CHAMBERS OF CONGRESS, AND INSTITUTES AN INHERENT AND CONTINUING CONSTITUTIONAL DEFECT IN THE PROCEEDINGS OF THE JBC THAT ADVERSELY AFFECTS APPOINTMENTS TO THE JUDICIAL DEPARTMENT, INCLUDING AND PARTICULARLY [THIS COURT].

IV.

THE 1987 CONSTITUTION CLEARLY REQUIRES PARTICIPATION AND VOTING BY REPRESENTATIVES FROM THE SENATE AND THE HOUSE OF REPRESENTATIVES IN JBC PROCEEDINGS AND ALL APPOINTMENTS TO THE JUDICIAL DEPARTMENT, INCLUDING AND PARTICULARLY [THIS COURT].

A. THE BICAMERAL NATURE OF THE LEGISLATIVE DEPARTMENT WAS BELATEDLY DECIDED UNDER THE 1987 CONSTITUTION, BUT MUST BE DEEMED AS INCORPORATED AND MODIFYING THE JBC STRUCTURE UNDER SECTION 8(1)[,] ARTICLE VIII OF THE [1987] CONSTITUTION, TO GIVE FULL MEANING TO THE INTENT OF ITS FRAMERS.

B. THERE WAS A CLEAR OVERSIGHT AND TECHNICAL OMISSION INVOLVING SECTIONS 8(1)[,] ARTICLE VIII OF THE [1987] CONSTITUTION THAT SHOULD BE RECTIFIED BY [THIS COURT].

C. THE FULL REPRESENTATION OF CONGRESS IN THE JBC IS POSSIBLE ONLY WITH PARTICIPATING AND

VOTING FROM REPRESENTATIVES FROM THE TWO INDEPENDENT CHAMBERS, OTHERWISE THE JBC PROCEEDINGS ARE UNCONSTITUTIONAL.

D. THE PRESENCE OF THE SENATE AND [THE] HOUSE OF REPRESENTATIVES MEMBERS IN THE JBC UPHOLDS THE CO-EQUAL REPRESENTATION IN THE COUNCIL OF THE THREE MAIN BRANCHES OF GOVERNMENT.[7]

As instructed by this Court,[8] both Houses of Congress, through the Manifestation of the Office of the Solicitor General (OSG), which acts as the People's Tribune in this case, and the JBC commented on the Petition.

The OSG wants this Court to revisit *Chavez* for its alleged unexecutability arising from constitutional constraints. It holds that the current practice of alternate representation was only arrived at because of time constraints and difficulty in securing the agreement of both Houses of Congress.[9] And, since the Constitution itself did not clearly state who is the Congress' representative in the JBC, the provision, therefore, regarding the latter's composition must be harmonized to give effect to the current bicameral system.[10] With this in view, the OSG believes that it is only proper for both Houses of Congress to be given equal representation in the JBC as neither House can bind the other for there can be no single member of either House who can fully represent the entire legislature for to do so would definitely result in absurdity.[11]

Further, the OSG avers that *Chavez's* strict interpretation of Section 8(1), Article VIII of the 1987 Constitution violates the very essence of bicameralism and sets aside the inherent

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

[8] Per Resolutions dated January 17, 2017 (*id.* at 84-85) and February 14, 2017 (*id*. at 255-256).

[9] Manifestation in lieu of Comment (to the Petition dated December 28, 2016), OSG, *id*. at 168-169.

[10] *Id*. at 175.

[11] *Id*. at 183.

dichotomy between the two Houses of Congress.[12] To note, a JBC member's votes are reflective of the position and the interest such member wants to uphold, such that when the representatives from each House of Congress vote for a certain judicial nominee, they carry the interests and views of the group they represent. Thus, when only one would represent both Houses of Congress in the JBC, the vote would not be representative of the interests embodied by the Congress as a whole.[13]

In the same way, the OSG contends that the bicameral nature of the legislature strictly adheres to the distinct and separate personality of both Houses of Congress; thus, no member of Congress can represent the entire Congress. Besides, the phrase "*a representative of the Congress*" in Section 8(1), Article VIII of the 1987 Constitution is qualified by the phrase "*ex officio members*." The *ex officio* nature of the position derives its authority from the principal office. It, thus, follows that each house of Congress must be represented in the JBC.[14]

Also, the OSG states that the constitutional intent in creating the JBC is to ensure community representation from the different sectors of society, as well as from the three branches of government, and to eliminate partisan politics in the selection of members of the judiciary. The focus, therefore, is more on proper representation rather than qualitative limitation. It even insists that when the Framers deliberated on Section 8(1), Article VIII of the 1987 Constitution, they were still thinking of a unicameral legislature, thereby, giving Congress only one representative to the JBC. However, with the shift from unicameralism to bicameralism, "*a representative of the Congress*" in the JBC should now be understood to mean one representative from each House of Congress. For had it been the intention of the Framers for the JBC to be composed only of seven members, they would have specified the numbers just like in the other constitutional provisions. As such, the

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[12] *Id*. at 185.

[13] *Id*. at 187.

[14] *Id*. at 191, 194 & 198.

membership in the JBC should not be limited to seven members. More so, an eventual deadlock in the voting would not pose any problem since the voting in the JBC is not through a "yes" or a "no" vote.[15]

As its final argument, the OSG maintains that while Congress' participation in the JBC may be non-legislative, still, the involvement of both Houses of Congress in its every proceeding is indispensable, as each House represents different constituencies and would necessarily bring a unique perspective to the recommendation process of the JBC.[16]

For its part, the JBC vehemently pleads that the present Petition be dismissed as its adopted rotational scheme and the necessary consequences thereof are not the proper subjects of a *certiorari* and even a mandamus petition for the same do not involve an exercise of judicial, quasi-judicial or ministerial functions. Apart from that, it committed no grave abuse of discretion in refusing to recognize, accept and count the petitioner's votes during its En Banc deliberations last December 2 and 9, 2016 for it merely acted in accordance with the Constitution and with the ruling in *Chavez*. More so, there is no showing that the petitioner has no plain, speedy and adequate remedy other than this Petition for nowhere herein did he assert that he exerted all efforts to have his concern addressed by Congress, such as asking the latter to repudiate the rotational arrangement. Thus, for the petitioner's failure to exhaust all remedies available to him in Congress, he deprived the latter of an opportunity to address the matter. Also, the practice and acquiescence of both Houses of Congress to such an arrangement operates as an estoppel against any member thereof to deny its validity. As regards a writ of mandamus, it cannot be issued to compel the JBC to count the petitioner's votes for it will not lie to control the performance of a discretionary act.[17]

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[15] *Id*. at 199-202, 207 & 210.

[16] *Id*. at 217 & 224.

[17] Comment/Opposition (On the Petition dated 28 December 2016), JBC, *id*. at 262-268.

The JBC further enunciates that the petitioner has no *locus standi* to institute this Petition in his capacity as Chairman of the House of Representatives Committee on Justice and *Ex Officio* Member of the JBC without the requisite resolution from both Houses of Congress authorizing him to sue as a member thereof, which absence is a fatal defect rendering this Petition dismissible.[18]

In the same vein, the JBC asseverates that this Petition should also be dismissed as the allegations herein are mere rehash of the arguments and dissents in *Chavez*, which have already been exhaustively litigated and settled therein by this Court, more in particular, the interpretation of Section 8(1), Article VIII of the 1987 Constitution, hence, barred by the doctrine of *stare decisis*. Similarly, there exists no substantial reason or even supervening event or material change of circumstances that warrants *Chavez's* reversal.[19]

The JBC likewise insists that it was the intent of the Framers of the Constitution for the JBC to have only seven members. The reason for that was laid down in *Chavez*, that is, to provide a solution should there be a stalemate in the voting. As to the alleged oversight and technical omission of the Framers in changing the provision on the JBC to reflect the bicameral nature of Congress, these are flimsy excuses to override the clear provision of the Constitution and to disturb settled jurisprudence. As explained in *Chavez*, Congress' membership in the JBC was not in the interest of a certain constituency but in reverence to it as a major branch of government.[20]

Last of all, the JBC holds that should this Petition be granted, there would be an imbalance in favor of Congress with respect to the representation in the JBC of the three main and co-equal branches of the government. For the unmistakable tenor of Section 8(1), Article VIII of the 1987 Constitution was to treat each *ex officio* member as representing one co-equal branch of

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[18] *Id.* at 269-271.

[19] *Id.* at 271-273.

[20] *Id.* at 273-280.

government. And, even assuming that the current six-month rotational scheme in the JBC created an imbalance between the two Houses of Congress, it is not within the power of this Court or the JBC to remedy such imbalance. For the remedy lies in the amendment of this constitutional provision.[21]

Given the foregoing arguments, the issues ought to be addressed by this Court can be summed up into: (1) whether the petitioner has *locus standi* to file this Petition even without the requisite resolution from both Houses of Congress permitting him to do so; (2) whether the petitioner's direct resort to this Court *via* a Petition for *Certiorari* and Mandamus is the plain, speedy and adequate remedy available to him to assail the JBC's adoption of the rotational representation leading to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016; (3) whether the JBC acted with grave abuse of discretion in adopting the six-month rotational scheme of both Houses of Congress resulting in the non-counting of the petitioner's votes in its En Banc deliberations last December 2 and 9, 2016; (4) whether the JBC can be compelled through mandamus to count the petitioner's votes in its En Banc deliberations last December 2 and 9, 2016; and (4) whether this Court's ruling in *Chavez* applies as *stare decisis* to the present case.

Before delving into the above-stated issues, this Court would like to note that this Petition was primarily filed because of the non-counting of the petitioner's votes in the JBC En Banc deliberations last December 2 and 9, 2016 held for the purpose of determining, among others, who will be the possible successors of the then retiring Associate Justices of the Supreme Court Perez and Brion, whose retirements were set on December 14 and 29, 2016, respectively. The list of nominees will then be forwarded to the President as the appointing authority. With the appointments of Associate Justices Samuel R. Martires (Martires) and Noel G. Tijam (Tijam) on March 2 and 8, 2017, respectively, this Petition has now been rendered moot insofar as the petitioner's prayers to (1) reverse and set aside the JBC

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[21] *Id*. at 280-282.

En Banc deliberations last December 2 and 9, 2016; and (2) direct the JBC to count his votes therein as its *ex officio* member,[22] are concerned.

As a rule, courts do not entertain moot questions. An issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. This notwithstanding, the Court in a number of cases held that the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will still decide cases otherwise, moot and academic if: (1) there is a grave violation of the Constitution; (2) the exceptional character of the situation and the paramount public interest is involved; (3) when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.[23] Considering that all the arguments herein once again boil down to the proper interpretation of Section 8(1), Article VIII of the 1987 Constitution on congressional representation in the JBC, this Court deems it proper to proceed on deciding this Petition despite its mootness to settle the matter once and for all.

Having said that, this Court shall now resolve the issues in seriatim.

On petitioner's locus standi. The petitioner brings this suit in his capacity as the current Chairman of the House of Representatives Committee on Justice and *Ex Officio* Member of the JBC. His legal standing was challenged by the JBC for lack of an enabling resolution for that purpose coming from both Houses of Congress.

Locus standi or legal standing is defined as a personal and substantial interest in a case such that the party has sustained

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[22] *Supra* note 6, at 83.

[23] *Lu v. Lu YM, Sr.*, G.R. Nos. 153690, 157381 & 170889, August 26, 2008, 563 SCRA 254, 273.

or will sustain direct injury as a result of the challenged governmental act. It requires a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[24] With that definition, therefore, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.[25] Otherwise, he/she would not be allowed to litigate. Nonetheless, in a long line of cases, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court. This was succinctly explained in *Francisco, Jr. v. The House of Representatives*, thus:

> When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.
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> In the case of a *taxpayer*, he is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a wastage of public funds through the enforcement of an invalid or unconstitutional law. Before he can invoke the power of judicial review, however, he must

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[24] *Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, 204957, *et al.*, April 8, 2014, 721 SCRA 146, 283.

[25] *Lozano v. Nograles*, G.R. Nos. 187883 & 187910, June 16, 2009, 589 SCRA 356, 360.

specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he would sustain a direct injury as a result of the enforcement of the questioned statute or contract. It is not sufficient that he has merely a general interest common to all members of the public.

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As for a *legislator*, he is allowed to sue to question the validity of any official action which he claims infringes his prerogatives as a legislator. Indeed, a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.[26] (Emphasis and underscoring supplied.)

The legal standing of each member of Congress was also upheld in *Philippine Constitution Association v. Enriquez*,[27] where this Court pronounced that:

The legal standing of the Senate, as an institution, was recognized in *Gonzales v. Macaraig, Jr.* (citation omitted). In said case, 23 Senators, comprising the entire membership of the Upper House of Congress, filed a petition to nullify the presidential veto of Section 55 of the GAA of 1989. The filing of the suit was authorized by Senate Resolution No. 381, adopted on February 2, 1989, and which reads as follows:

> Authorizing and Directing the Committee on Finance to Bring in the Name of the Senate of the Philippines the Proper Suit with the Supreme Court of the Philippines contesting the Constitutionality of the Veto by the President of Special and General Provisions, particularly Section 55, of the General Appropriation Bill of 1989 (H.B. No. 19186) and For Other Purposes.

In the United States, the legal standing of a House of Congress to sue has been recognized (citation omitted).

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[26] G.R. Nos. 160261-160263, *et al.*, November 10, 2003, 415 SCRA 44, 136-137

[27] G.R. Nos. 113105, 113174, 113766, *et al.*, August 19, 994, 235 SCRA 506.

While the petition in G.R. No. 113174 was filed by 16 Senators, including the Senate President and the Chairman of the Committee on Finance, the suit was not authorized by the Senate itself. Likewise, the petitions in G.R. Nos. 113766 and 113888 were filed without an enabling resolution for the purpose.

Therefore, the question of the legal standing of petitioners in the three cases becomes a preliminary issue before this Court can inquire into the validity of the presidential veto and the conditions for the implementation of some items in the GAA of 1994.

We rule that a member of the Senate, and of the House of Representatives for that matter, has the legal standing to question the validity of a presidential veto or a condition imposed on an item in an appropriation bill.

Where the veto is claimed to have been made without or in excess of the authority vested on the President by the Constitution, the issue of an impermissible intrusion of the Executive into the domain of the Legislature arises (citation omitted).

To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution (citation omitted).

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress (citation omitted). In such a case, any member of Congress can have a resort to the courts.

Former Chief Justice Enrique M. Fernando, as *Amicus Curiae*, noted:

> This is, then, the clearest case of the Senate as a whole or individual Senators as such having a substantial interest in the question at issue. It could likewise be said that there was the requisite injury to their rights as Senators. It would then be futile to raise any *locus standi* issue. Any intrusion into the domain appertaining to the Senate is to be resisted. Similarly, if the situation were reversed, and it is the Executive Branch that could allege a transgression, its officials could likewise file the corresponding action. **What cannot be denied is that a Senator has standing to maintain**

> **inviolate the prerogatives, powers and privileges vested by the Constitution in his office** (citation omitted).[28] (Emphases and underscoring supplied.)

It is clear therefrom that each member of Congress has a legal standing to sue even without an enabling resolution for that purpose so long as the questioned acts invade the powers, prerogatives and privileges of Congress. Otherwise stated, whenever the acts affect the powers, prerogatives and privileges of Congress, anyone of its members may validly bring an action to challenge the same to safeguard and maintain the sanctity thereof.

With the foregoing, this Court sustains the petitioner's legal standing as Member of the House of Representatives and as the Chairman of its Committee on Justice to assail the alternate representation of Congress in the JBC, which arrangement led to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, as it allegedly affects adversely Congress' prerogative to be fully represented before the said body.

On petitioner's direct resort to this Court via certiorari petition. The JBC questions the propriety of the petitioner's direct resort to this Court via the present Petition to assail its adoption of the rotational representation of Congress resulting in the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016. The JBC insists that the said scheme was a creation of Congress itself; as such, the petitioner's plain, speedy and adequate remedy is to appeal to Congress to repudiate the same. Direct resort to this Court should not be allowed if there is a remedy available to the petitioner before Congress.

Generally, the writ of *certiorari* can only be availed of in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law. In *Bordomeo v. Court of Appeals*, however, this Court clarified that it is inadequacy

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[28] *Id*. at 519-520.

that must usually determine the propriety of *certiorari* and not the mere absence of all other remedies and the danger of failure of justice without the writ. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency.[29]

In the same way, as a matter of policy, direct resort to this Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances, such as in cases involving national interest and those of serious implications, justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction.[30] In *The Diocese of Bacolod v. Commission on Elections*,[31] and again in *Maza v. Turla*,[32] this Court took pains in enumerating the circumstances that would warrant a direct resort to this Court, to wit: (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) cases of first impression as no jurisprudence yet exists that will guide the lower courts on this matter; (4) the constitutional issues raised are better decided by this court; (5) the time element presented in this case cannot be ignored; (6) the filed petition reviews the act of a constitutional organ; (7) petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law; and (8) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[33]

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[29] G.R. No. 161596, February 20, 2013, 691 SCRA 269, 286.

[30] *Yee v. Bernabe*, G.R. No. 141393, April 19, 2006, 487 SCRA 385, 394.

[31] G.R. No. 205728, January 21, 2015, 747 SCRA 1.

[32] G.R. No. 187094, February 15, 2017.

[33] *The Diocese of Bacolod v. Commission on Elections*, *supra* note 31, at 45-50.

Here, while this Court agrees with the JBC that the petitioner's preliminary remedy to question the rotational arrangement of Congress is to ask the latter to repudiate the same, this, however, cannot be considered plain, speedy and adequate. This Court is, thus, inclined to sustain the petitioner's direct resort to this Court not only because it is the plain, speedy and adequate remedy available to him but also by reason of the constitutional issues involved herein and the urgency of the matter. As correctly pointed out by the OSG, the Constitution mandates that any vacancy to the office of an Associate Justice of the Supreme Court must be filled up within the 90-day period from its occurrence. Therefore, the JBC must submit the list of nominees prior to the start of that period. As the nominations covered by the questioned December 2016 JBC En Banc deliberations were intended for vacancies created by then Associate Justices Perez and Brion, who respectively retired last December 14 and 29, 2016, hence, any resort to Congress during that time would already be inadequate since the JBC list of nominees would be submitted any moment to the Office of the President for the appointment of the next Associate Justices of the Supreme Court. Since time is of the essence, the petitioner's direct resort to this Court is warranted.

On the alleged grave abuse of discretion of the JBC in adopting the rotational representation of Congress correctible by certiorari. The petitioner ascribed grave abuse of discretion on the part of the JBC in its adoption of the rotational scheme, which led to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, as it deprives Congress of its full representation therein. The JBC, on the other hand, believes otherwise for it merely acted in accordance with the mandate of the Constitution and with the ruling in *Chavez.* Also, such rotational scheme was a creation of Congress, which it merely adopted.

Certiorari and Prohibition under Rule 65 of the present Rules of Court are the two special civil actions used for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which necessarily

includes the commission of grave abuse of discretion amounting to lack of jurisdiction.[34] The burden is on the petitioner to prove that the respondent tribunal committed not merely a reversible error but also a grave abuse of discretion amounting to lack or excess of jurisdiction. Showing mere abuse of discretion is not enough, for the abuse must be shown to be grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[35]

But, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach before this Court as the writs may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Thus, they are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[36]

Here, it is beyond question that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. Neither did it act in any judicial or quasi-judicial capacity nor did it assume any performance of judicial or quasi-judicial prerogative in adopting the rotational scheme of Congress, which was the reason for not counting

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[34] *Araullo v. Aquino III*, G.R. Nos. 209287, 209135-209136, *et al.*, July 1, 2014, 728 SCRA 1, 72.

[35] *Bordomeo v. Court of Appeals*, *supra* note 29, at 289.

[36] *Araullo v. Aquino III*, *supra* note 34, at 74-75.

the votes of the petitioner in its En Banc deliberations last December 2 and 9, 2016. But, despite this, its act is still not beyond this Court's reach as the same is correctible by *certiorari* if it is tainted with grave abuse of discretion even if it is not exercising judicial and quasi-judicial functions. Now, did the JBC abuse its discretion in adopting the six-month rotational arrangement and in not counting the votes of the petitioner? This Court answers in the negative. As correctly pointed out by the JBC, in adopting the said arrangement, it merely acted pursuant to the Constitution and the *Chavez* ruling, which both require only one representative from Congress in the JBC. It cannot, therefore, be faulted for simply complying with the Constitution and jurisprudence. Moreover, said arrangement was crafted by both Houses of Congress and the JBC merely adopted the same. By no stretch of imagination can it be regarded as grave abuse of discretion on the part of the JBC.

With the foregoing, despite this Court's previous declaration that *certiorari* is the plain, speedy and adequate remedy available to petitioner, still the same cannot prosper for the petitioner's failure to prove that the JBC acted with grave abuse of discretion in adopting the rotational scheme.

On the propriety of mandamus. It is essential to the issuance of a writ of mandamus that the applicant has a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. The burden is on the petitioner to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act. **As an extraordinary writ, it lies only to compel an officer to perform a ministerial duty, not a discretionary one**.[37] A clear line demarcates a discretionary act from a ministerial one. A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise

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[37] *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015, 755 SCRA 182, 198.

of his own judgment upon the propriety or impropriety of the act done.[38] On the other hand, if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[39] Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive. Further, the writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct.[40]

In the case at bench, the counting of votes in the selection of the nominees to the judiciary may only be considered a ministerial duty of the JBC if such votes were cast by its rightful members and not by someone, like the petitioner, who is not considered a member during the En Banc deliberations last December 2 and 9, 2016. For during the questioned period, the lawful representative of Congress to the JBC is a member of the Senate and not of the House of Representatives as per their agreed rotational scheme. Considering that a member of the Senate already cast his vote therein, the JBC has the full discretion not to count the votes of the petitioner for it is mandated by both the Constitution and jurisprudence to maintain that Congress will only have one representative in the JBC. As the act of the JBC involves a discretionary one, accordingly, mandamus will not lie.

On the application of Chavez as stare decisis in this case. The petitioner strongly maintains that *Chavez* must be revisited and reversed due to its unexecutability. But the JBC insists that the arguments herein are mere rehash of those in *Chavez*, hence, already barred by the doctrine of *stare decisis*. Also, there is no cogent reason for *Chavez's* reversal.

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[38] *Partido ng Manggagawa v. Commission on Elections*, G.R. No. 164702, March 15, 2006, 484 SCRA 671, 684.

[39] *Mallari v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 157660, August 29, 2008, 563 SCRA 664, 671.

[40] *Villanueva v. Judicial and Bar Council*, *supra* note 37.

This Court takes another glance at the arguments in *Chavez* and compares them with the present arguments of the petitioner. A careful perusal, however, reveals that, although the petitioner questioned the JBC's adoption of the six-month rotational representation of Congress leading to the non-counting of his votes in its En Banc deliberations last December 2 and 9, 2016, the supporting arguments hereof still boil down to the proper interpretation of Section 8(1), Article VIII of the 1987 Constitution. Hence, being mere rehash of the arguments in *Chavez*, the application of the doctrine of *stare decisis* in this case is inevitable. More so, the petitioner failed to present strong and compelling reason not to rule this case in the same way that this Court ruled *Chavez*.

As stated in the beginning of this *ponencia*, *stare decisis et non quieta movere* is a doctrine which means to adhere to precedents and **not to unsettle things which are established**. This is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

The doctrine enjoins adherence to judicial precedents and requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that **once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. The same is grounded on the necessity for securing certainty and stability of judicial decisions, thus, time and again, the court has held that it is a very desirable and necessary judicial practice that **when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same**. It simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds

from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. The doctrine has assumed such value in our judicial system that the Court has ruled that "[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." **Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same**.[41]

Here, the facts are exactly the same as in *Chavez*, where this Court has already settled the issue of interpretation of Section 8(1), Article VIII of the 1987 Constitution. Truly, such ruling may not be unanimous, but it is undoubtedly a reflection of the wisdom of the majority of members of this Court on that matter. *Chavez* cannot simply be regarded as an erroneous application of the questioned constitutional provision for it merely applies the clear mandate of the law, that is, Congress is entitled to only one representative in the JBC in the same way that its co-equal branches are.

As this Court declared in *Chavez*, Section 8(1), Article VIII of the 1987 Constitution is clear, categorical and unambiguous. Thus, it needs no further construction or interpretation. Time and time again, it has been repeatedly declared by this Court that **where the law speaks in clear and categorical language, there is no room for interpretation, only application**.[42] The

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[41] *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009, 588 SCRA 285, 293-295.

[42] *Barcellano v. Bañas*, G.R. No. 165287, September 14, 2011, 657 SCRA 545, 554.

wordings of Section 8(1), Article VIII of the 1987 Constitution are to be considered as indicative of the final intent of its Framers, that is, for Congress as a whole to only have one representative to sit in the JBC. This Court, therefore, cannot simply make an assumption that the Framers merely by oversight failed to take into account the bicameral nature of Congress in drafting the same. As further laid down in *Chavez*, the Framers were not keen on adjusting the provision on congressional representation in the JBC as it was not in the exercise of its primary function, which is to legislate. Notably, the JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function. No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution. Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch in the matter of its JBC representation.[43]

This Court cannot succumb to the argument that Congress, being composed of two distinct and separate chambers, cannot represent each other in the JBC. Again, as this Court explained in *Chavez*, such an argument is misplaced because in the JBC, any member of Congress, whether from the Senate or the House of Representatives, is constitutionally empowered to represent the entire Congress. It may be a constricted constitutional authority, but it is not an absurdity. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor constitutional provisions in order to accommodate all situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.[44]

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[43] *Chavez v. Judicial and Bar Council*, *supra* note 4, at 507-514.

[44] *Id.* at 515-518.

While it is true that Section 8(1), Article VIII of the 1987 Constitution did not explicitly state that the JBC shall be composed of seven members, however, the same is implied in the enumeration of who will be the members thereof. And though it is unnecessary for the JBC composition to be an odd number as no tie-breaker is needed in the preparation of a shortlist since judicial nominees are not decided by a "yes" or "no" vote, still, JBC's membership cannot be increased from seven to eight for it will be a clear violation of the aforesaid constitutional provision. To add another member in the JBC or to increase the representative of Congress to the JBC, the remedy is not judicial but constitutional amendment.

In sum, this Court will not overthrow *Chavez* for it is in accord with the constitutional mandate of giving Congress "a representative" in the JBC. In the same manner, the adoption of the rotational scheme will not in any way deprive Congress of its full participation in the JBC for such an arrangement is also in line with that constitutional mandate.

WHEREFORE, premises considered, the instant Petition for *Certiorari* and Mandamus is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Carpio, Peralta, Bersamin, Mendoza, Perlas-Bernabe, Jardeleza, Caguioa, Martires, and *Tijam, JJ.,* concur.

Leonen, J., see dissenting opinion.

Leonardo-de Castro, del Castillo, Martirez, and *Reyes, Jr., JJ.,* join the dissent of *J.* Leonen.

Sereno, C.J., no part.

DISSENTING OPINION

LEONEN, *J.*:

This Court is once again tasked to re-examine our interpretation of Article VIII, Section 8(1) of the Constitution, previously

the subject of this Court's review in *Chavez v. Judicial and Bar Council*.[1] In the aftermath of Chavez, we see the absurd and unworkable effects of having only one (1) representative of Congress within the Judicial and Bar Council.

Chavez v. Judicial and Bar Council[2] sanctioned what was clearly unintended by the Constitution: the periodic disempowerment of one (1) legislative chamber. In doing so, it weakens Congress itself as a bicameral constitutional department. The subtraction of the critical one (1) vote that determines who gets into the shortlist is achieved by periodically disempowering one (1) chamber. From the time *Chavez* was promulgated, significant facts have come to light that justifies the abandonment of that precedent.

We must do so in this case.

This is a Petition for mandamus and certiorari filed by Representative Reynaldo V. Umali (Representative Umali), current Chair of the House of Representatives Committee on Justice, questioning the six (6)-month rotational representation arrangement of Congress adopted by the Judicial and Bar Council pursuant to *Chavez v. Judicial and Bar Council*,[3] which was decided with finality on April 16, 2013. Petitioner claims that the current arrangement unfairly deprives both chambers of Congress of its full participation in the Judicial and Bar Council.

An understanding of the process of appointment to the judiciary, especially in its historical context, is important to situate this Court's proper interpretation of the current provisions of the Constitution.

Before the creation of the Judicial and Bar Council, the power to nominate and appoint members of the judiciary was vested in the executive and legislative branches.

Title X, Article 80 of the Malolos Constitution provides:

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[1] 691 Phil. 173 (2012) [Per *J.* Mendoza, *En Banc*].

[2] *Id.*

[3] 709 Phil. 478 (2013) [Per *J.* Mendoza, *En Banc*].

TITLE X
The Judicial Power

Article 80. The Chief Justice of the Supreme Court and the Solicitor-General shall be chosen by the National Assembly in concurrence with the President of the Republic and the Secretaries of the Government, and shall be absolutely independent of the Legislative and Executive Powers.

The 1935 Constitution similarly states:

ARTICLE VIII
Judicial Department

Section 5. The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.

The promulgation of the 1973 Constitution, however, vested the chief executive with both executive and legislative powers. Vetting and appointing of members to the judiciary became the sole prerogative of the President:

ARTICLE X
The Judiciary

Section 4. The Members of the Supreme Court and judges of inferior courts shall be appointed by the President.

Hoping to unshackle the Republic from the abuses of power during Martial Law but at the same time wanting to insulate the process of judicial appointments from partisan politics, the 1986 Constitutional Commission, through Commissioner Roberto Concepcion, proposed the creation of an independent body that would vet potential appointees to the judiciary.[4] This body would be represented by the different stakeholders of the legal sector and would have the mandate of preparing the list of potential judicial appointees to be submitted to the President. The proposal became what is now the Judicial and Bar Council. Article VIII, Section 8 of the Constitution now provides:

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[4] *See* I CONSTITUTIONAL COMMISSION RECORD, JOURNAL No. 29, dated July 14, 1986.

ARTICLE VIII
Judicial Department

x x x x x x x x x

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Based on their understanding of the provision stating that one (1) of its ex officio members would be "*a* representative of Congress," both the House of Representatives and Senate sent representatives to the Council. Representative Rogaciano A. Mercado sat as ex officio member from December 10, 1987 to February 23, 1989 while Senator Wigberto E. Tañada sat as ex officio member from March 2, 1988 to May 21, 1990.[5] In a previous case, however, this Court stated that membership in the Council would be altered only in 1994, stating that before then, the House of Representatives and the Senate would alternate its representation:

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[5] *JBC Officials*, JUDICIAL AND BAR COUNCIL <http://jbc. judiciary. gov.ph/index.php/about-the-jbc/jbc-officials> (Last accessed March 6, 2017).

[F]rom the moment of the creation of the JBC, [Congress] designated one representative to sit in the JBC to act as one of the *ex officio* members. Perhaps in order to give equal opportunity to both houses to sit in the exclusive body, the House of Representatives and the Senate would send alternate representatives to the JBC. In other words, Congress had only one (1) representative.

In 1994, the composition of the JBC was substantially altered. Instead of having only seven (7) members, an eighth (8th) member was added to the JBC as two (2) representatives from Congress began sitting in the JBC—one from the House of Representatives and one from the Senate, with each having one-half (½) of a vote. Then, curiously, the JBC En Banc, in separate meetings held in 2000 and 2001, decided to allow the representatives from the Senate and the House of Representatives one full vote each.[6]

The practice of giving each member of Congress one (1) full vote was questioned in 2012 in *Chavez v. Judicial and Bar Council*.[7]

This Court, voting 7-2,[8] stated that the Constitution intended for the Judicial and Bar Council to only have seven (7) members; thus, only one (1) representative from Congress must sit as an ex officio member. The dispositive portion of the Decision reads:

WHEREFORE, the petition is GRANTED. The current numerical composition of the Judicial and Bar Council is declared UNCONSTITUTIONAL. The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress

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[6] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 189 (2012) [Per *J.* Mendoza, *En Banc*] citing List of JBC Chairpersons, *Ex-Officio* and Regular Members, *Ex Officio* Secretaries and Consultants, issued by the Office of the Executive Officer, Judicial and Bar Council and Minutes of the 1st *En Banc* Executive Meeting, January 12, 2000 and Minutes of the 12th *En Banc* Meeting, May 30, 2001. Curiously, the List found in Judicial and Bar Council's website shows that since 1988, Congress has sent two (2) representatives to the Council.

[7] 691 Phil. 173, 189 (2012) [Per *J.* Mendoza, *En Banc*].

[8] Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, *JJ.*, concurred. Carpio, Velasco, Jr., Leonardo-De Castro, and Sereno, *JJ.*, no part, nominees to the *C.J.* position. Brion, *J.*, no part, on leave. Abad, *J.*, dissented. Del Castillo, *J.*, joined the dissent of *J.* Abad.

will sit as a representative in its proceedings, in accordance with Section 8 (1), Article VIII of the 1987 Constitution.

This disposition is immediately executory.

SO ORDERED.

Upon Motion for Reconsideration, this Court, voting 10-3,[9] reiterated that "[i]n the [Judicial and Bar Council], any member of Congress, whether from the Senate or the House of Representatives, is constitutionally empowered to represent the entire Congress."[10]

The Minutes of the July 29, 2013 Judicial and Bar Council En Banc meeting reflect their actions after the case was promulgated. Representative Niel C. Tupas, Jr. (Representative Tupas) informed the Council that pursuant to *Chavez*, the House of Representatives and Senate agreed that their representation would be on a six (6)-month rotational basis, with Senator Aquilino "Koko" Pimentel III (Senator Pimentel) representing Congress from July 1 to December 31, 2013.[11] The Minutes state:

> [Congressman Tupas] said that in view of the decision of the Supreme Court in April this year, the Speaker of the House of Representatives and the Senate President authorized him and Senator Pimentel, Chairperson of the Committee on Justice of the Senate to discuss the matter of representation to the JBC. They decided that the representation would be on a rotation basis. For the first six (6) months, Senator Pimentel would be the one to represent both Houses of Congress; and for the next six (6) months, it would be he. In the absence of Senator Pimentel, Congressman Tupas will automatically attend the meetings, and vice versa. He cautioned that since it is quite difficult for both Houses to come up with an agreement, it

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[9] *C.J.* Sereno had no part as chair of JBC. Associate Justice Velasco had no part due to participation in Judicial and Bar Council. Associate Justice Brion had no part. Associate Justices Carpio, Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe concurred. Associate Justice Abad, Del Castillo and Leonen dissented.

[10] *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 494 (2013) [Per *J.* Mendoza, *En Banc*].

[11] *Rollo*, p. 45.

would not be good to assume that whenever the Senate President or the Speaker of the House writes the JBC, it is the decision of Congress. It should be a communication from both Houses. He then requested that he be furnished with copies of all notices from the JBC even during the term of Senator Pimentel.

Chief Justice Sereno clarified that she received the Letter of Senate President Drilon stating, among other things, that the Speaker of the House and the Senate President agreed that Senator Pimentel would be the one to represent Congress until December 31, 2013, but that in his absence it would be Congressman Tupas. She assured both Congressman Tupas and Senator Pimentel that they will both receive copies of all notices and information that are being circulated among the JBC Members. She thanked Congressman Tupas for personally informing the Council of the agreement between the two Houses of Congress, thus giving a higher level of comfort than it had already given.

Congressman Tupas mentioned that he was not aware that the Senate President sent a letter. His assumption is that the information would come from both Houses, not just from the Senate. He thus came to the meeting to personally inform the JBC of the agreement. He thanked the Chief Justice and asked for permission to leave.

Senator Pimentel likewise requested that he also be furnished with copies of all documents during the rotation of Congressman Tupas. He then requested for a three-minute break, as he had some matters to discuss with the Congressman before leaving.[12]

There was no showing of the presence of any resolution from any of the legislative chambers that authorized or ratified the practice.

From then on, it became the practice of the House of Representatives to represent Congress in the Judicial and Bar Council from January to June and for the Senate to represent Congress from July to December.[13]

The present controversy arose from the En Banc deliberations of the Judicial and Bar Council on December 2 and December

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[12] *Id.*

[13] *Id.* at 260, Comment.

9, 2016, for the selection of nominees for the vacancies of retiring Supreme Court Associate Justices Arturo D. Brion and Jose P. Perez. On both occasions, Representative Umali[14] cast his votes. His votes, however, were not counted due to the present rotational representation arrangement. The votes were instead placed in an envelope and sealed, "subject to any further disposition as the Supreme Court may direct in a proper proceeding."[15]

Representative Umali filed this present Petition[16] praying that:

a. The JBC's denial of petitioner Umali's vote as ex-officio member during the En Banc sessions on December 2 and 9, 2016, be reversed and set aside;

b. The JBC be directed to count the votes of petitioner Umali as ex-officio member during the en bane sessions on December 2 and 9, 2016;

c. The current six-month rotational representation of Congress by the Senate and the House of Representatives in the JBC be declared unconstitutional; and

d. The JBC be directed to revert back to its prior representational arrangement where two representatives from Congress are recognized and allowed to vote, or the status quo ante, prior to the *Chavez* ruling, and in accordance with such specific guidelines that the Supreme Court will promulgate to ensure full and proper representation and voting by both members from the Senate and the House of Representatives, and thereafter to recognize, accept and count the votes cast by the petitioner Umali in all proceedings of the JBC.[17]

The Judicial and Bar Council was directed to file its comment to the Petition. On February 6, 2017, the Office of the Solicitor General submitted a Manifestation (in lieu of Comment)[18] entering

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[14] *Id.* at 6. Representative Umali is the current chair of the House Committee on Justice.

[15] *Id*. at 10.

[16] *Id*. at 3-40.

[17] *Id*. at 33.

[18] *Id*. at 160-241.

its appearance for "[t]he Congress of the Republic of the Philippines, represented by the Senate and the House of Representatives"[19] and "[acting] as the People's Tribune."[20] On February 10, 2017, the Judicial and Bar Council Executive Chair[21] and its regular members[22] filed its Comment[23] on behalf of the Council.

Petitioner argues that *Chavez v. Judicial and Bar Council*[24] did not define the manner by which the Judicial and Bar Council should be reconstituted and that no formal resolution was issued by the Council to resolve the issue. The Council instead adopted Representative Tupas' manifestation that the Senate and House of Representatives agreed on a six (6)-month rotational representation.[25]

Petitioner points out that Representative Tupas had cautioned the Council that decisions of Congress should be a communication of both houses. He argues that neither Representative Tupas' manifestation nor then Senate President Franklin Drilon's (then Senate President Drilon) letter conferring Senator PimentePs representation constitute a plenary act of both Houses of Congress so the present rotational representation cannot be adopted by the Council.[26]

Petitioner asserts that allowing only one (1) representative of Congress on the Council is "impractical, absurd and unconstitutional".[27] He explains that the bicameral nature of Congress results in both houses having different powers,

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[19] *Id*. at 160.

[20] *Id*.

[21] Retired Associate Justice Angelina Sandoval-Gutierrez.

[22] Jose V. Mejia, Maria Milagros N. Fernan-Cayosa, and Toribio E. Ilao, Jr.

[23] *Rollo*, pp. 257-290.

[24] 691 Phil. 173 (2012) [Per *J*. Mendoza, *En Banc*].

[25] *Rollo*, pp. 15-16.

[26] *Id*. at 16.

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

functions, and decision-making processes. Thus, any communication, action, or resolution from either house should not be interpreted as binding on the whole Congress. He points out that other than this Court's interpretation of Article VIII, Section 8(1),[28] there is also no provision in the Constitution that expressly mandates a single representation of Congress to any political or adjudicating body.[29] The genuine and full representation of Congress expresses the voice of the electorate to the Judicial and Bar Council.[30]

Petitioner contends that the distinction between both houses is recognized under the Constitution. He claims that denying the House of Representatives' continuous representation in the Council would be denying it of its duty to screen and vote for the candidates for the eight (8) Associate Justices of the Supreme Court who will compulsorily retire from 2017 to 2019.[31] The Senate would also be deprived of its duty to screen and vote for the two (2) vacant positions in the Supreme Court in 2022.[32] He cites as basis the vote for the vacancies left by

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[28] CONST., Art. VIII, Sec. 8 (1) provides:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

[29] *Rollo*, pp. 17-18.

[30] *Id*. at 18.

[31] *Id*. at 19. Under its current arrangement, the House of Representatives represents Congress in the JBC from January to June while Senate represents Congress from July to December. Justice Bienvenido Reyes retired on July 6, 2017 while Justice Mendoza retires on August 13, 2017. Justice Velasco, Jr. retires on August 18, 2018 while Justice Leonardo-De Castro retires on October 8, 2018. Justice Del Castillo retires on July 29, 2019, Justice Jardeleza retires on September 26, 2019, Justice Bersamin retires on October 18, 2019 and Justice Carpio retires on October 26, 2019. Two justices will retire in the first half of 2019: Justice Martires retires on January 2, 2019 and Justice Tijam retires on January 5, 2019.

[32] Justice Peralta retires on March 27, 2022 while Justice Perlas-Bernabe retires on May 14, 2022.

Associate Justices Perez and Brion that was scheduled in December, which deprived petitioner of his chance to vote.[33]

Petitioner asserts that the bicameral nature of Congress requires both houses to observe inter-parliamentary courtesies and were meant to represent different constituencies. Because of the shift from National Assembly to a bicameral Congress, Article VIII, Section 8(1) of the Constitution should be interpreted to allow representatives from both chambers to fully participate and vote in the Judicial and Bar Council.[34] He maintains that Article VIII, Section 8(1) was not plain and was unambiguous because from 2001 until the promulgation of *Chavez*, the Judicial and Bar Council allowed both the House of Representatives and the Senate to be given one (1) full vote each.[35] He insists that a *verba legis* interpretation of Article III, Section 8(1) would deny Congress of its representation since neither chamber on its own can represent the entirety of Congress.[36]

Petitioner claims that allowing both the House of Representatives and the Senate to represent Congress in the Council upholds the co-equal representation of the three (3) branches of the government. He explains that under the present composition, there are actually three (3) representatives from the judicial branch (the Chief Justice, a retired Justice of the Supreme Court, and a member of the Integrated Bar of the Philippines) and three (3) representatives of the executive branch (Secretary of Justice, the professor of law, and the representative of the private sector who are all presidential appointees).[37] Thus, he claims that continuing the present practice results in the legislative department having a disproportionate representation in the constitutional body and diminishes the integrity of the House of Representatives, which represents the people.[38]

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[33] *Rollo*, p. 20.

[34] *Id*. at 23.

[35] *Id*. at 24.

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

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

[38] *Id*. at 30.

For these reasons, petitioner argues that the Judicial and Bar Council committed grave abuse of discretion that could be remedied through a writ of certiorari.[39] He adds that a writ of mandamus would also be proper to compel the Judicial and Bar Council to accept and recognize the votes he cast in the December 2 and 9, 2016 En Banc sessions.[40]

Unlike in *Chavez v. Judicial and Bar Council*,[41] both the House of Representatives and the Senate were able to comment on the petition, through a Manifestation[42] and Consolidated Manifestation[43] by the Office of the Solicitor General.

The Office of the Solicitor General, for Congress, argues that *Chavez* should be revisited due to its "unexecutability . . . arising from constitutional constraints."[44] It explains that the current practice "was arrived at in view of time constraints and difficulty in securing the agreement of both Houses."[45] It likewise points out that since the Constitution did not identify who should represent Congress in the Judicial and Bar Council, the provision must be harmonized to take into account the current bicameral system.[46]

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[39] *Id.* at 15.

[40] *Id.* at 16.

[41] 691 Phil. 173, 494 (2012) [Per *J.* Mendoza, *En Banc*].

[42] *Rollo*, pp. 160-245. The Manifestation was verified by Senate President Aquilino "Koko" Pimentel III and Speaker of the House Pantaleon D. Alvarez.

[43] *Id.* at 425-432. The Counter-Manifestation attached a letter from Senator Richard Gordon, the current Chair of the Senate Committee on Justice and Senate representative to the Judicial and Bar Council, signifying his assent to the Petition filed by Rep. Umali. This Court likewise noted a Letter (*rollo*, pp. 426-427) from Secretary of Justice Vitaliano N. Aguirre II stating that while he previously signified his assent to the filing of the Judicial and Bar Council's Comment, he found after further evaluation that "the arguments of the representative of Mindoro in his petition to be impressed with merit."

[44] *Id.* at 168.

[45] *Id.* at 169.

[46] *Id.* at 175.

The Office of the Solicitor General contends that the current rotational arrangement sets aside the inherent dichotomy between the two (2) Houses of Congress and violates the essence of bicameralism.[47] It explains that when the representatives of the Senate or the House of Representatives vote for a certain judicial nominee, they carry the interests and views of the group they represent. If there is only one (1) member of Congress in the Council, this vote would not be representative of the interests represented by Congress as a whole.[48]

The Office of the Solicitor General maintains that no member of Congress can represent all of Congress, which is why Congress has always sent two (2) representatives to the Council.[49] It points out that the phrase "a representative of Congress" in Article VIII, Section 8(1) is qualified by the phrase "ex-officio *members*" signifying that the member in an ex-officio capacity must be qualified to represent the entirety of Congress.[50]

The Office of the Solicitor General asserts that the intent of the Judicial and Bar Council's composition is for the representation to be collegial and to eliminate partisan politics in the selection of members of the judiciary; thus, "the focus is more on proper representation rather than quantitative limitation."[51] It asserts that when the framers deliberated on Article VIII, Section 8(1), they were still of the belief that legislature would be unicameral.[52] If they had intended for the Council to only have seven (7) members, it would have specified the number, as it did in other provisions of the Constitution.[53] It contends that a deadlock in the voting is not enough justification

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[47] *Id*. at 185.

[48] *Id*. at 186-187.

[49] *Id*. at 190-194.

[50] *Id*. at 194-198.

[51] *Id*. at 200.

[52] *Id*. at 201.

[53] *Id*. at 207-209.

to undermine the bicameral nature of the legislature since voting in the Council is not decided by a "yes" or "no" vote.[54]

The Office of the Solicitor General likewise holds that while the function of the Judicial and Bar Council may be non-legislative, the involvement of both Houses of Congress is indispensable since each represents different constituencies and would necessarily bring a unique perspective to the Council's recommendation process.[55] It cites statistics from June 2016 to present showing that a large number of appointments were made to the lower courts at a time when the House of Representatives, which represents sectors or local districts, was not able to participate in the voting process.[56]

The Office of the Solicitor General also cites *Aguinaldo v. Judicial and Bar Council*[57] to argue that in the review of the Judicial and Bar Council's rules, it should also include a review of the rule on Congress' representation on the Council.[58]

Respondent Judicial and Bar Council, on the other hand, attests that the Petition should be dismissed since the rotational scheme adopted by Congress is not the proper subject of a petition for certiorari or mandamus. It contends that the controversy does not involve the Council's exercise of judicial, quasi-judicial, or ministerial functions.[59] It maintains that there was also no grave abuse of discretion when it refused to count petitioner's votes since this act was authorized by the Constitution and *Chavez v. Judicial and Bar Council*.[60] It argues that the Council's

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[54] *Id*. at 209-211.

[55] *Id*. at 217-220.

[56] *Id*. at 224-225.

[57] G.R. No. 224302, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per J. Leonardo-De Castro, *En Banc*].

[58] *Rollo*, pp. 227-237.

[59] *Id*. at 262-263.

[60] *Id*. at 264-265.

performance of its duties is discretionary; thus, mandamus cannot be issued to control the performance of a discretionary act.[61]

Respondent counters that the Petition is not the plain, speedy, and adequate remedy since petitioner did not show that he exerted all efforts to have his concern addressed by Congress. It points out that it was Congress, not the Council, which adopted the rotational scheme.[62] *Chavez* declared that the representation of Congress in the Council would be for Congress to determine; thus, petitioner should have first asked Congress to repudiate the rotational scheme agreement.[63] Respondent insists that the practice and acquiescence of Congress to this arrangement operates as an estoppel against any member of Congress to deny the validity of this agreement.[64] It also points out that petitioner has no *locus standi* to file this Petition in his capacity as Chair of the House of Representatives Committee on Justice absent any resolution by the Senate and the House of Representatives authorizing him to do so.[65]

Respondent likewise prays for the dismissal of the Petition on the ground that petitioner's allegations are mere rehashes of the arguments and dissents in *Chavez* and are, thus, barred by the doctrine of *stare decisis*.[66] It insists that any issue on the interpretation of Article VIII, Section 8(1) has already been settled in *Chavez*.[67]

Respondent reiterates the ruling in *Chavez* and argues that the framers of the Constitution intended for the Council to only have seven (7) members to provide a solution when there is a stalemate in the voting.[68] It insists that *Chavez* has also settled

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[61] *Id*. at 268-269.

[62] *Id*. at 265.

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

[64] *Id*. at 267.

[65] *Id*. at 269-271.

[66] *Id*. at 271-273.

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

[68] *Id*. at 276.

the alleged "oversight and technical omission" argued by petitioner when it stated that the membership of Congress to the Council was not in the interest of a certain constituency but in reverence to it as the third branch of the government.[69]

Respondent argues that the grant of the Petition would create an imbalance since Article VIII treats each ex officio member as representing one (1) co-equal branch of the government.[70] It maintains that even assuming that there is an imbalance, it is not for this Court or the Council to remedy the imbalance since the remedy lies in the amendment of the constitutional provision.[71]

The case presents several procedural and substantive issues. Procedurally, this Court is asked to determine *first*, whether petitioner has the *locus standi* to file the Petition in the absence of a resolution of both Houses of Congress authorizing him for that purpose; *second*, whether the Petition is the plain, speedy, and adequate remedy for addressing the issue of the rotational representation arrangement; and *third*, whether the doctrine of *stare decisis* operates as a bar for petitioner to question the ruling in *Chavez v. Judicial and Bar Council*.

On the substantive issues, this Court is likewise asked to determine, *first*, whether the current six (6)-month rotational representation arrangement deprives Congress of its full participation in the deliberations in the Judicial and Bar Council; *second*, whether the Judicial and Bar Council committed grave abuse of discretion in adopting a six (6)-month rotational representation arrangement absent a plenary action by both Houses of Congress; and *finally*, whether the Judicial and Bar Council can be compelled, by writ of mandamus, to count petitioner's votes in the En Banc sessions of December 2 and 9, 2016.

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[69] *Id*. at 277-280.

[70] *Id*. at 280-281.

[71] *Id*. at 282-284.

I

Every case brought to this Court must be filed by the party having the standing to file the case. The definition of legal standing is settled:

> Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "every action must be prosecuted or defended in the name of the real party in interest." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought.[72]

Respondent contends that petitioner has no standing to file this case absent a resolution from the House of Representatives authorizing him to do so.[73] It anchors its argument on *Philippine Constitutional Association v. Enriquez*,[74] where this Court stated:

> While the petition in G.R. No. 113174 was filed by 16 Senators, including the Senate President and the Chairman of the Committee on Finance, the suit was not authorized by the Senate itself. Likewise, the petitions in G.R. Nos. 113766 and 113888 were filed without an enabling resolution for the purpose.[75]

Respondent, however, failed to read the entirety of the quoted portion. In *Philippine Constitutional Association*, the procedural issue on standing was whether Senators could question a presidential veto on an appropriations bill despite the absence of a Senate resolution authorizing them to file the case. This Court, in addressing the issue, first acknowledged that previous

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[72] *David v. Arroyo*, 522 Phil. 705, 755-756 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*] citing *Black's Law Dictionary*, 6th Ed. 1991, p. 941, RULES OF COURT, Rule 3, Sec. 2, and *Salonga v. Warner Barnes & Co.*, 88 Phil. 125 (1951) [Per *J*. Bautista Angelo, *En Banc*].

[73] *Rollo*, pp. 269-271.

[74] 305 Phil. 546 (1994) [Per *J*. Quiason, *En Banc*].

[75] *Id*. at 562-536. *See* also *rollo*, pp. 269-270.

decisions have required Senators to first submit a Senate resolution authorizing the filing of the case. Nevertheless, this Court ruled that members of Congress have standing to question any action that impairs the Congress' powers and privileges, regardless of whether there was a prior Congressional resolution:

> The legal standing of the Senate, as an institution, was recognized in *Gonzales v. Macaraig, Jr.* . . . In said case, 23 Senators, comprising the entire membership of the Upper House of Congress, filed a petition to nullify the presidential veto of Section 55 of the GAA of 1989. The filing of the suit was authorized by Senate Resolution No. 381, adopted on February 2, 1989, and which reads as follows:
>
> > Authorizing and Directing the Committee on Finance to Bring in the Name of the Senate of the Philippines the Proper Suit with the Supreme Court of the Philippines contesting the Constitutionality of the Veto by the President of Special and General Provisions, particularly Section 55, of the General Appropriation Bill of 1989 (H.B. No. 19186) and For Other Purposes.
>
> In the United States, the legal standing of a House of Congress to sue has been recognized . . .
>
> While the petition in G.R. No. 113174 was filed by 16 Senators, including the Senate President and the Chairman of the Committee on Finance, the suit was not authorized by the Senate itself. Likewise, the petitions in G.R. Nos. 113766 and 113888 were filed without an enabling resolution for the purpose.
>
> . . . . . .
>
> We rule that a member of the Senate, and of the House of Representatives for that matter, has the legal standing to question the validity of a presidential veto or a condition imposed on an item in an appropriation bill.
>
> Where the veto is claimed to have been made without or in excess of the authority vested on the President by the Constitution, the issue of an impermissible intrusion of the Executive into the domain of the Legislature arises . . .
>
> *To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution . . .*

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress . . . In such a case, any member of Congress can have a resort to the courts.

Former Chief Justice Enrique M. Fernando, as *Amicus Curiae*, noted[:]

> This is, then, the clearest case of the Senate as a whole or individual Senators as such having substantial interest in the question at issue. It could likewise be said that there was requisite injury to their rights as Senators. It would then be futile to raise any locus standi issue. Any intrusion into the domain appertaining to the Senate is to be resisted. Similarly, if the situation were reversed, and it is the Executive Branch that could allege a transgression, its officials could likewise file the corresponding action. What cannot be denied is that a Senator has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.[76] (Emphasis supplied; Citations omitted.)

Every member of Congress has standing to question acts which affect the powers, prerogatives, and privileges of Congress. In *Pimentel v. Executive Secretary*:[77]

As regards Senator Pimentel, it has been held that "to the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution." Thus, *legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators*. The petition at bar invokes the power of the Senate to grant or withhold its concurrence to a treaty entered

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[76] *Philconsa v. Enriquez*, 305 Phil. 563, 562-564 (1994) [Per *J*. Quiason, *En Banc*] citing *Gonzales v. Macaraig, Jr.*, 269 Phil. 472 (1990) [Per *J*. Melencio-Herrera, *En Banc*]; *United States v. American Tel. & Tel. Co.*, 551 F. 2d 384, 391 (1976); *Notes: Congressional Access To The Federal Courts*, 90 Harvard Law Review 1632 (1977); *Coleman v. Miller*, 307 U.S. 433 (1939); *Holtzman v. Schlesinger*, 484 F. 2d 1307 (1973); and *Kennedy v. Jones*, 412 F. Supp. 353 (1976).

[77] 501 Phil. 303 (2005) [Per *J*. Puno, *En Banc*].

into by the executive branch, in this case, the Rome Statute. The petition seeks to order the executive branch to transmit the copy of the treaty to the Senate to allow it to exercise such authority. Senator Pimentel, as member of the institution, certainly has the legal standing to assert such authority of the Senate.[78] (Emphasis supplied, citations omitted)

Here, petitioner, as a member of Congress and the Chair of the House Committee on Justice, alleges that the rotational representation arrangement adopted by respondent Judicial and Bar Council impairs the prerogative of Congress to have full representation within the Council. Petitioner need not have the required House resolution to file his Petition.

In any case, parties are vested by this Court with legal standing when constitutional challenges have become justiciable, consistent with this Court's role in the constitutional order. While the parties must first establish their right to appear before us on a given question of law, they must, more importantly, present concrete cases and controversies. In this instance, the continuing problematic application of *Chavez* vests petitioner, as the current representative of the House to the Judicial and Bar Council, with sufficient standing to raise this issue before us.

The Office of the Solicitor General, however, may have been confused when it filed its Manifestation (in Lieu of Comment). It stated before this Court that the Manifestation is filed by "[t]he Congress of the Republic of the Philippines, represented by the Senate and the House of Representatives, through the Office of the Solicitor General (OSG) who in this case acts as the People's Tribune."[79]

It is unclear whether the Office of the Solicitor General intends to represent Congress or to act as the People's Tribune.

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[78] *Id*. at 312-313 citing *Del Mar vs. Philippine Amusement and Gaming Corporation*, 400 Phil. 307 (2000) [Per *J*. Puno, *En Banc*].

[79] *Rollo*, p. 160.

The Office of the Solicitor General's mandate is to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer."[80]

Thus, as a general rule, the Office of the Solicitor General represents the Philippine government in all legal proceedings. The rule has exceptions, such as when it takes an adverse position and acts as the "People's Tribune." In *Pimentel v. Commission on Elections*:[81]

> True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. However, *the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position*.
>
> . . . . . .
>
> As we commented on the role of the Solicitor General in cases pending before this Court:
>
> > This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well.[82] (Emphasis supplied, citations omitted)

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[80] 1987 ADM. CODE, Book IV, Title III, Chapter 12, Sec. 35.

[81] 352 Phil. 424 (1998) [Per *J*. Kapunan, *En Banc*].

[82] *Id*. at 431-432 citing Section 1 of Presidential Decree No. 478; Section 35, Chapter 12 of the Administrative Code of 1987; *Orbos v. Civil Service Commission*, 267 Phil. 476 (1990) [Per *J*. Gancayco, *En Banc*]; and *Martinez v. Court of Appeals*, 307 Phil. 592 (1994) [Per *C.J*. Narvasa, Second Division].

Gonzales v. Chavez[83] further explains:

> Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part.
>
> . . . . . .
>
> Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.[84]

The Office of the Solicitor General is not prohibited from taking a position adverse from that of the Judicial and Bar Council. Its representation would be on behalf of the Filipino people, instead of a particular government instrumentality.

Its representation in this case, however, is contradictory. It intends to represent Congress, a government instrumentality, and act as the People's Tribune; that is, it will be taking a position contrary to that of a government instrumentality. Obviously, the Office of the Solicitor General cannot represent both at the same time.

Nevertheless, considering that the Office of the Solicitor General manifested that it would not be representing the Judicial and Bar Council as mandated and will instead be taking an adverse position, this Court will presume that it intends to act as the People's Tribune.

In future cases, however, the Office of the Solicitor General should be more cautious in entering its appearance to this Court

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[83] 282 Phil. 858 (1992) [Per *J.* Romero, *En Banc*].

[84] *Id.* at 889-891.

as the People's Tribune to prevent further confusion as to its standing.

II

Respondent claims that the Petition is not the plain, speedy, and adequate remedy for questioning the rotational representation arrangement adopted by Congress.[85]

A petition for certiorari under Rule 65 of the Rules of Court primarily requires that there must be no appeal, or any other plain, speedy, and adequate remedy available before filing the petition:

> Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law*, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Emphasis supplied)

Citing the rule on exhaustion of administrative remedies, respondent contends that the Petition is not the plain, speedy, and adequate remedy since petitioner should have first asked Congress to repudiate the rotational representation agreement.[86]

This rule, however, applies to *administrative* agencies, not to Congress. Respondent fails to cite any provision of law or Congressional rule that requires petitioner to have his concern addressed by Congress before filing a petition with this Court.

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[85] *Rollo*, p. 265.

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

There is also a time element to be considered that would allow the direct resort to this Court. In *Diocese of Bacolod v. Commission on Elections*,[87] we stated that "a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time."[88] We further recognized that "[e]xigency in certain situations would qualify as an exception for direct resort to this [C]ourt."[89]

Under the Constitution, the President only has 90 days from the vacancy to appoint members of the Supreme Court. Thus, the Judicial and Bar Council must be able to submit its list of nominees before the running of the period.

Article VIII
Judicial Department

. . . . . .

Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

This 90-day period is mandatory. Failure to comply is considered a culpable violation of the Constitution. In *De Castro v. Judicial and Bar Council*:[90]

[T]he usage in Section 4 (1), Article VIII of the word *shall*—an imperative, operating to impose a duty that may be enforced—should not be disregarded. Thereby, Sections 4 (1) imposes on the President the *imperative duty* to make an appointment of a Member of the Supreme Court within 90 days from the occurrence of the vacancy. The failure by the President to do so will be a clear disobedience to the Constitution.[91] (Emphasis in the original, citation omitted)

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[87] 751 Phil. 301 (2015) [Per *J*. Leonen, *En Banc*].

[88] *Id*. at 331.

[89] *Id*. at 330.

[90] 629 Phil. 629 (2010) [Per *J*. Bersamin, *En Banc*].

[91] *Id*. at 692 citing *Dizon v. Encarnacion*, 119 Phil. 20 (1963) [Per *J*. Concepcion, *En Banc*].

Admittedly, petitioner's prayer to have his vote counted in the December 2 and 9, 2016 En Banc Meetings has already become moot with the appointments of Associate Justice Samuel R. Martires and Associate Justice Noel G. Tijam.[92] Nevertheless:

> Th[is] Court will decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[93] (Citation omitted)

An erroneous interpretation of a constitutional provision would be considered a grave violation of the Constitution. Judicial appointments are likewise of paramount public interest. This case will also settle, once and for all, the issue on the interpretation of Article VIII, Section 8(1).

This issue will once again arise considering that two (2) more justices are set to retire this year.[94] There is, thus, a limited amount of time for petitioner to question the lists of nominees submitted by respondent to the Office of the President. A direct resort to this Court would be warranted under the circumstances.

III

Respondent argues that this Petition is barred by the doctrine of *stare decisis*[95] considering that the interpretation of Article

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[92] Associate Justice Martires was appointed on March 2, 2017 vice Associate Justice Perez while Associate Justice Tijam was appointed on March 8, 2017 vice Associate Justice Brion. Judicial and Bar Council, See *Newly-appointed Judges/Justices*, JUDICIAL AND BAR COUNCIL, <http://jbc.iudiciary.gov.ph/index.php/announcements/newly-appointed> (Last accessed July 25, 2017).

[93] *Belgica v. Ochoa*, 721 Phil. 416, 678 (2013) [Per *J*. Perlas-Bernabe, *En Banc*] citing *Mattel, Inc. v. Francisco*, 582 Phil. 492 (2008) [Per *J*. Austria-Martinez, Third Division] and *Constantino v. Sandiganbayan (First Division)*, 559 Phil. 622 (2007) [Per *J.* Tinga, Second Division].

[94] Associate Justice Bienvenido Reyes retired on July 6, 2017 while Associate Justice Mendoza retires on August 13, 2017.

[95] *Rollo*, pp. 271-273.

VIII, Section 8(1) has already been settled in *Chavez v. Judicial and Bar Council*.[96]

The principle of *stare decisis* is derived from the Latin maxim "*stare decisis, et non quieta movere*"; that is, "it is best to adhere to decisions and not to disturb questions put at rest."[97] Its function is to ensure certainty and stability in the legal system.[98] Ruling by precedent is meant to assure the public of the court's objectivity.[99] *Stare decisis* provides the public with a reasonable expectation that courts will rule in a certain manner given a similar set of facts.

Courts, however, are cautioned against "blind adherence to precedents."[100] Decisions of this Court previously found to have been valid may become impractical, contrary to law, or even unconstitutional. It then becomes the duty of this Court to abandon that decision:

> The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.[101]

Similarly, in *De Castro v. Judicial and Bar Council*:[102]

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

[97] *Tung Chin Hui v. Rodriguez*, 395 Phil. 169, 177 (2000) [Per *J*. Panganiban, Third Division] citing R.S. Vasan, *Latin Words and Phrases for Lawyers*, p. 227.

[98] *Id*.

[99] *See* Concurring Opinion of *J*. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 677 [Per *J*. Perlas-Bernabe, *En Banc*].

[100] *Tan Chong v. Secretary of Labor*, 79 Phil. 249, 257 (1947) [Per *J*. Padilla, *En Banc*].

[101] *Id*.

[102] 632 Phil. 657 (2010) [Per *J*. Bersamin, *En Banc*].

The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament. But ours is not a common-law system; hence, judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision may be followed as a precedent in a subsequent case only when its reasoning and justification are relevant, and the court in the latter case accepts such reasoning and justification to be applicable to the case. The application of the precedent is for the sake of convenience and stability.[103] (Citations omitted)

Whenever this Court renders its decisions, the intended effects of those decisions to future cases are taken into consideration. The changing membership of the bench likewise contributes to the evolution of this Court's stand on certain issues and cases. Ruling by precedent, thus, requires more than a mechanical application:

[T]he use of precedents is never mechanical.

Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen. Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved.

In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents will not be useful to achieve the purposes for which the law would have been passed.[104] (Citations omitted)

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[103] *Id*. at 686 citing *Limketkai Sons Milling, Inc. v. Court of Appeals*, 330 Phil. 171 (1996) [Per *J*. Francisco, Third Division] and Calabresi, *A Common Law for the Age of Statutes*, Harvard University Press, p. 4 (1982).

[104] Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 678 [Per *J*. Perlas-Bernabe, *En Banc*] citing *Ting v. Velez-Ting*, 601 Phil.

There is also a need to abandon decisions "when this Court discerns, after full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists."[105] Assuring the public of stability in the law and certainty of court actions is important. It is, however, more important for this Court to be right. Thus, it becomes imperative for this Court to re-examine previous decisions to avoid continuing its error:

> The rule of stare decisis is entitled to respect. Stability in the law . . . is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. Indeed, on at least one occasion has the court broken away from the revamped doctrine, while even in the last case in point the court was as evenly divided as it was possible to be and still reach a decision.[106]

Chavez v. Judicial and Bar Council was not a unanimous decision of this Court. Vigorous dissents accompanied not only the main decision but also the resolution on the motion for reconsideration. This Petition precisely assails *Chavez*'s outcome and its effect on the diminished representation of Congress in the vetting process of judicial nominees. Rather than dismiss this case on the basis of *stare decisis*, it would be more prudent for this Court to revisit *Chavez* in order to settle the issue.

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676 (2009) [Per *J*. Nachura, Third Division]; Dissenting Opinion of *J*. Puno in *Lambino v. Commission on Elections*, 536 Phil. 1, 281 (2006) [Per *J*. Carpio, *En Banc*], Separate Opinion of Justice Imperial in *In the matter of the Involuntary Insolvency of Rafael Fernandez*, 59 Phil. 30, 41 (1933) [Per *J*. Malcolm, *En Banc*], and *Lazatin v. Desierto*, 606 Phil. 271 (2009) [Per *J*. Peralta, Third Division].

[105] Concurring Opinion of *J*. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 678 [Per *J*. Perlas-Bernabe, *En Banc*] citing *Urbano v. Chavez*, 262 Phil. 374, 385 (1990) [Per *J*. Gancayco, *En Banc*].

[106] *In the matter of the Involuntary Insolvency of Rafael Fernandez*, 59 Phil. 30 (1933) [Per *J*. Malcolm, *En Banc*].

IV

The doctrine of *Chavez v. Judicial and Bar Council*[107] must be abandoned and revised.

Under the Constitution, Congress is bicameral in nature. It consists of two (2) chambers: the Senate and the House of Representatives. Article VI, Section 1 provides:

> ARTICLE VI
> The Legislative Department
>
> Section 1. The legislative power shall be vested in *the Congress of the Philippines which shall consist of a Senate and a House of Representatives*, except to the extent reserved to the people by the provision on initiative and referendum. (Emphasis supplied)

The Constitution considers both chambers as separate and distinct from each other. The manner of elections, terms of office, and organization of each chamber is provided for under separate provisions of the Constitution.

Senators are "elected at large by the qualified voters of the Philippines."[108] Members of the House of Representatives are elected by their respective legislative districts[109] or through the party-list system.[110] The differing nature of its elections affects the scope of its representation. Senators represent a national constituency while the House of Representatives represents only a particular legislative district or marginalized and underrepresented sector.

A Senator's term of office is for six (6) years[111] while the term of office of a Member of the House of Representatives is for three (3) years.[112]

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[107] 691 Phil. 173 (2012) [Per *J.* Mendoza, *En Banc*] and 709 Phil. 478 (2013) [Per *J.* Mendoza, *En Banc*].

[108] CONST., Art. VI, Sec. 2.

[109] CONST., Art. VI, Sec. 5 (1).

[110] CONST., Art. VI, Sec. 5 (2).

[111] CONST., Art. VI, Sec. 4.

[112] CONST., Art. VI, Sec. 7.

Each chamber chooses its own officers.[113] Each chamber promulgates its own rules of procedure.[114] Each chamber maintains separate Journals.[115] Each chamber keeps separate Records of its proceedings.[116] Each chamber disciplines its own members.[117] Each chamber even maintains separate addresses.[118] There is no mechanism that would allow the two (2) chambers to represent the other:

> There is no presiding officer for the Congress of the Philippines, but there is a Senate President and a Speaker of the House of Representatives. There is no single journal for the Congress of the Philippines, but there is a journal for the Senate and a journal for the House of Representatives. There is no record of proceedings for the entire Congress of the Philippines, but there is a Record of proceedings for the Senate and a Record of proceedings for the House of Representatives. The Congress of the Philippines does not discipline its members. It is the Senate that promulgates its own rules and disciplines its members. Likewise, it is the House that promulgates its own rules and disciplines its members.
>
> No Senator reports to the Congress of the Philippines. Rather, he or she reports to the Senate. No Member of the House of Representatives reports to the Congress of the Philippines. Rather, he or she reports to the House of Representatives.
>
> Congress, therefore, is the Senate and the House of Representatives. Congress does not exist separate from the Senate and the House of Representatives.
>
> Any Senator acting *ex officio* or as a representative of the Senate must get directions from the Senate. By constitutional design, he or she cannot get instructions from the House of Representatives. If a Senator represents the Congress rather than simply the Senate, then

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[113] CONST., Art. VI, Sec. 16.

[114] CONST., Art. VI, Sec. 16 (1).

[115] CONST., Art. VI, Sec. 16 (4), par. (1).

[116] CONST., Art. VI, Sec. 16 (4), par. (2).

[117] CONST., Art. VI, Sec. 16 (3).

[118] The House of Representatives is located in Quezon City while the Senate is located in Pasay City.

he or she must be open to amend or modify the instructions given to him or her by the Senate if the House of Representatives' instructions are different. Yet, the Constitution vests disciplinary power only on the Senate for any Senator.

The same argument applies to a Member of the House of Representatives.

No Senator may carry instructions from the House of Representatives. No Member of the House of Representatives may carry instructions from the Senate. Neither Senator nor Member of the House of Representatives may therefore represent Congress as a whole.[119]

Thus, there is no Member of Congress that can represent all of Congress. Congress is represented by both the Senate and the House of Representatives. The Constitution itself provides for only one (1) instance when both chambers must vote jointly:

ARTICLE VII
Executive Department

. . . . . .

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. *The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined*

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[119] Dissenting Opinion of *J.* Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 503-504 (2013) [Per *J.* Mendoza, *En Banc*].

by the Congress, if the invasion or rebellion shall persist and public safely requires it.(Emphasis supplied)

In *Chavez v. Judicial and Bar Council*,[120] this Court, however, ruled that Congress is only entitled to one (1) seat in the Judicial and Bar Council, pursuant to its interpretation of Article VIII, Section 8(1) of the Constitution. Article VIII, Section 8(1) provides:

ARTICLE VIII
Judicial Department

. . . . . .

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and *a representative of the Congress* as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis supplied)

A *verba legis* interpretation of Article VIII, Section 8(1) of the Constitution leads to an ambiguity and disregards the bicameral nature of Congress. *Chavez* presumes that one (1) member of Congress can vote on behalf of the entire Congress.

It is a basic rule of statutory construction that constitutional provisions must be harmonized so that all words are operative. Thus, in *Civil Liberties Union v. Executive Secretary*:[121]

It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

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[120] 691 Phil. 173 (2012) [Per *J.* Mendoza, *En Banc*].

[121] 272 Phil. 147 (1991) [Per *C.J.* Fernan, En Banc].

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.[122] (Emphasis provided, citations omitted)

Civil Liberties Union also instructs us that constitutional interpretation should depend on the understanding of the people adopting it, rather than how the framers interpreted it:

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." *The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer[s'] understanding thereof.*[123] (Emphasis provided, citations omitted)

Resort to the records of the Constitutional Commission to discern the framers' intent must always be with the understanding of its context and its contemporary consequences.[124] Records show that Article VIII, Section 8(1) was approved by the Constitutional Commission on July 19, 1986.[125] On July 21, 1986, the Commission voted to amend the proposal of a unicameral "National Assembly" to a bicameral "Congress."[126]

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[122] *Id*. at 162.

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

[124] Dissenting Opinion of *J*. Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 501 (2013) [Per *J*. Mendoza, *En Banc*].

[125] I CONSTITUTIONAL COMMISSION RECORD, JOURNAL No. 34, dated July 19, 1986.

[126] I CONSTITUTIONAL COMMISSION RECORD, JOURNAL NO. 35, dated July 21, 1986, which reads in part With 22 Members voting for

The change of legislative structure led Commissioner Christian Monsod on July 30, 1986 to remark:

> Last week, we voted for a bicameral legislature. Perhaps it is symptomatic of what the thinking of this group is, that all the provisions that were being drafted up to that time assumed a unicameral government.[127]

On October 8, 1986, the Article on the Judiciary was reopened to introduce amendments to the proposed Sections 3, 7, 10, 11, 13, and 14 only.[128] The entire Article on the Legislature, meanwhile, was approved on October 9, 1986.[129] By October 15, 1986, the Constitution was presented to the President of the Constitutional Commission, Cecilia Muñoz Palma.[130]

The chronology of events shows that the provision on the composition of the Judicial and Bar Council had been passed at a time when the framers were still of the belief that there was to be a unicameral legislature. Thus, Section 8(1) provides for only "a representative" instead of "representatives."

However, Section 8(1) must also be interpreted according to the understanding of the people who ratified it.

Historically, both the Senate and the House of Representatives sent their members to sit in the Judicial and Bar Council:[131]

Ex Officio Members Representing the Senate, Congress:

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a unicameral system and 23 Members voting for bicameralism, the Body approved the proposal for a bicameral legislature.

[127] II Constitutional Commission Record 434, dated 30, 1986.

[128] II Constitutional Commission Record, Journal No. 102, dated October 7 and 8,1987.

[129] III Constitutional Commission Record, Journal No. 103 dated October 9, 1986.

[130] V Constitutional Commission Record, Journal No. 109 dated October 15, 1986.

[131] *List of Former and Incumbent JBC Chairpersons, Ex Officio and Regular Members, Ex Officio Secretaries, Consultants and Officers (from 1987 to date)*, JUDICIAL AND BAR COUNCIL, <http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-officials> (Last accessed July 25, 2017).

WIGBERTO E. TAÑADA	2 March 1988 to 21 May 1990
+RAUL S. ROCO	30 September 1992 to 3 March 1993
ALBERTO G. ROMULO	14 April 1993 to 1 August 1995
+MARCELO B. FERNAN	2 August 1995 to 31 December 1996
+RAUL S. ROCO	1 January 1997 to 30 July 1998
+RENATO L. CAYETANO	31 July 1998 to 31 January 2000
AQUILINO Q. PIMENTEL, JR.	1 February 2000 to 29 November 2000
+MIRIAM D. SANTIAGO	10 January 2001 to 14 February 2001
+RENATO L. CAYETANO	16 May 2001 to 28 August 2001
FRANCIS N. PANGILINAN	29 August 2001 to August 2004 23 August 2004 to 30 June 2007 6 August 2007 to 23 November 2008
FRANCIS JOSEPH G. ESCUDERO	24 November 2008 to 30 June 2013
AQUILINO MARTIN DL. PIMENTEL III	23 July 2013 to 31 December 2013 1 July 2014 to 31 December 2014 1 July 2015 to 31 December 2015
LEILA M. DE LIMA	26 July 2016 to 19 September 2016
RICHARD J. GORDON	19 September 2016 to date

Ex Officio Members Representing the House of Representatives, Congress:

+ROGACIANO M. MERCADO	10 December 1987 to 23 February 1989
ISIDRO C. ZARRAGA	31 July 1989 to 12 August 1992
PABLO P. GARCIA	26 August 1992 to 8 March 1995
ISIDRO C. ZARRAGA	28 June 1995 to 30 June 1998
ALFREDO E. ABUEG	31 July 1998 to 29 November 2000
+HENRY P. LANOT	14 December 2000 to 30 June 2001
ALLAN PETER S.CAYETANO	8 August 2001 to 3 March 2003
MARCELINO C. LIBANAN	4 March 2003 to 8 August 2003
SIMEON A. DATUMANONG	9 August 2004 to 30 June 2007
MATIAS V. DEFENSOR, JR.	8 August 2007 to 30 June 2010
NIEL C. TUPAS, JR.	29 July 2010 to 30 June 2013 1 January 2014 to 30 June 2014

	1 January 2015 to 30 June 2015
REYNALDO V. UMALI	3 August 2016 to date

From the promulgation of the Constitution, Congress already recognized that "a representative of Congress" can only mean one (1) representative from each chamber. This interpretation was so prevalent that from 2001, each member from the Senate and the House of Representatives was given one (1) full vote.[132] This is the representation of Congress contemplated in the Constitution.

The current practice of alternate representation not only diminishes Congress' representation. It negates it.[133]

When a Senator sits in the Council, he or she can only represent the Senate. Likewise, when a Member of the House of Representatives sits in the Council, he or she can only represent the House of Representatives. Congress is not represented at all in this kind of arrangement.

The composition of the Judicial and Bar Council is representative of the constituencies and sectors affected by judicial appointments. Hence, practicing lawyers, prosecutors, the legal academe, members of the Bench, and the private sector are represented in the Council.

Members of Congress are the only officials within the Judicial and Bar Council that are elected. The rest of the officials are appointed by the President. Thus, their membership within the Council is the only genuine representation of the People. Their input in the possible candidates to the judiciary is as invaluable as that of a member of the legal academe or that of the private sector.

The antecedents of this case only serve to highlight the absurd results wrought by *Chavez*. In 2013, then Representative Tupas approached the Judicial and Bar Council to personally inform it of the agreed representation between the Senate and the House

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[132] See *Chavez v. Judicial and Bar Council*, 691 Phil. 173 (2012) [Per *J*. Mendoza, *En Banc*].

[133] *See* Dissenting Opinion of *J*. Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 506 (2013) [Per *J*. Mendoza, *En Banc*].

of Representatives. When told by Chief Justice Sereno that she had already received a letter from then Senate President Drilon informing the Council of the agreed representation, Representative Tupas replied that he was not aware of the letter:

> [Congressman Tupas] said that in view of the decision of the Supreme Court in April this year, the Speaker of the House of Representatives and the Senate President authorized him and Senator Pimentel, Chairperson of the Committee on Justice of the Senate to discuss the matter of representation to the JBC. They decided that representation would be on a rotation basis. For the first six (6) months, Senator Pimentel would be the one to represent both Houses of Congress; and for the next six (6) months, it would be [him]. In the absence of Senator Pimentel, Congressman Tupas will automatically attend the meetings, and vice versa. *He cautioned that since it is quite difficult for both Houses to come up with an agreement, it would not be good to assume that whenever the Senate President or the Speaker of the House writes the JBC, it is the decision of Congress. It should be a communication from both Houses.* He then requested that he be furnished with copies of all notices from the JBC even during the term of Senator Pimentel.
>
> Chief Justice Sereno clarified that she received the Letter of the Senate President Drilon stating, among other things, that the Speaker of the House and the Senate President agreed that Senator Pimentel would be the one to represent Congress until December 31, 2013, but that in his absence it would be Congressman Tupas. She assured both Congressman Tupas and Senator Pimentel that they will both receive copies of all notices and information that are being circulated among the JBC Members. She thanked Congressman Tupas for personally informing the Council of the agreement between the two Houses of Congress, thus giving a higher level of comfort than it had already given.
>
> *Congressman Tupas mentioned that he was not aware that the Senate President sent a letter. His assumption is that the information would come from both Houses, not just from the Senate.* He thus came to the meeting to personally inform the JBC of the agreement. He thanked the Chief Justice and asked for permission to leave.
>
> Senator Pimentel likewise requested that he also be furnished with copies of all documents during the rotation of Congressman Tupas.

He then requested for a three-minute break, as he had some matters to discuss with the Congressman before leaving.[134] (Emphasis supplied)

There is no office or officer in Congress that can represent both chambers. Representative Tupas recognized this difficulty and cautioned the Council that it should never presume that one (1) chamber can speak for the entire Congress. He proved this point when he told the Council that he was unaware of any letter sent by the Senate President.

Chavez forces one (1) chamber of Congress to arrogate upon itself all the powers, prerogatives, and privileges of the entire Congress in the Judicial and Bar Council. This is contrary to its bicameral nature.

When members of Congress sit in the Judicial and Bar Council, it may be with the instruction of their respective chambers, as Representative Tupas demonstrated in the July 23, 2013 En Banc Meeting. Their votes may likewise be constrained by resolutions and actions of the Congressional Committees they represent. They do not just represent themselves. They are "representatives of Congress" "*ex officio.*"[135]

Of the two (2) chambers in Congress, the House of Representatives represent constituencies on a more local scale. As pointed out by the Office of the Solicitor General, current voting patterns of the Council shows that a large number of appointees were for the lower courts:[136]

Court/Tribunal	Number of Appointees
Supreme Court	1
Court of Appeals	0
Legal Education Board	1
Sandiganbayan	1
Court of Tax Appeals	1
Ombudsman	0

[134] *Rollo*, p. 259.

[135] *See* Dissenting Opinion of *J.* Leonen in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 507 (2013) [Per *J.* Mendoza, En Banc].

[136] *Rollo*, p. 224.

Lower Courts	38

Chavez deprives Congress its opportunity to fully represent its constituencies, whether at the national or at the local level.

The purported reasons for having only one (1) representative of Congress to the Council are illusory.

Chavez stated that Congress should be represented in the Council by only one (1) member "not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government."[137]

Within the Council, the Executive is represented by the Secretary of Justice, considered as the alter ego of the President. The Judiciary is represented by the Chief Justice. Congress, however, operates through a Senate and a House of Representatives. Two (2) separate and distinct chambers cannot be represented by a single individual.

Chavez also implied that the framers intended for the Council's membership to be seven (7), not eight (8).

Article VIII, Section 8(1), however, does not provide a numerical count for its membership unlike in other the provisions of the Constitution.[138] Increasing the Council's membership to eight (8) would not violate the provisions of the Constitution.

Chavez also insisted that the Council should have an odd-number representation so that one (1) member could function as a tie-breaker.

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[137] *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 491 (2013) [Per *J*. Mendoza, *En Banc*].

[138] *See* the following constitutional provisions:

> Article VI
>
> . . . . . .
>
> Section 2. The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.
>
> Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law[.]

Judicial nominees, however, are not decided by a "yes" or "no" vote. The Council submits to the President a list of at

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. . . . . .

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be[.]

Section 18. There shall be a Commission on Appointments consisting of the President of the Senate, as *ex officio* Chairman, twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein.

. . . . . .

Article VIII

. . . . . .

Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en bane or in its discretion, in divisions of three, five, or seven Members . . .

Article IX

. . . . . .

B. The Civil Service Commission

Section 1. (1) The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners

. . . . . .

C. The Commission on Elections

Section 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners . . .

D. Commission on Audit

Section 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners

. . . . . .

Article XI

. . . . . .

Section 11. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

least three (3) potential nominees who garnered a plurality of the votes. Some nominees may even have the same number of votes, and the Council will still include all of those names in the shortlist.

The shortlist dated December 2, 2016 for the vacancy of Associate Justice Perez contained the following names:[139]

1. REYES, Jose Jr. C.	-	7 votes
2. BRUSELAS, Apolinario Jr. D.	-	5 votes
3. DIMAAMPAO, Japar B.	-	5 votes
4. MARTIRES, Samuel R.	-	5 votes
5. REYES, Andres Jr. B.	-	4 votes

The shortlist dated December 9, 2016 for the vacancy of Associate Justice Brion contained the following names:[140]

1. CARANDANG, Rosmari D.	-	6 votes
2. BRUSELAS, Apolinario Jr. D.	-	5 votes
3. REYES, Jose, Jr. C.	-	5 votes
4. DIMAAMPAO, Japar B.	-	4 votes
5. LAZARO-JAVIER, Amy C.	-	4 votes
6. TIJAM, Noel G.	-	4 votes
7. VENTURA-JIMENO, Rita Linda S.	-	4 votes

As demonstrated, no tie-breaker was needed in the preparation of the shortlist. Insisting that the composition of the Council should be an odd number is unnecessary. The Council will still be able to discharge its functions regardless of whether it is composed of seven (7) or eight (8) members.

Article XIII

. . . . . .

Section 17 . . .

(2) The Commission [on Human Rights] shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar.

[139] *Shortlist of Nominees dated December 2, 2016*, JUDICIAL AND BAR COUNCIL, <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Perez_12-2-16.pdf> (Last accessed July 25, 2017).

[140] *Shortlist of Nominees dated December 9, 2016*, JUDICIAL AND BAR COUNCIL, <http://jbc.judiciary.gov.ph/announcements/2016/Shortlist_SC-Brion_12-9-16.pdf> (Last accessed July 25, 2017).

V

Respondent Judicial and Bar Council, however, did not commit grave abuse of discretion when it adopted the six (6)-month rotational representation arrangement.

Grave abuse of discretion is defined as:

> [S]uch capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction . . . , or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[141] (Citations omitted)

Respondent Judicial and Bar Council was merely implementing a prior decision of this Court when it refused to count petitioner's votes. A relevant portion of the *Chavez*'s, fallo states:

> The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8 (1), Article VIII of the 1987 Constitution.[142]

The method of reconstitution was left to the discretion of the Judicial and Bar Council, in recognition of its status as an independent constitutional body. The Council, in turn, implemented *Chavez* by requiring that Congress provide it with only one (1) representative. In the July 23, 2013 En Banc Meeting, Representative Tupas relayed the instructions of the House of Representatives. Then Senate President Drilon sent the instructions of the Senate through a letter to the Chief Justice. Both the Senate and the House of Representatives did not offer any other type of representation that may have been agreed

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[141] *Alafriz v. Nable*, 72 Phil. 278, 280 (1941) [Per *J*. Moran, First Division] citing *Abad Santos vs. Province of Tarlac*, 67 Phil. 480 (1939) [Per *J*. Moran, *En Banc*] and *Tavera-Lima, Inc. vs. Nable*, 61 Phil. 340 (1939) [Per *J*. Laurel, *En Banc*].

[142] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 209 (2012) [Per *J*. Mendoza, *En Banc*].

upon. The Council, therefore, was merely complying with the directive in *Chavez*. In *De Castro v. Judicial and Bar Council*:[143]

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[144]

These events, however, highlight the inevitable difficulty in implementing *Chavez's* interpretation of Article VIII, Section 8(1). There is no one (1) office in Congress that could provide the Council with one (1) representative. The Council has no authority to order Congress to jointly convene for the determination of its sole representative. Thus, the Council would only be able to implement what is practicable, that is, whatever arrangement the Congressional representatives may have agreed upon. Considering that the Congressional representatives have not yet manifested to the Council that it was considering another type of arrangement, the Council could not have been faulted for refusing to count petitioner's votes at a time when Senate was representing Congress in the Council.

The Office of the Solicitor General likewise requests that this Court take up the matter of rotational representation in the review of the Council's rules in *Aguinaldo v. Judicial and Bar Council*.[145]

In *Aguinaldo*, the new rules and practices of the Judicial and Bar Council were docketed as a separate administrative matter to be discussed at a future time.[146]

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[143] 632 Phil. 657 (2010) [Per *J*. Bersamin, *En Banc*].

[144] *Id*. at 686 *citing Caltex (Phil.), Inc. v. Palomar*, 124 Phil. 763 (1966) [Per *J*. Castro, *En Banc*].

[145] G.R. No. 224302, November 29, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/224302.pdf> [Per *J*. Leonardo-De Castro, *En Banc*].

[146] *Id*. at 40.

This case, however, is a matter of constitutional interpretation. There is, thus, no need to direct the Judicial and Bar Council to review its own rules to allow for the interpretation of this constitutional provision.

VI

The Judicial and Bar Council could have been compelled by a writ of mandamus to count petitioner's votes in the En Banc sessions of December 2 and 9, 2016.

Mandamus is provided for under Rule 65, Section 3 of the Rules of Court:

> Section 3. Petition for Mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Mandamus may issue to compel the performance of a ministerial duty. It cannot be issued to compel the performance of a discretionary act. In *Metro Manila Development Authority v. Concerned Residents of Manila Bay*:[147]

> Generally, the writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct

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[147] 595 Phil. 305 (2008) [Per *J.* Velasco, *En Banc*].

the exercise of judgment or discretion one way or the other.[148] (Citations omitted)

The difference between a discretionary act and a ministerial act is settled:

> The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[149] (Citation omitted)

The determination of the qualifications and fitness of judicial applicants is discretionary on the part of the Judicial and Bar Council.[150] A writ of mandamus cannot be issued to compel the council to withdraw a list originally submitted and to add other nominees that have not previously qualified.[151]

De Castro v. Judicial and Bar Council,[152] however, states that a writ of mandamus may be issued to compel the Council to comply with its constitutional mandate to submit a list of nominees to the President before the 90-day period to appoint:

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[148] *Id*. at 326 citing *Angchangco, Jr. v. Ombudsman*, 335 Phil. 766 (1997) [Per *J*. Melo, Third Division]; *BLACK'S LAW DICTIONARY* (8th ed., 2004); *Lamb v. Phipps*, 22 Phil. 456, 490 (1912) [Per *J*. Johnson, First Division].

[149] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 706-707 (2010) [Per *J*. Bersamin, *En Banc*] citing *Espiridion v. Court of Appeals*, 523 Phil. 664 (2006) [Per *J*. Corona, Second Division].

[150] *See* Dissenting Opinion of *J*. Leonen in *Jardeleza v. Judicial and Bar Council*, 741 Phil. 460, 641 (2014) [Per *J*. Mendoza, *En Banc*].

[151] *Id*.

[152] 629 Phil. 629 (2010) [Per *J*. Bersamin, *En Banc*].

The duty of the JBC to submit a list of nominees before the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for mandamus herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty. For mandamus to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.[153] (Citation omitted)

The Judicial and Bar Council has the ministerial duty to count the votes of *all* its members. Petitioner, as the Chair of the House of Representatives Committee on Justice, should be considered a regular ex officio member of the Council, and his votes in the December 2 and 9, 2016 En Banc Meetings should have been counted. This relief, however, has already become moot in light of the recent appointments to this Court. In future deliberations, however, the Judicial and Bar Council should have the ministerial duty to separately count the votes of both Congressional representatives in the Council.

Accordingly, I vote to **GRANT** the Petition. The doctrine in *Chavez v. Judicial and Bar Council*[154] must be **ABANDONED**and the Judicial and Bar Council must be **DIRECTED** to separately count the votes of both Congressional representatives in the Council in its En Banc deliberations.

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[153] *Id*. at 706 citing *Nery v. Gamolo*, 446 Phil. 76 (2003) [Per *J*. Quisumbing, Second Division], *Musni v. Morales*, 373 Phil. 703 (1999) [Per *J*. Panganiban, Third Division].

[154] 691 Phil. 173 (2012) [Per *J*. Mendoza, *En Banc*] and 709 Phil. 478 (2013) [Per *J*. Mendoza, *En Banc*].

EN BANC

[G.R. No. 231671. July 25, 2017]

ALEXANDER A. PADILLA, RENE A.V. SAGUISAG, CHRISTIAN S. MONSOD, LORETTA ANN P. ROSALES, RENE B. GOROSPE, and SENATOR LEILA M. DE LIMA, *petitioners, vs.* **CONGRESS OF THE PHILIPPINES, consisting of the SENATE OF THE PHILIPPINES, as represented by Senate President Aquilino "Koko" Pimentel III, and the HOUSE OF REPRESENTATIVES, as represented by House Speaker Pantaleon D. Alvarez,** *respondents.*

[G.R. No. 231694. July 25, 2017]

FORMER SEN. WIGBERTO E. TAÑADA, BISHOP EMERITUS DEOGRACIAS S. IÑIGUEZ, BISHOP BRODERICK PABILLO, BISHOP ANTONIO R. TOBIAS, MO. ADELAIDA YGRUBAY, SHAMAH BULANGIS and CASSANDRA D. DELURIA, *petitioners, vs.* **CONGRESS OF THE PHILIPPINES, CONSISTING OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, AQUILINO "KOKO" PIMENTEL III, President, Senate of the Philippines, and PANTALEON D. ALVAREZ, Speaker, House of the Representatives,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; IT IS THE PREROGATIVE OF THE JUDICIARY TO DECLARE WHAT THE LAW IS.— The separation of powers doctrine is the backbone of our tripartite system of government. It is implicit in the manner that our Constitution lays out in separate and distinct Articles the powers and prerogatives of each co-equal branch of government. x x x Contrary to respondents' protestations, the Court's exercise of jurisdiction over these petitions cannot be deemed as an

unwarranted intrusion into the exclusive domain of the Legislature. Bearing in mind that the principal substantive issue presented in the cases at bar is the proper interpretation of Article VII, Section 18 of the 1987 Constitution, particularly regarding the duty of the Congress to vote jointly when the President declares martial law and/or suspends the privilege of the writ of *habeas corpus,* there can be no doubt that the Court may take jurisdiction over the petitions. It is the prerogative of the Judiciary to declare "what the law is. x x xThe Court is bound to respect the rules of the Congress, a co-equal and independent branch of government. Article VI, Section 16(3) of the 1987 Constitution states that "[e]ach House shall determine the rules of its proceedings." The provision has been traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption, and promulgation of its rules; and as such, the exercise of this power is generally exempt from judicial supervision and interference. Moreover, unless there is a clear showing by strong and convincing reasons that they conflict with the Constitution, "all legislative acts are clothed with an armor of constitutionality particularly resilient where such acts follow a long-settled and well-established practice by the Legislature." Nothing in this Decision should be presumed to give precedence to the rules of the Houses of the Congress over the provisions of the Constitution. This Court simply holds that since the Constitution does not regulate the manner by which the Congress may express its concurrence to a Presidential proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, the Houses of the Congress have the discretion to adopt rules of procedure as they may deem appropriate for that purpose.

2. ID.; ID.; ID.; POLITICAL QUESTION DOCTRINE; IN A LONG LINE OF CASES, THE SUPREME COURT HAS GIVEN A LIMITED APPLICATION TO THE POLITICAL QUESTION DOCTRINE; RATIONALE.— It is true that the Court continues to recognize questions of policy as a bar to its exercise of the power of judicial review. However, in a long line of cases, we have given a limited application to the political question doctrine. In *The Diocese of Bacolod v. Commission on Elections*, we emphasized that the Court's judicial power as conferred by the Constitution has been expanded to include "the duty of the courts of justice to settle actual controversies

involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Further, in past cases, the Court has exercised its power of judicial review noting that the requirement of interpreting the constitutional provision **involved the *legality* and not the *wisdom*** of a manner by which a constitutional duty or power was exercised. In *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, we explained the rationale behind the Court's expanded *certiorari* jurisdiction. Citing former Chief Justice and Constitutional Commissioner Roberto R. Concepcion in his sponsorship speech for Article VIII, Section 1 of the Constitution, we reiterated that the courts cannot hereafter evade the duty to settle matters, by claiming that such matters constitute a political question.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; *LOCUS STANDI*, DEFINED; A CITIZEN'S PERSONAL INTEREST IN A CASE CHALLENGING AN ALLEGEDLY UNCONSTITUTIONAL ACT LIES IN HIS INTEREST AND DUTY TO UPHOLD AND ENSURE THE PROPER EXECUTION OF THE LAW.— The Court has consistently held that *locus standi* is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed. x x x The Court has recognized that every citizen has the right, if not the duty, to interfere and see that a public offense be properly pursued and punished, and that a public grievance be remedied. When a citizen exercises this "public right" and challenges a supposedly illegal or unconstitutional executive or legislative action, he represents the public at large, thus, clothing him with the requisite *locus standi*. He may not sustain an injury as direct and adverse as compared to others but it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court in the vindication

of a public right. Verily, legal standing is grounded on the petitioner's personal interest in the controversy. A citizen who files a petition before the court asserting a public right satisfies the requirement of personal interest simply because the petitioner is a member of the general public upon which the right is vested. A citizen's personal interest in a case challenging an allegedly unconstitutional act lies in his interest and duty to uphold and ensure the proper execution of the law.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND *MANDAMUS*; REQUIREMENTS AS TO WHAT REMEDY MAY BE AVAILED OF; DISTINGUISHED.— *Mandamus* is a remedy granted by law when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use or enjoyment of a right or office to which such other is entitled. *Certiorari*, as a special civil action, is available only if: (1) it is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. With respect to the Court, however, *certiorari* is broader in scope and reach, and it may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board, or officer exercising judicial, quasi-judicial, or ministerial functions, but also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, **even if the latter does not exercise judicial, quasi-judicial or ministerial functions**. x x x For the Court to exercise its power of judicial review and give due course to the petitions, it is sufficient that the petitioners set forth their material allegations to make out a *prima facie* case for *mandamus* or *certiorari*. Whether the petitioners are actually and ultimately entitled to the reliefs prayed for is exactly what is to be determined by the Court after careful consideration of the parties' pleadings and submissions.

5. ID.; RULES OF COURT; THE COURT MAY BRUSH ASIDE PROCEDURAL TECHNICALITIES AND, NONETHELESS,

EXERCISE ITS POWER OF JUDICIAL REVIEW IN CASES OF TRANSCENDENTAL IMPORTANCE; CASE AT BAR.— [I]t is an accepted doctrine that the Court may brush aside procedural technicalities and, nonetheless, exercise its power of judicial review in cases of transcendental importance. There are marked differences between the Chief Executive's military powers, including the power to declare martial law, as provided under the present Constitution, in comparison to that granted in the 1935 Constitution. Under the 1935 Constitution, such powers were seemingly limitless, unrestrained, and purely subject to the President's wisdom and discretion. At present, the Commander-in-Chief still possesses the power to suspend the privilege of the writ of *habeas corpus* and to proclaim martial law. However, these executive powers are now subject to the review of both the legislative and judicial branches. This check-and-balance mechanism was installed in the 1987 Constitution precisely to prevent potential abuses of these executive prerogatives. Inasmuch as the present petitions raise issues concerning the Congress' role in our government's system of checks and balances, these are matters of paramount public interest or issues of transcendental importance deserving the attention of the Court in view of their seriousness, novelty, and weight as precedents. x x x It cannot be gainsaid that there are compelling and weighty reasons for the Court to proceed with the resolution of these consolidated petitions on the merits. As explained in the preceding discussion, these cases involve a constitutional issue of transcendental significance and novelty. A definitive ruling from this Court is imperative not only to guide the Bench, the Bar, and the public but, more importantly, to clarify the parameters of congressional conduct required by the 1987 Constitution, in the event of a repetition of the factual precedents that gave rise to these cases.

6. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; THE CONGRESS IS NOT CONSTITUTIONALLY MANDATED TO CONVENE IN JOINT SESSION EXCEPT TO VOTE JOINTLY TO REVOKE THE PRESIDENT'S DECLARATION OR SUSPENSION.—** The Congress is not constitutionally mandated to convene in joint session except to vote jointly to revoke the President's declaration or suspension. By the language of Article VII, Section 18 of the 1987 Constitution, the Congress is only required to vote jointly to

revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. x x x Outside explicit constitutional limitations, the Commander-in-Chief clause in Article VII, Section 18 of the 1987 Constitution vests on the President, as Commander-in-Chief, absolute authority over the persons and actions of the members of the armed forces, in recognition that the President, as Chief Executive, has the general responsibility to promote public peace, and as Commander-in-Chief, the more specific duty to prevent and suppress rebellion and lawless violence. However, to safeguard against possible abuse by the President of the exercise of his power to proclaim martial law and/or suspend the privilege of the writ of *habeas corpus*, the 1987 Constitution, through the same provision, institutionalized checks and balances on the President's power through the two other co-equal and independent branches of government, *i.e.*, the Congress and the Judiciary. In particular, Article VII, Section 18 of the 1987 Constitution requires the President to submit a report to the Congress after his proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* and grants the Congress the power to revoke, as well as extend, the proclamation and/or suspension; and vests upon the Judiciary the power to review the sufficiency of the factual basis for such proclamation and/or suspension.

7. ID.; ID.; FOUR PROVISIONS OF THE CONSTITUTION SPECIFICALLY PERTAINING TO THE ROLE OF CONGRESS WHEN THE PRESIDENT PROCLAIMS MARTIAL LAW AND/OR SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*, ENUMERATED.— There are four provisions in Article VII, Section 18 of the 1987 Constitution specifically pertaining to the role of the Congress when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus*, *viz.*: a. Within forty-eight (48) hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress; b. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President; c. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by

the Congress, if the invasion or rebellion shall persist; and d. The Congress, if not in session, shall within twenty-four hours (24) following such proclamation or suspension, convene in accordance with its rules without need of call. There is no question herein that the first provision was complied with, as within forty-eight (48) hours from the issuance on May 23, 2017 by President Duterte of Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao, copies of President Duterte's Report relative to Proclamation No. 216 was transmitted to and received by the Senate and the House of Representatives on May 25, 2017.

8. STATUTORY CONSTRUCTION; STATUTES; A CARDINAL RULE IN STATUTORY CONSTRUCTION IS THAT WHEN THE LAW IS CLEAR AND FREE FROM ANY DOUBT OR AMBIGUITY, THERE IS NO ROOM FOR CONSTRUCTION OR INTERPRETATION; CASE AT BAR.— A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. According to the plain-meaning rule or *verba legis*, when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is expressed in the maxims *index animi sermo* or "speech is the index of intention[,]" and *verba legis non est recedendum* or "from the words of a statute there should be no departure." x x xThe provision in question is clear, plain, and unambiguous. In its literal and ordinary meaning, the provision grants the Congress the power to revoke the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* and prescribes how the Congress may exercise such power, *i.e.*, by a vote of at least a majority of all its Members, voting jointly, in a regular or special session. The use of the word "may" in the provision – such that "[t]he Congress x x x **may** revoke such proclamation or suspension x x x" – is to be construed as permissive and operating to confer discretion on the Congress on whether or not to revoke, but in order to revoke, the same provision sets the requirement that at least a majority of the Members of the Congress, voting jointly, favor revocation. x x x The provision in Article VII, Section 18 of the 1987 Constitution requiring the Congress to vote jointly

in a joint session is specifically for the purpose of revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. In the petitions at bar, the Senate and House of Representatives already separately adopted resolutions expressing support for President Duterte's Proclamation No. 216. Given the express support of both Houses of the Congress for Proclamation No. 216, and their already evident lack of intent to revoke the same, the provision in Article VII, Section 18 of the 1987 Constitution on revocation did not even come into operation and, therefore, there is no obligation on the part of the Congress to convene in joint session.

9. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; WRIT OF *MANDAMUS*; IT IS ESSENTIAL TO THE ISSUANCE OF A WRIT OF *MANDAMUS* THAT PETITIONER SHOULD HAVE A CLEAR LEGAL RIGHT TO THE THING DEMANDED AND IT MUST BE THE IMPERATIVE DUTY OF THE RESPONDENT TO PERFORM THE ACT REQUIRED.— It is essential to the issuance of a writ of *mandamus* that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. *Mandamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed. Although there are jurisprudential examples of the Court issuing a writ of *mandamus* to compel the fulfillment of legislative duty, we must distinguish the present controversy with those previous cases. In this particular instance, the Court has no authority to compel the Senate and the House of Representatives to convene in joint session absent a clear ministerial duty on its part to do so under the Constitution and in complete disregard of the separate actions already undertaken by both Houses on Proclamation No. 216, including their respective decisions to no longer hold a joint session, considering their respective resolutions **not to revoke** said Proclamation.

10. ID.; ID.; WRIT OF *CERTIORARI* DISTINGUISHED FROM WRIT OF *MANDAMUS*; *CERTIORARI* NOT PROPER IN CASE AT BAR.— [U]nder the Court's expanded jurisdiction, a petition for *certiorari* is a proper remedy to question the act

of any branch or instrumentality of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law. It bears to mention that to pray in one petition for the issuance of both a writ of *mandamus* and a writ of *certiorari* for the very same act – which, in the Tañada Petition, the non-convening by the two Houses of the Congress in joint session – is contradictory, as the former involves a mandatory duty which the government branch or instrumentality must perform without discretion, while the latter recognizes discretion on the part of the government branch or instrumentality but which was exercised arbitrarily or despotically. Nevertheless, if the Court is to adjudge the petition for *certiorari* alone, it still finds the same to be without merit. To reiterate, the two Houses of the Congress decided to no longer hold a joint session only after deliberations among their Members and putting the same to vote, in accordance with their respective rules of procedure. Premises considered, the Congress did not gravely abuse its discretion when it did not jointly convene upon the President's issuance of Proclamation No. 216 **prior to expressing its concurrence thereto**.

LEONEN, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; THE PRIMARY DUTY OF THE COURT IN INTERPRETING THE CONSTITUTION IS TO REASONABLY CONSTRUE ITS PROVISIONS UNDER CONTEMPORARY CONDITIONS SO THAT WHAT HAS BEEN RATIFIED BY THE SOVEREIGN PEOPLE IS GIVEN FULL EFFECT.— The interpretation of the Constitution based on textual primacy entails a review of the evolution of its provisions. This may involve a comparison between the current text and its counterpart in previous texts.

However, the interpretation of the Constitution may also include recourse to extrinsic aids to validate the meaning of the text when the latter is capable of multiple meanings. The primary duty of this Court in interpreting the Constitution is to reasonably construe its provisions under contemporary conditions so that what has been ratified by the sovereign people is given full effect. We review the history of the text and the corresponding jurisprudence then examine the possible readings taking all the provisions into consideration.

2. ID.; LEGISLATIVE DEPARTMENT; ALTHOUGH THE PREROGATIVE TO MAKE THE DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IS VESTED ON THE PRESIDENT, IT IS ULTIMATELY UP TO CONGRESS WHETHER TO REVOKE OR EXTEND IT.— Instead of wresting power from the President, the 1987 Constitution bestowed powers of review on both the legislature and the judiciary. The text of Article VII, Section 18 of the Constitution outlines a dynamic interaction between the three (3) branches of the government. It also delineates the important functions of each branch, which serves as a check-and-balance mechanism on executive prerogative. x x x Article VII, Section 18 of the 1987 Constitution and its historical underpinning direct the legislature and the judiciary not to grant full deference to the President's discretion when he chooses to declare martial law or suspend the privilege of the writ of habeas corpus. The two (2) other branches of the government were intended to play an active role to check any possible abuses that may be committed. As it now stands, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is no longer a power that exclusively pertains to the President. An important safeguard placed by the 1987 Constitution is the authority of Congress to revoke the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. Although the prerogative to make the declaration or suspension is vested on the President, it is ultimately up to Congress whether to revoke or extend it. x x x Unlike this Court, whose power of review is activated only upon the filing of an "appropriate proceeding filed by any citizen," Congress is not constrained by any condition precedent before it can act. Congress convenes automatically through a constitutional

mandate. Subject to the voting requirements under the Constitution, Congress can revoke the proclamation or suspension at any time, which the President cannot undo. It can also extend the proclamation or suspension upon the initiative of the President voting "in the same manner." In my view, moreover, Congress' scope of review under Article VII Section 18 is neither bound nor restricted by any legal standard except when it is arbitrary or unreasonable. Congress is given "a wider latitude in how it chooses to respond to the President's proclamation or suspension." The Court's power of review meanwhile is limited to a finding of the "sufficiency of the factual basis" or a violation of any of the fundamental rights or processes embedded in a specific provision of the Constitution.

APPEARANCES OF COUNSEL

Florin T. Hilbay, et al. for petitioners in G.R. No. 231671.
Hermilia Campos Banayat for petitioners in G.R. No. 231694.
The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

These consolidated petitions under consideration essentially assail the failure and/or refusal of respondent Congress of the Philippines (the Congress), composed of the Senate and the House of Representatives, to convene in joint session and therein deliberate on Proclamation No. 216 issued on May 23, 2017 by President Rodrigo Roa Duterte (President Duterte). Through Proclamation No. 216, President Duterte declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period not exceeding sixty (60) days effective from the date of the proclamation's issuance.

In the Petition for *Mandamus* of Alexander A. Padilla (Padilla), Rene A.V. Saguisag (Saguisag), Christian S. Monsod (Monsod), Loretta Ann P. Rosales (Rosales), Rene B. Gorospe (Gorospe), and Senator Leila M. De Lima (Senator De Lima), filed on

June 6, 2017 and docketed as G.R. No. 231671 (the Padilla Petition), petitioners seek a ruling from the Court directing the Congress to convene in joint session to deliberate on Presidential Proclamation No. 216, and to vote thereon.[1]

In the Petition for *Certiorari* and *Mandamus* of former Senator Wigberto E. Tañada (Tañada), Bishop Emeritus Deogracias Iñiguez (Bishop Iñiguez), Bishop Broderick Pabillo (Bishop Pabillo), Bishop Antonio Tobias (Bishop Tobias), Mo. Adelaida Ygrubay (Mo. Ygrubay), Shamah Bulangis (Bulangis), and Cassandra D. Deluria (Deluria), filed on June 7, 2017 and docketed as G.R. No. 231694 (the Tañada Petition), petitioners entreat the Court to: (a) declare the refusal of the Congress to convene in joint session for the purpose of considering Proclamation No. 216 to be in grave abuse of discretion amounting to a lack or excess of jurisdiction; and (b) issue a writ of *mandamus* directing the Congress to convene in joint session for the aforementioned purpose.[2]

Respondent Congress, represented by the Office of the Solicitor General (OSG), filed its *Consolidated Comment* on June 27, 2017. Respondents Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III (Senate President Pimentel), through the Office of the Senate Legal Counsel, separately filed their *Consolidated Comment (Ex Abudanti Cautela)* on June 29, 2017.

ANTECEDENT FACTS

On May 23, 2017, President Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the Mindanao group of islands on the grounds of rebellion and necessity of public safety pursuant to Article VII, Section 18 of the 1987 Constitution.

Within forty-eight (48) hours after the proclamation, or on May 25, 2017, and while the Congress was in session, President

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[1] *Rollo* (G.R. No. 231671), p. 22.

[2] *Rollo* (G.R. No. 231694), p. 27.

Duterte transmitted his "Report relative to Proclamation No. 216 dated 23 May 2017" (Report) to the Senate, through Senate President Pimentel, and the House of Representatives, through House Speaker Pantaleon D. Alvarez (House Speaker Alvarez).

According to President Duterte's Proclamation No. 216 and his Report to the Congress, the declaration of a state of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao ensued from the series of armed attacks, violent acts, and atrocities directed against civilians and government authorities, institutions, and establishments perpetrated by the Abu Sayyaf and Maute terrorist groups, in complicity with other local and foreign armed affiliates, who have pledged allegiance to the Islamic State of Iraq and Syria (ISIS), to sow lawless violence, terror, and political disorder over the said region for the ultimate purpose of establishing a DAESH *wilayah* or Islamic Province in Mindanao.

Representatives from the Executive Department, the military, and other security officials of the government were thereafter invited, on separate occasions, by the Senate and the House of Representatives for a conference briefing regarding the circumstances, details, and updates surrounding the President's proclamation and report.

On May 29, 2017, the briefing before the Senate was conducted, which lasted for about four (4) hours, by Secretary of National Defense Delfin N. Lorenza (Secretary Lorenzana), National Security Adviser and Director General of the National Security Council Hermogenes C. Esperon, Jr. (Secretary Esperon), and Chief of Staff of the Armed Forces of the Philippines (AFP) General Eduardo M. Año (General Año). The following day, May 30, 2017, the Senate deliberated on these proposed resolutions: (a) Proposed Senate (P.S.) Resolution No. 388,[3] which expressed support for President Duterte's

[3] Entitled "*Resolution Expressing the Sense of the Senate, Supporting Proclamation No. 216 dated May 23, 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao' and Finding No Cause to Revoke the Same*." (*Rollo* [G.R. No. 231671], p. 177).

Proclamation No. 216; and (b) P.S. Resolution No. 390,[4] which called for the convening in joint session of the Senate and the House of Representatives to deliberate on President Duterte's Proclamation No. 216.

P.S. Resolution No. 388 was approved, after receiving seventeen (17) affirmative votes as against five (5) negative votes, and was adopted as Senate Resolution No. 49[5] entitled "*Resolution Expressing the Sense of the Senate Not to Revoke, at this Time, Proclamation No. 216, Series of 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.*'"[6]

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[4] Entitled "*Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216 dated 23 May 2017 Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.*'" (*Rollo* [G.R. No. 231671], pp. 178-181).

[5] *Rollo* (G.R. No. 231671), pp. 182-183.

[6] The pertinent portions of the resolution reads:

WHEREAS, the 1987 Philippine Constitution, Article VII, Section 18, provides that:

"…in case of invasion or rebellion, when the public safety requires it, he (President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law...";

WHEREAS, President Rodrigo Roa Duterte issued Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the whole of Mindanao," on May 23, 2017 (the "Proclamation");

WHEREAS, pursuant to his duty under the Constitution, on May 25, 2017, and within forty-eight hours after the issuance of the Proclamation, President Duterte submitted to the Senate his report on the factual and legal basis of the Proclamation;

WHEREAS, on May 29, 2017, the Senators were briefed by the Department of National Defense (DND), the Armed Forces of the Philippines (AFP), and by the National Security Council (NSC) on the factual circumstances surrounding the Proclamation as well as the updates on the situation in Mindanao;

WHEREAS, on the basis of information received by the Senators, the Senate is convinced that President Duterte declared martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao because actual rebellion exists and that public safety requires it;

P.S. Resolution No. 390, on the other hand, garnered only nine (9) votes from the senators who were in favor of it as opposed to twelve (12) votes from the senators who were against its approval and adoption.[7]

On May 31, 2017, the House of Representatives, having previously constituted itself as a Committee of the Whole House,[8] was briefed by Executive Secretary Salvador C. Medialdea (Executive Secretary Medialdea), Secretary Lorenzana, and other security officials for about six (6) hours. After the closed-door briefing, the House of Representatives resumed its regular meeting and deliberated on House Resolution No. 1050 entitled *"Resolution Expressing the Full Support of the House of Representatives to President Rodrigo Duterte as it Finds No Reason to Revoke Proclamation No. 216, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'"*[9] The House

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WHEREAS, the Senate, at this time, agrees that there is no compelling reason to revoke Proclamation No. 216, series of 2017;

WHEREAS, the Proclamation does not suspend the operation of the Constitution, which among others, guarantees respect for human rights and guards against any abuse or violation thereof: Now, therefore, be it

Resolved, as it is hereby resolved, To express the sense of the Senate, that there is no compelling reason to revoke Proclamation No. 216, series of 2017, at this time.

[7] See excerpts from the deliberations of the Senate on P.S. Resolution No. 390 held on May 30, 2017, attached as Annex "7" of the *Consolidated Comment* (*Ex Abudanti Cautela*) of the Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III through the Office of the Senate Legal Counsel (*Rollo* [G.R. No. 231671], pp. 184-230.)

[8] The House of Representatives resolved to constitute itself as a Committee of the Whole House on May 29, 2017.

[9] *Rollo* (G.R. No. 231671), pp. 130-131. The full text of said resolution is reproduced here:

WHEREAS, Section 18, Article VII (Executive Department) of the 1987 Constitution states, in pertinent part:

"The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.

of Representatives proceeded to divide its members on the matter of approving said resolution through *viva voce* voting. The result shows that the members who were in favor of passing the subject resolution secured the majority vote.[10]

In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a Report in person or in writing to the Congress. x x x";

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao";

WHEREAS, on May 25, 2017, President Rodrigo Roa Duterte submitted a Report to the House of Representatives relative to Proclamation No. 216 stating, among others:

"x x x, after finding that lawless armed groups have taken up arms and committed public uprising against the duly constituted government and against the people of Mindanao, for the purpose of removing Mindanao – starting with the City of Marawi, Lanao del Sur – from its allegiance to the Government and its laws and depriving the Chief Executive of its powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole. x x x"

WHEREAS, on May 31, 2017, the House of Representatives constituted itself into a Committee of the Whole House to consider the Report of the President relative to Proclamation No. 216, and heard the briefing by the heads of departments of the Executive Department;

WHEREAS, during the said briefing and after interpellation, the Members of the House of Representatives determined the sufficiency of the factual basis for the issuance of Proclamation No. 216;

RESOLVED BY THE HOUSE OF REPRESENTATIVES, to express its full support to President Rodrigo Roa Duterte as it finds no reason to revoke Proclamation No. 216, entitled *"Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao."*

[10] *See* excerpts from the deliberations of the Committee of the Whole House on House Resolution No. 1050 held on May 31, 2017, attached as Annex "8" of the *Consolidated Comment* (*Ex Abudanti Cautela*) of the Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III through the Office of the Senate Legal Counsel. (*Rollo* [G.R. No. 231671], pp. 231-241.)

The House of Representatives also purportedly discussed the proposal calling for a joint session of the Congress to deliberate and vote on President Duterte's Proclamation No. 216. After the debates, however, the proposal was rejected.[11]

These series of events led to the filing of the present consolidated petitions.

THE PARTIES' ARGUMENTS

The Padilla Petition

Petitioners in G.R. No. 231671 raise the question of "[w]hether Congress is required to convene in joint session, deliberate, and vote jointly under Article VII, [Section] 18 of the Constitution" and submit the following arguments in support of their petition:

[I] THE PETITION SATISFIES THE REQUISITES FOR THE EXERCISE OF THE HONORABLE COURT'S POWER OF JUDICIAL REVIEW.

[i] THERE IS AN ACTUAL CASE OR CONTROVERSY.

[ii] PETITIONERS, AS PART OF THE PUBLIC AND AS TAXPAYERS, POSSESS LEGAL STANDING TO FILE THIS PETITION.

[iii] PETITIONER [DE LIMA], AS MEMBER OF CONGRESS, HAS LEGAL STANDING TO FILE THIS PETITION.

[iv] THE CASE AND THE ISSUE INVOLVED ARE RIPE FOR JUDICIAL DETERMINATION.

[II] THE PLAIN TEXT OF THE CONSTITUTION, SUPPORTED BY THE EXPRESS INTENT OF THE FRAMERS, AND CONFIRMED BY THE SUPREME COURT, REQUIRES THAT CONGRESS CONVENE IN JOINT SESSION TO DELIBERATE AND VOTE AS A SINGLE DELIBERATIVE BODY.

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[11] *Consolidated Comment* (*Ex Abudanti Cautela*) of the Senate of the Philippines and Senate President Aquilino "Koko" Pimentel III through the Office of the Senate Legal Counsel. (*Id.* at 140.)

[i] THE PLAIN TEXT OF THE CONSTITUTION REQUIRES THAT CONGRESS CONVENE IN JOINT SESSION.

[ii] THE EXPRESS INTENT OF THE FRAMERS IS FOR CONGRESS TO CONVENE IN JOINT SESSION TO DELIBERATE AND VOTE AS A SINGLE DELIBERATIVE BODY.

[iii] THE SUPREME COURT CONFIRMED IN *FORTUN v. GMA* THAT CONGRESS HAS THE "AUTOMATIC DUTY" TO CONVENE IN JOINT SESSION.

[iv] LEGISLATIVE PRECEDENT ALSO RECOGNIZES CONGRESS' DUTY TO CONVENE IN JOINT SESSION.

[III] THE REQUIREMENT TO ACT AS A SINGLE DELIBERATIVE BODY UNDER ARTICLE VII, [SECTION] 18 OF THE CONSTITUTION IS A MANDATORY, MINISTERIAL CONSTITUTIONAL DUTY OF CONGRESS, WHICH CAN BE COMPELLED BY *MANDAMUS*.[12]

Petitioners claim that there is an actual case or controversy in this instance and that their case is ripe for adjudication. According to petitioners, the resolutions separately passed by the Senate and the House of Representatives, which express support as well as the intent not to revoke President Duterte's Proclamation No. 216, injure their rights "to a proper [and] mandatory legislative review of the declaration of martial law" and that the continuing failure of the Congress to convene in joint session similarly causes a continuing injury to their rights.[13]

Petitioners also allege that, as citizens and taxpayers, they all have *locus standi* in their "assertion of a public right" which they have been deprived of when the Congress refused and/or failed to convene in joint session to deliberate on President Duterte's Proclamation No. 216. Senator De Lima adds that she, together with the other senators who voted in favor of the resolution to convene the Congress jointly, were even effectively denied the opportunity to perform their constitutionally-mandated

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[12] *Rollo* (G.R. No. 231671), pp. 8-10, 12, 15, 19-20.

[13] *Id*. at 8.

duty, under Article VII, Section 18 of the Constitution, to deliberate on the said proclamation of the President in a joint session of the Congress.[14]

On the propriety of resorting to the remedy of *mandamus*, petitioners posit that "the duty of Congress to convene in joint session upon the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* does not require the exercise of discretion." Such mandate upon the Congress is allegedly a purely ministerial act which can be compelled through a writ of *mandamus*.[15]

As for the substantive issue, it is the primary contention of petitioners that a plain reading of Article VII, Section 18 of the Constitution shows that the Congress is required to convene in joint session to review Proclamation No. 216 and vote as a single deliberative body. The performance of the constitutional obligation is allegedly mandatory, not discretionary.[16]

According to petitioners, the discretionary nature of the phrase "may revoke such proclamation or suspension" under Article VII, Section 18 of the Constitution allegedly pertain to the power of the Congress to revoke but not to its obligation to jointly convene and vote – which, they stress, is mandatory. To require the Congress to convene only when it exercises the power to revoke is purportedly absurd since the Congress, without convening in joint session, cannot know beforehand whether a majority vote in fact exists to effect a revocation.[17]

Petitioners claim that in *Fortun v. Macapagal-Arroyo*,[18] this Court described the "duty" of the Congress to convene in joint session as "automatic." The convening of the Congress in joint session when former President Gloria Macapagal-Arroyo

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[14] *Id*. at 8-9.

[15] *Id*. at 21.

[16] *Id.* at 12-13.

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

[18] 684 Phil. 526 (2012).

(President Macapagal-Arroyo) declared martial law and suspended the privilege of the writ of *habeas corpus* in Maguindanao was also a legislative precedent where the Congress clearly recognized its duty to convene in joint session.[19]

The mandate upon the Congress to convene jointly is allegedly intended by the 1986 Constitutional Commission (ConCom) to serve as a protection against potential abuses in the exercise of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus*. It is "a mechanism purposely designed by the Constitution to compel Congress to review the propriety of the President's action x x x [and] meant to contain martial law powers within a democratic framework for the preservation of democracy, prevention of abuses, and protection of the people."[20]

The Tañada Petition

The petitioners in G.R. No. 231694 chiefly opine that:

I. A PLAIN READING OF THE 1987 CONSTITUTION LEADS TO THE INDUBITABLE CONCLUSION THAT A JOINT SESSION OF CONGRESS TO REVIEW A DECLARATION OF MARTIAL LAW BY THE PRESIDENT IS MANDATORY.

II. FAILURE TO CONVENE A JOINT SESSION DEPRIVES LAWMAKERS OF A DELIBERATIVE AND INTERROGATORY PROCESS TO REVIEW MARTIAL LAW.

III. FAILURE TO CONVENE A JOINT SESSION DEPRIVES THE PUBLIC OF TRANSPARENT PROCEEDINGS WITHIN WHICH TO BE INFORMED OF THE FACTUAL BASES OF MARTIAL LAW AND THE INTENDED PARAMETERS OF ITS IMPLEMENTATION.

IV. THE FRAMERS OF THE CONSTITUTION INTENDED THAT A JOINT SESSION OF CONGRESS BE CONVENED

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[19] *Rollo* (G.R. No. 231671), pp. 19-20.

[20] *Id*. at 19.

IMMEDIATELY AFTER THE DECLARATION OF MARTIAL LAW.[21]

Similar to the contentions in the Padilla Petition, petitioners maintain that they have sufficiently shown all the essential requisites in order for this Court to exercise its power of judicial review, in that: (1) an actual case or controversy exists; (2) they possess the standing to file this case; (3) the constitutionality of a governmental act has been raised at the earliest possible opportunity; and (4) the constitutionality of the said act is the very *lis mota* of the petition.

According to petitioners, there is an actual case or controversy because the failure and/or refusal of the Congress to convene jointly deprived legislators of a venue within which to raise a motion for revocation (or even extension) of President Duterte's Proclamation No. 216 and the public of an opportunity to be properly informed as to the bases and particulars thereof.[22]

Petitioners likewise claim to have legal standing to sue as citizens and taxpayers. Nonetheless, they submit that the present case calls for the Court's liberality in the appreciation of their *locus standi* given the fact that their petition presents "a question of first impression – one of paramount importance to the future of our democracy – as well as the extraordinary nature of Martial Law itself."[23]

Petitioners contend that the convening of the Congress in joint session, whenever the President declares martial law or suspends the privilege of the writ of *habeas corpus*, is a public right and duty mandated by the Constitution. The writ of *mandamus* is, thus, the "proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, especially when the public right involved is mandated by the Constitution."[24]

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[21] *Rollo* (G.R. No. 231694), pp. 18-21.

[22] *Id.* at 13.

[23] *Id.* at 16.

[24] *Id.* at 17.

For this group of petitioners, the Members of the Congress gravely abused their discretion for their refusal to convene in joint session, underscoring that "[w]hile a writ of *mandamus* will not generally lie from one branch of the government to a coordinate branch, or to compel the performance of a discretionary act, this admits of certain exceptions, such as in instances of gross abuse of discretion, manifest injustice, or palpable excess of authority, when there is no other plain, speedy and adequate remedy."[25]

As to the merits, petitioners assert that the convening of the Congress in joint session after the declaration of martial law is mandatory under Article VII, Section 18 of the Constitution, whether or not the Congress is in session or there is intent to revoke. It is their theory that a joint session should be a deliberative process in which, after debate and discussion, legislators can come to an informed decision as to the factual and legal bases for the declaration of martial law. Moreover, "legislators who wish to revoke the martial law proclamation should have the right to put that vote on historical record in joint session – and, in like manner, the public should have the right to know the position of their legislators with respect to this matter of the highest national interest."[26]

Petitioners add that a public, transparent, and deliberative process is purportedly necessary to allay the people's fears against "executive overreach." This concern allegedly cannot be addressed by briefings in executive sessions given by representatives of the Executive Branch to both Houses of the Congress.[27]

Petitioners further postulate that, based on the deliberations of the Members of the ConCom, the phrase "voting jointly" under Article VII, Section 18 was intended to mean that a joint session is a procedural requirement, necessary for the Congress

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[25] *Id*.

[26] *Id*. at 20.

[27] *Id*. at 21.

to decide whether to revoke, affirm, or even extend the declaration of martial law.[28]

Consolidation of Respondents' Comments

Respondents assert firmly that there is no mandatory duty on their part to "vote jointly," except in cases of revocation or extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*.[29] In the absence of such duty, the non-convening of the Congress in joint session does not pose any actual case or controversy that may be the subject of judicial review.[30] Additionally, respondents argue that the petitions raise a political question over which the Court has no jurisdiction.

Petitioners' avowal that they are citizens and taxpayers is allegedly inadequate to clothe them with *locus standi*. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi*. Petitioners must show that they have a direct and personal interest in the Congress' failure to convene in joint session, which they failed to present herein. A taxpayer's suit is likewise proper only when there is an exercise of the spending or taxing power of the Congress. However, in these cases, the funds used in the implementation of martial law in Mindanao are taken from those funds already appropriated by the Congress. Senator De Lima's averment of her *locus standi* as an incumbent member of the legislature similarly lacks merit. Insofar as the powers of the Congress are not impaired, there is no prejudice to each Member thereof; and even assuming *arguendo* that the authority of the Congress is indeed compromised, Senator De Lima still does not have standing to file the present petition for *mandamus* because it is not shown that she has been allowed to participate in the Senate sessions during her incarceration. She cannot, therefore,

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[28] *Id*. at 25.

[29] *Id*. at 224-225, 279.

[30] *Id*. at 211.

claim that she has suffered any direct injury from the non-convening of the Congress in joint session.[31]

Respondents further contend that the constitutional right to information, as enshrined under Article III, Section 7 of the Constitution, is not absolute. Matters affecting national security are considered as a valid exception to the right to information of the public. For this reason, the petitioners' and the public's right to participate in the deliberations of the Congress regarding the factual basis of a martial law declaration may be restricted in the interest of national security and public safety.[32]

Respondents allege that petitioners failed to present an appropriate case for *mandamus* to lie. *Mandamus* will only issue when the act to be compelled is a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust, or station.[33]

According to respondents, it is erroneous to assert that it is their ministerial duty to convene in joint session whenever martial law is proclaimed or the privilege of the writ of *habeas corpus* is suspended in the absence of a clear and specific constitutional or legal provision. In fact, Article VII, Section 18 does not use the words "joint session" at all, much less impose the convening of such joint session upon the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. What the Constitution requires is joint voting when the action of the Congress is to revoke or extend the proclamation or suspension.[34]

Indeed, prior concurrence of the Congress is not constitutionally required for the effectivity of the proclamation or suspension. Quoting from the deliberations of the framers

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[31] *Id*. at 212-214.

[32] *Id* at 236-240.

[33] *Id*. at 217, citing *Pacheco v. Court of Appeals*, 389 Phil. 200, 203 (2000).

[34] *Id*. at 228.

of the Constitution pertaining to Article VII, Section 18, the Congress points out that it was the intention of the said framers to grant the President the power to declare martial law or suspend the privilege of the writ of *habeas corpus* for a period not exceeding sixty (60) days without the concurrence of the Congress. There is absolutely nothing under the Constitution that mandates the Congress to convene in joint session when their intention is merely to discuss, debate, and/or review the factual and legal basis for the proclamation. That is why the phrase "voting jointly" is limited only in case the Congress intends to revoke the proclamation.[35] In a situation where the Congress is not in session, the Constitution simply provides that the Congress must convene in accordance with its rules but does not state that it must convene in joint session. Respondents further refer to the proper procedure for the holding of joint sessions.

Respondents brush aside as mere *obiter dictum* the Court's pronouncement in the *Fortun* case that it is the duty of the Congress to convene upon the declaration of martial law. That whether or not the Congress should convene in joint session in instances where it is not revoking the proclamation was not an issue in that case. Moreover, the factual circumstances in the *Fortun* case are entirely different from the present cases. The Congress then issued a concurrent resolution calling for the convening of a joint session as the intention – at least as far as the Senate was concerned – was to revoke the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Maguindanao. The *Fortun* case then cannot be considered a legislative precedent of an "automatic convening of a joint session by the Congress upon the President's proclamation of martial law."[36]

Respondents argue that the remedy of *certiorari* is likewise unavailing. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a

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[35] *Id.* at 230-231.

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

positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[37] The Congress has the duty to convene and vote jointly only in two (2) instances, as respondents have already explained. The Congress had even issued their respective resolutions expressing their support to, as well as their intent not to revoke, President Duterte's Proclamation No. 216. There then can be no evasion of a positive duty or a virtual refusal to perform a duty on the part of the Congress if there is no duty to begin with.[38]

Respondents respectfully remind the Court to uphold the "constitutional demarcation of the three fundamental powers of government."[39] The Court may not intervene in the internal affairs of the Legislature and it is not within the province of the courts to direct the Congress how to do its work. Respondents stress that this Court cannot direct the Congress to convene in joint session without violating the basic principle of the separation of powers.[40]

Subsequent Events

On July 14, 2017, petitioners in G.R. No. 231671, the Padilla Petition, filed a Manifestation, calling the attention of the Court to the imminent expiration of the sixty (60)-day period of validity of Proclamation No. 216 on July 22, 2017. Despite the lapse of said sixty (60)-day period, petitioners exhort the Court to still resolve the instant cases for the guidance of the Congress, State actors, and all Filipinos.

On July 22, 2017, the Congress convened in joint session and, with two hundred sixty-one (261) votes in favor versus

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[37] *Id*. at 222, citing *Unilever Philippines v. Tan*, 725 Phil. 486, 493-494 (2014).

[38] *Id*.

[39] *Id*. at 223, citing *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008).

[40] *Id*. at 223, 266-267.

eighteen (18) votes against, overwhelmingly approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao until December 31, 2017.

STATEMENT OF THE ISSUES

After a meticulous consideration of the parties' submissions, we synthesize them into the following fundamental issues:

I. Whether or not the Court has jurisdiction over the subject matter of these consolidated petitions;

II. Whether or not the petitions satisfy the requisites for the Court's exercise of its power of judicial review;

III. Whether or not the Congress has the mandatory duty to convene jointly upon the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* under Article VII, Section 18 of the 1987 Constitution; and

IV. Whether or not a writ of *mandamus* or *certiorari* may be issued in the present cases.

THE COURT'S RULING

The Court's jurisdiction over these consolidated petitions

The principle of separation of powers

The separation of powers doctrine is the backbone of our tripartite system of government. It is implicit in the manner that our Constitution lays out in separate and distinct Articles the powers and prerogatives of each co-equal branch of government. In *Belgica v. Ochoa*,[41] this Court had the opportunity to restate:

> The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in *Angara v. Electoral Commission*,

[41] 721 Phil. 416, 534-535 (2013).

it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government." To the legislative branch of government, through Congress, belongs the power to make laws; to the executive branch of government, through the President, belongs the power to enforce laws; and **to the judicial branch of government, through the Court, belongs the power to interpret laws.** Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere." Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. **To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates.** Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others. (Emphases supplied, citations omitted.)

Contrary to respondents' protestations, the Court's exercise of jurisdiction over these petitions cannot be deemed as an unwarranted intrusion into the exclusive domain of the Legislature. Bearing in mind that the principal substantive issue presented in the cases at bar is the proper interpretation of Article VII, Section 18 of the 1987 Constitution, particularly regarding the duty of the Congress to vote jointly when the President declares martial law and/or suspends the privilege of the writ of *habeas corpus,* there can be no doubt that the Court may take jurisdiction over the petitions. It is the prerogative of the Judiciary to declare "what the law is."[42] It is worth repeating here that:

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[42] See *Lozano v. Nograles,* 607 Phil. 334, 340 (2009), citing *Marbury v. Madison,* 1 Cranch 137, 2L. Ed. 60 [1803].

[W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, **but only asserts the solemn and sacred obligation assigned to it by the Constitution** to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[43] (Emphases supplied.)

Political question doctrine

Corollary to respondents' invocation of the principle of separation of powers, they argue that these petitions involve a political question in which the Court may not interfere. It is true that the Court continues to recognize questions of policy as a bar to its exercise of the power of judicial review.[44] However, in a long line of cases,[45] we have given a limited application to the political question doctrine.

In *The Diocese of Bacolod v. Commission on Elections*,[46] we emphasized that the Court's judicial power as conferred by the Constitution has been expanded to include "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Further, in past cases, the Court has exercised its power of judicial review noting that the requirement of interpreting the constitutional provision **involved the *legality* and not the**

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[43] *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936).

[44] A recent example is *Ocampo v. Enriquez,* G.R. No. 225973, November 8, 2016.

[45] *Marcos v. Manglapus*, 258 Phil. 479, 506-507 (1989); *Bengzon, Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 840 (1991); *Daza v. Singson*, 259 Phil. 980, 983 (1983); *Francisco, Jr. v. House of Representatives,* 460 Phil. 830, 904 (2003).

[46] 751 Phil. 301, 340 (2015), citing Chief Justice Reynato Puno's separate opinion in *Francisco, Jr. v. House of Representatives, id*.

wisdom of a manner by which a constitutional duty or power was exercised.[47]

In *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*,[48] we explained the rationale behind the Court's expanded *certiorari* jurisdiction. Citing former Chief Justice and Constitutional Commissioner Roberto R. Concepcion in his sponsorship speech for Article VIII, Section 1 of the Constitution, we reiterated that the courts cannot hereafter evade the duty to settle matters, by claiming that such matters constitute a political question.

Existence of the requisites for judicial review

Petitioners' legal standing

Petitioners in G.R. No. 231671 allege that they are suing in the following capacities: (1) Padilla as a member of the legal profession representing victims of human rights violations, and a taxpayer; (2) Saguisag as a human rights lawyer, former member of the Philippine Senate, and a taxpayer; (3) Monsod as a framer of the Philippine Constitution and member of the 1986 ConCom, and a taxpayer; (4) Rosales as a victim of human rights violations committed under martial law declared by then President Ferdinand E. Marcos, and a taxpayer; (5) Gorospe as a lawyer and a taxpayer; and (6) Senator De Lima as an incumbent Member of the Philippine Senate, a human rights advocate, a former Secretary of Justice, Chairperson of the Commission on Human Rights, and a taxpayer.

On the other hand, in G.R. No. 231694, while petitioner Tañada sues in his capacity as a Filipino citizen and former legislator, his co-petitioners (Bishop Iñiguez, Bishop Pabillo, Bishop Tobias, Mo. Ygrubay, Bulangis, and Deluria) all sue in their capacity as Filipino citizens.

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[47] *Id.* at 338-339.

[48] G.R. No. 207132, December 6, 2016.

Respondents insist that none of the petitioners have legal standing, whether as a citizen, taxpayer, or legislator, to file the present cases.

The Court has consistently held that *locus standi* is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed.[49]

Petitioners satisfy these standards.

The Court has recognized that every citizen has the right, if not the duty, to interfere and see that a public offense be properly pursued and punished, and that a public grievance be remedied.[50] When a citizen exercises this "public right" and challenges a supposedly illegal or unconstitutional executive or legislative action, he represents the public at large, thus, clothing him with the requisite *locus standi*. He may not sustain an injury as direct and adverse as compared to others but it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court in the vindication of a public right.[51]

Verily, legal standing is grounded on the petitioner's personal interest in the controversy. A citizen who files a petition before the court asserting a public right satisfies the requirement of personal interest simply because the petitioner is a member of the general public upon which the right is vested.[52] A citizen's personal interest in a case challenging an allegedly

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[49] *Purisima v. Lazatin*, G.R. No. 210588, November 29, 2016, citing *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

[50] *David v. Macapagal-Arroyo*, 522 Phil. 705, 756 (2006).

[51] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 680 (2010).

[52] *Legaspi v. Civil Service Commission*, 234 Phil. 521, 530 (1987).

unconstitutional act lies in his interest and duty to uphold and ensure the proper execution of the law.[53]

The present petitions have been filed by individuals asserting that the Senate and the House of Representatives have breached an allegedly constitutional duty to convene in joint session to deliberate on Presidential Proclamation No. 216. The citizen-petitioners' challenge of a purportedly unconstitutional act in violation of a public right, done in behalf of the general public, gives them legal standing.

On the other hand, Senator De Lima questions the Congress' failure to convene in joint session to deliberate on Proclamation No. 216, which, according to the petitioners, is the legislature's constitutional duty.

We have ruled that legislators have legal standing to ensure that the constitutional prerogatives, powers, and privileges of the Members of the Congress remain inviolate.[54] Thus, they are allowed to question the validity of any official action – or in these cases, inaction – which, **to their mind**, infringes on their prerogatives as legislators.[55]

Actual case or controversy

It is long established that the power of judicial review is limited to actual cases or controversies. There is an actual case or controversy where there is a conflict of legal rights, an assertion of opposite legal claims, where the contradiction of the rights can be interpreted and enforced on the basis of existing law and jurisprudence.[56]

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[53] *Tañada v. Tuvera*, 220 Phil. 422, 430 (1985).

[54] *Purisima v. Lazatin, supra* note 49, citing *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 439 (2010).

[55] *Biraogo v. The Philippine Truth Commission of 2010*, *id*., citing *Senate of the Philippines v. Ermita*, 522 Phil. 1, 29 (2006).

[56] *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *supra* note 39 at 481, citing *Didipio Earth Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun*, 520 Phil. 457, 471 (2006).

There are two conflicting claims presented before the Court: on the one hand, the petitioners' assertion that the Congress has the **mandatory** duty to convene in joint session to deliberate on Proclamation No. 216; and, on the other, the respondents' view that so convening in joint session is **discretionary** on the part of the Congress.

Petitioners seek relief through a writ of *mandamus* and/or *certiorari. Mandamus* is a remedy granted by law when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use or enjoyment of a right or office to which such other is entitled.[57] *Certiorari*, as a special civil action, is available only if: (1) it is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[58] With respect to the Court, however, *certiorari* is broader in scope and reach, and it may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board, or officer exercising judicial, quasi-judicial, or ministerial functions, but also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, **even if the latter does not exercise judicial, quasi-judicial or ministerial functions**.[59]

As the present petitions **allege** an omission on the part of the Congress that constitutes neglect of their constitutional duties, the petitions make a *prima facie* case for *mandamus*, and an actual case or controversy ripe for adjudication exists. When an act or omission of a branch of government is seriously alleged

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[57] RULES OF COURT, Rule 65, Sec. 3.

[58] *Cawad v. Abad,* 764 Phil. 705, 722 (2015).

[59] *Araullo v. Aquino III,* 737 Phil. 457, 531 (2014).

to have infringed the Constitution, it becomes not only the right but, in fact, the duty of the judiciary to settle the dispute.[60]

Respondents aver that the Congress cannot be compelled to do something that is discretionary on their part nor could they be guilty of grave abuse of discretion in the absence of any mandatory obligation to jointly convene on their part to affirm the President's proclamation of martial law. Thus, petitioners are not entitled to the reliefs prayed for in their petitions for *mandamus* and/or *certiorari*; consequently, no actual case or controversy exists.

There is no merit to respondents' position.

For the Court to exercise its power of judicial review and give due course to the petitions, it is sufficient that the petitioners set forth their material allegations to make out a *prima facie* case for *mandamus* or *certiorari*.[61] Whether the petitioners are actually and ultimately entitled to the reliefs prayed for is exactly what is to be determined by the Court after careful consideration of the parties' pleadings and submissions.

Liberality in cases of transcendental importance

In any case, it is an accepted doctrine that the Court may brush aside procedural technicalities and, nonetheless, exercise its power of judicial review in cases of transcendental importance.

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[60] *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *supra* note 39 at 486, citing *Tañada v. Angara*, 338 Phil. 546, 575 (1997).

[61] This is implied in *De Castro v. Judicial and Bar Council* (*supra* note 51 at 737), wherein we ruled: "On its face, this petition fails to present any justiciable controversy that can be the subject of a ruling from this Court. As a petition for *certiorari*, it must first show as a minimum requirement that the JBC is a tribunal, board or officer exercising judicial or quasi-judicial functions and is acting outside its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. A petition for *mandamus*, on the other hand, at the very least must show that a tribunal, corporation, board or officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty."

There are marked differences between the Chief Executive's military powers, including the power to declare martial law, as provided under the present Constitution, in comparison to that granted in the 1935 Constitution. Under the 1935 Constitution,[62] such powers were seemingly limitless, unrestrained, and purely subject to the President's wisdom and discretion.

At present, the Commander-in-Chief still possesses the power to suspend the privilege of the writ of *habeas corpus* and to proclaim martial law. However, these executive powers are now subject to the review of both the legislative and judicial branches. This check-and-balance mechanism was installed in the 1987 Constitution precisely to prevent potential abuses of these executive prerogatives.

Inasmuch as the present petitions raise issues concerning the Congress' role in our government's system of checks and balances, these are matters of paramount public interest or issues of transcendental importance deserving the attention of the Court in view of their seriousness, novelty, and weight as precedents.[63]

Mootness

The Court acknowledges that the main relief prayed for in the present petitions (*i.e.*, that the Congress be directed to convene in joint session and therein deliberate whether to affirm or revoke Proclamation No. 216) may arguably have been rendered moot by: (a) the lapse of the original sixty (60) days that the President's martial law declaration and suspension of the privilege of the

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[62] Article VII, Section 10(2) of the 1935 Constitution provides, "The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law."

[63] *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *supra* note 39 at 488, citing *Integrated Bar of the Phils. v. Hon. Zamora*, 392 Phil. 618 (2000).

writ of *habeas corpus* were effective under Proclamation No. 216; (b) the subsequent extension by the Congress of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* over the whole of Mindanao after convening in joint session on July 22, 2017; and (c) the Court's own decision in *Lagman v. Medialdea*,[64] wherein we ruled on the sufficiency of the factual bases for Proclamation No. 216 under the original period stated therein.

In *David v. Macapagal-Arroyo*, the jurisprudential rules regarding mootness were succinctly summarized, thus:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.
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> x x x x x x x x x
>
> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; ***second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.**[65] (Emphasis supplied, citations omitted.)

It cannot be gainsaid that there are compelling and weighty reasons for the Court to proceed with the resolution of these consolidated petitions on the merits. As explained in the preceding discussion, these cases involve a constitutional issue of transcendental significance and novelty. A definitive ruling from this Court is imperative not only to guide the Bench, the Bar, and the public but, more importantly, to clarify the parameters of congressional conduct required by the 1987 Constitution, in the event of a repetition of the factual precedents that gave rise to these cases.

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[64] G.R. Nos. 231658, 231771 and 231774, July 4, 2017.

[65] *Supra* note 50 at 753-754.

The duty of the Congress to vote jointly under Article VII, Section 18

We now come to the crux of the present petitions – the issue of whether or not under Article VII, Section 18 of the 1987 Constitution, it is mandatory for the Congress to automatically convene in joint session in the event that the President proclaims a state of martial law and/or suspends the privilege of the writ of *habeas corpus* in the Philippines or any part thereof.

The Court answers in the negative. The Congress is not constitutionally mandated to convene in joint session except to vote jointly to revoke the President's declaration or suspension.

By the language of Article VII, Section 18 of the 1987 Constitution, the Congress is only required to vote jointly to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*.

Article VII, Section 18 of the 1987 Constitution fully reads:

Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. **Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied.)

Outside explicit constitutional limitations, the Commander-in-Chief clause in Article VII, Section 18 of the 1987 Constitution vests on the President, as Commander-in-Chief, absolute authority over the persons and actions of the members of the armed forces,[66] in recognition that the President, as Chief Executive, has the general responsibility to promote public peace, and as Commander-in-Chief, the more specific duty to prevent and suppress rebellion and lawless violence.[67] However, to safeguard against possible abuse by the President of the exercise of his power to proclaim martial law and/or suspend the privilege of the writ of *habeas corpus*, the 1987 Constitution, through the same provision, institutionalized checks and balances on the President's power through the two other co-equal and

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[66] *B/Gen. Gudani v. Lt./Gen. Senga*, 530 Phil. 398, 421-422 (2006).

[67] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on the Ancestral Domain*, *supra* note 39 at 529.

independent branches of government, *i.e.*, the Congress and the Judiciary. In particular, Article VII, Section 18 of the 1987 Constitution requires the President to submit a report to the Congress after his proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* and grants the Congress the power to revoke, as well as extend, the proclamation and/or suspension; and vests upon the Judiciary the power to review the sufficiency of the factual basis for such proclamation and/or suspension.

There are four provisions in Article VII, Section 18 of the 1987 Constitution specifically pertaining to the role of the Congress when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus*, *viz.*:

a. Within forty-eight (48) hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress;

b. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President;

c. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist; and

d. The Congress, if not in session, shall within twenty-four hours (24) following such proclamation or suspension, convene in accordance with its rules without need of call.

There is no question herein that the first provision was complied with, as within forty-eight (48) hours from the issuance on May 23, 2017 by President Duterte of Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in Mindanao, copies of President Duterte's Report relative to Proclamation No. 216 was transmitted

to and received by the Senate and the House of Representatives on May 25, 2017.

The Court will not touch upon the third and fourth provisions as these concern factual circumstances which are not availing in the instant petitions. The petitions at bar involve the initial proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*, and not their extension; and the 17th Congress was still in session[68] when President Duterte issued Proclamation No. 216 on May 23, 2017.

It is the second provision that is under judicial scrutiny herein: "The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President."

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. According to the plain-meaning rule or *verba legis*, when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is expressed in the maxims *index animi sermo* or "speech is the index of intention[,]" and *verba legis non est recedendum* or "from the words of a statute there should be no departure."[69]

In *Funa v. Chairman Villar*,[70] the Court also applied the *verba legis* rule in constitutional construction, thus:

> The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.

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[68] The First Regular Session of the 17th Congress was from May 2 to June 2, 2017.

[69] *Bolos v. Bolos*, 648 Phil. 630, 637 (2010).

[70] 686 Phil. 571, 591-592 (2012).

The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself. If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed. *J.M. Tuason & Co., Inc. v. Land Tenure Administration* illustrates the *verbal legis* rule in this wise:

> We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the **words in which constitutional provisions are couched express the objective sought to be attained**. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much as possible should be understood in the sense they have in common use**. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum. (Emphases supplied.)

The provision in question is clear, plain, and unambiguous. In its literal and ordinary meaning, the provision grants the Congress the power to revoke the President's proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* and prescribes how the Congress may exercise such power, *i.e.*, by a vote of at least a majority of all its Members, voting jointly, in a regular or special session. The use of the word "may" in the provision – such that "[t]he Congress x x x **may** revoke such proclamation or suspension x x x" – is to be construed as permissive and operating to confer discretion on the Congress on whether or not to revoke,[71] but in order to revoke, the same provision sets the requirement that at least a majority of the Members of the Congress, voting jointly, favor revocation.

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[71] See *Office of the Ombudsman v. De Sahagun*, 584 Phil. 119, 127 (2008).

It is worthy to stress that the provision does not actually refer to a "joint session." While it may be conceded, subject to the discussions below, that the phrase "voting jointly" shall already be understood to mean that the joint voting will be done "in joint session," notwithstanding the absence of clear language in the Constitution,[72] still, the requirement that "[t]he Congress, **voting jointly**, by a vote of at least a majority of all its Members in regular or special session, x x x" explicitly applies only to the situation when the Congress revokes the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. Simply put, the provision only requires Congress to vote jointly on the revocation of the President's proclamation and/or suspension.

Hence, the plain language of the subject constitutional provision does not support the petitioners' argument that it is obligatory for the Congress to convene in joint session following the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, under all circumstances.

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[72] Compared to Article VI, Section 23(1) of the 1987 Constitution, which reads, "The Congress, by a vote of two-thirds of both Houses **in joint session assembled**, voting separately, shall have the sole power to declare the existence of a state of war." See also Article VII, Section 4, fourth paragraph, which states:

> The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives **in joint public session**, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The deliberations of the 1986 ConCom reveal the framers' specific intentions to (a) remove the requirement of prior concurrence of the Congress for the effectivity of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*; and (b) grant to the Congress the discretionary power to revoke the President's proclamation and/or suspension by a vote of at least a majority of its Members, voting jointly.

The Court recognized in *Civil Liberties Union v. The Executive Secretary*[73] that:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.

However, in the same Decision, the Court issued the following *caveat*:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons

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[73] 272 Phil. 147, 157 (1991).

for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. **We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof**.[74] (Emphasis supplied.)

As the Court established in its preceding discussion, the clear meaning of the relevant provision in Article VII, Section 18 of the 1987 Constitution is that the Congress is only required to vote jointly on the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. Based on the *Civil Liberties Union case*, there is already no need to look beyond the plain language of the provision and decipher the intent of the framers of the 1987 Constitution. Nonetheless, the deliberations on Article VII, Section 18 of the 1986 ConCom does not reveal a manifest intent of the framers to make it mandatory for the Congress to convene in joint session following the President's proclamation and/or suspension, so it could deliberate as a single body, regardless of whether its Members will concur in or revoke the President's proclamation and/or suspension.

What is evident in the deliberations of the 1986 ConCom were the framers' intentions to (a) remove the requirement of prior concurrence by the Congress for the effectivity of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*; and (b) grant to the Congress the discretionary power to revoke the President's proclamation and/or suspension by a vote of at least a majority of its Members, voting jointly.

As the Commander-in-Chief clause was initially drafted, the President's suspension of the privilege of the writ of *habeas corpus* required the prior concurrence of at least a majority of all the members of the Congress to be effective. The first line read, "The President shall be the commander-in-chief of all

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

the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion[;]" and the next line, "In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, **and, with the concurrence of at least a majority of all the members of the Congress,** suspend the privilege of the writ of *habeas corpus*."[75]

The Commissioners, however, extensively debated on whether or not there should be prior concurrence by the Congress, and the exchanges below present the considerations for both sides:

MR. NATIVIDAD. First and foremost, we agree with the Commissioner's thesis that **in the first imposition of martial law there is no need for concurrence of the majority of the Members of Congress** because the provision says "in case of actual invasion and rebellion." If there is actual invasion and rebellion, as Commissioner Crispino de Castro said, there is need for immediate response because there is an attack. Second, the fact of securing a concurrence may be impractical because the roads might be blocked or barricaded. They say that in case of rebellion, one cannot even take his car and go to the Congress, which is possible because the roads are blocked or barricaded. And maybe if the revolutionaries are smart, they would have an individual team for each and every Member of the Congress so he would not be able to respond to a call for a session. So the requirement of an initial concurrence of the majority of all the Members of the Congress in case of an invasion or rebellion might be impractical as I can see it.

Second, Section 15 states that the Congress may revoke the declaration or lift the suspension.

And third, the matter of declaring martial law is already a justiciable question and no longer a political one in that it is subject to judicial review at any point in time. So on that basis, I agree that there is no need for concurrence as a prerequisite to declare martial law or to suspend the privilege of the writ of *habeas corpus*. x x x

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[75] II RECORD, CONSTITUTIONAL COMMISSION 393-394 (July 29, 1986).

MR. SUAREZ. x x x

The Commissioner is suggesting that in connection with Section 15, we **delete the phrase "and, with the concurrence of at least a majority of all the Members of the Congress..."**

MR. PADILLA. **That is correct especially for the initial suspension of the privilege of the writ of *habeas corpus* or also the declaration of martial law.**

MR. SUAREZ. So in both instances, the Commissioner is suggesting that this would be **an exclusive prerogative of the President**?

MR. PADILLA. **At least initially, for a period of 60 days.** But even that period of 60 days may be shortened by the Congress or the Senate because the next sentence says that the Congress or the Senate may even revoke the proclamation.

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MR. MONSOD. x x x

We are back to Section 15, page 7, lines 1 and 2. I just want to reiterate my previous proposal to amend by deletion the phrase "and, with the concurrence of at least a majority of all the members of Congress."

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MR. SUAREZ. x x x

The Commissioner is proposing a very substantial amendment because this means that he is vesting exclusively unto the President the right to determine the factors which may lead to the declaration of martial law and the suspension of the writ of *habeas corpus*. I suppose he has strong and compelling reasons in seeking to delete this particular phrase. May we be informed of his good and substantial reasons?

MR. MONSOD. This situation arises in cases of invasion or rebellion. And in previous interpellations regarding this phrase, even during the discussions on the Bill of Rights, as I understand it, the interpretation is a situation of actual invasion or rebellion. In these situations, the President has to act quickly. Secondly, this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days, it automatically terminates. Thirdly, the right of the

judiciary to inquire into the sufficiency of the factual basis of the proclamation always exists, even during those first 60 days.

MR. SUAREZ. Given our traumatic experience during the past administration, if we give exclusive right to the President to determine these factors, especially the existence of an invasion or rebellion and the second factor of determining whether the public safety requires it or not, may I call the attention of the Gentleman to what happened to us during the past administration. Proclamation No. 1081 was issued by Ferdinand E. Marcos in his capacity as President of the Philippines by virtue of the powers vested upon him purportedly under Article VII, Section 10(2) of the Constitution, wherein he made this predicate under the "Whereas" provision.

> Whereas, the rebellion and armed action undertaken by these lawless elements of the Communists and other armed aggrupations organized to overthrow the Republic of the Philippines by armed violence and force have assumed the magnitude of an actual state of war against our people and the Republic of the Philippines.

And may I also call the attention of the Gentleman to General Order No. 3, also promulgated by Ferdinand E. Marcos, in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 wherein he said, among other things:

> Whereas, martial law having been declared because of wanton destruction of lives and properties, widespread lawlessness and anarchy and chaos and disorder now prevailing throughout the country, which condition has been brought about by groups of men who are actively engaged in a criminal conspiracy to seize political and state power in the Philippines in order to take over the government by force and violence, the extent of which has now assumed the proportion of an actual war against our people and the legitimate government...

And he gave all reasons in order to suspend the privilege of the writ of *habeas corpus* and declare martial law in our country without justifiable reason. Would the Gentleman still insist on the deletion of the phrase "and, with the concurrence of at least a majority of all the members of the Congress"?

MR. MONSOD. Yes, Madam President, in the case of Mr. Marcos he is undoubtedly an aberration in our history and national

consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards. **As I said, it is not really true, as the Gentleman has mentioned, that there is an exclusive right to determine the factual bases because the paragraph beginning on line 9 precisely tells us that the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis** of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within 30 days from its filing.

I believe that there are enough safeguards. The Constitution is supposed to balance the interests of the country. And here we are trying to balance the public interest in case of invasion or rebellion as against the rights of citizens. And I am saying that there are enough safeguards, unlike in 1972 when Mr. Marcos was able to do all those things mentioned.

MR. SUAREZ. Will that prevent a future President from doing what Mr. Marcos had done?

MR. MONSOD. There is nothing absolute in this world, and there may be another Marcos. What we are looking for are safeguards that are reasonable and, I believe, adequate at this point. **On the other hand, in case of invasion or rebellion, even during the first 60 days when the intention here is to protect the country in that situation, it would be unreasonable to ask that there should be a concurrence on the part of the Congress, which situation is automatically terminated at the end of such 60 days.**

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MR. SUAREZ. Would the Gentleman not feel more comfortable if we provide for a legislative check on this awesome power of the Chief Executive acting as Commander-in-Chief?

MR. MONSOD. I would be less comfortable if we have a presidency that cannot act under those conditions.

MR. SUAREZ. But he can act with the concurrence of the proper or appropriate authority.

MR. MONSOD. Yes. But when those situations arise, it is very unlikely that the concurrence of Congress would be available; and, secondly, the President will be able to act quickly in order to deal with the circumstances.

MR. SUAREZ. So, we would be subordinating actual circumstances to expediency.

MR. MONSOD. I do not believe it is expediency when one is trying to protect the country in the event of an invasion or a rebellion.

MR. SUAREZ. No. But in both instances, we would be seeking to protect not only the country but the rights of simple citizens. We have to balance these interests without sacrificing the security of the State.

MR. MONSOD. I agree with the Gentleman that is why in the Article on the Bill of Rights, which was approved on Third Reading, the safeguards and the protection of the citizens have been strengthened. And on line 21 of this paragraph, I endorsed the proposed amendment of Commissioner Padilla. We are saying that those who are arrested should be judicially charged within five days; otherwise, they shall be released. So, there are enough safeguards.

MR. SUAREZ. **These are safeguards after the declaration of martial law and after the suspension of the writ of *habeas corpus*.**

MR. MONSOD. That is true.[76] (Emphases supplied.)

Ultimately, twenty-eight (28) Commissioners voted to remove the requirement for prior concurrence by the Congress for the effectivity of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, against only twelve (12) Commissioners who voted to retain it.

As the result of the foregoing, the 1987 Constitution does not provide at all for the manner of determination and expression of concurrence (whether prior or subsequent) by the Congress in the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. In the instant cases, both Houses of the Congress separately passed resolutions, in accordance with their respective rules of procedure, expressing their support for President Duterte's Proclamation No. 216.

In contrast, being one of the constitutional safeguards against possible abuse by the President of his power to proclaim martial

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[76] *Id*. at 470-477.

law and/or suspend the privilege of the writ of *habeas corpus*, the 1987 Constitution explicitly provides for how the Congress may exercise its discretionary power to revoke the President's proclamation and/or suspension, that is, "voting jointly, by a vote of at least a majority of all its Members in regular or special session."

The ConCom deliberations on this particular provision substantially revolved around whether the two Houses will have to vote jointly or separately to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*; but as the Court reiterates, it is undisputedly for the express purpose of revoking the President's proclamation and/or suspension.

Based on the ConCom deliberations, pertinent portions of which are reproduced hereunder, the underlying reason for the requirement that the two Houses of the Congress will vote jointly is to avoid the possibility of a deadlock and to facilitate the process of revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*:

> MR. MONSOD. Madam President, I want to ask the Committee a clarifying question on line 4 of page 7 as to whether the meaning here is that the majority of all the Members of each House vote separately. Is that the intent of this phrase?
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> FR. BERNAS. We would like a little discussion on that because yesterday **we already removed the necessity for concurrence of Congress for the initial imposition of martial law.** If we require the Senate and the House of Representatives to vote separately for purposes of revoking the imposition of martial law, that will make it very difficult for Congress to revoke the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*. That is just thinking aloud. To balance the fact that the President acts unilaterally, then **the Congress voting as one body and not separately can revoke** the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*.
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> MR. MONSOD. In other words, voting jointly.

FR. BERNAS. Jointly, yes.

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MR. RODRIGO. May I comment on the statement made by Commissioner Bernas? I was a Member of the Senate for 12 years. Whenever a bicameral Congress votes, it is always separately.

For example, bills coming from the Lower House are voted upon by the Members of the House. Then they go up to the Senate and voted upon separately. Even on constitutional amendments, where Congress meets in joint session, the two Houses vote separately.

Otherwise, the Senate will be useless; it will be sort of absorbed by the House considering that the Members of the Senate are completely outnumbered by the Members of the House. So, I believe that whenever Congress acts, it must be the two Houses voting separately.

If the two Houses vote "jointly," it would mean mixing the 24 Senators with 250 Congressmen. This would result in the Senate being absorbed and controlled by the House. This violates the purpose of having a Senate.

FR. BERNAS. I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of the tremendous effect on the nation when the privilege of the writ of *habeas corpus* is suspended and then martial law is imposed. Since we have allowed the President to impose martial law and suspend the privilege of the writ of *habeas corpus* unilaterally, we should **make it a little more easy for Congress to reverse** such actions for the sake of protecting the rights of the people.

MR. RODRIGO. Maybe the way it can be done is to vest this function in just one of the Chambers – to the House alone or to the Senate alone. But to say, "by Congress," both House and Senate "voting" jointly is practically a vote by the House.

FR. BERNAS. I would be willing to say just the vote of the House.

MR. RODRIGO. That is less insulting to the Senate. However, there are other safeguards. For example, if, after 60 days the Congress does not act, the effectiveness of the declaration of martial law or the suspension of the privilege of the writ ceases. Furthermore, there is recourse to the Supreme Court.

FR. BERNAS. I quite realize that there is this recourse to the Supreme Court and there is a time limit, but at the same time because

of the extraordinary character of this event when martial law is imposed, I would like to make it easier for the representatives of the people to review this very significant action taken by the President.

MR. RODRIGO. Between the Senate being absorbed and controlled by the House numerically and the House voting alone, the lesser of two evils is the latter.

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MR. GUINGONA. x x x

In connection with the inquiry of Commissioner Monsod, and considering the statements made by Commissioner Rodrigo, I would like to say, in reply to Commissioner Bernas, that perhaps because of necessity, we might really have to break tradition. Perhaps it would be better to give **this function of revoking** the proclamation of martial law or the suspension of the writ or extending the same to the House of Representatives, instead of to the Congress. I feel that even the Senators would welcome this because they would feel frustrated by the imbalance in the number between the Senators and the Members of the House of Representatives.

Anyway, Madam President, we have precedents or similar cases. For example, under Section 24 of the committee report on the Legislative, appropriation, revenue or tariff bills, and bills authorizing increase of public debt are supposed to originate exclusively in the House of Representatives. Besides, we have always been saying that it is the Members of the House of Representatives who are mostly in touch with the people since they represent the various districts of our country.

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MR. MONSOD. I would prefer to have the vote of both Houses because this is a very serious question that must be fully discussed. By limiting it alone to the House of Representatives, then we lose the benefit of the advice and opinion of the Members of the Senate. I would prefer that they would be **in joint session**, but I would agree with Father Bernas that they should not be voting separately as part of the option. I think they should be voting jointly, so that, in effect, the Senators will have only one vote. But at least we have the benefit of their advice.

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MR. RODRIGO. I was the one who proposed that the two Houses vote separately because if they vote jointly, the Senators are absolutely outnumbered. It is insulting to the intelligence of the Senators to join a session where they know they are absolutely outnumbered. Remember that the Senators are elected at large by the whole country. The Senate is a separate Chamber. The Senators have a longer term than the Members of the House; they have a six-year term. They are a continuing Senate. Out of 24, twelve are elected every year. So, if they will participate at all, the Senate must vote separately. That is the practice everywhere where there are two chambers. But as I said, between having a joint session of the Senate and the House voting jointly where it is practically the House that will decide alone, the lesser of two evils is just to let the House decide alone instead of insulting the Senators by making them participate in a charade.

MR. REGALADO. May the Committee seek this clarification from Commissioner Rodrigo? **This voting is supposed to revoke the proclamation of martial law.** If the two Houses vote separately and a majority is obtained in the House of Representatives for the revocation of the proclamation of martial law but that same majority cannot be obtained in the Senate voting separately, what would be the situation?

MR. RODRIGO. Then the proclamation of martial law or the suspension continues for almost two months. After two months, it stops. Besides, there is recourse to the Supreme Court.

MR. REGALADO. Therefore, that arrangement would be very difficult for the legislative since they are voting separately and, for lack of majority in one of the Houses they are precluded from revoking that proclamation. They will just, therefore, have to wait until the lapse of 60 days.

MR. RODRIGO. It might be difficult, yes. But remember, we speak of the Members of Congress who are elected by the people. Let us not forget that the President is also elected by the people. Are we forgetting that the President is elected by the people? We seem to distrust all future Presidents just because one President destroyed our faith by his declaration of martial law. I think we are overreacting. Let us not judge all Presidents who would henceforth be elected by the Filipino people on the basis of the abuses made by that one President. Of course, we must be on guard; but let us not overreact.

Let me make my position clear. I am against the proposal to make the House and the Senate vote jointly. That is an insult to the Senate.

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MR. RODRIGO. Will the Gentleman yield to a question?

MR. MONSOD. Yes, Madam President.

MR. RODRIGO. So, in effect, if there is a **joint session** composed of 250 Members of the House plus 24 Members of the Senate, the total would be 274. The majority would be one-half plus one.

MR. MONSOD. So, 148 votes.

MR. RODRIGO. And the poor Senators would be absolutely absorbed and outnumbered by the 250 Members of the House. Is that it?

MR. MONSOD. Yes, that is one of the implications of the suggestion and the amendment is being made nonetheless because there is a higher objective or value which is **to prevent a deadlock** that would enable the President to continue the full 60 days in case one House revokes and the other House does not.

The proposal also allows the Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and their national vote.

MR. RODRIGO. So, the Senators will have the "quality votes" but Members of the House will have the "quantity votes." Is that it?

MR. MONSOD. The Gentleman is making an assumption that they will vote against each other. I believe that they will discuss, probably in joint session and vote on it; then the consensus will be clear.

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MR. NOLLEDO. Madam President, the purpose of the amendment is really to set forth a limitation because we have to avoid a stalemate. For example, the Lower House decides that the declaration of martial law should be revoked, and that later on, the Senate sitting separately decides that it should not be revoked. It becomes inevitable that martial law shall continue even if there should be no factual basis for it.

MR. OPLE. Madam President, if this amendment is adopted, we will be held responsible for a glaring inconsistency in the Constitution to a degree that it distorts the bicameral system that we have agreed to adopt. I reiterate: If there are deadlocks, it is the responsibility of the presidential leadership, together with the leaders of both Houses, to overcome them.[77] (Emphases supplied.)

When the matter was put to a vote, twenty-four (24) Commissioners voted for the two Houses of the Congress "voting jointly" in the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, and thirteen (13) Commissioners opted for the two Houses "voting separately."

Yet, there was another attempt to amend the provision by requiring just the House of Representatives, not the entire Congress, to vote on the revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*:

MR. RODRIGO. Madam President, may I propose an amendment?

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MR. RODRIGO. On Section 15, page 7, line 4, I propose to change the word "Congress" to HOUSE OF REPRESENTATIVES so that the sentence will read: "The HOUSE OF REPRESENTATIVES, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension or extend the same if the invasion or rebellion shall persist and public safety requires it."

FR. BERNAS. Madam President, the proposed amendment is really a motion for reconsideration. We have already decided that both Houses will vote jointly. Therefore, the proposed amendment, in effect, asks for a reconsideration of that vote in order to give it to the House of Representatives.

MR. RODRIGO. Madam President, the opposite of voting jointly is voting separately. If my amendment were to vote separately, then, yes, it is a motion for reconsideration. But this is another formula.

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[77] II RECORD, CONSTITUTIONAL COMMISSION 493-501 (July 31, 1986).

x x x x x x x x x

MR. DE CASTRO. What is the rationale of the amendment?

MR. RODRIGO. It is intended to avoid that very extraordinary and awkward provision which would make the 24 Senators meet jointly with 250 Members of the House and make them vote jointly. What I mean is, the 24 Senators, like a drop in the bucket, are absorbed numerically by the 250 Members of the House.

x x x x x x x x x

MR. SARMIENTO. Madam President, we need the wisdom of the Senators. What is at stake is the future of our country – human rights and civil liberties. If we separate the Senators, then we deprive the Congressmen of the knowledge and experience of these 24 men. I think we should forget the classification of "Senators" or "Congressmen." We should all work together to restore democracy in our country. So we need the wisdom of 24 Senators.

MR. RODRIGO. Madam President, may I just answer. This advice of the 24 Senators can be sought because they are in the same building. Anyway, the provision, with **the amendment of Commissioner Monsod, does not call for a joint session**. It only says: "the Congress, by a vote of at least a majority of all its Members in regular or special session" – it does not say "joint session." So, I believe that if the Members of the House need the counsel of the Senators, they can always call on them, they can invite them.[78] (Emphasis supplied.)

The proposed amendment was not adopted, however, as only five (5) Commissioners voted in its favor and twenty-five (25) Commissioners voted against it. Thus, the power to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* still lies with both Houses of the Congress, voting jointly, by a vote of at least a majority of all its Members.

Significantly, the Commissioners only settled the manner of voting by the Congress, *i.e.*, "voting jointly, by a vote of at least a majority of all its Members," in order to revoke the President's proclamation of martial law and/or suspension of

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[78] *Id.* at 501-502.

the privilege of the writ of *habeas corpus*, but they did not directly take up and specify in Article VII, Section 18 of the 1987 Constitution that the voting shall be done during a joint session of both Houses of the Congress. In fact, Commissioner Francisco A. Rodrigo expressly observed that the provision does not call for a joint session. That the Congress will vote on the revocation of the President's proclamation and/or suspension in a joint session can only be inferred from the arguments of the Commissioners who pushed for the "voting jointly" amendment that the Members of the House of Representatives will benefit from the advice, opinion, and/or wisdom of the Senators, which will be presumably shared during a joint session of both Houses. **Such inference is far from a clear mandate for the Congress to automatically convene in joint session, under all circumstances,** when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus*, even when Congress does not intend to revoke the President's proclamation and/or suspension.

There was no obligation on the part of the Congress herein to convene in joint session as the provision on revocation under Article VII, Section 18 of the 1987 Constitution did not even come into operation in light of the resolutions, separately adopted by the two Houses of the Congress in accordance with their respective rules of procedure, expressing support for President Duterte's Proclamation No. 216.

The provision in Article VII, Section 18 of the 1987 Constitution requiring the Congress to vote jointly in a joint session is specifically for the purpose of revocation of the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*. In the petitions at bar, the Senate and House of Representatives already separately adopted resolutions expressing support for President Duterte's Proclamation No. 216. Given the express support of both Houses of the Congress for Proclamation No. 216, and their already

evident lack of intent to revoke the same, the provision in Article VII, Section 18 of the 1987 Constitution on revocation did not even come into operation and, therefore, there is no obligation on the part of the Congress to convene in joint session.

Practice and logic dictate that a collegial body will first hold a meeting among its own members to get a sense of the opinions of its individual members and, if possible and necessary, reach an official stance, before convening with another collegial body. This is exactly what the two Houses of the Congress did in these cases.

The two Houses of the Congress, the Senate and the House of Representatives, immediately took separate actions on President Duterte's proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao through Proclamation No. 216, in accordance with their respective rules of procedure. The *Consolidated Comment* (*Ex Abudanti Cautela*), filed by the Senate and Senate President Pimentel, recounted in detail the steps undertaken by both Houses of the Congress as regards Proclamation No. 216, to wit:

> 2. On the date of the President's declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, Congress was in session (from May 2, to June 2, 2017), in its First Regular Session of the 17th Congress, as evidenced by its Legislative Calendar, otherwise known as Calendar of Session as contained in Concurrent Resolution No. 3 of both the Senate and the House of Representatives. x x x
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> 3. During the plenary session of the Senate on the following day, 24 May 2017, privilege speeches and discussions had already been made about the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. This prompted Senator Franklin M. Drilon to move to invite the Secretary of National Defense, the National Security Adviser and the Chief of Staff of the Armed Forces of the Philippines to brief the senators in closed session on what transpired in Mindanao. Submitted to a vote and there being no objection, the Senate approved the motion. x x x
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> 4. On 25 May 2017, the President furnished the Senate and the House of Representatives, through Senate President Aquilino

"Koko" Pimentel III and Speaker Pantaleon D. Alvarez, respectively, with copies of his report (hereinafter, the "Report") detailing the factual and legal basis for his declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

5. On or about 25 May 2017, invitation letters were issued and sent by the Senate Secretary, Atty. Lutgardo B. Barbo to the following officials requesting them to attend a briefing for the Senators on 29 May 2017 at 3:00 p.m. at the Senators' Lounge at the Senate in a closed door session to describe what transpired in Mindanao which was the basis of the declaration of martial law in Mindanao: (a) Secretary Delfin N. Lorenzana, Secretary of National Defense (hereinafter, "Secretary Lorenzana"); (b) Secretary Hermogenes C. Esperon, Jr., National Security Adviser and Director General of the National Security Council (hereinafter, "Secretary Esperon"); and (c) General Eduardo M. Año, Chief of Staff of the Armed Forces of the Philippines (hereinafter, "Gen. Año"). The said letters stated that the Senators requested that the President's Report be explained and that more details be given about the same. x x x

6. On 29 May 2017, about 3:30 p.m., a closed door briefing was conducted by Secretary Lorenzana, Secretary Esperon and other security officials for the Senators to brief them about the circumstances surrounding the declaration of martial law and to inform them about details about the President's Report. The briefing lasted for about four (4) hours. After the briefing, the Senators had a caucus to determine what could be publicly revealed.

7. On the same day, 29 May 2017, the House of Representatives resolved to constitute itself as a Committee of the Whole on 31 May 2017 to consider the President's Report.

8. On 30 May 2017, two (2) resolutions were introduced in the Senate about the proclamation of martial law. The first one was P.S. Resolution No. 388 (hereinafter, "P.S.R. No. 388") introduced by Senators Sotto, Pimentel, Recto, Angara, Binay, Ejercito, Gatchalian, Gordon, Honasan, Lacson, Legarda, Pacquiao, Villanueva, Villar and Zubiri which was entitled, "Expressing the Sense of the Senate, Supporting the Proclamation No. 216 dated May 23, 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao" and Finding no Cause to revoke the Same." The second one was P.S. Resolution No. 390 (hereinafter, "P.S.R. No. 390") introduced by Senators Pangilinan, Drilon, Hontiveros, Trillanes, Aquino and De Lima which

was entitled, "Resolution to Convene Congress in Joint Session and Deliberate on Proclamation No. 216 dated 23 May 2017 entitled, "Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao." x x x

9. Discussions were made on the two (2) proposed resolutions during the plenary deliberations of the Senate on 30 May 2017. The first resolution to be discussed was P.S.R. No. 388. During the deliberations, amendments were introduced to it and after the amendments and the debates, P.S.R. No. 388 was voted upon and it was adopted by a vote of seventeen (17) affirmative votes and five (5) negative votes. The amended, substituted and approved version of P.S.R. No. 388, which was then renamed Resolution No. 49, states as follows:

RESOLUTION NO. 49

RESOLUTION EXPRESSING THE SENSE OF THE SENATE NOT TO REVOKE, AT THIS TIME, PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED, "DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO."

WHEREAS, the 1987 Philippine Constitution, Article VII, Section 18, provides that:

> ". . . in case of invasion or rebellion, when the public safety requires it, he (President) may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law . . .";

WHEREAS, President Rodrigo Roa Duterte issued Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao," on May 23, 2017 (the "Proclamation");

WHEREAS, pursuant to his duty under the Constitution, on May 25, 2017, and within forth-eight hours after the issuance of the Proclamation, President Duterte submitted to the Senate his report on the factual and legal basis of the Proclamation;

WHEREAS, on May 29, 2017, the Senators were briefed by the Department of National Defense (DND), the Armed Forces

of the Philippines (AFP), and by the National Security Council (NSC) on the factual circumstances surrounding the Proclamation as well as the updates on the situation in Mindanao;

WHEREAS, on the basis of the information received by the Senators, the Senate is convinced that President Duterte declared martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao because actual rebellion exists and that the public safety requires it;

WHEREAS, the Senate, at this time, agrees that there is no compelling reason to revoke Proclamation No. 216, series of 2017;

WHEREAS, the Proclamation does not suspend the operation of the Constitution, which among others, guarantees respect for human rights and guards against any abuse or violation thereof: Now, therefore, be it

Resolved, as it is hereby resolved, To express the sense of the Senate, that there is no compelling reason to revoke Proclamation No. 216, series of 2017 at this time.

Adopted. x x x"

x x x x x x x x x

10. Immediately thereafter, P.S.R. No. 390 was also deliberated upon. After a prolonged discussion, a vote was taken on it and nine (9) senators were in favor and twelve (12) were against. As such, P.S.R. No. 390 calling for a joint session of Congress was not adopted. x x x

11. In the meantime, on 31 May 2017, the House of Representatives acting as a Committee of the Whole was briefed for about six (6) hours by officials of the government led by Executive Secretary Salvador C. Medialdea (hereinafter, "Executive Secretary Medialdea"), Secretary Lorenzana and other security officials on the factual circumstances surrounding the President's declaration of martial law and on the statements contained in the President's Report. During the evening of the same day, a majority of the House of Representatives passed Resolution No. 1050 entitled, "Resolution Expressing the Full Support of the House of Representatives to President Rodrigo Roa Duterte As It Finds No Reason to Revoke Proclamation No. 216 Entitled, 'Declaring A State of Martial Law and Suspending the

Privilege of the Writ of Habeas Corpus in the Whole of Mindanao.'" In the same deliberations, it was likewise proposed that the House of Representatives call for a joint session of Congress to deliberate and vote on the President's declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. However, after debates, the proposal was not carried. x x x.[79]

It cannot be disputed then that the Senate and House of Representatives placed President Duterte's Proclamation No. 216 under serious review and consideration, pursuant to their power to revoke such a proclamation vested by the Constitution on the Congress. Each House timely took action by accepting and assessing the President's Report, inviting over and interpellating executive officials, and deliberating amongst their fellow Senators or Representatives, before finally voting in favor of expressing support for President Duterte's Proclamation No. 216 and against calling for a joint session with the other House. The prompt actions separately taken by the two Houses of the Congress on President Duterte's Proclamation No. 216 belied all the purported difficulties and delays such procedures would cause as raised in the Concurring and Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen (Justice Leonen). As earlier pointed out, there is no constitutional provision governing concurrence by the Congress in the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, and absent a specific mandate for the Congress to hold a joint session in the event of concurrence, then whether or not to hold a joint session under such circumstances is completely within the discretion of the Congress.

The Senate and Senate President Pimentel explained in their *Consolidated Comment* (*Ex Abudanti Cautela*), that, by practice, the two Houses of the Congress must adopt a concurrent resolution to hold a joint session, and only thereafter can the Houses adopt the rules to be observed for that particular joint session:

It must be stated that the Senate and the House of Representatives have their own respective Rules, *i.e.*, the Rules of the Senate and the

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[79] *Rollo* (G.R. No. 231671), pp. 136-140.

Rules of the House of Representatives. **There is no general body of Rules applicable to a joint session of Congress. Based on parliamentary practice and procedure, the Senate and House of Representatives only adopt Rules for a joint session on an *ad hoc* basis but only after both Houses have already agreed to convene in a joint session through a Concurrent Resolution. The Rules for a Joint Session for a particular purpose become *functus officio* after the purpose of the joint session has been achieved.** Examples of these Rules for a Joint Session are (1) the Rules of the Joint Public Session of Congress on Canvassing the Votes Cast for Presidential and Vice-Presidential Candidates in the May 9, 2016 Election adopted on 24 May 2016; and (2) the Rules of the Joint Session of Congress on Proclamation No. 1959 (Proclaiming a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao, Except for Certain Areas) adopted on 09 December 2009. The only time that the Senate and the House of Representatives do not adopt Rules for a joint session is when they convene on the fourth Monday of July for its regular session to receive or listen to the State of the Nation Address of the President and even then, they adopt a Concurrent Resolution to do so.

The usual procedure for having a joint session is for both Houses to first adopt a Concurrent Resolution to hold a joint session. This is achieved by either of two (2) ways: (1) both the Senate and the House of Representatives simultaneously adopting the Concurrent Resolution – an example would be when the two (2) Houses inform the President that they are ready to receive his State of the Nation Address or (2) For one (1) House to pass its own resolution and to send it to the other House for the latter's concurrence. Once the joint session of both Houses is actually convened, it is only then that the Senate and the House of Representatives jointly adopt the Rules for the joint session. x x x[80] (Emphases supplied.)

With neither Senate nor the House of Representatives adopting a concurrent resolution, no joint session by the two Houses of the Congress can be had in the present cases.

The Court is bound to respect the rules of the Congress, a co-equal and independent branch of government. Article VI,

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[80] *Id*. at 156-157.

Section 16(3) of the 1987 Constitution states that "[e]ach House shall determine the rules of its proceedings." The provision has been traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption, and promulgation of its rules; and as such, the exercise of this power is generally exempt from judicial supervision and interference.[81] Moreover, unless there is a clear showing by strong and convincing reasons that they conflict with the Constitution, "all legislative acts are clothed with an armor of constitutionality particularly resilient where such acts follow a long-settled and well-established practice by the Legislature."[82] Nothing in this Decision should be presumed to give precedence to the rules of the Houses of the Congress over the provisions of the Constitution. This Court simply holds that since the Constitution does not regulate the manner by which the Congress may express its concurrence to a Presidential proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, the Houses of the Congress have the discretion to adopt rules of procedure as they may deem appropriate for that purpose.

The Court highlights the particular circumstance herein that **both Houses of Congress already separately expressed support for President Duterte's Proclamation No. 216, so revocation was not even a possibility** and the provision on revocation under Article VII, Section 18 of the 1987 Constitution requiring the Congress to vote jointly in a joint session never came into operation. It will be a completely different scenario **if either of the Senate or the House of Representatives, or if both Houses of the Congress, resolve/s to revoke the President's proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*,** in which case, Article VII, Section 18 of the 1987 Constitution shall apply

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[81] *Dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981, 986 (2009).

[82] *McGillicuddy v. Commissioner, Department of Agriculture, Food and Rural Resources,* 646 A.2d 354, July 22, 1994, citing *State v. Hills*, 574 A.2d 1357, 1358 (Me. 1990).

and the Congress must convene in joint session to vote jointly on the revocation of the proclamation and/or suspension. Given the foregoing parameters in applying Article VII, Section 18 of the 1987 Constitution, Justice Leonen's concern, expressed in his Concurring and Dissenting Opinion, that a deadlock may result in the future, is completely groundless.

The legislative precedent referred to by petitioners actually supports the position of the Court in the instant cases. On December 4, 2009, then President Macapagal-Arroyo issued Proclamation No. 1959, entitled "*Proclaiming a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao, except for Certain Areas*." The Senate, on December 14, 2009, adopted Resolution No. 217, entitled "*Resolution Expressing the Sense of the Senate that the Proclamation of Martial Law in the Province of Maguindanao is Contrary to the Provisions of the 1987 Constitution*." Consequently, the Senate and the House of Representatives adopted Concurrent Resolutions, *i.e.*, Senate Concurrent Resolution No. 14 and House Concurrent Resolution No. 33, calling both Houses of the Congress to convene in joint session on December 9, 2009 at 4:00 p.m. at the Session Hall of the House of Representatives to deliberate on Proclamation No. 1959. It appears then that the two Houses of the Congress in 2009 also initially took separate actions on President Macapagal-Arroyo's Proclamation No. 1959, with the Senate eventually adopting Resolution No. 217, expressing outright its sense that the proclamation of martial law was unconstitutional and necessarily implying that such proclamation should be revoked. With one of the Houses favoring revocation, and in observation of the established practice of the Congress, the two Houses adopted concurrent resolutions to convene in joint session to vote on the revocation of Proclamation No. 1959.

For the same reason, the *Fortun* case cannot be deemed a judicial precedent for the present cases. The factual background of the *Fortun* case is not on all fours with these cases. Once more, the Court points out that in the *Fortun* case, the Senate expressed through Resolution No. 217 its objection to President Macapagal-Arroyo's Proclamation No. 1959 for being

unconstitutional, and both the Senate and the House of Representatives adopted concurrent resolutions to convene in joint session for the purpose of revoking said proclamation; while in the cases at bar, the Senate and the House of Representatives adopted Senate Resolution No. 49 and House Resolution No. 1050, respectively, which expressed support for President Duterte's Proclamation No. 216, and both Houses of the Congress voted against calling for a joint session. In addition, the fundamental issue in the *Fortun* case was whether there was factual basis for Proclamation No. 1959 and not whether it was mandatory for the Congress to convene in joint session; and even before the Congress could vote on the revocation of Proclamation No. 1959 and the Court could resolve the *Fortun* case, President Macapagal-Arroyo already issued Proclamation No. 1963 on December 12, 2009, entitled "*Proclaiming the Termination of the State of Martial Law and the Restoration of the Privilege of the Writ of Habeas Corpus in the Province of Maguindanao.*" Furthermore, the word "automatic" in the *Fortun* case referred to the duty or power of the Congress to review the proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus*, rather than the joint session of Congress.[83]

Petitioners invoke the following provision also in Article VII, Section 18 of the 1987 Constitution: "The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension convene in accordance with its rules without call." Petitioners reason that if the Congress is not in session, it is constitutionally mandated to convene within twenty-four (24) hours from the President's proclamation of martial

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[83] The Court wrote in the *Fortun* case, that "President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* before the joint houses of Congress could fulfill their **automatic duty** to review and validate or invalidate the same[;]" and "Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is **automatic** rather than initiated." (*Supra* note 18 at 556, 558.)

law and/or suspension of the privilege of the writ of *habeas corpus*, then it is with all the more reason required to convene immediately if in session.

The Court is not persuaded.

First, the provision specially addresses the situation when the President proclaims martial law and/or suspends the privilege of the writ of *habeas corpus* while the Congress is in recess. To ensure that the Congress will be able to act swiftly on the proclamation and/or suspension, the 1987 Constitution provides that it should convene within twenty-four (24) hours without need for call. It is a whole different situation when the Congress is still in session as it can readily take up the proclamation and/or suspension in the course of its regular sessions, as what happened in these cases. *Second*, the provision only requires that the Congress convene without call, but it does not explicitly state that the Congress shall already convene in joint session. In fact, the provision actually states that the Congress "convene in accordance with its rules," which can only mean the respective rules of each House as there are no standing rules for joint sessions. And *third*, it cannot be said herein that the Congress failed to convene immediately to act on Proclamation No. 216. Both Houses of the Congress promptly took action on Proclamation No. 216, with the Senate already issuing invitations to executive officials even prior to receiving President Duterte's Report, except that the two Houses of the Congress acted separately. By initially undertaking separate actions on President Duterte's Proclamation No. 216 and making their respective determination of whether to support or revoke said Proclamation, the Senate and the House of Representatives were only acting in accordance with their own rules of procedure and were not in any way remiss in their constitutional duty to guard against a baseless or unjustified proclamation of martial law and/or suspension of the privilege of the writ of *habeas corpus* by the President.

There is likewise no basis for petitioners' assertion that without a joint session, the public cannot hold the Senators and Representatives accountable for their respective positions on

President Duterte's Proclamation No. 216. Senate records completely chronicled the deliberations and the voting by the Senators on Senate Resolution No. 49 (formerly P.S. Resolution No. 388) and P.S. Resolution No. 390. While it is true that the House of Representatives voted on House Resolution No. 1050 *viva voce*, this is only in accordance with its rules. Per the Rules of the House of Representatives:

RULE XV
Voting

Sec. 115. *Manner of Voting*. – The Speaker shall rise and state the motion or question that is being put to a vote in clear, precise and simple language. The Speaker shall say "as many as are in favor, (*as the question may be*) say '*aye*'". After the affirmative vote is counted, the Speaker shall say "as many as are opposed, (*as the question may be*) say '*nay*'".

If the Speaker doubts the result of the voting or a motion to divide the House is carried, the House shall divide. The Speaker shall ask those in favor to rise, to be followed by those against. If still in doubt of the outcome or a count by tellers is demanded, the Speaker shall name one (1) Member from each side of the question to count the Members in the affirmative and those in the negative. After the count is reported, the Speaker shall announce the result.

An abstention shall not be counted as a vote. Unless otherwise provided by the Constitution or by these rules, a majority of those voting, there being a quorum, shall decide the issue.

Sec. 116. *Nominal Voting*. – Upon motion of a Member, duly approved by one-fifth (1/5) of the Members present, there being a quorum, nominal voting on any question may be called. In case of nominal voting, the Secretary General shall call, in alphabetical order, the names of the Members who shall state their vote as their names are called.

Sec. 117. *Second Call on Nominal Voting*. – A second call on nominal voting shall be made to allow Members who did not vote during the first call to vote. Members who fail to vote during the second call shall no longer be allowed to vote.

Since no one moved for nominal voting on House Resolution No. 1050, then the votes of the individual Representatives cannot

be determined. It does not render though the proceedings unconstitutional or invalid.

The Congress did not violate the right of the public to information when it did not convene in joint session.

The Court is not swayed by petitioners' argument that by not convening in joint session, the Congress violated the public's right to information because as records show, the Congress still conducted deliberations on President Duterte's Proclamation No. 216, albeit separately; and the public's right to information on matters of national security is not absolute. When such matters are being taken up in the Congress, whether in separate or joint sessions, the Congress has discretion in the manner the proceedings will be conducted.

Petitioners contend that the Constitution requires a public deliberation process on the proclamation of martial law: one that is conducted *via* a joint session and by a single body. They insist that the Congress must be transparent, such that there is an "open and robust debate," where the evaluation of the proclamation's factual bases and subsequent implementation shall be openly discussed and where each member's position on the issue is heard and made known to the public.

The petitioners' insistence on the conduct of a "joint session" contemplates a mandatory joint Congressional session where public viewing is allowed.

However, based on their internal rules, each House has the **discretion** over the manner by which Congressional proceedings are to be conducted. Verily, sessions are generally open to the public,[84] but each House may decide to hold an **executive session due to the confidential nature of the subject matter** to be discussed and deliberated upon.

Rule XI of the Rules of the House of Representatives provides:

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[84] See Rule XI, Section 82, The Rules of the House of Representatives.

Section 82. *Sessions Open to the Public*. - Sessions shall be open to the public. However, **when the security of the State** or the dignity of the House or any of its Members are affected by any motion or petition being considered, the House may hold executive sessions.

Guests and visitors in the galleries are prohibited from using their cameras and video recorders. Cellular phones and other similar electronic devices shall be put in silent mode.

Section 83. *Executive Sessions*. - When the House decides to hold an executive session, the Speaker shall direct the galleries and hallways to be cleared and the doors closed. Only the Secretary General, the Sergeant-at-Arms and other persons specifically authorized by the House shall be admitted to the executive session. They shall preserve the confidentiality of everything read or discussed in the session. (Emphasis supplied.)

Rule XLVII of the Rules of the Senate similarly sets forth the following:

SEC. 126. The executive sessions of the Senate shall be held always behind closed doors. In such sessions, only the Secretary, the Sergeant-at-Arms, and/or such other persons as may be authorized by the Senate may be admitted to the session hall.

SEC. 127. Executive sessions shall be held whenever a Senator so requests it and his petition has been duly seconded, or **when the security of the State or public interest so requires**. Thereupon, the President shall order that the public be excluded from the gallery and the doors of the session hall be closed.

The Senator who presented the motion shall then explain the reasons which he had for submitting the same.

The minutes of the executive sessions shall be recorded in a separate book. (Emphasis supplied)

From afore-quoted rules, it is clear that matters affecting the **security of the state** are considered **confidential** and must be discussed and deliberated upon in an **executive session**, excluding the public therefrom.

That these matters are considered confidential is in accordance with settled jurisprudence that, in the exercise of their right to information, the government may withhold certain types of

information from the public such as **state secrets** regarding **military**, diplomatic, and **other national security matters**.[85] The Court has also ruled that the Congress' deliberative process, including information discussed and deliberated upon in an executive session,[86] may be kept out of the public's reach.

The Congress not only recognizes the sensitivity of these matters but also endeavors to preserve their confidentiality. In fact, Rule XLVII, Section 128[87] of the Rules of the Senate expressly establishes a **secrecy ban** prohibiting all its members, including Senate officials and employees, from divulging any of the confidential matters taken up by the Senate. A Senator found to have violated this ban faces the possibility of expulsion from his office.[88] This is consistent with the Ethical Standards Act[89] that prohibits public officials and employees from using or divulging "confidential or classified information officially known to them by reason of their office and not made available to the public."[90]

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[85] *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 586 Phil. 135, 162 (2008), citing *Almonte v. Vasquez*, 314 Phil. 150, 167 (1995); *Chavez v. Public Estates Authority*, 433 Phil. 506, 534 (2002).

[86] *Chavez v. Philippine Commission on Good Government*, 360 Phil. 133, 162 (1998).

[87] SEC. 128. The President as well as the Senators and the officials and employees of the Senate shall absolutely refrain from divulging any of the confidential matters taken up by the Senate, and all proceedings which might have taken place in the Senate in connection with the said matters shall be likewise considered as strictly confidential until the Senate, by two-thirds (2/3) vote of all its Members, decides to lift the ban of secrecy.

[88] SEC. 129. Any Senator who violates the provisions contained in the preceding section may, by a two-thirds (2/3) vote of all the Senators, be expelled from the Senate, and if the violator is an official or employee of the Senate, he shall be dismissed.

[89] Republic Act No. 6713, enacted on February 20, 1989, cited in *Chavez v. Philippine Commission on Good Government*, *supra* note 86.

[90] Section 7, Republic Act No. 6713.

Certainly, the factual basis of the declaration of martial law involves intelligence information, military tactics, and other sensitive matters that have an undeniable effect on national security. Thus, to demand Congress to hold a public session during which the legislators shall openly discuss these matters, all the while under public scrutiny, **is to effectively compel them to make sensitive information available to everyone, without exception, and to breach the recognized policy of preserving these matters' confidentiality**, at the risk of being sanctioned, penalized, or expelled from Congress altogether.

That these are the separate Rules of the two Houses of the Congress does not take away from their persuasiveness and applicability in the event of a joint session. Since both Houses separately recognize the policy of preserving the confidentiality of national security matters, then in all likelihood, they will consistently observe the same in a joint session. The nature of these matters as confidential is not affected by the composition of the body that will deliberate upon it – whether it be the two Houses of the Congress separately or in joint session.

Also, the petitioners' theory that a regular session must be preferred over a mere briefing for purposes of ensuring that the executive and military officials are placed under oath does not have merit. The Senate Rules of Procedure Governing Inquiries In Aid of Legislation[91] require that **all witnesses at executive sessions or public hearings** who testify as to matters of fact shall give such testimony under oath or affirmation. The proper implementation of this rule is within the Senate's competence, which is beyond the Court's reach.

Propriety of the issuance of a writ of mandamus or certiorari

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[91] Sec. 12. Testimony Under Oath. All witnesses at executive sessions or public hearings who testify as to matters of fact shall give such testimony under oath or affirmation. Witnesses may be called by the Committee on its own initiative or upon the request of the petitioner or person giving the information or any person who feels that he may be affected by the said inquiry.

For *mandamus* to lie, there must be compliance with Rule 65, Section 3, Rules of Court, to wit:

SECTION 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Jurisprudence has laid down the following requirements for a petition for *mandamus* to prosper:

[T]hus, a petition for mandamus will prosper if it is shown that the subject thereof is a **ministerial act or duty**, and not purely discretionary on the part of the board, officer or person, and that the **petitioner has a well-defined, clear and certain right to warrant the grant thereof.**

The difference between a ministerial and discretionary act has long been established. **A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done**. **If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment**.[92] (Emphases added.)

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[92] *Velasco v. Belmonte, Jr.*, G.R. No. 211140, January 12, 2016, 780 SCRA 81, 119 citing *Codilla, Sr. v. De Venecia,* 442 Phil. 139, 189 (2002).

It is essential to the issuance of a writ of *mandamus* that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. *Mandamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[93]

Although there are jurisprudential examples of the Court issuing a writ of *mandamus* to compel the fulfillment of legislative duty,[94] we must distinguish the present controversy with those previous cases. In this particular instance, the Court has no authority to compel the Senate and the House of Representatives to convene in joint session absent a clear ministerial duty on its part to do so under the Constitution and in complete disregard of the separate actions already undertaken by both Houses on Proclamation No. 216, including their respective decisions to no longer hold a joint session, considering their respective resolutions **not to revoke** said Proclamation.

In the same vein, there is no cause for the Court to grant a writ of *certiorari*.

As earlier discussed, under the Court's expanded jurisdiction, a petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[95] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent

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[93] *University of San Agustin, Inc. v. Court of Appeals,* 300 Phil. 819, 830 (1994).

[94] See *Velasco v. Belmonte, Jr., supra* note 92 at 123, citing *Codilla, Sr. v. De Venecia*, *supra* note 92 at 188-189.

[95] *Jardeleza v. Sereno,* 741 Phil. 460, 491 (2014).

to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[96] It bears to mention that to pray in one petition for the issuance of both a writ of *mandamus* and a writ of *certiorari* for the very same act – which, in the Tañada Petition, the non-convening by the two Houses of the Congress in joint session – is contradictory, as the former involves a mandatory duty which the government branch or instrumentality must perform without discretion, while the latter recognizes discretion on the part of the government branch or instrumentality but which was exercised arbitrarily or despotically. Nevertheless, if the Court is to adjudge the petition for *certiorari* alone, it still finds the same to be without merit. To reiterate, the two Houses of the Congress decided to no longer hold a joint session only after deliberations among their Members and putting the same to vote, in accordance with their respective rules of procedure. Premises considered, the Congress did not gravely abuse its discretion when it did not jointly convene upon the President's issuance of Proclamation No. 216 **prior to expressing its concurrence thereto**.

WHEREFORE, the petitions are **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Jardeleza, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Leonen, J., see separate concurring and dissenting opinion.

Caguioa, J., joins *J.* Leonen's separate opinion.

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[96] *Limkaichong v. Land Bank of the Phils.*, G.R. No. 158464, August 2, 2016.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur only in the result.

The Petitions are moot in that the 60-day period has already lapsed. It is likewise academic considering that both the Senate and the House of Representatives convened jointly to extend the efficacy of the declaration of martial law and the suspension of the privilege of the writ of habeas corpus.

However, I dissent with the majority's attempts to establish doctrine in this case.

In my view, the power to revoke intrinsically and logically includes the duty to deliberate on whether or not to revoke.

Immediately after the President, as Commander in Chief, suspends the privilege of the writ of habeas corpus or declares martial law, Congress convenes as a whole to jointly consider the reasons, scope, and proposed authorities to be exercised, deliberates, and thus decides whether or not to revoke the proclamation. Only after all legislators—whether Senator or Member of the House of Representatives—participate in deliberations in one (1) forum will they take a vote.

This, to me, is the clear and logical requirement of Article VII, Section 18 of the Constitution in the light of its context and its history. It harmonizes with the exigency of the circumstances that require the suspension of the privilege of the writ and the declaration of martial law.

The *ponencia* proposes that deliberation to consider whether or not to revoke can be separated from the actual vote to revoke the suspension or the proclamation. It proposes to defer to the political wisdom of the majority in the present Senate and the House of Representatives.

I disagree.

To defer to the actions of the respondents today and grant the veneer of constitutionality ensure the unworkability of the constitutional provision at bar in the future.

Instead of one (1) forum for all legislators to deliberate, there will be two (2). Senators will consider their own issues. Members of the House of Representatives will also consider their own issues, which may or may not be different from that of the Senate. The voices of the minority in the Senate will not be heard by any member of the House of Representatives. Likewise, the minority in the House will not be heard by the Senate.

The representatives of the President, including ranking officers of the Armed Forces of the Philippines as well as the Philippine National Police, will appear, make presentations, and respond to questions not in one (1) but in two (2) forums. One (1) chamber may decide that the information provided by their resource persons will be considered in camera or in executive session. The other chamber may see it differently. Thus, we can have the same information treated confidentially by one (1) chamber and publicly by the other.

Furthermore, the high-ranking officials of both the Armed Forces of the Philippines and the Philippine National Police will, thus, be called out of their stations, where they can best address the urgency of an actual invasion or rebellion, to address the legislators. They will do this not once, but twice. Perhaps even more. They will appear before the House of Representatives. They will appear before the Senate. They may also still appear when both chambers finally decide to convene jointly to vote.

The Senate will take a vote as to whether they are inclined to revoke the proclamation. The House will also take a vote. The results can be different. If the results are different, then the heads of both houses or their representatives will have to meet perhaps in a bicameral committee.

Then, their representatives will present the results of the bicameral committee to their respective chambers. Only when the Senate and the House separately decide that they should revoke the suspension or the proclamation will they then convene.

Deadlock is possible when one (1) chamber decides to revoke and the other does not. The crisis that gave rise to the suspension or proclamation will then be burdened with another crisis: that of the inability of the government to decide.

All this must be done within the first 60 days from the suspension or proclamation. This is the constitutional limitation imposed on the duration of this type of presidential action. The longer it takes for Congress to decide, the less potent their review of the President's power to suspend the privilege of the writ or to declare martial law. The longer it takes for Congress to decide, the higher the possibility that the rationale for the constitutional provision would be frustrated.

These scenarios were already imagined by those who drafted this Constitution. That is why it requires that Congress convene immediately, vote jointly and thus, logically, also deliberate as one (1) body.

In this case, there was no deadlock between the House and the Senate. Both agreed not to revoke Proclamation No. 216. What happened was one (1) of four (4) possible permutations, namely:

	Senate	**House of Representatives**
One	Not to revoke	Not to revoke
Two	Not to revoke	Revoke
Three	Revoke	Not to revoke
Four	Revoke	Revoke

But, this case is not being decided *pro hac vice*. We are not dismissing the case on the ground that it is moot and academic upon the automatic expiration of the 60-day period for Proclamation No. 216 on July 22, 2017. Rather, the *ponencia* proposes a doctrine which will possibly result in a deadlock in the future. With the interpretation proposed by the *ponencia*, two (2) of the four (4) possibilities will result in a constitutional crisis.

Thus, the act of actually revoking the suspension or the declaration becomes a thin and truncated power divorced from its deliberation to be exercised by Congress convened jointly. If it is true that the Senate and the House can deliberate separately on the legality, necessity, and appropriateness of the suspension and the proclamation, then the constitutional requirement that the vote for revocation should be done jointly with both houses convened does not make sense. That is, of course, if such vote to revoke is only mere ceremony.

If the requirement to convene is required when there is a deadlock after the two legislative chambers have opposing views on whether to revoke, then we grossly lose sight of the exigencies of the situation and the importance of the check on the President. Every moment that the suspension of the privilege of the writ of habeas corpus is imposed or martial law is declared is a potential situation where a fundamental right may be violated.

Clearly, the power to revoke exercised by Congress jointly convened logically includes their duty to jointly convene and deliberate.

I

The real issue in this case is not only one of procedure. It pertains to the role of Congress when the President, as Commander-in-Chief, places any part of the Philippines under martial law or suspends the privilege of the writ of habeas corpus. The relevant constitutional provision states:

ARTICLE VII
Executive Department

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. ***Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President***

shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied)

The sentences which mention the role of Congress are as follows:

First:

"Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress."

Second:

"The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such

proclamation or suspension, which revocation shall not be set aside by the President."

Third:

"Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it."

Fourth:

"The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call."

I agree with the *ponencia* that this case should be reviewed based on the interpretative modality adopted in *Civil Liberties Union v. The Executive Secretary*.[1] A reading of the Constitution requires an examination of the text and an understanding of the "intention underlying the provision under consideration."[2]

Moreover, the text should be read as a whole, thus:

> It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.
>
> In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.[3]

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[1] 272 Phil. 147 (1991) [Per *C.J.* Fernan, *En Banc*].

[2] *Id*. at 157.

[3] *Id*. at 162.

The interpretation of the Constitution based on textual primacy entails a review of the evolution of its provisions. This may involve a comparison between the current text and its counterpart in previous texts.[4] However, the interpretation of the Constitution may also include recourse to extrinsic aids to validate the meaning of the text when the latter is capable of multiple meanings.[5] The primary duty of this Court in interpreting the Constitution is to reasonably construe its provisions under contemporary conditions so that what has been ratified by the sovereign people is given full effect.[6]

We review the history of the text and the corresponding jurisprudence then examine the possible readings taking all the provisions into consideration.

II

Prior to the 1987 Constitution, Congress played a limited role with respect to the President's exercise of his Commander-in-Chief powers. It was delegated as a bystander and was never given much participation.

In *Barcelon v. Baker*,[7] the authority to suspend the privilege of the writ of habeas corpus was characterized as a discretionary act of the political branch of the government beyond the review of the judiciary.[8] This Court applied a deferential approach and emphasized that a branch of the government can neither interfere with nor inquire into purely discretionary acts of the other.[9]

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[4] *David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/221538.pdf> 22 [Per *J*. Leonen, *En Banc*].

[5] *Id*. at 23.

[6] See *J*. Leonen, Dissenting Opinion in *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 501–523 (2013) [Per *J*. Mendoza, *En Banc*].

[7] 5 Phil. 87 (1905) [Per J. Johnson, *En Banc*].

[8] *Id*. at 98.

[9] *Id*. at 115.

Barcelon was decided at a time when the Philippine Bill of 1902 was still in force and effect.[10] Although martial law was never mentioned, the Philippine Bill of 1902 empowered the Governor General to suspend the privilege of the writ of habeas corpus.[11] However, its exercise was conditioned upon the concurrence of the legislature:

Section 5.

. . . . . .

That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor, with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist.

It was in the Philippine Autonomy Act of 1916 or the Jones Law where the concept of martial law was first introduced into the organic law of the Philippines. The power to suspend the privilege of the writ of habeas corpus was however retained. The relevant text then read:

Section 21.

. . . . . .

[The Governor General of the Philippine Islands] shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and *he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or*

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

[11] Phil. Bill of 1902, Sec. 5, par. 7.

any part thereof, under martial law: Provided, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General. (Emphasis supplied)

In the exercise of these powers, legislative concurrence was not necessary. Nevertheless, the Governor General was required to notify the President of the United States when the privilege of the writ of habeas corpus was suspended or when any part of the country was placed under martial law. No other branch of government was authorized to review the action taken by the Governor General except the President of the United States.[12]

The passage of the Tydings-Mcduffie Act or the Philippine Independence Act paved the way for the enactment of the 1935 Constitution.[13] Article VII, Section 10 of the 1935 Constitution reiterated the extraordinary powers of the executive and vested the President with the power to call out the armed forces, suspend the privilege of the writ of habeas corpus, or declare martial law in any part of the country, thus:

ARTICLE VII
Executive Department

Section 10.

. . . . . .

(2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.

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[12] Phil. Autonomy Act (1916), Sec. 21.

[13] Phil. Independence Act (1934), Sec. 1.

In the exercise of his Commander-in-Chief powers, the discretion of the President was paramount and was not subject to review by any of the other branches of the government. The participation of Congress was practically nil. It could only step in when it grants emergency powers to the President pursuant to Article VI, Section 26 of the 1935 Constitution.[14] This provided:

> Section 26. In times of war and other national emergency the Congress may by law authorize the President, for a limited period, and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.

The text of Article VII, Section 10, paragraph 2 of the 1935 Constitution was reproduced in Article VII, Section 11 of the 1973 Constitution:

> ARTICLE VII
> *The President and Vice-President*
>
> Section 10. The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

Similar to the 1935 Constitution, the 1973 Constitution appeared to not textually allow any form of intrusion or participation from any of the other branches of the government in the President's exercise of his powers except in cases where there was a vacancy in the office of the President. Legislative

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[14] Similarly, the 1987 Constitution in Art. VI, Sec. 23(2) provides:

> (2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

concurrence was only deemed necessary when the acting President declared martial law:

> ARTICLE VII
> The President and Vice-President
>
> Section 9.
>
> . . . . . .
>
> The Acting President may not declare martial law or suspend the privilege of the writ of habeas corpus without the prior consent of at least a majority of all the Members of the Batasang Pambansa, or issue any decree, order or letter of instruction while the law-making power of the President is in force. He shall be deemed automatically on leave and the Speaker Pro Tempore shall act as Speaker. While acting as President, the Speaker may not be removed. He shall not be eligible for election in the immediately succeeding election for President and Vice-President. (Emphasis supplied)

The 1935 and 1973 Constitutions suggested deference to the President's discretion and wisdom in declaring martial law or in suspending the privilege of the writ of habeas corpus. This changed with the 1987 Constitution, which was cognizant of the aberrant type of martial law imposed by then President Ferdinand Marcos. That part of our history served as the impetus to limit the President's powers as Commander-in-Chief[15] by making that power less exclusive.

Instead of wresting power from the President, the 1987 Constitution bestowed powers of review on both the legislature and the judiciary. The text of Article VII, Section 18 of the Constitution outlines a dynamic interaction between the three (3) branches of the government. It also delineates the important functions of each branch, which serves as a check-and-balance mechanism on executive prerogative. Thus:

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[15] *Sanlakas v. Reyes,* 466 Phil. 482, 521-522 (2004) [Per *J.* Tinga, *En Banc*] citing *Marcos v. Manglapus*, 258 Phil. 479 (1989) [Per *J.* Cortes, *En Banc*].

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. ***The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.***

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

Article VII, Section 18 of the 1987 Constitution and its historical underpinning direct the legislature and the judiciary not to grant full deference to the President's discretion when he chooses to declare martial law or suspend the privilege of the writ of habeas corpus. The two (2) other branches of the government were intended to play an active role to check any possible abuses that may be committed. As it now stands, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is no longer a power that exclusively pertains to the President.[16]

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[16] *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 557 (2012) [Per *J*. Abad, *En Banc*].

An important safeguard placed by the 1987 Constitution is the authority of Congress to revoke the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus. Although the prerogative to make the declaration or suspension is vested on the President, it is ultimately up to Congress whether to revoke or extend it.[17] The significant role and power of Congress was highlighted in *Fortun v. Macapagal-Arroyo*:[18]

> Although the above vests in the President the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*, he shares such power with the Congress. Thus:
>
> 1. The President's proclamation or suspension is temporary, good for only 60 days;
> 2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress;
> 3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and
> 4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted.
>
> It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have.[19]

Unlike this Court, whose power of review is activated only upon the filing of an "appropriate proceeding filed by any

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[17] CONST, Art. VII, Sec. 18.

[18] 684 Phil. 526 (2012) [Per *J.* Abad, *En Banc*].

[19] *Id*. at 557-558.

citizen,"[20] Congress is not constrained by any condition precedent before it can act. Congress convenes automatically through a constitutional mandate. Subject to the voting requirements under the Constitution, Congress can revoke the proclamation or suspension at any time, which the President cannot undo.[21] It can also extend the proclamation or suspension upon the initiative of the President voting "in the same manner."[22]

In my view, moreover, Congress' scope of review under Article VII Section 18 is neither bound nor restricted by any legal standard except when it is arbitrary or unreasonable. Congress is given "a wider latitude in how it chooses to respond to the President's proclamation or suspension."[23] The Court's power of review meanwhile is limited to a finding of the "sufficiency of the factual basis"[24] or a violation of any of the fundamental rights or processes embedded in a specific provision of the Constitution.

III

The obvious motivation for the requirement that Congress convene automatically and deliberate and vote jointly was to render any action by a deliberative body practical in the light of the exigencies. The framers of the 1987 Constitution already anticipated the possibility of a deadlock between the two (2) houses. Hence, to make revocation of the proclamation or suspension easier, they purposely proposed an exception to the general rule where each house acts separately:

FR. BERNAS: We would like a little discussion on that because yesterday we already removed the necessity for concurrence of

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[20] CONST., Art. VII, Sec. 18, par. 3.

[21] CONST., Art. VII, Sec. 18, par. 1.

[22] CONST., Art. VII, Sec. 18, par. 1.

[23] *J.* Leonen, Dissenting Opinion in *Lagman v. Medialdea,* G.R. Nos. 231658, 231771, 231774, July 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/231658.pdf > [Per *J.* Del Castillo, *En Banc*].

[24] CONST., Art. VII, Sec. 18, par. 3.

Congress for the initial imposition of martial law. ***If we require the Senate and the House of Representatives to vote separately for purposes of revoking the imposition of martial law, that will make it very difficult for Congress to revoke the imposition of martial law and the suspension of the privilege of the writ of habeas corpus.*** That is just thinking aloud. To balance the fact that the President acts unilaterally[,] then the Congress voting as one body and not separately can revoke the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

MR. MONSOD: In other words, voting jointly.

FR. BERNAS: Jointly, yes.

. . . . . .

MR. RODRIGO: May I comment on the statement made by Commissioner Bernas? I was a Member of the Senate for 12 years. Whenever a bicameral Congress votes, it is always separately.

For example, bills coming from the Lower House are voted upon by the Members of the House. Then they go up to the Senate and voted upon separately. Even on constitutional amendments, where Congress meets in joint session, the two Houses vote separately.

Otherwise, the Senate will be useless; it will be sort of absorbed by the House considering that the Members of the Senate are completely outnumbered by the Members of the House. So, I believe that whenever Congress acts, it must be the two Houses voting separately.

If the two Houses vote "jointly," it would mean mixing the 24 Senators with 250 Congressmen. This would result in the Senate being absorbed and controlled by the House. This violates the purpose of having a Senate.

FR. BERNAS: ***I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of the tremendous effect on the nation when the privilege of the writ of habeas corpus is suspended and then martial law is imposed. Since we have allowed the President to impose martial law and suspend the privilege of the writ of habeas corpus unilaterally, we should make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people.***

. . . . . .

MR. RODRIGO: Will the Gentleman yield to a question?

MR. MONSOD: Yes, Madam President.

MR. RODRIGO: So, in effect, if there is a joint session composed of 250 Members of the House plus 24 Members of the Senate, the total would be 274. The majority would be one-half plus one.

MR. MONSOD: So, 148 [sic] votes.

MR. RODRIGO: And the poor Senators would be absolutely absorbed and outnumbered by the 250 Members of the House. Is that it?

MR. MONSOD: ***Yes, that is one of the implications of the suggestion and the amendment is being made nonetheless because there is a higher objective or value which is to prevent a deadlock that would enable the President to continue the full 60 days in case one House revokes and the other House does not.***

The proposal also allows the Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and their national vote.[25] (Emphasis supplied)

Clearly, those who participated in the drafting of the Constitution were contemplating not only the voting but likewise the deliberations that would lead to the voting. Thus, Commissioner Monsod mentioned that *"the proposal allows Senators to participate fully in the discussions and whether we like it or not, the Senators have very large persuasive powers because of their prestige and national vote."*[26]

When the deliberations are conducted in separate chambers, the final results may differ. Thus, the leaders may have to meet in a bicameral body or repeat the same discussions done in both chambers but, this time, with Congress convened jointly. Since any declaration of martial law or suspension of the writ of habeas corpus will only be for an initial period of 60 days, the length of the deliberations in each chamber duplicated in

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[25] II Records of the Constitutional Commission, dated July 31, 1986.

[26] II Records of the Constitutional Commission, dated July 31, 1986.

bicameral and/or in Congress assembled as a whole weakens legislative oversight.

The Constitution requires that Congress convene within 24 hours if it is adjourned to consider the suspension or the declaration. This communicates a sense of urgency that Congress has to act. The context of the provisions, thus, suggests that the discussions in Congress cannot take place in layers—that is, with each Chamber first before it goes to Congress convened jointly.

There will be other unintended consequences which will point to the lack of viability for the interpretation proposed by the *ponencia*.

Clearly, when each chamber deliberates separately, the representatives of the executive will have to make their presentations twice. They will present the reasons, evidence, and their intended program to the Senate and then to the House of Representatives, all within the same 60-day period. In each of their presentations, they will have to take questions, discuss their answers, and adjust their programs of action. The points considered in one (1) chamber may be different in the other. Thus, the other chamber will not benefit from the wisdom of the other. If the points discussed are the same, then the Constitution is read as allowing redundancy during a situation where there may be actual invasion or rebellion.

Such waste of energies does not harmonize with the exigent circumstances sought to be addressed by the extraordinary use of the power to suspend the privilege of the writ or the declaration of martial law. Certainly, it is not the process that will ensure that Congress will always decide early within the initial 60 days. An ordinary filibuster in one (1) chamber by one (1) legislator will negate the power of the entire Congress.

Within such limited time, the views of the minority of the Senate will not be heard by the House of Representatives. Neither will the voice of the minority in the House of Representatives be heard by or considered by the Senators. With separate

deliberations read as being allowed by the Constitution, a joint vote becomes a mere ceremony.

The power to revoke should be made as effectively and efficiently as possible. The constitutional design is not to make it difficult for Congress to revoke. This is not what the Constitution requires. In the words of a member of the Constitutional Commission:

> FR. BERNAS: [W]e should make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people.[27]

The present Constitution negates a vision of an authoritarian. Its goal is the establishment of a "democratic and republican" State.[28] It cannot be read to allow the emergence of a strongman. Even in situations that may appear to require the derogation of certain rights through the suspension of the privilege of the writ of habeas corpus or the declaration of martial law, our fundamental law requires further deliberation by Congress, which should effectively check on the contingent powers of the President. The representatives of the people, thus, gather as a whole Congress jointly considering the reasons, necessity, and appropriateness of the policies taken.

IV

With due respect, the *ponente* arrives at her conclusion by proposing that sentences from Article VII, Section 18 be taken in isolation from each other.[29] Thus, she starts with the position that this sentence shall not be considered:

> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules even without need of a call.

The *ponencia* thus isolates this sentence:

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[27] II Records of the Constitutional Commission, dated July 31, 1986.

[28] CONST., Art II, Sec 1.

[29] *Ponencia,* pp. 27-30.

The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

I disagree with this approach. The parts of the Constitution must be construed in its entirety. Each provision should provide the context of meaning.

Thus, the requirement that Congress automatically convene qualifies the interpretation of the scope of the power to revoke.

First, it communicates the urgency and that Congressional action should be taken soonest; and

Second, it communicates that Congress may exercise all its other legislative powers in order that it may assist in ensuring that the crisis that led to the suspension of the privilege of the writ of habeas corpus or the declaration of martial law is adequately addressed.

The first conclusion does not require further elaboration considering that the duration of the Presidential Proclamation is initially limited to 60 days without Congressional action.

The second is likewise obvious. The Constitution frames an entire government. The social, economic, or political conditions which led to actual invasion or rebellion, including the possible inefficiencies of intelligence or law enforcement, cannot be the sole domain of the President alone. After all, long-term policymaking is the province of the legislature. So is the allocation of resources through regular or special appropriations. Congress, when it convenes and deliberates jointly, will thus be able to identify more efficiently what needs to be done by both the Senate and the House of Representatives. Within the time that it convenes, the chambers do not shed their nature as legislative bodies that can consider the measures that will assist the President to address the emergencies in the near term. After having discussed as a whole body, the Senators and Members of the House of Representatives will, thus, have a better idea of what may be needed in terms of legislation and

appropriation. While martial law is declared, they can then proceed either to legislate or appropriate through the normal legislative process.

V

More telling in the interpretation of how Congress must exercise its full powers during the exigent circumstances described in Article VII, Section 18 is the sentence that comes next to the one (1) privileged in the *ponencia*, thus:

> Upon the initiative of the President, the Congress may, ***in the same manner***, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it. (Emphasis provided)

The phrase "in the same manner" clearly textually refers to the prior sentence, which reads:

> The Congress, voting jointly, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

If the *ponencia* holds, this means that Congress should deliberate in separate chambers first and will only convene jointly as a whole body when it is ready to vote to extend the suspension or the proclamation. Thus, the fact that rebellion and invasion persist and that public safety requires the suspension or proclamation should first be determined separately. Only when both chambers are convinced of the merits to extend the suspension or proclamation will Congress convene jointly. Again, all this confluence of events should happen within the same 60 days—the same 60 days when the House and the Senate separately determine whether they should revoke and then the same 60 days that they will also separately deliberate for the purpose of acting on a proposal of the President to extend.

Given the time constraints, the interpretation proposed by the *ponencia* will, thus, not make sense when there is a difference of opinion between the Senate and the House of Representatives.

VI

Respondents have not presented any rationale for meeting separately to consider whether or not they should exercise their prerogative to revoke Proclamation No. 216 except either as a policy of deference or their traditions.

I agree with the *ponencia* that respect should be given to the rules that each house of Congress has adopted.[30] However, I disagree with the proposition that Article VI, Section 16(3) of the Constitution, which grants each house of Congress the power and authority to "determine the rules of its proceedings," is paramount to the mandate in Article VII, Section 18.[31]

The tradition of Congress to first deliberate amongst themselves and subsequently adopt a concurrent resolution convening both houses in joint session must, however, yield to Article VII, Section 18 of the Constitution. The urgency of the provision should be read into the rules of each chamber.

With due respect to my colleagues, the majority impales the meaning of the Constitution at its most critical period. The decision degrades the historical lessons we have learned and weakens the safeguards that those who ratified the 1987 Constitution wanted. There is a more reasoned contemporary reading of the fundamental law: during a crisis that may lead the President to effect the suspension of some fundamental rights, Congress as a whole—not as two (2) chambers—should automatically convene to publicly deliberate. In my view, this is the Congressional power that the respondents should have discharged on behalf of their constituents. When there is a perception that the existence of the democratic republic may be threatened, we should read as inscribed in Article VII, Section 18 of our fundamental law the fullest, most effective, most efficient, and most timely Congressional review of the President's exercise of his awesome powers as Commander-in-Chief.

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[30] *Ponencia*, p. 48.

[31] *Id.*

There can be no second order solutions. The exigencies and the protection of fundamental rights require nothing less.

We are a democratic and republican state. This is true during normal times and during times of perceived crisis.

Sovereignty resides in the people. This is true likewise during normal times and during times of perceived crisis.

We should live these values and not consciously allow political barriers to degrade what the Constitution means. In my view, it was the constitutional duty of the House of Representatives and the Senate to convene jointly, deliberate jointly, and decide jointly whether or not to revoke Proclamation No. 216.

ACCORDINGLY, I vote to **DISMISS** the Petitions but only because they have become moot and academic.

EN BANC

[G.R. No. 232413. July 25, 2017]
(Formerly UDK 15419)

IN THE MATTER OF THE PETITION FOR ISSUANCE OF WRIT OF *HABEAS CORPUS* WITH PETITION FOR RELIEF

INTEGRATED BAR OF THE PHILIPPINES PANGASINAN LEGAL AID and JAY-AR R. SENIN, *petitioners, vs.* **DEPARTMENT OF JUSTICE, PROVINCIAL PROSECUTOR'S OFFICE, BUREAU OF JAIL MANAGEMENT AND PENOLOGY, and PHILIPPINE NATIONAL POLICE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE PETITION FOR ISSUANCE OF WRIT OF *HABEAS CORPUS* WITH PETITION FOR DECLARATORY RELIEF HAS BECOME MOOT AND ACADEMIC; REASONS.—** The Court agrees with the OSG that this controversy has become moot and academic. *First*, the DOJ already issued D.C. No. 004, series of 2017, which recognizes the right of a detainee to be released even if the dismissal of the case on preliminary investigation is the subject of automatic review by the SOJ. *Second*, records show that the order of dismissal was reversed; that upon filing of the information with the court, there was judicial determination of probable cause against Senin; and that following such judicial determination, the court issued a warrant of arrest and a commitment order.

2. **ID.; ID.; ID.; REQUISITES THAT MUST CONCUR FOR THE COURT TO DECIDE A CASE, OTHERWISE MOOT; ALL PRESENT IN CASE AT BAR.—** Although the latest circular of Secretary Aguirre is laudable as it adheres to the constitutional provisions on the rights of pre-trial detainees, the Court will not dismiss the case on the ground of mootness. As can be gleaned from the ever-changing DOJ circulars, there is a possibility that the latest circular would again be amended by succeeding secretaries. It has been repeatedly held that "the Court will decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. All four (4) requisites are present in this case. As the case is prone to being repeated as a result of constant changes, the Court, as the guardian and final arbiter of the Constitution and pursuant to its prerogative to promulgate rules concerning the protection and enforcement of constitutional rights, takes this opportunity to lay down controlling principles to guide the bench, the bar and the public on the propriety of the continued detention of an arrested person whose case has been dismissed on inquest, preliminary investigation, reinvestigation, or appeal but pending automatic review by the SOJ.

3. ID.; CRIMINAL PROCEDURE; RULE WHEN A PERSON WAS ARRESTED WITHOUT A WARRANT; REMEDIES OF THE PERSON ARRESTED.— The rule is that a person subject of a warrantless arrest must be delivered to the proper judicial authorities within the periods provided in Article 125 of the RPC, otherwise, the public official or employee could be held liable for the failure to deliver except if grounded on reasonable and allowable delays. Article 125 of the RPC is intended to prevent any abuse resulting from confining a person without informing him of his offense and without allowing him to post bail. It punishes public officials or employees who shall detain any person for some legal ground but fail to deliver such person to the proper judicial authorities within the periods prescribed by law. In case the detention is without legal ground, the person arrested can charge the arresting officer with arbitrary detention under Article 124 of the RPC. This is without prejudice to the possible filing of an action for damages under Article 32 of the New Civil Code of the Philippines.

4. ID.; ID.; ID.; THE WAIVER OF THE EFFECTS OF ARTICLE 125 OF THE REVISED PENAL CODE (RPC) IS NOT A LICENSE TO DETAIN A PERSON *AD INFINITUM*.— [T]he waiver of the effects of Article 125 of the RPC is not a license to detain a person *ad infinitum*. Waiver of a detainee's right to be delivered to proper judicial authorities as prescribed by Article 125 of the RPC does not trump his constitutional right in cases where probable cause was initially found wanting by reason of the dismissal of the complaint filed before the prosecutor's office even if such dismissal is on appeal, reconsideration, reinvestigation or on automatic review. Every person's basic right to liberty is not to be construed as waived by mere operation of Section 7, Rule 112 of the Rules of Court. The fundamental law provides limits and this must be all the more followed especially so that detention is proscribed absent probable cause.

5. ID.; ID.; ID.; ID.; A PRE-TRIAL DETAINEE MUST BE RELEASED DESPITE A WAIVER OF ARTICLE 125 IF THE APPROPRIATE PERIOD FOR THE CONDUCT OF PRELIMINARY INVESTIGATION LAPSES; THAT THE SECURITY OF THE PUBLIC AND THE INTEREST OF THE STATE WOULD BE JEOPARDIZED IS NOT A JUSTIFICATION TO TRAMPLE UPON THE CONSTITUTIONAL RIGHTS TO LIBERTY, TO BE PRESUMED INNOCENT,

AND TO A SPEEDY DISPOSITION OF THE CASE.— [T]he Court rules that a detainee under such circumstances must be promptly released to avoid violation of the constitutional right to liberty, despite a waiver of Article 125, if the 15-day period (or the thirty 30-day period in cases of violation of R.A. No. 9165) for the conduct of the preliminary investigation lapses. This rule also applies in cases where the investigating prosecutor resolves to dismiss the case, even if such dismissal was appealed to the DOJ or made the subject of a motion for reconsideration, reinvestigation or automatic review. The reason is that such dismissal automatically results in a *prima facie* finding of lack of probable cause to file an information in court and to detain a person. The Court is aware that this decision may raise discomfort to some, especially at this time when the present administration aggressively wages its "indisputably popular war on illegal drugs." As Justice Diosdado Peralta puts it, that the security of the public and the interest of the State would be jeopardized is not a justification to trample upon the constitutional rights of the detainees against deprivation of liberty without due process of law, to be presumed innocent until the contrary is proved and to a speedy disposition of the case.

APPEARANCES OF COUNSEL

January E. Ragudo for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for the issuance of writ of *habeas corpus* with a petition for declaratory relief filed by the Integrated Bar of the Philippines *(IBP)* Pangasinan Chapter Legal Aid, pursuant to its purpose, as stated in "*In the Matter of the Integration of the Bar of the Philippines*," issued by the Supreme Court on January 9, 1973, and the provisions under Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines (*Guidelines on Legal Aid*).

The petition claims that as a result of jail visitations participated in by the IBP Legal Aid Program, as well as a series of consultations with the Philippine National Police *(PNP)* on the extant condition of detention prisoners, it was discovered that several detention prisoners had been languishing in jail for years without a case being filed in court by the prosecutor's office and without definite findings as to the existence or non-existence of probable cause.

DOJ Issuances

The petition considers such condition of several detention prisoners as an alarming situation brought about by several Department of Justice *(DOJ)* issuances, namely:

1. DOJ Circular *(D.C.)* No. 12, series of 2012, which provided that the dismissal of all drug-related cases involving violations for which the maximum penalty is either *reclusion perpetua* or life imprisonment is subject to automatic review by the Justice Secretary whether such case has been dismissed on inquest, preliminary investigation or reinvestigation. It also stated that [t]he automatic review shall be summary in nature and shall, as far as practicable, be completed within 30 days from receipt of the case records, without prejudice to the right of the respondent to be immediately released from detention pending automatic review, unless the respondent is detained for other causes;
2. D.C. No. 22, series of 2013, entitled Guidelines on the Release of Respondents/Accused Pending Automatic Review of Dismissed Cases Involving Republic Act *(R.A.)* No. 9165; and
3. D.C. No. 50, series of 2012, entitled Additional Guidelines on the Application of Article 125 of the Revised Penal Code, as Amended *(RPC)*.[1]

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[1] Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person

For the IBP, it is the height of injustice when innocent persons are left to suffer in jail for years without a fixed term. Contending that it is their duty to defend the Constitution and protect the people against unwarranted imprisonment and detention, the IBP is requesting the Court to act on the amendment of the Rules on Preliminary Investigation, by way of a letter, which has been forwarded to the Committee on Revision. Pending the desired amendment, however, the IBP urges the Court to act on the urgent and imperative need to release from detention those who are wrongfully imprisoned despite the absence of probable cause.

The IBP represents in this case its client, Jay-Ar Senin *(Senin)*. Senin's rights were allegedly violated because he has been detained for at least eight months without any finding of probable cause or a case having been filed in court.

Senin's case started when a complaint against him and other unidentified persons was indorsed on February 9, 2015, by Police Chief Inspector Crisante Pagaduan Sadino of the San Fabian Police Station, Pangasinan to the Provincial Prosecutor's Office. He was arrested while engaged in the sale of illegal drugs during a buy-bust operation. Thereafter, he executed a waiver of the provisions of Article 125 of the RPC. After the preliminary investigation, the prosecutor resolved to dismiss the case. Pursuant to the then prevailing DOJ Circular, the case was forwarded to the DOJ for automatic review.

The IBP claims that the waiver of Article 125 of the RPC does not vest the DOJ, Provincial Prosecutor's Office *(PPO*), Bureau of Jail Management and Penology *(BJMP)*, and the PNP, the unbridled right to detain Senin indefinitely subject only to the whims and caprices of the reviewing prosecutor of the DOJ.

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for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

Section 7, Rule 112 of the Rules of Court explicitly provides that preliminary investigation must be terminated within 15 days from its inception if the person arrested had requested for a preliminary investigation and had signed a waiver of the provisions of Article 125.[2] It follows, therefore, that the waiver of Article 125 must coincide with the 15-day period of preliminary investigation. The detention beyond this period violates Senin's constitutional right to liberty. The review of the investigating prosecutor's resolution has been pending with the DOJ for more than eight months. The IBP concludes that Senin must be released from detention and be relieved from the effects of the unconstitutional issuances of the DOJ.

Thus, the petition prays that the Court:

a) declare that pursuant to A.M. No. 08-11-7-SC, the petitioner is exempt from the payment of filing fees;

b) issue a writ of *habeas corpus* directing the release of Senin;

c) declare the aforementioned issuances of the DOJ as unconstitutional;

d) immediately set the case for hearing due to its urgency; and

e) issue a writ of *kalayaan* directing the release of all detention prisoners in a similar plight.

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[2] Section 7. *When accused lawfully arrested without warrant*. — When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

Department Circular No. 50

On December 18, 2015, D.C. No. 50 was issued by then Secretary of Justice *(SOJ),* now Associate Justice Alfredo Benjamin S. Caguioa of this Court. In brief, D.C. No. 50 stated that a person with a pending case for automatic review before the DOJ shall be released immediately if the review is not resolved within a period of 30 days, to wit:

> 9. All cases subject to automatic review shall be resolved by the Office of the Secretary within thirty (30) days from the date the complete records are elevated to this Department in order to give the concerned signatory of the review resolution sufficient time to study the case, the reviewing prosecutor to whom the case is assigned is mandated to submit his recommendation to the concerned signatory ten (10) days before the thirty (30) day deadline. The docket section of this Department is also directed to monitor compliance with the periods prescribed herein.
>
> If the case subject of the automatic review is not resolved within thirty (30) days, then the respondent shall be immediately released from detention pending automatic review, unless the respondent is detained for other causes.

D.C. No. 50 also directed all heads of prosecution offices to immediately issue corresponding release orders in favor of respondents, whose cases are still pending automatic review before the Office of the Secretary, beyond the 30 day period, unless they are detained for other causes.

Department Circular No. 003

On January 13, 2016, however, D.C. No. 003 was issued revoking DC No. 50 and reinstating D.C. No. 012, series of 2012.

Reversal of the Order of Dismissal

Meanwhile, on February 10, 2016, the Information against Senin for Illegal Possession of Dangerous Drugs was finally

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After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule.

filed by Prosecutor Marcelo C. Espinosa. Later, the RTC, Branch 43, Dagupan City *(RTC)*, issued a commitment order directing Senin's detention during the pendency of the case against him.

On February 16, 2016, the IBP filed a manifestation with motion informing the Court that to their surprise, Senin signed a Motion for Issuance of Order of Release; that such motion was filed before the RTC, Branch 43, and was later on set for hearing; that to protect the interest of Senin, the IBP filed a motion to intervene in the said proceeding; that no case has been filed before the said trial court; that any action the RTC would take might pre-empt the Court in resolving this case; and that Senin remains incarcerated despite the issuance of D.C. No. 50. With all these events, the IBP prays for the issuance of an order directing BJMP to release Senin from detention unless detained for some other lawful causes.

An Amended Information, dated February 22, 2016, was subsequently filed before the RTC, Branch 43.

Department Circular No. 004

On January 4, 2017, the incumbent Secretary of Justice, Vitaliano N. Aguirre II, issued D.C. No. 004, series of 2017, the pertinent provisions of which read:

> In the interest of the service and pursuant to the provisions of existing laws, the dismissal of all cases whether on inquest, preliminary investigation, reinvestigation or on appeal, filed for violation of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) and involving the maximum penalty of *reclusion perpetua* or life imprisonment, shall be subject to automatic review by the Secretary of Justice.
>
> The entire records of the case shall be elevated to the Secretary of Justice, within three (3) days from issuance of the resolution dismissing the complaint or appeal, as applicable, and the parties involved shall be notified accordingly.
>
> **Notwithstanding the automatic review, respondent shall be immediately released from detention unless detained for other causes**.
>
> This Department Circular shall apply to all pending cases and to those which have been dismissed prior to the issuance hereof, if such

dismissal has not yet attained finality as of the the effectivity of this Circular.

This Department Order revokes all prior issuances inconsistent herewith and shall take effect immediately until revoked.

For strict compliance.

Position of the IBP on the effect of the amendments on the DOJ issuances

The IBP concedes that the present detention of Senin had been overrun by the issuance of D.C. No. 50, the resolution of the DOJ *reversing* the dismissal order of the PPO and the eventual filing of the February 22, 2016 Amended Information. It remains firm, however, that despite these circumstances, the dismissal of this petition is not in order as the writ of *habeas corpus* for the immediate release of Senin is but one of the three reliefs being sought from the Court. The IBP reiterates that the constitutionality of DC No. 12, series of 2012, DC No. 22, series of 2013 and DC No. 50 is still being questioned. Likewise, it emphasizes that the issuance of a writ of *kalayaan* is one of the reliefs prayed for in order to protect those similarly situated as Senin.

The IBP pleads for the Court not to dismiss the petition outright and resolve the issue on the constitutionality of the DOJ issuances in order to prevent the executive department from issuing orders which tend to violate basic constitutional rights.

It appears that the IBP is unaware of the issuance of D.C. No. 004 as no manifestation has been filed with the Court regarding the same circular.

Position of the BJMP

According to the BJMP, Senin has been confined in its facility through a valid commitment order issued by the court and cannot be released without an order directing the same. It asserts that it has not disregarded or violated any existing laws or policy at the expense of Senin's rights. The BJMP cites *Agbay v.*

Deputy Ombudsman[3] and its 2007 Revised BJMP Manual,[4] wherein it is provided that court order is required before a prisoner can be released. It insists that the continuous detention of Senin is legal considering that the RTC has already issued a commitment order, which has not been recalled or revoked.

The BJMP avers that D.C. No. 50 does not vest it unbridled discretion to release prisoners because a court order is always required. It opines that the filing of an Information against Senin for Illegal Possession of Dangerous Drugs mooted the question on the legality of the latter's detention.

Position of the OSG

The Office of the Solicitor General *(OSG)* posits that the remedy of *habeas corpus* availed of by the IBP and Senin is not appropriate considering that as of February 10, 2016, the SOJ has found the existence of probable cause for the filing of information in court. For said reason, the OSG deems it unnecessary for the Court to determine the constitutionality of the DOJ issuances as the question on the legality of Senin's detention has already been put to rest. In other words, the OSG points out that the constitutional question is not the very *lis mota* of the case, thus, precluding this Court from exercising its power of judicial review.

Reply of the IBP

The IBP seeks to nullify the DOJ issuances for the alleged violation of the detainee's rights. It asserts that the DOJ issuances

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[3] 369 Phil. 174 (1999). The power to order the release or confinement of the accused is determinative of the issue. In contrast with a city fiscal, it is undisputed that a municipal court judge, even in the performance of his function to conduct preliminary investigation retains the power to issue order of release or commitment.

[4] No inmate shall be released on a mere verbal order or an order relayed by telephone. The release of an inmate by reason of acquittal, dismissal of case, payment of fines and/or indemnity, or filing of bond shall be effected only upon receipt of the Release Order served by the court process server. The Court Order shall bear the full name of the inmate, the crime he/she was charged with, the criminal case number and such other details that will enable the officer in charge to properly identify the inmate to be released.

requiring the automatic review of dismissed cases involving drug-related cases for which the maximum penalty is either *reclusion perpetua* or life imprisonment, permit the indefinite confinement of a pre-trial detainee who has waived Article 125 of the RPC in order to undergo preliminary investigation. The IBP believes that a person who has requested the conduct of a preliminary investigation can only be detained for a maximum period of 15 days because the Rules require that the preliminary investigation be terminated within such period despite waiver of Article 125. It also claims that those persons whose cases were dismissed initially by the investigating prosecutor should be released even if the dismissal is still subject to re-investigation or to the SOJ's automatic review.

History of the DOJ Issuances

D.C. No. 46, dated June 26, 2003

The process of automatic review of dismissed drug cases was first instituted in 2003.

Due to numerous complaints about illegal drug cases being whitewashed or dismissed due to sloppy police work, former SOJ Simeon Datumanong issued D.C. No. 46, empowering the DOJ to automatically review dismissed cases filed in violation of R.A. No. 9165 and involving the maximum penalty of life imprisonment or death.

The circular also applied to cases which had been dismissed prior to its issuance if such dismissal had not yet attained finality as of the date of the circular.

D.C. No. 12, dated February 13, 2012

D.C. No. 46 was followed by D.C. No. 12 in which former SOJ Leila M. De Lima, for the most part, reiterated the provisions of the first circular but added that automatic review of dismissed drug cases shall be without prejudice to the right of the respondent to be immediately released from detention pending automatic review, unless respondent is detained for other causes.

D.C. No. 22, dated February 12, 2013

A year after, SOJ De Lima revised the guidelines directing the continued detention of some respondents accused of violating R.A. No. 9165. She reasoned that cases, where the maximum imposable penalty *reclusion perpetua* or life imprisonment, are presumably high-priority drug cases whose alleged perpetrators should remain in custody.

In this circular, the only respondents who may be released, pending automatic review of their cases by the SOJ, are those whose cases were dismissed during inquest proceedings on the ground that the arrest was not a valid warrantless arrest under Section 5, Rule 113 of the Rules of Criminal Procedure, or that no probable cause exists to charge respondents in court.

The respondents shall remain in custody, pending automatic review of the dismissal of their cases, in the following instances as provided for under the circular:

1. When during inquest proceedings, respondent elects to avail of a regular preliminary investigation and waives in writing the provisions of Article 125 of the RPC;

2. When an information is filed in court after inquest proceedings and the accused is placed in the custody of the law, but the court allows the accused to avail of a regular preliminary investigation, which results in the dismissal of the case, the handling prosecutor shall insist that the accused shall remain in the custody of the law pending automatic review by the SOJ, unless the court provides otherwise, or until the dismissal is affirmed by the SOJ and the corresponding motion to dismiss or withdraw information is granted by the court;

3. When an information is filed in court after preliminary investigation proceedings and the accused is placed in the custody of the law, but the court allows the accused to avail of reinvestigation, which results in the dismissal of the case, the accused shall remain in custody of the law pending automatic review by the SOJ, unless the court provides otherwise, or until the dismissal is affirmed

by the SOJ and the corresponding motion to dismiss or withdraw information is granted by the court; and

4. When the case against respondent is dismissed after due reinvestigation, if the case was commenced as an inquest case but was converted to a regular preliminary investigation after respondent elected the same and waived the provisions of Article 125 of the RPC.

D.C. No. 50, dated December 18, 2015

In order to address the problem of delay in the disposition of cases subject to automatic review and the prolonged detention of drug suspects without any case filed against them, then SOJ Caguioa issued D.C. No. 50, directing all heads of prosecution offices to immediately issue corresponding release orders in favor of respondents whose cases are still pending automatic review before the SOJ beyond the 30-day period prescribed in the subject circular, unless respondents are detained for some other causes.

D.C. No. 003, dated January 13, 2016

In view of the considerable number of petitions for *habeas corpus* filed against the DOJ by accused languishing in jail for years while their cases were pending automatic review by the DOJ, then SOJ Caguioa revoked D.C. No. 50 dated December 18, 2015 and D.C. No. 22, dated February 12, 2013.

SOJ Caguioa then reinstated D.C. No. 12, dated February 13, 2012, mandating immediate release of respondents pending automatic review, unless respondents are detained for other causes.

D.C. No. 004, dated January 4, 2017

SOJ Vitaliano Aguirre, in this latest circular, reiterated the provisions of D.C. No. 3, dated January 13, 2016, in so far as it orders the respondent/s to be immediately released from detention, pending automatic review, unless detained for other causes.

Petition is moot and academic

The Court agrees with the OSG that this controversy has become moot and academic. *First,* the DOJ already issued D.C. No. 004, series of 2017, which recognizes the right of a detainee to be released even if the dismissal of the case on preliminary investigation is the subject of automatic review by the SOJ. *Second*, records show that the order of dismissal was reversed; that upon filing of the information with the court, there was judicial determination of probable cause against Senin; and that following such judicial determination, the court issued a warrant of arrest and a commitment order.

The rule pertaining to pre-trial detainees whose cases are under preliminary investigation, or whose cases have been dismissed on inquest, preliminary investigation but pending appeal, motion for reconsideration, reinvestigation or automatic review

Although the latest circular of Secretary Aguirre is laudable as it adheres to the constitutional provisions on the rights of pre-trial detainees, the Court will not dismiss the case on the ground of mootness. As can be gleaned from the ever-changing DOJ circulars, there is a possibility that the latest circular would again be amended by succeeding secretaries. It has been repeatedly held that "the Court will decide cases, otherwise moot, if: *first,* there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[5] All four (4) requisites are present in this case.

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[5] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. Nos. 209271, 209276, 209301 & G.R. No. 209430 (Resolution), July 26, 2016.

As the case is prone to being repeated as a result of constant changes, the Court, as the guardian and final arbiter of the Constitution[6] and pursuant to its prerogative to promulgate rules concerning the protection and enforcement of constitutional rights,[7] takes this opportunity to lay down controlling principles to guide the bench, the bar and the public on the propriety of the continued detention of an arrested person whose case has been dismissed on inquest, preliminary investigation, reinvestigation, or appeal but pending automatic review by the SOJ.

The rule is that a person subject of a warrantless arrest must be delivered to the proper judicial authorities[8] within the periods provided in Article 125 of the RPC, otherwise, the public official or employee could be held liable for the failure to deliver except if grounded on reasonable and allowable delays. Article 125 of the RPC is intended to prevent any abuse resulting from confining a person without informing him of his offense and without allowing him to post bail. It punishes public officials or employees who shall detain any person for some legal ground

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[6] In his Dissenting Opinion in *IBP v. Hon. Ponce Enrile* (223 Phil. 561, 619 [1985]), then Chief Justice Claudio Teehankee said:

"The judiciary, as headed by the Supreme Court has neither the power of the sword nor the purse. Yet as the third great department of government, it is entrusted by the Constitution with judicial power – the awesome power and task of determining disputes between litigants involving life, liberty and fortune and protecting the citizen against arbitrary or oppressive action of the State. The Supreme Court and all inferior courts are called upon by the Constitution 'to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary [assisted by the bar] stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive as also transgression of its constitutional limitations by the legislature."

[7] Constitution, Article VIII, Section 5(5).

[8] The words "judicial authority" as contemplated by Art. 125 mean "the courts of justices or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a a public offense, that is, the Supreme Court and such inferior courts as may be established by law." (*Sayo v. Chief of Police of Manila*, 80 Phil. 859, 866 (1948), as cited in *Agbay v. Deputy Ombudsman for the Military,* 369 Phil. 174, 188 [1999]).

but fail to deliver such person to the proper judicial authorities within the periods prescribed by law. In case the detention is without legal ground, the person arrested can charge the arresting officer with arbitrary detention under Article 124 of the RPC. This is without prejudice to the possible filing of an action for damages under Article 32 of the New Civil Code of the Philippines.

Article 125 of the RPC, however, can be waived if the detainee who was validly arrested without a warrant opts for the conduct of preliminary investigation. The question to be addressed here, therefore, is whether such waiver gives the State the right to detain a person indefinitely.

The Court answers in the negative.

The waiver of Article 125 of the RPC does not vest upon the DOJ, PPO, BJMP, and PNP the unbridled right to indefinitely incarcerate an arrested person and subject him to the whims and caprices of the reviewing prosecutor of the DOJ. The waiver of Article 125 must coincide with the prescribed period for preliminary investigation as mandated by Section 7, Rule 112 of the Rules of Court. Detention beyond this period violates the accused's constitutional right to liberty.

Stated differently, the waiver of the effects of Article 125 of the RPC is not a license to detain a person *ad infinitum*. Waiver of a detainee's right to be delivered to proper judicial authorities as prescribed by Article 125 of the RPC does not trump his constitutional right in cases where probable cause was initially found wanting by reason of the dismissal of the complaint filed before the prosecutor's office even if such dismissal is on appeal, reconsideration, reinvestigation or on automatic review. Every person's basic right to liberty is not to be construed as waived by mere operation of Section 7, Rule 112 of the Rules of Court. The fundamental law provides limits and this must be all the more followed especially so that detention is proscribed absent probable cause.

Accordingly, the Court rules that a detainee under such circumstances must be promptly released to avoid violation of the constitutional right to liberty, despite a waiver of Article

125, if the 15-day period (or the thirty 30-day period in cases of violation of R.A. No. 9165[9]) for the conduct of the preliminary

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[9] Republic Act No. 9165, Section 90. *Jurisdiction*. — The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act.

The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of their filing.

When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the records of the case.

Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

The Implementing Rules and Regulations of the law further states:

Section 90. *Jurisdiction*. — The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of the Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The DOJ, through its provincial/city prosecution offices, shall designate special prosecutors to exclusively handle cases involving violations of the Act.

The preliminary investigation of cases filed under the Act shall be terminated within a period of thirty (30) days from the date of their filing.

When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the records of the case.

However, when the prosecutor disagrees with the finding of the Municipal Trial Court and he/she finds the need to conduct a formal reinvestigation of the case to clarify issues, or to afford either party the opportunity to be heard to avoid miscarriage of justice, the prosecutor has to terminate the reinvestigation within fifteen (15) days from receipt of the records, and if

investigation lapses. This rule also applies in cases where the investigating prosecutor resolves to dismiss the case, even if such dismissal was appealed to the DOJ or made the subject of a motion for reconsideration, reinvestigation or automatic review. The reason is that such dismissal automatically results in a *prima facie* finding of lack of probable cause to file an information in court and to detain a person.

The Court is aware that this decision may raise discomfort to some, especially at this time when the present administration aggressively wages its "indisputably popular war on illegal drugs." As Justice Diosdado Peralta puts it, that the security of the public and the interest of the State would be jeopardized is not a justification to trample upon the constitutional rights of the detainees against deprivation of liberty without due process of law, to be presumed innocent until the contrary is proved and to a speedy disposition of the case.

WHEREFORE, it is hereby declared, and ruled, that all detainees whose pending cases have gone beyond the mandated periods for the conduct of preliminary investigation, or whose cases have already been dismissed on inquest or preliminary investigation, despite pending appeal, reconsideration, reinvestigation or automatic review by the Secretary of Justice, are entitled to be released pursuant to their constitutional right to liberty and their constitutional right against unreasonable seizures, unless detained for some other lawful cause.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Caguioa, J., no part.

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probable cause exists, to file the corresponding information in court within forty-eight (48) hours from termination of the reinvestigation.

Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

FIRST DIVISION

[A.C. No. 8450. July 26, 2017]

SPOUSES FELIX AND FE NAVARRO, ***c****omplainants, vs.* **ATTY. MARGARITO G. YGOÑA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARIZATION, CONCEPT AND EFFECTS.— Notarization is not merely an empty or meaningless exercise. It is invested with public interest, such that only those qualified and authorized may act as notaries public. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, therefore, entitled to full faith and credit upon its face, and the courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public.

2. ID.; ID.; NEGLIGENCE IN THE PERFORMANCE OF NOTARIAL FUNCTIONS, COMMITTED; PENALTY.— Atty. Ygoña should have been more circumspect in notarizing the Deed of Absolute Sale. Assuming that there is truth in Atty. Ygoña's assertion that the Spouses Navarro freely and voluntarily signed and executed the Deed of Absolute Sale, the Court agrees with Commissioner Andres that the discrepancies in the CTCs used in the Deed of Absolute are too glaring to ignore. Thus, serious doubt exists as to whether the Spouses Navarro did indeed appear before Atty. Ygoña to have the Deed of Absolute Sale notarized, as required by the Rules on Notarial Practice. Moreover, the Court notes the Certification from the Office of the Clerk of Court confirming that the notarial report submitted by Atty. Ygoña did not contain the subject Deed of Absolute Sale. This failure on the part of Atty. Ygoña to record the transaction in his books and include the same in his notarial register, as required by the Rules on Notarial Practice, warrants a corresponding sanction. x x x [T]he Court agrees with, and hereby adopts, the recommended penalty of the IBP that respondent Atty. Ygoña's notarial commission be revoked and that he be disqualified from being commissioned as a notary public for two (2) years.

APPEARANCES OF COUNSEL

Leoville T. Ecarma for complainants.

R E S O L U T I O N

CAGUIOA, *J.*:

A notarized document is entitled to full faith and credit upon its face. A notary public must exercise utmost care in performing his duties to preserve the public's confidence in the integrity of notarized documents.[1]

The relevant facts, as borne by the records, are as follows:

Complainants spouses Felix and Fe Navarro (Spouses Navarro) were the owners of a parcel of land (subject property) located at Barrio Panadtaran, San Fernando, Cebu, Philippines, covered by Tax Declaration No. 0137-7148.[2]

Sometime in November 2002, the Spouses Navarro obtained a loan from Mercy Grauel (Grauel) in the amount of ₱300,000.00.[3] As a collateral for the loan, the Spouses Navarro executed and signed a Promissory Note and a Real Estate Mortgage over the subject property on November 22, 2002.[4] In addition, Grauel proposed to the Spouses Navarro the execution of a Deed of Absolute Sale conveying the subject property to Grauel, in the event that the Spouses Navarro would fail to pay the loan.[5] Grauel admitted that she made the proposal to avoid the tedious process of foreclosing a property, and that the Deed of Absolute Sale would serve merely as an additional

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[1] *Bartolome v. Basilio*, A.C. No. 10783, October 14, 2015, 772 SCRA 213, 223-224.

[2] *Rollo*, pp. 2, 152.

[3] *Id*.

[4] *Id*. at 86, 152-153.

[5] *Id*. at 86.

security for the loan.[6] According to Grauel, the Spouses Navarro agreed to her proposal and voluntarily signed the Deed of Absolute Sale.[7]

Grauel repeatedly demanded payment from the Spouses Navarro, but her demands went unheeded.[8] Grauel recounted that due to her hectic schedule, she forgot to register the Real Estate Mortgage with the Office of the Register of Deeds. It was only on March 2004 when Grauel filed her request and paid the corresponding fees for the registration of the Real Estate Mortgage. Despite this, the Real Estate Mortgage was not registered because the Office of the Register of Deeds allegedly just sat on Grauel's request.[9]

Upon instructions made by Grauel, Atty. Ygoña sent the Spouses Navarro a letter, received on September 24, 2004, demanding payment of the loan.[10] According to Grauel, since the Spouses Navarro could no longer pay, Grauel proposed that the Spouses Navarro convey to her the subject property to extinguish all their obligations arising from the loan.[11] Thereafter, on October 22, 2004, Atty. Ygoña notarized the Deed of Absolute Sale which Grauel used to cause the transfer of the tax declaration over the subject property to her name.[12]

Upon learning that Grauel filed a civil case for Quieting of Title, the Spouses Navarro filed an adverse claim in order to restore their right over the subject property.[13] The Spouses Navarro also filed a criminal complaint against Grauel and Atty. Ygoña for Estafa through Falsification of Public Document,

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[6] *Id*. at 86, 153.

[7] *Id*. at 87.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 87, 110, 153.

[11] *Id*. at 87.

[12] *Id*.

[13] *Id*. at 111.

and the instant administrative case against Atty. Ygoña.[14] The Spouses Navarro asserted that, driven by their dire need for the proceeds of the loan and lacking familiarity with the particulars of the transaction, they hastily signed the Deed of Absolute Sale, of which the date and other relevant portions were allegedly left blank.[15]

According to the Spouses Navarro, and as admitted by Grauel, the Promissory Note, the Real Estate Mortgage, and the Deed of Absolute Sale were all executed on November 22, 2002.[16] The Real Estate Mortgage was notarized by Atty. Ygoña on the same date. However, the Deed of Sale was notarized only on October 22, 2004.[17]

In their complaint,[18] the Spouses Navarro alleged that the Deed of Absolute Sale was fictitious and that their signatures therein were forged. In impugning the validity of the Deed of Absolute Sale, the Spouses Navarro pointed out several irregularities, particularly, the Community Tax Certificates (CTC) used in the Deed of Absolute Sale and the Acknowledgment portion.[19] In addition, the Spouses Navarro presented a

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[14] *Id*. at 154.

[15] *Id*. at 110.

[16] *Id.* at 54-56, 87, 110.

[17] *Id*. at 55-56.

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

[19] **The irregularities pointed out by the Spouses Navarro include the following:**

a) Fe Navarro's CTC No. in the Real Estate Mortgage notarized on November 22, 2002, and Felix Navarro's CTC No. in the Deed of Absolute Sale notarized on October 22, 2004, are the same (i.e. CTC No. 09030330), but were issued on different dates (i.e. 01/10/2002 and 01/01/2004, respectively).

b) Felix Navarro's CTC No. in the Acknowledgment portion of the Deed of Absolute Sale (i.e. CTC No. 09030331 issued on 01/10/04) is different from the one used in the body of the Deed of Absolute Sale (i.e. CTC No. 09030330 issued on 01/01/04).

Certification[20] issued by the Office of the Clerk of Court (Notarial Section), Regional Trial Court of Cebu, 7th Judicial Region, confirming that Atty. Ygoña had submitted his notarial report for the year 2004, but the subject Deed of Absolute Sale notarized on October 22, 2004 was not among the documents listed.

For his part, Atty. Ygoña averred that at the time the Deed of Absolute Sale was presented to him for notarization, it was complete in all material particulars, and that the Spouses Navarro freely and voluntary executed and signed the same.[21] Atty. Ygoña also emphasized that the Spouses Navarro did not deny the genuineness of their signatures in the Deed of Absolute Sale.[22]

In a Resolution[23] dated September 19, 2005, the City Prosecutor dismissed the criminal complaint for Estafa against Atty. Ygoña as there was no proof that he conspired with Grauel in committing the crime against the Spouses Navarro. However, in the same Resolution, the City Prosecutor recommended the filing of an Information for Estafa under Article 315, No. 3(a) of the Revised Penal Code (RPC) against Grauel after finding probable cause that she employed deceit and fraud when she induced the Spouses Navarro to sign the Deed of Absolute Sale purposely as an assurance before granting the loan, but used it to transfer the title over the property to her name, to the prejudice of the Spouses Navarro.[24]

At the scheduled mandatory conference on August 13, 2010, the Spouses Navarro and Atty. Ygoña were present, and assisted

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c) Fe Navarro's CTC No. in the Acknowledgment portion of the Deed of Absolute Sale (i.e. CTC No. 09030330 issued on 01/10/04) is different from the one used in the body of the Deed of Absolute Sale (i.e. CTC No. 09030334 issued on 01/01/04). (*Rollo*, pp. 153-154, 159-160.)

[20] *Rollo*, p. 13.

[21] *Id*. at 134.

[22] *Id*. at 134-135.

[23] *Id*. at 80-85.

[24] *Id*. at 84-85.

by their respective counsels, jointly moved for the resetting of the case to give them enough time to go over the records.[25]

During the last mandatory conference on November 19, 2010, the Spouses Navarro, represented by Atty. Rainier C. Lacap, and Atty. Ygoña agreed that stipulations, admissions, and issues shall be limited to the pleadings already filed.[26] The mandatory conference was terminated and the parties submitted their respective position papers. Thereafter, the case was deemed submitted for decision.

After due proceedings, Commissioner Mario V. Andres (Commissioner Andres) rendered a Report and Recommendation[27] on June 10, 2013, concluding that Atty. Ygoña failed to diligently perform his notarial functions after notarizing the Deed of Absolute Sale, when he should have already been aware of a possible badge of *pactum commissorium* in the transaction – that the lender, Grauel, intended an automatic appropriation of the subject property in case of nonpayment of the loan by the Spouses Navarro.[28] The dispositive portion reads:

> WHEREFORE, the Undersigned respectfully recommends that if the notarial commission of the Respondent still exists, that it be hereby revoked and that he be disqualified from being commissioned as a notary public for two (2) years. It is also recommended that herein Respondent be suspended from the practice of law for three (3) to six (6) months.[29]

In its Resolution[30] dated August 9, 2014, the IBP Board of Governors resolved to adopt and approve the said Report and Recommendation, thus:

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[25] *Id*. at 92.

[26] *Id*. at 97.

[27] *Id*. at 152-163.

[28] *Id*. at 158.

[29] *Id*. at 163.

[30] *Id*. at 151.

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED**,** the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by evidence on record and the applicable laws, and for failure to exercise the utmost diligence in the performance of his functions as a notary public, Atty. Margarito G. Ygoña's Notarial Commission is hereby **Immediately Revoked. Atty. Margarito G. Ygoña is further DISQUALIFIED from being commissioned as notary public for two (2) years and SUSPENDED from the practice of law for three (3) months.**[31]

On February 25, 2016, the IBP Board of Governors denied Atty. Ygoña's Motion for Reconsideration finding no reason to reverse its previous decision.[32] On August 26, 2016, the IBP Board of Governors denied Atty. Ygoña's Second Motion for Reconsideration for the following reasons: (1) neither the Rules of Court nor the IBP Commission on Bar Discipline Rules allow the filing of the same; (2) for being dilatory; and (3) the issues therein had already been passed upon.[33]

After a judicious examination of the records and submission of the parties, this Court affirms the resolution of the IBP Board of Governors finding respondent Atty. Ygoña administratively liable, but modifies the penalty imposed.

The Court does not entirely agree with the basis of Commissioner Andres in finding Atty. Ygoña liable for his failure to diligently perform his notarial functions. Commissioner Andres concluded that Atty. Ygoña should have been aware that the Deed of Absolute Sale he had notarized was in the nature of a *pactum commissorium*. The Court finds that this issue should be resolved in a separate civil action. Likewise, the issue of whether or not the Deed of Absolute Sale was indeed forged, is civil, and perhaps criminal, in nature, and should be passed

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[31] *Id*.; emphasis in the original, italics omitted.

[32] *Id*. at 179.

[33] *Id*. at 224.

upon in a proper case.[34] Nevertheless, the Court agrees that Atty. Ygoña was remiss in the exercise of his notarial functions.

Notarization is not merely an empty or meaningless exercise. It is invested with public interest, such that only those qualified and authorized may act as notaries public.[35] Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity.[36] A notarized document is, therefore, entitled to full faith and credit upon its face, and the courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public.[37] Corollary to this, notaries public must observe utmost care and diligence in carrying out their duties and functions.

In *Salita v. Salve*,[38] a case with a similar factual milieu, the Court revoked therein respondent Atty. Salve's notarial commission and disqualified him from being commissioned as a notary for a period of (2) years, for his gross neglect in the performance of his duty as a notary when he notarized the pre-formed Deed of Absolute Sale without therein complainant Salita's presence before him. The Court found that it was unfathomable for Salita to appear before Atty. Salve to have the Deed of Absolute Sale notarized, as it would be detrimental to his own interests.[39]

Here, Atty. Ygoña should have been more circumspect in notarizing the Deed of Absolute Sale. Assuming that there is truth in Atty. Ygoña's assertion that the Spouses Navarro freely and voluntarily signed and executed the Deed of Absolute Sale, the Court agrees with Commissioner Andres that the

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[34] *Castelo v. Atty. Ching,* A.C. No. 11165, February 6, 2017, p. 6.

[35] *Bernardo v. Ramos*, 433 Phil. 8, 15 (2002).

[36] RULES OF COURT, Rule 132, Sec. 30.

[37] *Joson v. Baltazar*, 271 Phil. 880, 885 (1991).

[38] 753 Phil. 1 (2015).

[39] *Id*. at 8, 10.

discrepancies in the CTCs used in the Deed of Absolute are too glaring to ignore.[40] Thus, serious doubt exists as to whether the Spouses Navarro did indeed appear before Atty. Ygoña to have the Deed of Absolute Sale notarized, as required by the Rules on Notarial Practice.[41]

Moreover, the Court notes the Certification from the Office of the Clerk of Court confirming that the notarial report submitted by Atty. Ygoña did not contain the subject Deed of Absolute Sale.[42] This failure on the part of Atty. Ygoña to record the transaction in his books and include the same in his notarial register, as required by the Rules on Notarial Practice,[43] warrants a corresponding sanction.

As for the penalty to be imposed, the Court takes into account the dismissal of the criminal case for falsification filed against Atty. Ygoña. Despite the ruling of the IBP Board of Governors on Atty. Ygoña's Second Motion for Reconsideration, the Court deems it necessary to point out that the Spouses Navarro previously filed a disbarment case[44] against the former counsel of Grauel, Atty. Gregorio B. Escasinas, concerning the same civil action involving the subject property. This shows the Spouses Navarro's propensity to file suits against the lawyers of their opponent, which the Court should not overlook. Thus, considering the foregoing, the Court agrees with, and hereby adopts, the recommended penalty of the IBP that respondent Atty. Ygoña's notarial commission be revoked and that he be disqualified from being commissioned as a notary public for two (2) years. However, the Court does not agree that the acts of Atty. Ygoña warrant the recommended penalty of suspension from the practice of law for three (3) months.

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[40] *Rollo*, pp. 153-154, 159-160.

[41] See *Anudon v. Cefra*, 753 Phil. 421, 429 (2015).

[42] *Rollo*, p. 13.

[43] 2004 RULES ON NOTARIAL PRACTICE, Rule XI, Section 1(b)(2).

[44] *Rollo*, pp. 185, 205.

WHEREFORE, Atty. Margarito G. Ygoña is found **GUILTY** of gross negligence in the performance of his duties as notary public. His notarial commission, if still existing, is hereby **REVOKED** and he is **DISQUALIFIED** from being commissioned as a notary public for a period of two (2) years. He is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Further, let copies of this Resolution be furnished 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 *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173120. July 26, 2017]

SPOUSES YU HWA PING and MARY GAW, *petitioners, vs.* **AYALA LAND, INC.,** *respondent.*

[G.R. No. 173141. July 26, 2017]

HEIRS OF SPOUSES ANDRES DIAZ and JOSEFA MIA, *petitioners, vs.* **AYALA LAND, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; PRESCRIPTION; AN ACTION FOR RECONVEYANCE BASED ON A VOID DEED OR CONTRACT IS IMPRESCRIPTIBLE; PRINCIPLE, APPLIED.—** [W]hen the action for reconveyance is based on an implied or constructive trust, the prescriptive period is ten (10) years, or it is *imprescriptible if the movant is in the actual, continuous and peaceful possession* of the property involved. On the other hand, when the action for reconveyance is based on a void deed or contract the action is imprescriptible under Article 1410 of the New Civil Code. As long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner. x x x In this case, Spouses Yu sought to reconvey to them once and for all the titles over the subject properties. To prove that they had a superior right, they questioned the validity of the surveys which were the bases of OCT Nos. 242, 244 and 1609, the origin of ALI's TCTs. Moreover, they also sought to recover the possession that was clandestinely taken away from them. Thus, as the subject matter of this case is the ownership and possession of the subject properties, Spouses Yu's complaint is an action for reconveyance, which is not prohibited by Section 38 of Act No. 496. Moreover, a reading of Spouses Yu's complaint reveals that they are seeking to declare void *ab initio* the titles of ALI and their predecessors-in-interest as these were based on spurious, manipulated and void surveys. If successful, the original titles of ALI's predecessors-in-interest shall be declared void and, hence, they had no valid object to convey. It would result to a void contract or deed because the subject properties did not belong to the said predecessors-in-interest. Accordingly, the Yu case involves an action for reconveyance based on a void deed or contract which is imprescriptible under Article 1410 of the New Civil Code.

2. **ID.; LAND REGISTRATION; THE RULE THAT BETWEEN TWO CONFLICTING TITLES, THE TITLE REGISTERED EARLIER PREVAILS IS NOT ABSOLUTE; IF THE INCLUSION OF THE LAND IN THE EARLIER REGISTERED TITLE WAS A RESULT OF A MISTAKE, THEN THE LATTER REGISTERED TITLE WILL**

PREVAIL.— [T]he rule on superiority is **not absolute**. x x x [I]f the inclusion of the land in the earlier registered title was a result of a mistake, then the latter registered title will prevail. The *ratio decidendi* of this exception is to prevent a title that was earlier registered, which erroneously contained a parcel of land that should not have been included, from defeating a title that was later registered but is legitimately entitled to the said land. It reinforced the doctrine that "[r]egistering a piece of land under the Torrens System does not create or vest title because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein." In his book, *Land Registration and Related Proceedings,* Atty. Amado D. Aquino further explained that the principle of according superiority to a certificate of title earlier in date cannot, however, apply if it was procured through fraud or was otherwise jurisdictionally flawed. Thus, if there is a compelling and genuine reason to set aside the rule on the superiority of earlier registered title, the Court may look into the validity of the title bearing the latter date of registration, taking into consideration the evidence presented by the parties.

3. **ID.; ID.; REGISTRATION OF A PIECE OF LAND UNDER THE TORRENS SYSTEM DOES NOT CREATE OR VEST TITLE BECAUSE IT IS NOT A MODE OF ACQUIRING OWNERSHIP; IN THE DETERMINATION OF OWNERSHIP, THE SURVEYS OF THE REGISTERED LAND MAY BE SCRUTINIZED BY THE COURTS WHEN COMPELLING REASON EXISTS.—** Although a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein, it is not a conclusive proof of ownership. It is a well-settled rule that ownership is different from a certificate of title. The fact that a person was able to secure a title in his name does not operate to vest ownership upon him of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others.

Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner. Hence, the Court may inquire into the validity of the ownership of a property by scrutinizing the movant's evidence of title and the basis of such title. When there is compelling proof that there is doubt on the validity of the sources or basis of such title, then an examination is proper. Thus, the surveys of the certificates of title are not immune from judicial scrutiny, in light of the genuine and legitimate reasons for its analysis.

4. **ID.; ID.; ID.; ID.; IN VIEW OF NUMEROUS, BLATANT, AND UNJUSTIFIABLE ERRORS IN THE ASSAILED SURVEYS PRESENTED BY RESPONDENT, THEY ARE DECLARED VOID INCLUDING THE TRANSFER CERTIFICATES AND INSTRUMENT OF CONVEYANCES THAT RELIED ON THE SAID ANOMALOUS SURVEYS.—** When a land registration decree is marred by severe irregularity that discredits the integrity of the Torrens system, the Court will not think twice in striking down such illegal title in order to protect the public against unscrupulous and illicit land ownership. Thus, due to the numerous, blatant and unjustifiable errors in Psu-47909, Psu-80886, and Psu-80886/SWO-20609, these must be declared void. Likewise, OCT Nos. 242, 244, and 1609, their transfer certificates, and instruments of conveyances that relied on the anomalous surveys, must be absolutely declared void *ab initio*. With respect to the Diaz case, the Court agrees with the CA in its February 8, 2005 decision that Spouses Diaz did not commit fraud. As Psu-47909, Psu-80886 and Psu-80886/SWO-20609 are void, then OCT Nos. 242, 244 and 1609 are also void *ab initio.* The transfer certificates in the hands of third parties, including CPJ Corporation and ALI, are likewise void.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for Ayala Land, Inc.

D E C I S I O N

MENDOZA, *J.*:

These petitions for review on *certiorari* seek to reverse and set aside the June 19, 2006 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CV Nos. 61593 and 70622, which reversed and set aside its February 8, 2005 Amended Decision[2] and reinstated its February 28, 2003 Decision,[3] in a case for annulment of title and surveys, recovery of possession and judicial confirmation of title.

The Antecedents

On **March 17, 1921**, petitioners Spouses Andres Diaz and Josefa Mia *(Spouses Diaz)* submitted to the General Land Registration Office for approval of the Director of Lands a survey plan designated as **Psu-25909,** which covered a parcel of land located at Sitio of Kay Monica, Barrio Pugad Lawin, Las Piñas, Rizal, with an aggregate area of 460,626 square meters covered by Lot 1. On **May 26, 1921**, the Director of Lands approved survey plan Psu-25909.

On **October 21, 1925**, another survey plan was done covering Lot 3 of the same parcel of land designated as **Psu-47035** for a certain Dominador Mayuga**.** The said survey, however, stated that the lot was situated at Sitio May Kokek, Barrio Almanza, Las Piñas, Rizal. Then, on **July 28, 1930**, another survey was undertaken designated as **Psu-80886** for a certain Eduardo C. Guico *(Guico)***.** Again, the survey indicated a different address that the lots were situated in Barrio Tindig na Mangga, Las Piñas, Rizal. Finally, on **March 6, 1931**, an additional survey plan was executed over the similar parcel of land designated as **Psu-80886/SWO-20609** for a certain Alberto Yaptinchay *(Yaptinchay)*. Psu-80886 and Psu-80886/SWO-20609 covered

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[1] *Rollo* (G.R. No. 173120), pp. 1397-1437.

[2] *Id*. at 1178-1197.

[3] *Id*. at 1061-1121.

Lot 2, with 158,494 square meters, and Lot 3, with 171,309 square meters, of the same land.

On **May 9, 1950**, **Original Certificate of Title** ***(OCT)*** **No. 242** was issued in favor of Yaptinchay covering Lots 2 and 3 pursuant to Psu-80886/SWO-20609. On **May 11, 1950, OCT No. 244** was also issued to Yaptinchay. On **May 21, 1958, OCT No. 1609** covering Lot 3 pursuant to Psu-47035 was issued in favor of Dominador Mayuga. On May 18, 1967, some of properties were sold to CPJ Corporation resulting in the issuance of Transfer Certificate Title *(TCT)* No. 190713 in its name.

On **February 16, 1968**, petitioner Andres Diaz filed a petition for original registration before the Court of First Instance *(CFI)* of Pasay for Lot No. 1 of Psu-25909. On **October 19, 1969**, judgment was rendered by the CFI of Pasay for the original registration of Psu-25909 in favor of Andres Diaz. **On May 19, 1970, OCT No. 8510** was issued in the name of Spouses Diaz. On **May 21, 1970**, the Spouses Diaz **subdivided** their 460,626 square meter property covered by **OCT No. 8510 into ten (10) lots**, described as Lots No. 1-A to 1-J and conveyed to different third parties.

On May 17, 1971, CPJ Corporation, then owner of the land covered by TCT No. 190713, which originated from OCT No. 242, filed Land Registration Case No. N-24-M before the Regional Trial Court *(RTC)* of Pasig City, Branch 166, against Spouses Diaz and other named respondents *(Diaz Case)*. It sought to review OCT No. 8510 in the names of Spouses Diaz on the ground that the interested persons were not notified of the application.

On August 30, 1976 and December 4, 1976, **Andres Diaz sold to Librado Cabautan** ***(Cabautan)*** the following parcels of land, which originated from OCT No. 8510 under Psu-25909, to wit:

1. Lot 1-I, with an area of 190,000 square meters covered by the new TCT No. 287416;
2. Lot 1-B, with an area of 135,000 square meters covered by the new TCT No. 287411;

3. Lot 1-A with an area of 125,626 square meters covered by the new TCT No. 287412; and

4. Lot 1-D, with an area of 10,000 square meters also covered by the new TCT No. 287412.[4]

On March 12, 1993, petitioner Spouses Yu Hwa Ping and Mary Gaw *(Spouses Yu)* acquired ownership over **67,813 square meters representing the undivided half-portion of Lot 1-A originating from OCT No. 8510 of Spouses Diaz.** The said property was co-owned by Spouses Diaz with Spouses Librado and Susana Cabautan resulting from a civil case decided by the RTC of Makati on March 29, 1986.

On January 27, 1994, Spouses Yu acquired ownership over Lot 1-B originating from OCT No. 8510 of Spouses Diaz with an area of 135,000 square meters. Pursuant to the transfers of land to Spouses Yu, TCT Nos. 39408 and 64549 were issued in their names.

On the other hand, on May 4, 1980, CPJ Corporation transferred their interest in the subject properties to third persons. Later, in 1988, Ayala Corporation obtained the subject properties from Goldenrod, Inc. and PESALA. In 1992, pursuant to the merger of respondent Ayala Land, Inc. *(ALI)* and Las Piñas Ventures, Inc., ALI acquired all the subject properties, as follows:

1. Lot 3 which originated from OCT No. 1609 under Psu-47035 and covered by a new TCT No. 41325;

2. Lot 2 which originated from OCT No. 242 under Psu-80886/SWO-20609 and covered by a new TCT No. 41263;

3. Lot 3 which originated from OCT No. 242 under Psu-80886/SWO-20609 and covered by a new TCT No. 41262; and

4. Lot 6 which originated from OCT No. 242 under Psu-80886/SWO-20609 and covered by a new TCT No. 41261.[5]

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[4] *Id*. at 1181.

[5] *Id*. at 842.

First RTC Ruling

Returning to the Diaz case, on December 13, 1995, the RTC of Pasig City rendered a Decision[6] against Spouses Diaz. It held that OCT No. 8510 and all the transfer certificates issued thereunder must be cancelled. The RTC of Pasig City opined that Spouses Diaz committed fraud when they filed their application for original registration of land without informing the interested parties therein in violation of Sections 31 and 32 of Act No. 496. It also held that Spouses Diaz knew that CPJ Corporation had an appropriate interest over the subject properties.

Aggrieved, Spouses Diaz elevated an appeal before the CA docketed as CA-G.R. CV No. 61593.

Meanwhile, sometime in August 1995, Spouses Yu visited their lots. To their surprise, they discovered that ALI had already clandestinely fenced the area and posted guards thereat and they were prevented from entering and occupying the same.[7] They also discovered that the transfer of certificates of titles covering parcels of land overlapping their claim were in the name of ALI under TCT Nos. 41325, 41263, 41262, and 41261.

On December 4, 1996, Spouses Yu filed a complaint before the RTC of Las Piñas City, Branch 255, against ALI for declaration of nullity of the TCTs issued in the name of the latter *(Yu case)*. They also sought the recovery of possession of the property covered by ALI's title which *overlapped* their land alleging that Spouses Diaz, their predecessors had open, uninterrupted and adverse possession of the same from 1921 until it was transferred to Cabautan in 1976. Spouses Yu averred that Cabautan possessed the said land until it was sold to them in 1994.[8] They likewise sought the judicial confirmation of the validity of their titles.

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[6] *Id*. at 130-144.

[7] *Id*. at 157.

[8] *Id*. at 157.

Spouses Yu principally alleged that the titles of ALI originated from OCT Nos. 242, 244, and 1609, which were covered by Psu-80886 and Psu-47035. The said surveys were merely copied from Psu-25909, which was prepared at an earlier date, and *the Director of Lands had no authority to approve one or more surveys by different claimants over the same parcel of land.*[9] They asserted that OCT No. 8510 and its transfer certificates, which covered the Psu-25909, must be declared valid against the titles of ALI.

The RTC of Las Piñas ordered the conduct of a verification survey to help in the just and proper disposition of the case. Engr. Veronica Ardina-Remolar from the Bureau of Lands, the court-appointed commissioner, supervised the verification survey, and the parties sent their respective surveyors. After the verification survey was completed and the parties presented all their pieces of evidence, the case was submitted for resolution.

Second RTC Ruling

In its May 7, 2001 Decision,[10] the RTC of Las Piñas ruled in favor of Spouses Yu. It held that **based on the verification survey and the testimonies of the parties' witnesses**, OCT Nos. 242, 244, and 1609 **overlapped** OCT No. 8510. The RTC of Las Piñas also pointed out, and extensively discussed, that Psu-80886 and Psu-47035, which were the bases of OCT Nos. 242, 244, and 1609, were marred with numerous and blatant errors. It opined that ALI did not offer any satisfactory explanation regarding the glaring discrepancies of Psu-80886 and Psu-47035. On the other hand, it observed that Psu-25909, the basis of OCT No. 8510, had no irregularity in its preparation. Thus, the RTC of Las Piñas concluded that the titles of ALI were void *ab initio* because their original titles were secured through fraudulent surveys. The *fallo* reads:

WHEREFORE, judgment is rendered in favor of the plaintiffs in that the three transfer certificates issued in the name of Ayala Land,

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[9] *Id.* at 159.

[10] *Id.* at 679-715.

Inc. by the Register of Deeds in the City of Las Piñas, namely, Transfer Certificate of Title Nos. 41325, 41263 and 41262 all covering Lots Nos. 1, 2 and 6 of survey plans PSU-47035, PSU-80886, Psu-80886/SWO-20609, the original survey under PSU-47035 and decree of registration no. N-63394, and Original Certificate of Title No. 1609 issue in favor of Dominador Mayuga, including all other titles, survey and decrees pertaining thereto and from or upon which the aforesaid titles emanate, are hereby declared spurious and void *ab initio.* In the same vein, the Court upholds the validity of Transfer Certificates of Title Nos. TCT Nos. T-64549 covering Lot 1-A in the name of Mary Gaw, spouse of Yu Hwa Ping, and T-39408 covering Lot 1-B in the name of Yu Hwa Ping (both originating from Original Certificate of Title No. 8510) pursuant to plan PSU-25909 undertaken on March 17, 1921. The defendant is also ordered to pay the plaintiffs temperate damages in the amount of One Million Pesos (PHP1,000,000.00) exemplary damages in the amount of Five Hundred Thousand Pesos (PHP500,000.00), and to pay the costs.

SO ORDERED.[11]

Unconvinced, ALI appealed to the CA, where the case was docketed as CA-G.R. CV No. 70622. Eventually, said appeal was consolidated with the earlier appeal of Spouses Diaz in CA-G.R. CV No. 61593.

The CA Rulings

In its decision, dated June 19, 2003, the *CA ruled in favor of ALI*. It held that in the Diaz case, the RTC of Pasig properly cancelled OCT No. 8510 because Spouses Diaz committed fraud. It opined that Spouses Diaz knew of CPJ Corporation's interest over the subject land but failed to inform it of their application.

With respect to the Yu case, the CA ruled that Spouses Yu could no longer assert that the titles of ALI were invalid because the one-year period to contest the title had prescribed. Hence, ALI's titles were incontestable. The CA underscored that the errors cited by the RTC of Las Piñas in Psu-80886 and Psu-47035, upon which the titles of ALI were based, were innocuous or already explained. It also stressed that OCT Nos. 242, 244,

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[11] *Id.* at 714-715.

and 1609, from which the titles of ALI originated, were issued in 1950 and 1958; while the OCT No. 8510, from which the titles of Spouses Yu originated, was only issued in 1970. As the original titles of ALI predated that of Spouses Yu, the CA concluded that the former titles were superior.

Undaunted, Spouses Yu and Spouses Diaz filed their motions for reconsideration.

In its decision, dated February 8, 2005, the CA *granted* Spouses Yu and Spouses Diaz' *motions for reconsideration*. It opined that the numerous errors in Psu-80886 and Psu-47035 were serious and these affected the validity of the original titles upon which the surveys were based. In contrast, the CA noted that Psu-25909, upon which the original titles of Spouses Yu and Spouses Diaz were based, bore all the hallmarks of verity.

The CA also emphasized that in *Guico v. San Pedro,*[12] the Court already **recognized the defects surrounding Psu-80886**. In that case, the Court noted that the applicant-predecessor of Psu-80886 was not able to submit the corresponding measurements of the land and he failed to prove that he had occupied and cultivated the land continuously since the filing of their application. The CA likewise cited (1) the certification from the Department of Environment and Natural Resources-Land Management Bureau *(DENR-LMB)* that Psu-80886 was included in the list of restricted plans because of the doubtful signature of the surveyor, and (2) the memorandum, dated August 3, 2000, from the Assistant Regional Director for Operations of the DENR directing all personnel of the Land Survey Division not to issue copies or technical descriptions of Psu-80886 and Psu-47035.

The CA further wrote that the slavish adherence to the issue of prescription and laches by ALI should not be countenanced. It declared that the doctrine that registration done fraudulently is no registration at all prevails over the rules on equity. With respect to the Diaz case, the CA held that Spouses Diaz had no

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[12] 72 Phil. 415 (1941).

obligation to inform CPJ Corporation and its successors about their registration because the original titles of the latter, from which their transferred titles were derived, were based on fraudulent surveys.

Undeterred, ALI filed a second motion for reconsideration.

In its assailed June 19, 2006 decision, the CA granted the second motion for reconsideration in favor of ALI. It reversed and set aside its February 8, 2005 decision and reinstated its February 28, 2003 decision. The CA held that *Guico v. San Pedro* did not categorically declare that Psu-80886 was invalid and it even awarded some of the lots to the applicant; and that the certification of DENR-LMB and the memorandum of the Assistant Director of the DENR could not be considered by the courts because these were not properly presented in evidence.

The CA reiterated its ruling that Spouses Yu could no longer question the validity of the registrations of OCT Nos. 242, 244, and 1609 because the one-year reglementary period from the time of registration had already expired and these titles were entitled to the presumption of regularity. Thus, once a decree of registration was made under the Torrens system, and the reglementary period had lapsed, the title was perfected and could not be collaterally attacked. The CA also stressed that the noted discrepancies in Psu-80886 and Psu-47035 were immaterial to assail the validity of OCT Nos. 242, 244 and 1609, which were registered earlier than OCT No. 8510.

Hence, these petitions, anchored on the following

ISSUES

I

WHETHER THE COMPLAINT OF SPOUSES YU IS BARRED BY PRESCRIPTION

II

WHETHER THE VALIDITY OF THE SURVEYS OF OCT NOS. 242, 244 AND 1609 AS AGAINST OCT NO. 8510 CAN BE ASSAILED IN THE PRESENT CASE

III

WHETHER THE CASE OF GUICO V. SAN PEDRO IS APPLICABLE IN THE PRESENT CASE

IV

WHETHER THE ALLEGED ERRORS IN PSU-80886 AND PSU-47035 ARE OF SUCH DEGREE SO AS TO INVALIDATE OCT NOS. 242, 244 AND 1609 AND ITS TRANSFER CERTIFICATES OF TITLES

In their Memorandum,[13] the petitioners chiefly argue that the complaint filed by Spouses Yu is not barred by the one-year prescriptive period under Act No. 496 because an action to annul the fraudulent registration of land is imprescriptible; that there are several and conspicuous irregularities in Psu-80886 and Psu-47035 which cast doubt on the validity of OCT Nos. 242, 244, and 1609; that *Guico v. San Pedro* did not categorically award Lots No. 2 and 3 covered by Psu-80886 to the applicant therein because he was still required to submit an amended plan duly approved by the Director of Lands; that the applicant in *Guico v. San Pedro* never submitted any amended plan, hence, no lot was awarded under Psu-80886 and its irregularity was affirmed by the Supreme Court; that the registration of OCT Nos. 242, 244, and 1609 on a date earlier than OCT No. 8510 did not render them as the superior titles; that in case of two conflicting titles, the court must look into the source of the titles; that the sources of the titles, Psu-80886 and Psu-47035, had numerous errors that could not be satisfactorily explained by ALI; and that Psu-25909 had the hallmark of regularity and it was approved by the Director of Lands at an earlier date.

In its Memorandum,[14] ALI essentially countered that in the June 19, 2006 decision, the CA properly disregarded the certification of DENR-LMB and the memorandum of the Assistant Director of the DENR because these were not presented

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[13] *Rollo* (G.R. No. 173141), pp. 414-554.

[14] *Id*. at 355-408.

in evidence; that *Guico v. San Pedro* recognized the registrability of Lots No. 2 and 3 under Psu-80886; that the RTC of Las Piñas did not have jurisdiction to look beyond the details of the decrees of registration; that the registration of a land under the Torrens system carries with it a presumption of regularity; that in case of conflict between two certificates of title, the senior and superior title must be given full effect and validity; and that the alleged errors in the Psu-80886 and Psu-47035 were sufficiently explained.

The Court's Ruling

The Court finds the petitions meritorious.

The present case essentially involves the issue: between the registered titles of the petitioners and ALI, which is more superior? Before the said issue can be discussed thoroughly, the Court must first settle whether the actions instituted by the petitioners were filed within the reglementary periods.

The actions were filed within their respective prescriptive periods

The Diaz case was a petition for review before the RTC of Pasig. It assailed OCT No. 8510 in the names of Spouses Diaz on the ground that the said title was issued through fraud because the interested persons were not informed of their application for registration. Under Section 38 of Act No. 496, "any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud [may] file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest."[15]

Here, OCT No. 8510 was issued in the name of Spouses Diaz on May 21, 1970. On the other hand, the petition for review of CPJ Corporation was filed on May 17, 1971. Thus, the said petition was timely filed and the RTC of Pasig could tackle the

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[15] See *Rublico v. Orellana,*141 Phil. 181(1969).

issues raised therein. When the RTC of Pasig ruled in favor of CPJ Corporation, Spouses Diaz appealed to the CA. In the same manner, when they received an unfavorable judgment from the CA, Spouses Diaz filed a petition for review on *certiorari* before the Court. Accordingly, the appeal of Spouses Diaz is proper and it can be adjudicated on the merits.

On the other hand, the Yu case began when they filed a complaint before the RTC of Las Piñas against ALI for declaration of nullity of the TCTs issued in the name of the latter because of the spurious, manipulated and void surveys of OCT Nos. 242, 244 and 1609. They also sought the recovery of possession of the property covered by ALI's title that overlapped their land alleging that their predecessors, Spouses Diaz, had open, uninterrupted and adverse possession of the same from 1921 until it was transferred to Cabautan in 1976. Spouses Yu also alleged that Cabautan possessed the said land until it was sold to them in 1994.[16] It was only in August 1995 that they discovered that ALI clandestinely fenced their property and prevented them from occupying the same. They also sought the judicial confirmation of the validity of their titles.

ALI argues that the complaint of Yu is barred by prescription because it was filed beyond the one-year period under Section 38 of Act No. 496. On the other hand, Spouses Yu assert that their action was imprescriptible because they sought to set aside the titles that were obtained through void surveys and they assert that the principle of indefeasibility of a Torrens title does not apply where fraud attended the issuance of the title.

The Court finds that the complaint of Spouses Yu is not barred by prescription. While Section 38 of Act No. 496 states that the petition for review to question a decree of registration must be filed within one (1) year after entry of the decree, such provision is not the only remedy of an aggrieved party who was deprived of land by fraudulent means. The remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of

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[16] *Rollo* (G.R. No. 173120), p. 157.

the decree, not to set aside the decree, as was done in this case, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages.[17]

Uy v. Court of Appeals[18] remarkably explained the prescriptive periods of an action for reconveyance depending on the ground relied upon, to wit:

> The law creates the obligation of the trustee to reconvey the property and its title in favor of the true owner. Correlating Section 53, paragraph 3 of PD No. 1529 and Article 1456 of the Civil Code with Article 1144 (2) of the Civil Code, the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of the issuance of the certificate of title. This ten-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land. An exception to this rule is when the party seeking reconveyance based on implied or constructive trust is in actual, continuous and peaceful possession of the property involved. Prescription does not commence to run against him because the action would be in the nature of a suit for quieting of title, an action that is imprescriptible.
>
> The foregoing cases on the prescriptibility of actions for reconveyance apply when the action is based on fraud, or when the contract used as basis for the action is voidable. Under Article 1390 of the Civil Code, a contract is voidable when the consent of one of the contracting parties is vitiated by mistake, violence, intimidation, undue influence or fraud. When the consent is totally absent and not merely vitiated, the contract is void. An action for reconveyance may also be based on a void contract. When the action for reconveyance is based on a void contract, as when there was no consent on the part of the alleged vendor, the action is imprescriptible. The property may be reconveyed to the true owner, notwithstanding the TCTs already issued in another's name. The issuance of a certificate of title in the latter's favor could not vest upon him or her ownership of the property;

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[17] *Philippine National Bank v. Jumamoy*, 670 Phil. 472, 482 (2011).

[18] G.R. No. 173186, September 16, 2015.

neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale produces no legal effects whatsoever.

Whether an action for reconveyance prescribes or not is therefore determined by the nature of the action, that is, whether it is founded on a claim of the existence of an implied or constructive trust, or one based on the existence of a void or inexistent contract. x x x[19]

As discussed-above, when the action for reconveyance is based on an implied or constructive trust, the prescriptive period is ten (10) years, or it is *imprescriptible if the movant is in the actual, continuous and peaceful possession* of the property involved. On the other hand, when the action for reconveyance is based on a void deed or contract the action is imprescriptible under Article 1410 of the New Civil Code.[20] As long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner.[21]

In *Hortizuela v. Tagufa,*[22] the complainant therein filed an action for reconveyance and recovery of possession with damages for a parcel of land which was wrongfully granted a patent or decree issued in a registration proceedings in the name of a third person. The CA and the Municipal Circuit Trial Court initially dismissed the complaint because it allegedly questioned the validity of the Torrens title in a collateral proceeding and it had prescribed. When the case reached the Court, it ruled that the instituted complaint had not prescribed because *"in a complaint for reconveyance, the decree of registration is*

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[19] *Id*.

[20] New Civil Code, Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[21] *Daclag v. Macahilig,* 599 Phil. 28, 31 (2009).

[22] *Hortizuela v. Tagufa*, G.R. No. 205867, February 23, 2015, 751 SCRA 371.

respected as incontrovertible and is not being questioned. What is being sought is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to the one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property."[23] It was eventually ruled therein that the action for reconveyance was proper and the possession was recovered.

In this case, Spouses Yu sought to reconvey to them once and for all the titles over the subject properties. To prove that they had a superior right, they questioned the validity of the surveys which were the bases of OCT Nos. 242, 244 and 1609, the origin of ALI's TCTs. Moreover, they also sought to recover the possession that was clandestinely taken away from them. Thus, as the subject matter of this case is the ownership and possession of the subject properties, Spouses Yu's complaint is an action for reconveyance, which is not prohibited by Section 38 of Act No. 496.

Moreover, a reading of Spouses Yu's complaint reveals that they are seeking to declare void *ab initio* the titles of ALI and their predecessors-in-interest as these were based on spurious, manipulated and void surveys.[24] If successful, the original titles of ALI's predecessors-in-interest shall be declared void and, hence, they had no valid object to convey. It would result to a void contract or deed because the subject properties did not belong to the said predecessors-in-interest. Accordingly, the Yu case involves an action for reconveyance based on a void deed or contract which is imprescriptible under Article 1410 of the New Civil Code.

Further, the Court agrees with the observation of the CA in its February 8, 2005 Amended Decision, to wit:

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[23] *Id*. at 382.

[24] *Rollo* (G.R. No. 173120), p. 160.

9. In light of the circumstances, we feel that a slavish adherence to the doctrine being invoked by ALI with respect to alleged prescription and laches, should not be countenanced. The said axioms do not possess talismanic powers, the mere invocation of which will successfully defeat any and all attempts by those who claim to be the real owners of property, to set aright what had been done through fraud and imposition. Consistent with the doctrine that registration done fraudulently is no registration at all, then this court must not allow itself to be swayed by appeals to a strict interpretation of what are, after all, principles based on equity. To rule otherwise would be to reward deception and duplicity and place a premium on procedural niceties at the expense of substantial justice.[25]

Neither can ALI be considered an innocent purchaser for value of the subject properties. As discussed by the RTC of Las Piñas, when ALI purchased the subject lots from their predecessors-in-interest in 1988, the *titles bore notices of the pending cases and adverse claims sufficient to place it on guard.* In the TCTs of ALI, the notices of *lis pendens* indicated therein were sufficient notice that the ownership of the properties were being disputed. The trial court added that even the certified true copy of Psu-80886 had markings that it had been used in some other cases as early as March 7, 1959.[26] Accordingly, ALI is covered by the present action for reconveyance. As both the Diaz and Yu cases were properly filed and are not barred by prescription, these can be adjudicated by the Court on the merits.

The Rule - that between two (2) conflicting titles, the title registered earlier prevails - is Not Absolute

The June 19, 2006 and February 28, 2003 decisions of the CA essentially ruled that ALI's titles were superior to those of the petitioners because OCT Nos. 242, 244 and 1609 were registered earlier than OCT No. 8510. The CA emphasized that

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[25] *Id*. at 1195.

[26] *Id*. at 973-974.

the general rule was that in case of two certificates of title purporting to include the same land, the earlier date prevails. This general rule was first discussed in *Legarda v. Saleeby,*[27] as follows:

> The question, who is the owner of land registered in the name of two different persons, has been presented to the courts in other jurisdictions. In some jurisdictions, where the "torrens" system has been adopted, the difficulty has been settled by express statutory provision. In others it has been settled by the courts. Hogg, in his excellent discussion of the "Australian Torrens System," at page 823, says: "The general rule is that in the case of two certificates of title, purporting to include the same land, the earlier in date prevails, whether the land comprised in the latter certificate be wholly, or only in part, comprised in the earlier certificate. xxx In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof xxx.[28]

The said general rule has been repeated by the Court in its subsequent decisions in *Garcia v. Court of Appeals*,[29] *MWSS v. Court of Appeals,*[30] *Spouses Carpo v. Ayala Land, Inc.,*[31] and recently in *Jose Yulo Agricultural Corp. v. Spouses Davis.*[32] Nevertheless, the rule on superiority is **not absolute**. The same case of *Legarda v. Saleeby* explains the exception to the rule, viz:

> Hogg adds however that, "if it can be clearly ascertained by the ordinary rules of construction relating to written documents, that the **inclusion of the land in the certificate of title of prior date is**

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[27] 31 Phil. 590 (1915).

[28] *Id*. at 595-596.

[29] 184 Phil. 358 (1980).

[30] 290 Phil. 284 (1992).

[31] 625 Phil. 277 (2010).

[32] G.R. No. 197709, August 3, 2015, 764 SCRA 589.

a mistake, the mistake may be **rectified** by **holding the latter** of the two certificates of title **to be conclusive**."[33] [Emphasis supplied]

Accordingly, if the inclusion of the land in the earlier registered title was a result of a mistake, then the latter registered title will prevail. The *ratio decidendi* of this exception is to prevent a title that was earlier registered, which erroneously contained a parcel of land that should not have been included, from defeating a title that was later registered but is legitimately entitled to the said land. It reinforced the doctrine that "[r]egistering a piece of land under the Torrens System does not create or vest title because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein."[34]

In his book, *Land Registration and Related Proceedings,*[35] Atty. Amado D. Aquino further explained that the principle of according superiority to a certificate of title earlier in date cannot, however, apply if it was procured through fraud or was otherwise jurisdictionally flawed. Thus, if there is a compelling and genuine reason to set aside the rule on the superiority of earlier registered title, the Court may look into the validity of the title bearing the latter date of registration, taking into consideration the evidence presented by the parties.

In *Golloy v. Court of Appeals,*[36] there were two conflicting titles with overlapping boundaries. The first title was registered on March 1, 1918, while the second title was registered on August 15, 1919. Despite having been registered at a prior date, the Court did not allow the earlier registered title of the respondents to prevail because of the continuing possession of the petitioners therein and the laches committed by the respondents. Hence, the holder of an earlier registered title does not, in all instances, absolutely triumph over a holder of a latter registered title.

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[33] *Legarda v. Saleeby, supra* note 27, at 595.

[34] *Heirs of Ermac v. Heirs of Ermac*, 451 Phil. 368, 377 (2003).

[35] 2007 ed., pp. 140-141.

[36] 255 Phil. 26 (1989).

In this case, the petitioners assail the numerous and serious defects in the surveys of OCT Nos. 242, 244 and 1609, which cast doubt on the inclusion of the subject lands in ALI's titles. Accordingly, the Court must delve into the merits of their contentions to determine whether the subject properties are truly and genuinely included in ALI's title. Merely relying on the date of registration of the original titles is insufficient because it is the surveys therein that are being assailed. It is only through a judicious scrutiny of the evidence presented may the Court determine whether to apply the general rule or the exception in the superiority of titles with an earlier registration date.

The survey of the registered land may be scrutinized by the courts when compelling reasons exist

In its June 19, 2006 decision, the CA emphasized that OCT Nos. 242, 244, and 1609 carry with it the presumption of regularity and that the surveys therein were presumably undertaken by qualified surveyors before the issuance of the titles. In effect, the appellate court declares that the surveys of these titles should no longer be inspected.

The Court does not agree.

Although a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein,[37] it is not a conclusive proof of ownership. It is a well-settled rule that ownership is different from a certificate of title. The fact that a person was able to secure a title in his name does not operate to vest ownership upon him of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for

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[37] *Heirs of Maligaso, Sr. v. Spouses Encinas,* 688 Phil. 516, 523 (2012).

the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[38]

Hence, the Court may inquire into the validity of the ownership of a property by scrutinizing the movant's evidence of title and the basis of such title. When there is compelling proof that there is doubt on the validity of the sources or basis of such title, then an examination is proper. Thus, the surveys of the certificates of title are not immune from judicial scrutiny, in light of the genuine and legitimate reasons for its analysis.

In *Dizon v. Rodriguez*[39] and *Republic v. Ayala y Cia,*[40] the Court confronted the validity of the surveys conducted on the lands to determine whether the title was properly subdivided. It was ruled therein that subdivision plan Psd-27941 was erroneous because it was "prepared not in accordance with the technical descriptions in TCT No. T-722 but in disregard of it, support the conclusion reached by both the lower court and the Court of Appeals that Lots 49 and 1 are actually part of the territorial waters and belong to the State."[41] Accordingly, the sole method for the Court to determine the validity of the title was to dissect the survey upon which it was sourced. As a result, it was discovered that the registered titles therein contained areas which belong to the sea and foreshore lands.

Here, only a direct review of the surveys of OCT Nos. 242, 244, and 1609, as well as OCT No. 8510 can resolve the issue on the validity of these titles. The findings of the RTC of Las Piñas and the CA differ with respect to the cited errors in the surveys. The Court is convinced that through a rigorous study

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[38] *Wee v. Mardo,* G.R. No. 202414, June 4, 2014, 725 SCRA 242, 256-257.

[39] 121 Phil. 681(1965).

[40] 121 Phil. 1052 (1965).

[41] *Dizon v. Rodriguez, supra* note 39, at 686.

of the affected surveys, the valid owners of the subject properties are can be finally adjudicated.

Finally, after resolving the various preliminary issues, the Court can now tackle the crux of these petitions – the validity of Psu-25909, Psu-47035, Psu-80886, and Psu-80886/SWO-20609. The resolution of this issue will decisively determine the true and rightful owner of the subject properties.

Psu-47035, Psu-80886 and Psu-80886/SWO-20609 contain numerous and serious irregularities which cast doubt on the validity of OCT Nos. 242, 244 and 1609

At the onset, the present case poses an issue on the validity of registered and overlapping titles based on their surveys. The Court must commend the RTC of Las Piñas for taking the correct procedure in resolving such issue.

In *Cambridge Realty and Resources Corp. v. Eridanus Development, Inc.,*[42] it was ruled that a case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey; barring one, no overlapping or encroachment may be proved successfully, for obvious reasons. The first step in the resolution of such cases is for the court to direct the proper government agency concerned to conduct a verification or relocation survey and submit a report to the court, or constitute a panel of commissioners for the purpose. In that case, the Court lamented that the trial court therein did not order the conduct of a verification survey and the appointment of geodetic engineers as commissioners, to wit:

> This is precisely the reason why the trial court should have officially appointed a commissioner or panel of commissioners and not leave the initiative to secure one to the parties: so that a thorough investigation, study and analysis of the parties' titles could be made in order to provide, in a comprehensive report, the necessary information that will guide it in resolving the case completely, and

[42] 579 Phil. 375(2008).

not merely leave the determination of the case to a consideration of the parties' more often than not self-serving evidence.[43]

Similarly, in *Chua v. B.E. San Diego, Inc.,*[44] the Court ruled that in overlapping boundary disputes, the verification survey must be actually conducted on the very land itself. In that case, the verification survey conducted it was merely based on the technical description of the defective titles. The opinion of the surveyor lacked authoritativeness because his verification survey was not made on the land itself.

In this case, the RTC of Las Piñas issued an Order,[45] dated December 5, 1997, which directed the parties to conduct a verification survey pursuant to the prescribed rules. Engr. Veronica Ardina-Remolar *(Remolar)* from the Bureau of Lands of the DENR was the court-appointed commissioner who supervised and coordinated the verification survey. Engrs. Rolando Nathaniel Pada *(Pada)* and Alexander Ocampo *(Ocampo)* were the geodetic engineers for Spouses Yu; while Engr. Lucal Francisco *(Francisco)* was the geodetic engineer for ALI. They conducted actual verification survey on April 5, 6, 7 and 16, 1998 and June 8, 1998. Afterwards, Engr. Remolar submitted her Report,[46] dated November 4, 1998, to the trial court which stated that there were *overlapping areas* in the contested surveys. Likewise, Engrs. Pada and Francisco submitted their Verification Reports and Survey Plans,[47] which were approved by the DENR. Then, the parties presented their respective witnesses.

The RTC of Las Piñas had a technical and accurate understanding and appreciation of the overlapping surveys of Psu-25909, Psu-47035, Psu-80886, and Psu-80886/SWO-20609. In its decision, dated May 7, 2001, it ruled in favor of Spouses

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[43] *Id*. at 401.

[44] 708 Phil. 386 (2013).

[45] *Rollo* (G.R. No. 173120), pp. 287-293.

[46] *Id*. at 294-295.

[47] *Id*. at 296-308.

Yu and it discussed extensively its observations and findings regarding the overlapping areas, to wit:

From the evidence on record, it appears that the following plans were made on the dates and by the surveyor specified herein:

Survey No. PSU-25909 March 17, 1921 A.N. Feliciano

Survey No. PSU-47035 October 21, 1925 A.N. Feliciano

Survey No. PSU-80886 July 28, 1930 A.N. Feliciano

Survey No. SWO-20609 March 6, 1931 A.N. Feliciano

Plan PSU-25909 (Exhibit "F") invoked by the plaintiffs and authenticity of which is certified by appropriate government custodians including Engineer Remolar, the court-designated commissioner, appears to have been prepared on March 17, 1921 for one Andres Diaz and recites the following entries:

"THE ORIGINAL FIELD NOTES, COMPUTATIONS AND PLAN OF THIS SURVERY EXECUTED BY A.M. FELICIANO HAVE BEEN CHECKED AND VERIFIED IN THIS OFFICE IN ACCORDANCE WITH SECTIONS 1858 TO 1865, ACT 2711 AND ARE HEREBY APPROVED MAY 26, 1921."

-and-

"This is to certify that this is a true and correct plan of Psu-25909 as traced from the mounted paper of plan Psu-25909 which is on file at T.R.S. Lands Management Sector, N.C.R.

"This true copy of the plan is requested by the Chief, Technical Records Section as contained in a letter dated February 15, 1989.

TEODORICO C. CALISTERIO

Chief, Topographic 7 Special Maps Section

Traced by: F. SUMAGUE

Checkd by: A.O. VENZON (Sgd.) 4/28/89

Thus, the Court holds that plan PSU-25909 (Exhibit"F) is a true copy of an official document on file with the Bureau of Lands and is, therefore, entitled to great weight and appreciation, there being no irregularity demonstrated in the preparation thereof.

On the other hand, an examination of Plan PSU-47035 (Exhibit "G") **invites suspicion** thereto. As observed by Engineer Pada in his verification survey report, the photocopy of plan PSU-47035 submitted by the defendant shows that the plan appears to have done for one Estanislao Mayuga, while in the certified true copy of the pertinent decree (Exhibit "HH"/Exhibit 20), it appears that the same was done for a certain Dominador Mayuga. Viewing this discrepancy in the light of the fact that the plan for PSU-47035 was undertaken on October 21, 1925 or more than four years after the survey for plan PSU-25909 was done, the same discrepancy leads the Court to conclude that PSU-47035 is spurious and void.

The third plan enumerated above, plan PSU-80886 (Exhibit "II/ Exhibit 29), prepared on July 28, 1930 or more than five years since plan PSU-25909 was done for Andres Diaz, also **invites suspicion**. An examination of the same reveals that the lower right hand corner of the plan, which bears the serial number PSU-80886, is manifestly different from the main document in terms of the intensity of its contrast, and that the change in the intensity of the shading is abrupt as one examines the document starting from the lower right hand corner to anywhere else in the same document. Also, it is worth observing that the main document, minus the lower right hand corner mentioned, does not indicate anything to even suggest that it pertains to plan PSU-80886. For these reasons, the contention of the plaintiffs that this lower right hand corner of the plan appears to be a spurious attachment to the main document to make the main document it look like it is actually plan PSU-80886, has merit.

Another discrepancy **invites further suspicion** under the circumstances. The main document bears what appears to be the actual signature of the surveyor, Mr. A.N. Feliciano while the lower right hand corner of the plan mentions only the name "Serafin P. Hidalgo – Director of Lands" with the prefix "Sgd." But *without any actual signature.* An interesting query arises: Why would the document bear an actual signature of the surveyor without bearing the signature of the Director of Lands which in essence is the more important signature for authentication purposes?

Still another discrepancy is with respect to a monument appearing in PSU-80886 (Exhibit "II"). At the upper off-right portion thereof are entries referring to a monument more specifically described as B.L.L.M. No. 4. According to Engineer Pada, citing a certified document taken from the Land Management Bureau of the Department

of Environment and Natural Resources, this *monument* was established *only on November 27, 1937* (TSN, March 24, 2000, pp. 18-20) which is more than seven years after PSU-80886 was undertaken. *How a monument which was established only in November 1937 can actually exist in a plan made on July 28, 1930 is absolutely incredible.*

In view of the foregoing, the Court finds good reason to consider PSU-80886 (Exhibit "II" and 29), relied upon by the defendant, *spurious* and *void* as well.

The fourth and last plan mentioned is SWO-20609, done on March 6, 1931.

It is admitted by the geodetic engineer of the defendant that a specific work order (SWO) co-exists with a survey plan, and that in particular, SWO-20609 was undertaken in view of alleged errors in plan PSU-80886 (TSN, February 16, 2001, pp. 31-32). Therefore, SWO-20609 must be *evaluated* in relation to plan PSU-80886. From this perspective, the Court also notes that SWO-20609 is attended with *discrepancies* thus rendering it devoid of any credence.

For the record, in PSU-80886 (Exhibit "II"/Exhibits 29 and 30), the land concerned appears to have been surveyed for one Eduardo C. *Guico* while in PSU-80886/SWO-20609 (Exhibit "H"/Exhibit 35), the same land appears to have been surveyed for one Alberto *Yaptinchay.* In addition, it is evident in PSU-80886 (Exhibits 29 and 30) that vital entries regarding the total area of the property covered by the document bear many erasures, particularly two erasures as to the total area in terms of number and one erasure as to that total area in terms of unit of measurement.

The Court likewise notes with suspicion the fact that all four survey plans were purportedly undertaken by one and the *same surveyor, a Mr. A.N. Feliciano*. It seems extremely unusual why the same A.N. Feliciano, who surveyed the *same property* for Andres Diaz *in 1921*, would do so again *in 1925* with *different results*, and again *in 1930* once more with *different results*, and still one more time *in 1931* with still *different results*. The only reasonable and logical conclusion under these telling circumstances is that the second, third and last surveys corresponding to PSU-47035, PSU-80886 and PSU-80886/ SWO-20609 are all *spurious* and *void*, too.

The Court went through the record of the case and no satisfactory explanation has been offered by the defendant regarding these discrepancies. Even the documentary evidence presented by the

defendant offers no plausible reason for the Court to reject the contentions of the plaintiffs. This all the more strengthens the view of the Court to effect that PSU-47035, PSU-80886 and PSU-80886/SWO-20609 are spurious and void ab initio. This view is also strengthened by the credentials of Engineer Pada whom the Court considers as a very credible witness.

All in all, the Court is convinced that the title of the plaintiffs to the properties in dispute is superior over those invoked by the defendant.[48] [Emphases supplied]

The findings of the RTC of Las Piñas were affirmed by the CA in its February 8, 2005 decision. It agreed that there are indeed glaring errors in the surveys relied upon by ALI. These errors could not be merely disregarded as they affect the authenticity and validity of OCT Nos. 242, 244 and 1609.

Conclusion

After a judicious study of the case, the Court agrees with the findings of the RTC of Las Piñas and the CA in its February 8, 2005 decision.

First, Psu-25909 was conducted by a certain A.N. Feliciano in favor of Andres Diaz and was approved on May 26, 1921. Curiously, the subsequent surveys of Psu-47035 for a certain Dominador Mayuga, Psu-80886 for a certain Guico and Psu-80886/SWO-20609 for a certain Yaptinchay were also conducted by A.N. Feliciano. It is dubious how the same surveyor or agrimensor conducted Psu-47035, Psu-80886 and Psu-80886/SWO-20609 even though an earlier survey on Psu-25909, which the surveyor should obviously be aware, was already conducted on the same parcel of land. Engr. Pada, witness of Spouses Yu, also observed this irregularity and stated that this practice is not the standard norm in conducting surveys.

Second, even though a single entity conducted the surveys, the lands therein were *described to be located in different places*. Psu-25909, the earliest dated survey, indicated its location at Sitio of Kay Monica, Barrio Pugad Lawin, Las Piñas, Rizal,

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[48] *Id*. at 710-713.

while Psu-47035 and Psu-80886 stated their locations at Sitio May Kokek, Barrio Almanza, Las Piñas, Rizal, and Barrio Tindig na Mangga, Las Piñas, Rizal, respectively. Again, Engr. Pada observed this peculiarity and pointed out that the subject properties should have had the same address. ALI did not provide an explanation to the discrepancies in the stated addresses. Thus, it led the CA to believe that the same surveyor indicated different locations to prevent the discovery of the questionable surveys over the same parcel of land.

Third, there is a *discrepancy as to who requested the survey of Psu-47035*. The photocopy of Psu-47035 as submitted by ALI shows that it was done for a certain Estanislao Mayuga. On the other hand, the certified true copy of Psu-47035 depicts that it was made for Dominador Mayuga. Once more, Engr. Pada noticed this discrepancy on the said survey. ALI, however, did not give any justification on the diverging detail, which raises question as to the authenticity and genuineness of Psu-47035.

Fourth, *Psu-80886 does not contain the signature of then Director of Lands, Serafin P. Hidalgo*; rather, the prefix "Sgd." was simply indicated therein. As properly observed by the CA in its February 8, 2005 decision, any person can place the said prefix and it does not show that the Director of Lands actually signed and gave his *imprimatur* to Psu-80886. The absence of the approval of the Director of Lands on Psu-80886 added doubt to its legitimacy. The excuse proffered by ALI - that Psu-80886 is regular and valid simply because land registration proceedings were undertaken - is insufficient to cure the crucial defect in the survey.

In *University of the Philippines v. Rosario,*[49] it was held that "[n]o *plan or survey may be admitted in land registration proceedings until approved by the Director of Lands.* The submission of the plan is a statutory requirement of mandatory character. *Unless a plan and its technical description are duly approved by the Director of Lands, the same are of no value."*

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[49] 407 Phil. 924 (2001).

Hence, the lack of approval by the Director of Lands of Psu-80886 casts doubt on its legality. It also affects the jurisdictional facts before the land registration courts which relied on Psu-80886 for registration.

Fifth, Psu-80886 was *issued* on *July 28, 1930* but it *referred* to a *specific monument* described as B.L.L.M No. 4. According to the LMB-DENR, the *said monument was only established on November 27, 1937*, more than seven years after Psu-80886 was issued.[50] This discrepancy was duly noted in the findings of the verification report and it was affirmed by the testimony of Engr. Pada. Thus, both the RTC of Las Piñas and the CA in its February 8, 2005 decision properly observed that it was highly irregular for Psu-80886 to refer to B.L.L.M No. 4 because the said monument existed seven years later.

Sixth, *ALI attempted to explain* this anomaly by stating that Psu-80886 was *amended* by Psu-80886/SWO-20609, a Special Work Order, in view of the discrepancies of the former. While Psu-80886/SWO-20609 is dated March 6, 1931, ALI insists that it was actually conducted in 1937 and approved in 1940. However, in its February 8, 2005 decision, the CA noted that said testimony crumbled under cross-examination as ALI's witness, Engr. Felino Cortez *(Cortez)*, *could not reaffirm the said justification for Psu-80886's manifest error of including a latter dated monument*. Also, the Court observed that ALI's other witness, Engr. Percival Bacani, testified that he does not know why B.L.L.M No. 4 was used in preparing Psu-80886 even though the said monument appears on all the titles.[51] Moreover, the alleged explanation provided by ALI to justify the existence of B.L.L.M No. 4 in Psu-80886 was not indicated at all in the verification report and survey plan they submitted before the RTC of Las Piñas. Accordingly, ALI did not resolve the uncertainty surrounding the reference to B.L.L.M No. 4 by Psu-80886 and it seriously damages the validity of the said survey.

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[50] TSN, March 24, 2000, pp. 18-20.

[51] TSN, November 24, 2000, pp. 4-9.

Seventh, ALI explained that Psu-80886/SWO-20609 was undertaken to correct a discrepancy in Psu-80886. Its witness, Engr. Cortez, confirmed that Psu-80886/SWO-20609 was commenced to resolve the mistake in the timeline. He added that the timeline published in the notice of initial hearing in the Official Gazette for Psu-80886 was different from the approved plan in Psu-80886/SWO-20609. He also noted some difference in the area of Psu-80886 compared to Psu-80886/SWO-20609.[52] *These admissions show that Psu-80886 was flawed from the very beginning. Yaptinchay merely requested the conduct of Psu-80886/SWO-20609 in order to resurrect or salvage the erroneous Psu-80886 and to wrongfully acquire OCT No. 242*. It does not, however, erase the fact that Psu-80886, from which ALI's titles originated, is marred with irregularities. This is a badge of fraud that further runs counter to the legitimacy of the surveys that ALI relied upon.

Eight, the RTC of Las Piñas continuously observed the irregularities in Psu-80886. It stated that *"the total area of the property covered by the document bear many erasures, particularly two erasures as to the total area in terms of number and one erasure as to that total area in terms of unit of measurement.*"[53] Manifestly, no explanation was provided why it was necessary to make erasures of the crucial data in the survey regarding the total area.

***Ninth*,** the RTC of Las Piñas continued its observations regarding Psu-80886's anomalies. It added that "[a]n examination of the same reveals that the lower right hand corner of the plan, which bears the serial number PSU-80886, is manifestly different from the main document in terms of the intensity of its contrast, and that the change in the intensity of the shading is abrupt as one examines the document starting from the lower right hand corner to anywhere else in the same document. Also, it is worth observing that the main document, minus the lower right hand corner mentioned, does not indicate anything to even suggest

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[52] TSN, February 16, 2001, pp. 40-41.

[53] *Rollo* (G.R. No. 173120), p. 712.

that it pertains to plan PSU-80886. For these reasons, the contention of the plaintiffs that this lower right hand corner of the plan appears to be a spurious attachment to the main document to make the main document it look like it is actually plan PSU-80886, has merit."[54] These observations were based on the first-hand examination of the surveys, verification reports, and witnesses by the RTC of Las Piñas.

Tenth, as correctly emphasized by the CA in its February 8, 2005 decision, the Supreme Court had previously noted the defects surrounding Psu-80886 in the case of *Guico v. San Pedro.* The said case involved the application of registration of Guico of a tract of land covered by Psu-80886, subdivided into eleven (11) lots, filed on November 4, 1930 before the Court of First Instance of Rizal *(CFI)*. The said land originated from Pedro Lopez de Leon, covered by Psu-16400. It was transferred to his son, Mariano Lopez de Leon, and then one-third portion thereof was conveyed to Guico. Several oppositors appeared therein to assail Guico's application. On August 19, 1935, the CFI ruled that only Lot Nos. 1, 2, 3, 6, 7 and 10 may be registered in the name of Guico.

On appeal, the CA disposed the case in this wise:

Adjudicamos a Eduardo C. Guico los lotes 2 y 3 de su plano y las porciones que quedan de las adjudicadas a el por el Juzgado inferior y que no estan comprendidos en los terrenos reclamados por Valeriano Miranda, Nicasio san Pedro, Jose Dollenton, Gregorio Arciaga, Donato Navarro, Leon Navarro, Dionisio Dollenton, Basilio Navarro, Bernardo Mellama y Lorenzo Dollenton, debiendo al efecto presentar un plano enmendado debidamente aprobado por el Director de Terrenos, confirmado asi la decision apelada en lo que estuvira conforme, y revocandola en lo que no estuviera.[55]

When translated, the text reads:

We adjudicate to Eduardo C. Guico Lots 2 and 3 of his plant and the portions that remain adjudicated to him by the lower court and

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[54] *Id*. at 711.

[55] *Guico v. San Pedro, supra* note 12, at 417.

that are not included in the lands claimed by Valeriano Miranda, Nicasio San Pedro, Jose Dollenton, Gregorio Arciaga, Donato Navarro, Leon Navarro, Dionisio Dollenton, Basilio Navarro, Bernardo Mellama, and Lorenzo Dollenton, **under the obligation to present an amended properly approved plan to the Director of Lands, confirming therefore the appealed decision what is consistent with this and revoking it on what is not.**[56] [Emphasis and underscoring supplied]

Undeterred, Guico filed an appeal before the Supreme Court alleging that the CA erred in declaring that there was no imperfect title in favor of Pedro Lopez de Leon, his predecessor-in-interest.

In its decision, dated June 20, 1941, the Court dismissed the appeal of Guico and affirmed the CA ruling. It was held that *"la solicitud de Pedro Lopez de Leon composicion con el Estado no fue aprobada porque no pudo hacerse la medicion correspondiente."* Its translation stated that the application of Pedro Lopez de Leon regarding the composition of the estate was not approved because he was not able to submit the corresponding measurements, referring to Psu-16400, from which Psu-80886 was derived.

In addition, the Supreme Court noted that "while abundant proof is offered concerning the filing of the application for composition title by the original possessor, the records nowhere exhibits compliance with the operative requirement of said section 45 (a) of Act. No. 2874, that such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications."[57]

Consequently, the Court observed *two major irregularities* in the application of Guico under Psu-80886, (1) his predecessor-in-interest *did not submit any valid measurement* of the estate from which Psu-80886 was derived; and (2) that the *applicant or his grantees failed to occupy or cultivate the subject land*

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[56] *Rollo* (G.R. No. 173120), p. 1418.

[57] *Guico v. San Pedro, supra* note 12, at 419.

continuously. These findings are substantial and significant as these affect the validity of Psu-80886.

ALI insisted that *Guico v. San Pedro* should actually be construed in their favor because the Court affirmed the ruling of the CA which awarded Lot Nos. 2 and 3 to Guico, hence, Psu-80886 was valid.

The Court is not persuaded.

A reading of the dispositive portion of the CA decision in *Guico v. San Pedro* does not categorically state that Lot Nos. 2 and 3 were absolutely and completely awarded to Guico. The award of the said lots was subject to the vital and primordial condition or obligation to present to the court an amended, properly approved, plan to the Director of Lands. Evidently, the Court was not satisfied with Psu-80886 because it lacked the requisites for a valid survey. Thus, it required Guico to secure an amended and correctly approved plan, signed by the Director of Lands. The purpose of this new plan was to confirm that the appealed decision was consistent with the facts established therein. The records, however, did not show that Guico indeed secured an amended and properly approved plan. Psu-80886/SWO-20609 obviously was not the required amended order because a special work order is different from an amended survey.[58] Moreover, the said special work order was initiated by Yaptinchay, and not Guico. The insufficiency of Psu-80886 is evident in this decision.

Thus, as Guico did not subject Psu-80886 to a valid amended approved plan, he was not awarded Lot Nos. 2 and 3 for registration. It can be seen from the OCT Nos. 242, 244, and 1609; that Guico never secured their registration because the Court discovered the anomalous Psu-80886. The Court's pronouncement in *Guico v. San Pedro,* although promulgated more than half a century ago, must be respected in accordance with the rule on judicial adherence.

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[58] See Sections 605 and 579 of DENR-LMB Administrative Order No. 4 or the Manuel for Land Survey of the Philippines for the definitions of a special work order and an amended survey.

Lastly, the Court also agrees with the finding of the CA in its February 8, 2005 decision that Psu-25909 bears all the hallmarks of verity. It was established that Andres Diaz was the very first claimant of the subject property and was the proponent of Psu-25909. The said survey clearly contained the signature of the surveyor and the Director of Lands, as can be seen on its face. In stark contrast with Psu-80886, which contained alterations and erasures, Psu-25909 has none. The original of Psu-25909 was likewise on file with the Bureau of Lands and a microfilm reproduction was readily obtained from the file of the said office, unlike in Psu-80886 and Psu-47909.

The RTC of Las Piñas shared this examination. It ruled that Psu-25909 was a true copy of an official document on file with the Bureau of Lands. It also gave great weight and appreciation to the said survey because *no irregularity* was demonstrated in the preparation thereof. The trial court added that Engr. Remolar, as the appropriate government custodian and court-appointed commissioner, certified the authenticity of Psu-25909.

In fine, the Court finds that there are numerous defects in Psu-47909, Psu-80886 and Psu-80886/SWO-20609, which are all hallmarks of fraud, *viz*:

1. That A.N. Feliciano conducted all the surveys even though he should have known that the earlier dated survey Psu-25909, already covered the same parcel of land;
2. That Psu-47909, Psu-80886 and Psu-25909 covered the same parcel of land and were conducted by the same surveyor but each survey stated a different location;
3. That the photocopy of Psu-47035, as submitted by ALI, shows that it was done for a certain Estanislao Mayuga but the certified true copy of Psu-47035 depicted that it was made for Dominador Mayuga;
4. That Psu-80886 did not contain the signature of then Director of Lands, Serafin P. Hidalgo, and it is well-settled rule that no plan or survey may be admitted in land registration proceedings until approved by the

Director of Lands;

5. That Psu-80886 was issued on July 28, 1930 but it referred to a specific monument described as B.L.L.M No.4, which was only established on November 27, 1937;

6. That ALI attempted to explain this anomaly by stating that Psu-80886 was amended by Psu-80886/SWO-20609, which was done in 1937. On cross-examination, however, the witness of ALI was unable to reaffirm that the special work order was rightly performed in 1937 and the said explanation was not reflected in the verification report and survey plan of ALI;

7. That Psu-80886/SWO-20609 was undertaken to correct a discrepancy in Psu-80886, which was an admission that the latter survey, from which the titles of ALI originated, was defective;

8. That the total area of the property covered by Psu-80886 contained many erasures, which were not satisfactorily explained;

9. That there was a difference in the intensity of the lower right portion of Psu-80886 which showed that it may simply have been an attachment to the main document; and

10. That in *Guico v. San Pedro,* the Court found that irregularities surround Psu-80886 because its predecessor-in-interest did not submit the corresponding measurement of his survey and the applicant or his grantees failed to occupy and cultivate the subject land continuously. Further, Lot Nos. 2 and 3 of Psu-80886 were not awarded to Guico because the records do not show that he submitted the required amended properly approved plan by the Director of Lands.

In contrast, Psu-25909 bore all the hallmarks of verity because it contains the signatures of the surveyor and the Director of Lands, and it did not contain any erasure or

alterations thereon. Likewise, a duly authenticated copy of Psu-25909 is readily available in the Bureau of Lands.

The foregoing anomalies surrounding Psu-47909, Psu-80886, and Psu-80886/SWO-20609 were similarly observed by the RTC of Las Piñas. The trial court was able to establish its findings based on the verification survey it ordered, under the supervision of the court-appointed commissioner. Hence, the trial court had the direct access to the evidence presented by the parties as well as the verification reports and survey plans submitted by the parties. It is a fundamental rule that the conclusion and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed except for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[59]

Even without considering (1) the certification from the DENR-LMB that Psu-80886 is included in the list of restricted plans because of the doubtful signature of the surveyor, and (2) the memorandum, dated August 3, 2000, from the Assistant Regional Director of the DENR directing all personnel of the Land Survey Division not to issue copies or technical descriptions of Psu-80886 and Psu-47035, there were numerous defects on the surveys that affected their validity. The exclusion of these documents did not alter the finding of the Court that the surveys were spurious and must be set aside.

Further, the Court cannot subscribe to the finding of the CA in its June 19, 2006 decision that the numerous defects in Psu-47909, Psu-80886 and Psu-80886/SWO-20609 are "not enough to deprive the assailed decree of registration of its conclusive effect, neither are they sufficient to arrive at the conclusion that the survey was definitely, certainly, conclusively spurious."[60] The Court cannot close its eyes to the blatant defects on the surveys upon which the original titles of ALI were derived simply because its titles were registered. To allow these certificates

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[59] *Ban v. Intermediate Appellate Court,* 229 Phil. 159, 163 (1986).

[60] *Rollo* (G.R. No. 173120), p. 1430.

of title in the registration books, even though these were sourced from invalid surveys, would tarnish and damage the Torrens system of registration, rather than uphold its integrity.

It is an enshrined principle in this jurisdiction that registration is not a mode of acquiring ownership. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of a Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility. A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.[61]

When a land registration decree is marred by severe irregularity that discredits the integrity of the Torrens system, the Court will not think twice in striking down such illegal title in order to protect the public against unscrupulous and illicit land ownership. Thus, due to the numerous, blatant and unjustifiable errors in Psu-47909, Psu-80886, and Psu-80886/SWO-20609, these must be declared void. Likewise, OCT Nos. 242, 244, and 1609, their transfer certificates, and instruments of conveyances that relied on the anomalous surveys, must be absolutely declared void *ab initio*.

With respect to the Diaz case, the Court agrees with the CA in its February 8, 2005 decision that Spouses Diaz did not commit fraud. As Psu-47909, Psu-80886 and Psu-80886/SWO-20609 are void, then OCT Nos. 242, 244 and 1609 are also void *ab initio.* The transfer certificates in the hands of third parties, including CPJ Corporation and ALI, are likewise void. Accordingly, Spouses Diaz had no obligation to inform CPJ Corporation of their application for registration and they could not be held guilty of fraud.

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[61] *Spouses Reyes v. Montemayor*, 614 Phil. 256 (2009).

WHEREFORE, the petitions are **GRANTED.** The June 19, 2006 Decision of the Court of Appeals in CA-G.R. CV Nos. 61593 & 70622 is hereby **REVERSED** and **SET ASIDE**. The February 8, 2005 Amended Decision of the Court of Appeals is hereby **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174670. July 26, 2017]

PHILCONTRUST RESOURCES INC. (Formerly known as INTER-ASIA LAND CORPORATION), *petitioner, vs.* **CARLOS SANTIAGO, LITO PALANGANAN, OLIMPIA ERCE, TAGUMPAY REYES, DOMINGO LUNA, RICARDO DIGO, FRANCIS DIGO, VIRGILIO DIGO, CORAZON DIGO, WILBERT SORTEJAS, ADRIEL SANTIAGO, CARLOS SANTIAGO JR., SEGUNDO BALDONANSA, RODRIGO DIGO, PAULINO MENDOZA, SOFRONIO OLEGARIO, BERNARD MENDOZA, JUN DELPINADO, EDILBERTO CABEL, ERINITO MAGSAEL, HONORIO BOURBON, MAURICIO SENARES, RICARTE DE GUZMAN, MANUEL DE CASTRO, CENON MOSO, JESUS EBDANI, DOMINGO HOLGADO, LETICIA PELLE, REY SELLATORES, EFREN CABRERA, RONNIE DIGO, RENATO OLIMPIAD, RICARDO LAGARDE, ERIC DIGO, ISAGANI SENARES, CANCIANO PAYAD, MELITONA PALANGANAN, VIRGILIO PERENA, EDGARDO PAYAD, WINNIE CABANSAG, WINNIE AVINANTE, and VALENTINA SANTIAGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 43 PETITION; LIBERALITY IN THE APPLICATION OF THE PERIOD FOR FILING AN APPEAL MAY BE GRANTED ONLY IN THE EXERCISE OF SOUND JUDICIAL DISCRETION WHEN A PARTY PLEADS FOR SUBSTANTIAL JUSTICE AND MERITORIOUS REASONS; PETITIONER PRESENTED NO COMPELLING REASON FOR ITS FAILURE TO SEASONABLY FILE THE APPEAL.— We have said, time and again, that strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. Section 4 of Rule 43 limits the extension the appellate court may grant for the filing of an appeal. Clearly, the thirty-day extension that petitioner requested of the CA is incompatible with the prescribed period. Undeterred, petitioner invokes the prevailing trend in the computation of the period to appeal, which is that of liberality. Such liberality is in line with an overall jurisprudential trend, duly noted in *Asia United Bank v. Goodland Company, Inc.*, that is inclined to a flexible application of the Rules of Court, if so warranted. In said case, x x x we directed that a liberal and flexible application of the technical rules be bestowed not only for reason of substantial justice, but also for *meritorious reasons*. We relate this to *Cu-Unjieng v. CA*, where we held that "…the mere invocation of substantial justice is not a magical incantation that will automatically compel the Court to suspend procedural rules," as well as to *Redeña v. CA*, where we held that what constituted good and sufficient cause as would merit such suspension would be discretionary upon the courts. Following case law, therefore, the pleading party must plead both substantial justice and *meritorious reasons* before its request for liberality in the application of the Rules of Court may be granted in accordance with sound judicial discretion. The reason petitioner gave for its inability to comply with the fifteen-day appeal period as well as the *additional* fifteen days it was granted was simply that it was securing certified true copies of certain documents from the DARAB, and that it had no control over the speed with which the DARAB staff could release the copies. x x x The CA found this reason to be not compelling. We see no error in this particular exercise of discretion.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); WHERE THE ALLEGATIONS AND PRAYERS IN THE COMPLAINT CLEARLY INDICATE AN AGRARIAN DISPUTE, THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) HAS JURISDICTION TO TAKE COGNIZANCE OF THE COMPLAINT.— It is axiomatic that the subject matter jurisdiction of a quasi-judicial body such as the DARAB is *determined* by the material allegations of the complaint before it and the character of the reliefs prayed for, irrespective of whether the complainant is entitled to any or all such reliefs. x x x [The] allegations and prayers [in the complaint] clearly indicate an *agrarian dispute*, a subject matter that is within the competence of the DARAB and its adjudicators. Section 50 of R.A. No. 6657 and Section 17 of Executive Order (*E.O.*) No. 229 confer upon the DAR the primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving the implementation of agrarian reform. Correspondingly, and through E.O. No. 129-A, the DARAB was created to assume the powers and functions of the DAR pertaining to the adjudication of agrarian reform cases. At the first instance, only the DARAB, as the DAR's quasi-judicial body, can determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the CARP.

3. ID.; ID.; ID.; JURISDICTION OF THE DARAB CANNOT BE MADE TO DEFEND ON THE ANSWER OF THE DEFENDANT OR THE AGREEMENT OR WAIVER OF THE PARTIES; PRINCIPLE, APPLIED.— We consider also the axiom that the jurisdiction of a tribunal cannot be made to depend on the answer of the defendant or the agreement or waiver of the parties. This axiom exists, because otherwise, the question of jurisdiction would depend almost entirely on defendant." In *Laynesa v. Uy,* the Court had occasion to rule that the DARAB retains jurisdiction over disputes arising from agrarian reform matters even though the landowner or defendant interposes the defense that the land involved has been reclassified from agricultural to non-agricultural use.

4. ID.; ID.; ID.; ID.; THE ZONING ORDINANCE DULY ISSUED AND APPROVED BY THE PROPER GOVERNMENT AGENCIES WHICH WOULD SERVE AS A CONCLUSIVE

PROOF OF LAND'S RECLASSIFICATION FROM AGRICULTURAL TO RESIDENTIAL; DESPITE A LOCAL GOVERNMENT'S RECLASSIFFICATION OF LAND AS NON-AGRICULTURAL, DARAB STILL RETAINED JURISDICTION OVER THE COMPLAINT.— Fatally missing is a zoning ordinance, duly issued by the local government and approved by the HLURB, on the reclassification of the subject land as residential. It is this ordinance, not any of the above, which would serve as conclusive proof of the land's "classification" as residential. Yet even if such ordinance had been secured and presented, such would not operate to oust the DARAB of jurisdiction. The previously cited *Laynesa v. Uy*, held that despite a local government's reclassification of a piece of land as non-agricultural, the DARAB still retained jurisdiction over the therein complaint, filed by the land's tenant who was threatened with ejectment, because the complaint's averments pertained to a matter within the competence of the DARAB. This holds true for the complaint at bar. Incidentally, also missing from petitioner's documents is an exemption clearance, which is issued by the DAR Secretary. Without such clearance, petitioner would not be allowed to change the land's use from agricultural to non-agricultural, even if it had already been reclassified by the local government via a zoning ordinance.

5. **ID.; ID.; ID.; THE BURDEN OF PROVING THE EXISTENCE OF TENANCY RIGHTS RESTED ON THE PARTY WHO CLAIMED IT; EVIDENCE OF RESPONDENTS' TENANCY RIGHTS IS PRESENT IN THE RECORDS.—** The burden of proving that respondents had tenancy rights, as an aspect of their cultivation of the subject land, rested on the party that had alleged it, i.e., the respondents. If such evidence be lacking, then the blame should fall on respondents' complaint, and not on petitioner's Answer—or alleged lack thereof. x x x [I]t is not true that there is no evidence on record of respondents' tenancy rights. The sworn affidavits of respondents and their witness, attached as annexes "A" and "B" of the complaint, were submitted precisely in support of this factual allegation. As the present case is a Rule 45 review, the Court as a general rule cannot calibrate the evidence presented below. At any rate, the Court is satisfied that, contrary to what petitioner would have the Court believe, evidence of respondent's tenancy rights are in fact present in the records of the DARAB.

6. ID.; ID.; ID.; WHEN PETITIONER AVAILED OF THE AMPLE OPPORTUNITIES TO PRESENT ITS SIDE, IT CANNOT BE SAID THAT IT WAS DENIED DUE PROCESS.— [I]t is not true that petitioner was denied the opportunity to file an answer. As noted in the narration above, petitioner had in fact filed an answer with the adjudicator, but later requested its withdrawal via an omnibus motion. Correspondingly, petitioner should not be heard to say that it was deprived of the chance to file an answer. x x x In *Villaran v. DARAB*, we held that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. x x x Petitioner certainly availed of the ample opportunities it had been given to present its side. It had filed an answer and an omnibus motion with the adjudicator. It had filed a motion for reconsideration with the DARAB. Thus, it should not be said that it was deprived of due process.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.

D E C I S I O N

MARTIRES, *J.*:

THE CASE

Petitioner Philcontrust Resources, Inc. assails,[1] by way of a Petition for Review by Certiorari,[2] the 19 June 2006[3] and 12 September 2006[4] Resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 93735, whereby the appellate court dismissed outright petitioner's Rule 43 Petition[5] against the 25 April 2005

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[1] *Rollo*, pp. 3-243.

[2] Rule 45 of the Rules of Court.

[3] *Rollo*, pp. 45-46; Penned by Associate Justice Elvi John S. Asuncion, and concurred in by Associate Justices Japar B. Dimaampao and Arturo G. Tayag.

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

[5] *Id*. at 112-126.

Decision[6] and 3 February 2006 Resolution[7] of the Department of Agrarian Reform Adjudication Board (*DARAB*) in DARAB Case No. 12726. With said issuances, the DARAB declared respondents to be petitioner's agricultural tenants of a piece of land located in Barangay Iruhin West, Tagaytay City,[8] which in the present petition is referred to as titled to petitioner.

In fine, petitioner prays for the remand of the case to the agrarian reform adjudicator for further proceedings.

THE FACTS

The records support the following narration.

Respondents are members of an organization called *Kapisanan ng mga Magsasaka sa Iruhin*.[9] On 20 February 2002, they filed a Complaint[10] before the DARAB, alleging as follows:

Respondents and their predecessors were the agricultural tenants of the subject land since 1935, which they cultivated with a variety of food crops, namely, pineapple, coffee, banana, papaya, root crops, vegetables, and coconut. Comprising twenty-nine hectares, the land was subdivided into thirteen parcels and was then owned by one Marcela Macatangay, to whom respondents paid lease rental at the rate of one-fifth of the net harvest.[11]

In 1994, petitioner, then known as Inter-Asia Development Corporation, informed respondents of its acquisition of the land and ordered them to stop its cultivation. While petitioner promised respondents disturbance compensation, several meetings at the Office of the Punong Barangay to negotiate the terms of the disturbance compensation, however, proved to be futile.[12]

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[6] *Id*. at 86-92.

[7] *Id*. at 101-102.

[8] *Id*. at 4.

[9] *Id*. at 51.

[10] *Id*. at 51-54; Docketed as DARAB Case No. 0402-003-2002.

[11] *Id*. at 52.

[12] *Id*.

In August 2001, petitioner gave respondents notice to vacate the land and surrender their respective areas of tillage. Respondents refused, saying that the land was covered by the Comprehensive Agrarian Reform Program[13] and that they had been identified as the potential farmer beneficiaries by the Municipal Agrarian Reform Officer (*MARO*) of Tagaytay City.[14]

In their complaint, respondents prayed: that they be declared as the *bona fide* agricultural tenants of the land, to be maintained in its peaceful possession; that their lease rental with petitioner be fixed; and that petitioner be ordered to execute leasehold contracts with them.[15]

Petitioner initially filed an answer.[16] Later, however, it filed an Omnibus Motion that included a request for the withdrawal of the answer.[17] In the motion, petitioner prayed that the complaint be dismissed on the grounds of forum shopping, lack of cause of action, and lack of jurisdiction. The purpose of the complaint, petitioner claimed, was to "offset"[18] the several ejectment cases it had filed against respondent before the Municipal Trial Court in Cities (*MTCC*), Tagaytay City, as respondents were "squatters"[19] whose occupation of the land was merely being tolerated. Also, the complaint was filed sans the necessary certification from the Barangay Agrarian Reform Committee (BARC), in violation of Section 53 of Republic Act (*R.A.*) No. 6657.[20] Finally, petitioner

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[13] *Id*.

[14] *Id*. at 53.

[15] *Id*.

[16] The Answer is not a part of the records before the Court.

[17] *Rollo*, pp. 55-063; Filed on 26 March 2002.

[18] *Id*. at 57.

[19] *Id*. at 58-59.

[20] Section 53 of R.A. No. 6657, also known as the Comprehensive Agrarian Reform Law of 1988, reads:

> Section 53. *Certification of the BARC*.—The DAR shall not take cognizance of any agrarian dispute or controversy unless a certification from the BARC that the dispute has been submitted to it for mediation and conciliation without any success of

insisted that the land had always been residential in nature and a number of its parcels were located in conservation areas. As proof, petitioner presented several documents that include certifications from a former MARO, the National Irrigation Administration, the Housing and Land Use Regulatory Board (*HLURB*), and the Planning and Development Office of Tagaytay City.[21]

The Order of the Adjudicator

On 7 October 2002, the Regional Agrarian Reform Adjudicator[22] dismissed the complaint on the first and third grounds of the Omnibus Motion.[23]

Respondents moved for reconsideration,[24] pleading that the person who signed the complaint's verification and certification against forum shopping, Honorio Borbon, was the president of their organization and that their failure to attach their written authority for him to sign was due to mere inadvertence. They also pointed out that the authority to approve conversions of agricultural lands to non-agricultural belonged to the Secretary of the Department of Agrarian Reform (*DAR*).

The motion was denied.[25]

The Ruling of the DARAB

On respondents' *Notice of Appeal*[26] dated 1 October 2003, and docketed as DARAB Case No. R-0402-003-2002, the

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settlement is presented: provided, however, that if no certification is issued by the BARC within thirty (30) days after a matter or issue is submitted to it for mediation or conciliation the case or dispute may be brought before the PARC.

[21] *Rollo*, pp. 59-61.

[22] Regional Adjudicator Conchita C. Miñas.

[23] *Rollo*, pp. 76-77.

[24] *Id*. at 78-82; Motion for Reconsideration (with compliance) dated 30 October 2002.

[25] *Id*. at 83-84; Order dated 3 September 2003.

[26] *Id*. at 85.

DARAB reversed and set aside the adjudicator's ruling. In the Decision dated 25 April 2005,[27] the board found that respondents had incurred vested rights over the subject land as a consequence of their tenancy relations with its previous owner. The board recognized respondents as the agricultural tenants at petitioner's property and ordered that they be maintained in peaceful possession and cultivation thereof.

On 3 February 2006, the DARAB denied[28] petitioner's motion for reconsideration.[29]

The CA Rulings

Petitioner attempted to obtain relief from the CA. On 21 March 2006, it filed a *Motion for Time*,[30] docketed as CA-G.R. SP No. 93735, manifesting that it had until 21 March 2006 to file an appeal, under Rule 43 of the Rules of Court, as it received notice of the CA's ruling on its motion for reconsideration on 6 March 2006. Due to the heavy workload of its counsel and the fact that it was securing "certified true copies of the pertinent documents" from the DARAB, petitioner asked for an additional **thirty (30) days**, or until 20 April 2006, within which to file the appeal.

In a Resolution dated 10 April 2006, the CA[31] granted the request, but only for **fifteen (15) days**.

Petitioner filed its appeal[32] on 20 April 2006, which was the very last day of the extension it had prayed for. On even date, it received a copy of the CA's 10 April 2006 Resolution.[33]

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[27] *Id*. at 86-92.

[28] *Id*. at 101-102.

[29] *Id*. at 93-100.

[30] *Id*. at 103-106.

[31] CA *rollo*, p. 19.

[32] *Rollo*, pp. 112-129.

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

In the Resolution dated 19 June 2006, which is presently assailed, the CA dismissed the appeal for being filed beyond the extended period.[34] It also took note of other defects:

> Moreover, a perusal of the petition shows the following legal defects: (a) the copy of the assailed April 25, 2005 Decision as well as the February 3, 2006 Resolution of the DARAB are in plain photocopy, contrary to the requirement under *Section 6(c), Rule 43* of the *Revised Rules of Court*; and (b) there are no certified copies of the material portions of the record and other supporting papers (i.e., position paper of the parties, memorandum of appeal) attached to the petition, as required under *Section 6(c), Rule 43* of the *Revised Rules of Court*.[35]

Petitioner filed a motion for reconsideration,[36] which the CA denied via the second assailed Resolution, dated 12 September 2006. The CA hewed to its technical dismissal of petitioner's appeal as being proper, viz:

> [Under Sec. 4, Rule 43 of the Rules:] this [c]ourt may grant an additional period of fifteen (15) days only within which to file a petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days. This [c]ourt did not grant petitioner the thirty-day extension as originally prayed for, as [w]e did not find compelling reasons to grant the same.
>
> Motions for extensions are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extensions or postponement will be granted or that they will be granted the length of time they pray for (*Cosmo Entertainment Management vs. La Ville Commercial Corporation*, 437 SCRA 145, 150).
>
> **WHEREFORE**, the motion for reconsideration is hereby DENIED for lack of merit. Our June 19, 2006 Resolution STANDS.[37]

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[34] *Id*. at 45-46.

[35] *Id*. at 46.

[36] *Id*. at 233-246.

[37] *Id*. at 50.

Hence, the present petition, which, for the purpose of imputing error on the CA's technical dismissal of its Rule 43 appeal, argues in this wise:

I.

THE DARAB DECISION IS VOID FOR HAVING BEEN RENDERED (A) WITHOUT SUBJECT MATTER JURISDICTION AND (B) IN VIOLATION OF PETITIONER'S FUNDAMENTAL RIGHT TO DUE PROCESS.

II.

VOID JUDGMENTS DO NOT BECOME EXECUTORY AND CAN BE ASSAILED AT ANY TIME. THE COURT OF APPEALS ERRED IN RELYING ON TECHNICAL RULES OF PROCEDURE IN DISMISSING THE PETITION FOR REVIEW PETITIONER FILED WITH THE COURT OF APPEALS FOR ALLEGEDLY HAVING BEEN FILED BEYOND THE EXTENDED PERIOD THE COURT OF APPEALS GRANTED TO PETITIONER.

III.

EVEN ASSUMING, FOR THE SAKE OF ARGUMENT, THAT THE PETITION FOR REVIEW WITH THE COURT OF APPEALS FAILED TO COMPLY WITH TECHNICAL REQUIREMENTS, THE SUBSTANTIVE MERITS OF THIS PETITION OVERRIDE TECHNICAL RULES AND THE HONORABLE COURT HAS THE POWER TO SUSPEND TECHNICAL RULES—EVEN JURISDICTIONAL PERIODS PROVIDED FOR PLEADING SUBMISSION—IN ORDER TO PROMOTE SUBSTANTIAL JUSTICE.[38]

The Court required respondents to comment.[39] They complied.[40]

The Issues

Inasmuch as the present case is one for review on certiorari from a final order of the CA, the petition is essentially an attack

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[38] *Id*. at 18.

[39] *Id*. at 250.

[40] *Id*. at 263-264; Compliance dated 8 February 2008; *id*. at 265-270; Comment dated 8 February 2008.

on the DARAB ruling. The assault rests on two grounds: *first*, the DARAB had no subject matter jurisdiction over respondents' complaint; and, *second,* the DARAB had violated petitioner's right to due process.

The Court shall resolve these issues and touch upon the manifold concerns of the case *ad seriatim*.

Discussion

The Court shall first deal with the claim that the CA had committed reversible error through an "improper adherence" to the rule on the period for the filing of an appeal.[41]

At issue is Rule 43 of the Rules of Court,[42] Section 4 of which provides:

> Section 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, **the Court of Appeals may grant an additional period of fifteen (15) days only** within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (emphasis ours)

We have said, time and again, that strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice.[43] Section 4 of Rule 43 limits the extension the appellate court may grant for the filing of an appeal. Clearly,

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[41] *Id*. at 4.

[42] Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.

[43] *Spouses Bergonia v. Court of Appeals,* 680 Phil. 334, 345 (2012), citing *Dimarucot v. People of the Philippines*, 645 Phil. 218, 229 (2010).

the thirty-day extension that petitioner requested of the CA is incompatible with the prescribed period.

Undeterred, petitioner invokes the prevailing trend in the computation of the period to appeal, which is that of liberality.[44] Such liberality is in line with an overall jurisprudential trend, duly noted in *Asia United Bank v. Goodland Company, Inc.*,[45] that is inclined to a flexible application of the Rules of Court, if so warranted. In said case, however, we reminded the bench and the bar of a primordial judicial policy: that of a zealous compliance with the Rules of Court. Consequently, we directed that a liberal and flexible application of the technical rules be bestowed not only for reason of substantial justice, but also for *meritorious reasons*. We relate this to *Cu-Unjieng v. CA*,[46] where we held that "…the mere invocation of substantial justice is not a magical incantation that will automatically compel the Court to suspend procedural rules," as well as to *Redeña v. CA*,[47] where we held that what constituted good and sufficient cause as would merit such suspension would be discretionary upon the courts. Following case law, therefore, the pleading party must plead both substantial justice and *meritorious reasons* before its request for liberality in the application of the Rules of Court may be granted in accordance with sound judicial discretion.

The reason petitioner gave for its inability to comply with the fifteen-day appeal period as well as the *additional* fifteen days it was granted was simply that it was securing certified true copies of certain documents from the DARAB, and that it had no control over the speed with which the DARAB staff could release the copies. The requested copies are: (a) petitioner's Omnibus Motion; (b) the Order of the adjudicator dated 03 September 2003; (c) respondents' *Notice of Appeal*; (d)

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[44] *Rollo*, p. 31.

[45] 650 Phil. 174, 183 (2010).

[46] 515 Phil. 568, 578 (2006).

[47] 543 Phil. 358, 336 (2007).

respondents' Complaint; (e) the Order of the adjudicator dated 7 October 2002; (f) the Certification dated 2 December 1996 of the HLURB; (g) the Certification dated 7 August 2001 of the Tagaytay City Planning and Development Office; (h) petitioner's Motion for Reconsideration, dated 30 October 2002, filed with the DARAB; (i) respondents' Motion for Reconsideration dated "24 June 2005;"[48] (j) Certification dated 20 January 1992 of the DAR; (k) Certification dated 23 August 1994 of the DAR; (l) Certification dated 31 July 1995 of the National Mapping and Resource Information Authority; and (m) "45 other documents attached as Annexes to the Omnibus Motion dated March 26, 2002."[49]

The CA found this reason to be not compelling. We see no error in this particular exercise of discretion.

This Court is perplexed with petitioner's request for certified copies, as they include copies of documents that petitioner itself had submitted to the DARAB and documents that were copy-furnished to petitioner in the normal course of proceedings. Petitioner already should have these documents in its possession, particularly in time for its appeal to the CA. Petitioner could have preempted or dispelled our perplexity with an explanation, but it did not. We are thus at a loss as to why, for example, petitioner had to request certified copies of the orders of the adjudicator. Section 11, Rule VIII of the 1994 DARAB Rules of Procedure, which prevailed at the time of the adjudicator's 2002 Order, provides:

SECTION 11. *Finality of Judgment*. Unless appealed, the decision, order or ruling disposing of the case on the merits shall be final after the lapse of fifteen (15) days from receipt of a copy thereof by the counsel or representative on record, or by the party himself who is appearing on his own behalf. **In all cases, the parties themselves shall be furnished with a copy of the final decision**. (emphasis ours)

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[48] *Rollo*, p. 10.

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

A similar provision is likewise found in the 2003 DARAB Rules of Procedure, which governed the adjudicator's 2003 Order.[50] Notably, petitioner does not allege, let alone prove, that it did not receive a copy of said orders. Absent such allegation and proof, petitioner is thus deemed to have been duly furnished with the copies, following the presumption of regularity in the performance of official duty. All told, we see no error in the CA's finding, done in the exercise of its discretion, that petitioner presented no compelling reason for its failure to seasonably file the appeal.

Parenthetically, petitioner also argues that the appeal should have been considered as having been filed on time, if reckoned within the sixty-day period set by the Rules of Court for the filing of a petition for certiorari, under Rule 65. Petitioner points out that among the material allegations of its appeal was that the DARAB had rendered a decision "with grave abuse of discretion amounting to lack or excess of jurisdiction," given that the board acted outside of its subject matter jurisdiction when it took cognizance of respondents' complaint.[51] Thus, petitioner advances, the appeal qualifies as a Rule 65 petition.

We have heard of this argument before.[52] In the 2012 case of *Villaran v. DARAB*,[53] this Court held:

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[50] Section 11, Rule X (on Proceedings before the Adjudicators), of the 2003 DARAB Rules of Procedure, adopted on 17 January 2003, provides:

> Section 11. Finality of Judgment. Unless appealed, the decision, order, or resolution disposing of the case on the merits shall be final after the lapse of fifteen (15) days from receipt of a copy thereof by the counsel or representative on record, or by the party himself whether or not he is appearing on his own behalf whichever is later. In all cases, the parties themselves shall be furnished with a copy of the decision, order or resolution.

[51] *Rollo*, p. 28.

[52] Cf. *Po v. Dampal*, 623 Phil. 523 (2009).

[53] 683 Phil. 536, 544-546 (2012).

We agree with the Court of Appeals that petitioners have resorted to a wrong mode of appeal by pursuing a Rule 65 petition from the DARAB's decision. Section 60 of Republic Act (R.A.) No. 6657 clearly states that the modality of recourse from decisions or orders of the then special agrarian courts is by petition for review. In turn, Section 61 of the law mandates that judicial review of said orders or decisions are governed by the Rules of Court. Section 60 thereof is to be read in relation to R.A. No. 7902, which expanded the jurisdiction of the Court of Appeals to include exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions. **On this basis, the Supreme Court issued Circular No. 1-95 governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review regardless of the nature of the question raised**. Hence, the Rules direct that it is Rule 43 that must govern the procedure for judicial review of decisions, orders, or resolutions of the DAR as in this case. Under Supreme Court Circular No. 2-90, moreover, an appeal taken to the Supreme Court or the Court of Appeals by a wrong or inappropriate mode warrants a dismissal.

Thus, petitioners should have assailed the January 16, 2001 decision and the June 25, 2002 resolution of the DARAB before the appellate court via a petition for review under Rule 43. By filing a special civil action for certiorari under Rule 65 rather than the mandatory petition for review, petitioners have clearly taken an inappropriate recourse. For this reason alone, we find no reversible error on the part of the Court of Appeals in dismissing the petition before it. While the rule that a petition for certiorari is dismissible when availed of as a wrong remedy is not inflexible and admits of exceptions such as when public welfare and the advancement of public policy dictates; or when the broader interest of justice so requires; or when the writs issued are null and void; or when the questioned order amounts to an oppressive exercise of judicial authority none of these exceptions obtains in the present case. (emphasis ours and citations omitted)

In *Spouses Bergonia v. CA*,[54] we held:

The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only

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[54] *Supra* note 43, citing *Dimarucot v. People*, 645 Phil. 218, 229 (2010).

in accordance with the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.

For this reason alone, we can already dismiss the petition. Nevertheless, we proceed to the argument that the DARAB decision is *void ab initio*, an argument that is couched on two points: *first*, the DARAB had no jurisdiction over respondents' complaint, as the land subject of the Complaint is not agricultural; and, *second,* the DARAB had violated petitioner's right to due process.

There is supreme irony in the claim that the DARAB has no subject matter jurisdiction in this case. To recall, what petitioner ultimately prays for is the remand of the case to the DARAB adjudicator for further proceedings. In other words, what petitioner wants is that the Complaint be sent back to the adjudicator of a board that petitioner believes does not have subject-matter jurisdiction over it.

At any rate, the Court cannot subscribe to the claim for two reasons.

First. It is axiomatic that the subject matter jurisdiction of a quasi-judicial body such as the DARAB[55] is *determined* by the material allegations of the complaint before it and the character of the reliefs prayed for, irrespective of whether the complainant is entitled to any or all such reliefs.[56] It is also axiomatic that the subject matter jurisdiction is *conferred* upon the quasi-judicial body by the Constitution and law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action.[57]

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[55] R.A. No. 6657, Section 50; Executive Order Nos. 229 and 129-A. See also *Springfield Development Corporation, Inc. v. The Hon. Presiding Judge of RTC Misamis Oriental*, *Br. 40,* 543 Phil. 298 (2007).

[56] *Vda. De Herrera v. Bernardo*, 665 Phil. 234, 240 (2011).

[57] *Cf. Soriano v. Bravo*, 653 Phil. 72, 89-90 (2010), citing *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*, 512 Phil. 389, 400 (2005).

Accordingly, we turn to the subject complaint.[58] As has been observed, the complaint alleges that respondents are the tenants

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[58] *Rollo*, pp. 51-53; The Complaint reads in full:

COMPLAINT

COME[S] NOW, the plaintiffs, through the undersigned counsel, and unto this Honorable Board, most respectfully aver:

1. That plaintiffs are pauper litigants and members of the Kapisanan ng mga Magsasaka sa Iruhin, all of legal age, filipinos [*sic*] and residents of Brgy. Iruhin, west Tagaytay City, Cavite, where they may be served with legal processes of this Honorable Board;
2. That defendant is a domestic corporation created and organized under the laws of the Republic of the Philippines with office and postal address at no. (sic) 16-M Legaspi Towers 300 Vito cruz cor. Roxas Boulevard, Malate, Manila, Philippines where it may be serve (sic) with summons and other legal processes of this Honorable Board;
3. That as early as the year 1935 up to the present, the plaintiffs have been the agricultural tenants over a parcel of agricultural land with an area of twenty-nine (29) hectares of land, more or less, a portion of a more than 100 hectares of land owned by the late Marcela Luna Macatangay of Talisay, Batangas, then administered by the late Melchor Senares and located at Brgy. Iruhin West, Tagaytay, City (sic), Cavite; That some of them (plaintiffs) have succeeded their parents as tenants therein. Attached hereto are copies of the "Pinagsamang Sinumpaang Salaysay" of the herein complainants and "Sinumpaang Salaysay of Alfredo Natanauan which are marked as annex "A" and "B", respectively, and all made integral part of the complaint;
4. That the subject property, which is now subdivided into thirteen parcels, is devoted to various crops, to wit, pineapple, coffee, banana, papaya coconut, (sic) root crops and other various kinds of vegetables, whereupon the plaintiffs are religiously giving lease rentals to the landowner thru her then Administrator the (sic) late Mr. Melchor Senares (sic) and thereafter to his son and one of the plaintiffs Mr. (sic) Mauricio Senares, at the rate of one fifth (1/5) of the net harvest;
5. That after so many years have passed and in the year 1994, plaintiffs to their astonishment, were approached by the lawyer and representative of the defendant Inter-Asia Develoment Corporation and informed the former that they (defendant) are now the new-owner of the subject property and further (sic)

and the cultivators of petitioner's property since 1935; that the land is agricultural; that respondents and their predecessors

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ordered them to stop cultivating the subject property, (sic) however, they promised the plaintiffs that they will be given Disturbance Compensation, and in view thereof, several meetings were undertaken before the office of the Brgy. Captain for the negotiation of the said payment disturbance compensation, but said promise has not been realised, (sic) said conferences for payment of disturbance compensation are evidenced by hereto attached "Sinumpaang Salaysay of the then Brgy. Captain Buenaventura Castillo of Brgy. Iruhin west, Tagaytay City which is marked as annex "C" and made an integral part of the complaint;

6. That on August 10, 2001 plaintiffs received notice from the defendant ordering them to vacate and surrender possession of their respective areas of tillage in favour of the defendant within 15 days from receipt as evidenced by hereto attached several copies of the demand letter and marked as annexes "D" to "D-__" (sic);
7. That plaintiffs refused to vacate their respective areas of tillage considering the fact that they are bona fide agricultural tenants of the subject property and therefore they are entitled to Security of Tenure and that, with more reason, the said landholding was put under the provisions and coverage of the Comprehensive Agrarian Reform Program (CARP) of the government pursuant to Republic Act No. 6657 otherwise known as the "Comprehensive Agrarian Reform law of 1988 and is now undergoing documentation process as evidenced by hereto attached notice of coverage by the Municipal Agrarian Reform Officer of Tagaytay City and investigation report of Mr Jimmy Dayao of FOSSO-DAR Central Office and marked as Annexes "E" to "E-_" (sic) and "F," respectively;
8. That by virtue of said program, the herein plaintiffs are identified as potential farmer beneficiaries by the MARO of Tagaytay so that their peaceful possession is protected under the pertinent provision of R.A. 6657 and other pertinent Agrarian Laws;
9. That the defendant corporation, being the successor-in-interest of the former landowner, assumes the rights and obligations of the latter with respect to the plaintiffs-tenants as provided for under pertinent agrarian laws.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed before this Honorable Board that, after due notice and hearing, Judgement (sic) be rendered:

had been paying lease rental to the previous owner at the rate of one-fifth of the net harvest; that petitioner, the new owner, had ordered them to stop cultivating the land and surrender its possession, and offered them disturbance compensation; that respondents refused as the property was covered by the agrarian reform program and they were the potential beneficiaries. As reliefs, the Complaint prayed that respondents be declared as petitioner's agricultural tenants and that the amounts respondents were to pay petitioner as lease rental be fixed.

These allegations and prayers clearly indicate an *agrarian dispute*, a subject matter that is within the competence of the DARAB and its adjudicators. Section 50 of R.A. No. 6657[59] and Section 17 of Executive Order (*E.O.*) No. 229[60] confer upon the DAR the primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving the implementation of agrarian reform. Correspondingly, and through E.O. No. 129-A,[61] the DARAB was created to assume

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1. Declaring the defendants as bona fide agricultural tenants of the defendants on the subject property;
2. Ordering the defendants to maintain the plaintiffs in their peaceful possession and cultivation of the subject property;
3. Ordering the MARO of Tagaytay City to fix the amount of lease rentals the plaintiffs are required to pay the defendant; and
4. Ordering the MARO of Tagaytay City to execute a leasehold contract between the parties.

Other reliefs, Just and Equitable under the premises, are likewise prayed for.

x x x x x x x x x

[59] Sec. 50 of R.A. No. 6657 provides: "SEC. 50. Quasi-Judicial Powers of the DAR. - The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR)."

[60] Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program, 22 July 1987.

[61] Reorganizing and Strengthening the Department of Agrarian Reform and for Other Purposes, 26 July 1987. Sec. 13 of this executive order provides:

the powers and functions of the DAR pertaining to the adjudication of agrarian reform cases.[62] At the first instance, only the DARAB, as the DAR's quasi-judicial body, can determine and adjudicate all agrarian disputes,[63]cases, controversies, and matters or incidents involving the implementation of the CARP.[64] In which case, the 1994 DARAB Rules of Procedure,[65] which was prevailing at the time the subject complaint was filed, provided:

"SECTION 13. Agrarian Reform Adjudication Board. There is hereby created an Agrarian Reform Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Assistant Secretary for Legal Affairs, and three (3) others to be appointed by the President upon the recommendation of the Secretary as members. A Secretariat shall be constituted to support the Board. The Board shall assume the powers and functions with respect to the adjudication of agrarian reform cases under Executive Order No. 229 and this Executive Order. These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board."

[62] See *Islanders Carp-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Development Corporation*, 522 Phil. 626, 633-634 (2006), citing *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz,* 512 Phil. 389, 402 (2005).

[63] Section 3(d) of R.A. No. 6657 defines an agrarian dispute in this wise: "Section 3 (d) - Agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under R.A. 6657 and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

[64] *Del Monte Philippines Inc. Employees Agrarian Reform Beneficiaries Cooperative (DEARBC) v. Sangunay*, 656 Phil. 87, 97 (2011).

[65] Adopted and promulgated on 30 May 1994 and came into effect on 21 June 1994. Cf. *DAR v. Paramount Holdings Equities, Inc.*, 711 Phil. 30 (2013). The 1994 DARAB Rules of Procedure has since been superceded by the DARAB 2003 Rules of Procedure. Cf. *Manuel v. DARAB*, 555 Phil. 28 (2007).

RULE II
JURISDICTION OF THE ADJUDICATION BOARD

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate **all agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

x x x x x x x x x

With respondents' allegations and prayers squaring with the above cases, the DARAB obtained a foothold to take cognizance of their complaint.

Second. We consider also the axiom that the jurisdiction of a tribunal cannot be made to depend on the answer of the defendant or the agreement or waiver of the parties.[66] This axiom exists, because otherwise, the question of jurisdiction would depend almost entirely on defendant."[67] In *Laynesa v. Uy,*[68] the Court had occasion to rule that the DARAB retains jurisdiction over disputes arising from agrarian reform matters even though the landowner or defendant interposes the defense that the land

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[66] Cf. *Bokingo v. CA*, 523 Phil. 186, 195 (2006).

[67] Cf. *De la Rosa v. Roldan*, 532 Phil. 492, 508 (2006).

[68] 570 Phil. 516, 530 (2008).

involved has been reclassified from agricultural to non-agricultural use.

In the course of assessing the present petition, however, the Court cannot help but notice petitioner's arguments to support its claim that the subject land is no longer agricultural. If only in passing, and to disabuse the mind of petitioner as well, the Court shall discuss why these arguments are misplaced.

According to petitioner, the DARAB had declared the subject land to be non-agricultural. Petitioner cites the following passage from the DARAB's 25 April 2005 decision as being on point:

> **Even if it ceases to be an agricultural land**, the owner must respect the status of the tenants or occupants of the land as well as the relationship governing them. Plaintiffs have vested rights over the properties in question. It is said that rights are vested when the right of enjoyment, present or prospective, has become the property of some person as present interest. They cannot avoid responsibility by simply saying that no tenancy relationship existed between them as the subject property is no longer classified as agricultural. The law must respect the contract between them. **Thus, even if it ceases to be agricultural, the Board should rule on the matter…**[69] (underlining, emphasis, and ellipsis in the original)

It is obvious, however, that the passage does not declare, whether explicitly or implicitly, that the land is no longer agricultural. Instead, its language is subjunctive, hypothetical. By no stretch of the imagination should it be said to be declarative. The Court need not belabor this point. And even if we were to assume, *arguendo*, that the DARAB had actually made the vaunted declaration, then the DARAB would be acting outside of its jurisdiction. The DARAB itself was aware of this. Contrary to what petitioner would have the Court believe, the DARAB in the same decision took pains to *expressly* state that it was not within its competence to determine whether a piece of land was agricultural or not, to wit: "It is correct to say that the Honorable Secretary of the DAR has the jurisdiction to determine whether or not the subject property is no longer agricultural

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[69] *Rollo*, p. 19.

and not the Board. The determination is beyond the power of the Honorable Board."[70]

We need not dwell at length on the claim that the subject land is no longer devoted to agricultural activity and has been "classified" as residential. For these claims, petitioner put together the following: (a) a certification of a "former" MARO[71] that the land has "long been" classified as residential; (b) a certification of the Department of Agriculture that it has ceased to be economically viable or suitable for any agricultural purposes; (c) an HLURB Region IV certification that per the land use map of Tagaytay City, the land is located within a special conservation area; and (d) a certification of the City Planning and Development Office of Tagaytay City that the land is located in a special conservation zone "as envisioned in the city's land use and zoning plan."[72]

Fatally missing is a zoning ordinance, duly issued by the local government and approved by the HLURB, on the reclassification of the subject land as residential.[73] It is this ordinance, not any of the above, which would serve as conclusive proof of the land's "classification" as residential. Yet even if such ordinance had been secured and presented, such would not operate to oust the DARAB of jurisdiction. The previously cited *Laynesa v. Uy*,[74] held that despite a local government's

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[70] *Id.* at 90-91.

[71] By the name of Leticia Diesta.

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

[73] *Cf.* DAR Administrative Order No. 1, Series of 1990 (the Revised Rules and Regulations Governing Conversion of Private Agricultural Land to Non-Agricultural Uses) which defined agricultural lands as those devoted to agricultural activity as defined in R.A. 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use.

[74] *Laynesa. v. Uy, supra* note 68 at 529-530.

reclassification of a piece of land as non-agricultural, the DARAB still retained jurisdiction over the therein complaint, filed by the land's tenant who was threatened with ejectment, because the complaint's averments pertained to a matter within the competence of the DARAB. This holds true for the complaint at bar. Incidentally, also missing from petitioner's documents is an exemption clearance, which is issued by the DAR Secretary. Without such clearance, petitioner would not be allowed to change the land's use from agricultural to non-agricultural, even if it had already been reclassified by the local government via a zoning ordinance.[75]

In the narration of facts,[76] petitioner mentions several ejectment cases with the MTCC, Tagaytay City, that it allegedly filed against respondents.[77] Petitioner asserts that these cases were decided in its favor,[78] and that the CA affirmed the ruling in 2004. Attached to the present petition are copies of the Consolidated Decision[79] and the Entry of Judgment[80] as Annexes "F" and "G," respectively.

Interestingly, in the discussion of the petition's main points, however, petitioner no longer took up or mentioned these ejectment cases. At any rate, the Court took a look at the consolidated decision, Annex "F." It is assigned the docket number of "Civil Case Nos. 474-2002 to 481-2002,"[81] consistent with how petitioner identified the ejectment cases in the narration of facts. In the Omnibus Motion with the adjudicator, however, where petitioner first mentioned the cases, petitioner identifies them as "Civil Case Nos. 462-2002 to 469-2002." To recall,

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[75] See *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform,* 635 Phil. 283, 309 (2010).

[76] *Rollo*, pp. 14-17.

[77] *Id*. at 15 and 152-159.

[78] Via a Consolidated Decision dated 20 January 2003.

[79] *Rollo*, pp. 64-74.

[80] *Id*. at 75.

[81] *Id*. at 15.

petitioner alleged that respondents could be held liable for forum shopping and perjury in view of these ejectment cases.[82] A scrutiny of the consolidated decision however shows that its sets of respondents are not the exact same set of respondents presently before us.[83] Which brings us to another point. We have previously observed that the petition at bar does not specifically describe its subject land; the petition refers to the

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[82] *Id*. at 57.

[83] The civil cases and their respective respondents are as follows: **Civil Case No. 474-2002**: Sps. Hilario and Gloria Agudo, Sps. Emmanuel Bangate, Sps. Efren and Nimia Cabrera, Ms. Josephine Cabrera, Sps. Edwin Cadaos, Sps. Rolando Entino, Sps. Virgilio Holgado, Sps. Felipe Llaban, Sps. Benedicto and Sonia [N]erio; Sps. Canciano Payad, Sps. Julieto Payad, Sps.Crisitto and Leticia Pelle, Ms. Marina Pelle, Sps.Eduardo Saltore, Sps. Alejo Sanares, Sps. Minda Sanares, Sps. Wilson Sangalang, Sps. Edgar Sangalang, Mrs. Lorlinda Sangalang, Sps. Willie Sangalang, Sps. Domingo Holgado, Sps. Vernon Jose, Ms. Balbina Derla, Sps. Andres Diaz, and "all persons claiming rights under the above named defendants" (*rollo*, p. 64). **Civil Case No. 475-2000**: Corazon Digo, Dennis Digo, Frederick Digo, Sofronio Digo, Olivia Erce, Angelbert and Lita Mendoza, Benito Oligario, Lito Palanganan, Rachel sortijas, Claire Caraan, and "all persons claiming rights under the abovenamed defendants," (*rollo*, p. 65). **Civil Case No. 476-2002**: Virgilio Digo and "all persons claiming rights under the above named defendant" (*rollo*, p. 65). **Civil Case No. 477-2002**: Sps. Wenceslao Avinante, Sps. Honorio and Ludy Borbon, Sps. Cosmeand Florendo Catinoy, Sps. Eduardo and Anita Climaco, Sps. Severino de Castro, Sps. Ricarte and Eden de Guzman, Ms. Winnie de Guzman, Ms. Christina Jumarang, Sps. Samuel and Herniliza Libutan, Ms. Gertrudez Magpili, Sps. Ferdinand and Maritess Mendoza, Sps. Julius Naturales, Ms. Elena Nolasco, Sps. Renato Olimpiada, Ms. Meletona Palanganan, Sps. Edwin Puspus, Ms. Emedelia Puspus, Sps. Neptali and Alma Rualis, Sps. Mauricio Sanares, Ms. Claudia Valdueza, Sps. Ramil Godinez, Ms. Salvacion Godinez, Ms. Girlie Osabel, Sps. Efren Pascua, and "(all persons claiming rights under the above named defendants)" (*rollo*, p. 66). **Civil Case No. 478-2002**: Sps. Marcelo Hopja, Sps. Boy DelaTorres, Ms. Pricilla Saltore, Sps. Orlando Victoriano "(all persons claiming rights under the above named defendants)" (*rollo*, p. 66). **Civil Case No. 479-2002**: Ms. Emma Baldonanza, Sps. Miguel Bituin, Sps. Ricardo and Milagros Ligarde, Sps. Domingo Luna, and "(all persons claiming rights under the above named defendants)" (*rollo*, p. 6). **Civil Case No. 480-2002**: Sps. Daniel and Vivian Castro, Sps. Moises and amelita de Guzman, Sps. Eddie and Agnes Golez, Ms. Anita Magsael, Sps. Cenon and Rowena Mozo, Sps. Luisito and Marilene Mozo, Sps. Sofronio and Eufrecina Oligario,

land simply as being located at Barangay Iruhin West, Tagaytay City, and titled in petitioner's name. Curiously, despite the land's alleged registration, the petition also fails to state its corresponding registration number/s. In contrast, the consolidated decision specifies the registration numbers of the land in the ejectment suits, namely, Transfer Certificate of Title Nos. 25373, 25379, 25378, 25380, 25374, 25402, 25400, and 25376. With the petition's vague description of its subject land, it is impossible to ascertain if it is the same land in the ejectment cases. Considering also that there is no similarity in the sets of the respondents in the ejectment cases and in the present, the Court thus has no reason to consider that the aforementioned ejectment cases may have any significant bearing on the case at bar.

We go now to the second point that props the argument of a *void ab initio* DARAB ruling, i.e., the claim that the DARAB had violated petitioner's right to due process. The claim chiefly rests on the fact that during the DARAB proceedings, no formal hearing on the merits of the case was conducted.

Petitioner acknowledges that it was due to its own motion that the adjudicator had dismissed the subject complaint, thereby obviating a formal hearing at that stage. To recall, the dismissal led to respondents' elevation of the Complaint to the DARAB, which eventually paved a way for a ruling in respondents' favor. Petitioner now contends that what the DARAB should have done was to remand the case to the adjudicator for a formal hearing. Citing *Parañaque Kings Enterprises, Incorporated v. CA*,[84] petitioner insists that it was "basic" that when a dismissal order is reviewed by a higher tribunal, the review is limited only to the propriety of the dismissal.[85] In other words, the

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Sps. Eduardo Payad, Ms. Julie Reyes, Sps. Jojit Rivera, Ms. Pacita Ygnacio, Ms. Benita Mendoza, Ms. Araceli Digo, Ms. Betty Santiago, and "(all persons claiming rights under the above named defendants)" (*rollo*, p. 67). **Civil Case No. 481-2002**: Sps. Pedro Digo, Sps. Ricardo Digo, Sps. Rodrigo Digo, Sps. Paulino Mendoza, Sps. Ernesto Revira, and "(all persons claiming rights under the above-named defendants)" (*rollo*, p. 68).

[84] 335 Phil. 1184 (1997).

[85] *Rollo*, p. 23.

DARAB should not have decided the case. Petitioner thus argues that in this instance, when the DARAB ruled upon the merits of respondents' complaint without a formal hearing, the board failed to give petitioner an opportunity to present its case. In fine, petitioner asserts that the DARAB acted without jurisdiction, for the reason that the board obtains appellate jurisdiction only after an adjudicator below had conducted a formal hearing on a complaint and issued a ruling on the merits, which did not happen in this case. Following this chief premise, petitioner also contends that: (a) it was denied of the opportunity to file an answer to the complaint; (b) no first and second preliminary conferences were held before the adjudicator, Contrary to Rule IX, Section 1 of the DARAB Rules; (c) it was denied of an opportunity to file an appeal-memorandum before the DARAB, contrary to Rule XIV, Section 9 of the DARAB Rules; and (d) it was denied of an opportunity to file a reply-memorandum.

Petitioner also argues in this wise: "[w]orse, there was no evidentiary basis at all to the conclusion of DARAB that respondents were tenants of petitioner over the property in question. This evidentiary lack comes from the fact that no Answer and no further proceedings to receive evidence ever took place before the Adjudicator himself, much less before the DARAB."[86]

This sweeping argument is specious and incorrect. The burden of proving that respondents had tenancy rights, as an aspect of their cultivation of the subject land, rested on the party that had alleged it, i.e., the respondents. If such evidence be lacking, then the blame should fall on respondents' complaint, and not on petitioner's Answer—or alleged lack thereof. Secondly, it is not true that petitioner was denied the opportunity to file an answer. As noted in the narration above, petitioner had in fact filed an answer with the adjudicator, but later requested its withdrawal via an omnibus motion. Correspondingly, petitioner should not be heard to say that it was deprived of the chance to file an answer. Finally, it is not true that there is no evidence

[86] *Id*. at 8.

on record of respondents' tenancy rights. The sworn affidavits of respondents and their witness, attached as annexes "A" and "B" of the complaint, were submitted precisely in support of this factual allegation.[87] As the present case is a Rule 45 review, the Court as a general rule cannot calibrate the evidence presented below. At any rate, the Court is satisfied that, contrary to what petitioner would have the Court believe, evidence of respondent's tenancy rights are in fact present in the records of the DARAB.

In *Villaran v. DARAB*,[88] we held that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. Thus:

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[89]

Petitioner certainly availed of the ample opportunities it had been given to present its side. It had filed an answer and an omnibus motion with the adjudicator. It had filed a motion for reconsideration with the DARAB.[90] Thus, it should not be said that it was deprived of due process.

Moreover, as respondents correctly point out in their comment, the DARAB and its adjudicators are not bound by the technical rules. Section 3, Rule I, of the 1994 DARAB Rules of Procedure provides:

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[87] *Id*. at 52.

[88] *Supra* note 53.

[89] *Id*. at 552, citing *Casimiro v. Tandog*, 498 Phil. 660, 666 (2005).

[90] *Rollo*, pp. 78-82.

SECTION 3. *Technical Rules Not Applicable*. The Board and its Regional and Provincial Adjudicators shall not be bound by technical rules of procedure and evidence as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity. x x x

This precautionary measure, established to assist expediency, was retained by the 2003 DARAB Rules of Procedure,[91] which was effective at the time of the filing of respondents' *Notice of Appeal.* Given that the DARAB is mandated by its own rules to resolve cases expeditiously, unhampered by the technical rules, petitioner's lamentations involving foregone preliminary conferences and foregone submissions of reply and/or appeal-memoranda are woefully out of place. Inasmuch as the DARAB operates under the norms of procedural due process, the case cited by petitioner, *Parañaque Kings*,[92] is not availing. The tribunal involved in *Parañaque Kings* was a trial court which, by its very nature, must certainly cleave to the procedural laws. The Rules of Court does not provide that the courts are not to be bound by the technical rules of procedure and evidence that it contains.

All told, petitioner had not been denied due process in the DARAB proceedings.

WHEREFORE, premises considered, the Petition is hereby **DENIED** for lack of merit. The Resolutions dated 19 June 2006 and 12 September 2006 of the Court of Appeals in CA-G.R. SP No. 93735 are **AFFIRMED**.

SO ORDERED.

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

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[91] See Rule I, Section 3, of the 2003 DARAB Rules of Procedure.

[92] *Supra* note 84.

SECOND DIVISION

[G.R. No. 181474. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMALDO LUMAYAG *y* DELA CRUZ, DIONY OPINIANO *y* VERANO, and JERRY[1] DELA CRUZ *y* DIAZ,** *accused*, **DIONY OPINIANO *y* VERANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AN EXTRAJUDICIAL CONFESSION WITHOUT COUNSEL AND WITHOUT A VALID WAIVER OF THE RIGHT TO COUNSEL IS INADMISSIBLE IN EVIDENCE.— Dela Cruz's extrajudicial confession without counsel at the police station without a valid waiver of the right to counsel — that is, in writing and *in the presence of counsel* — is inadmissible in evidence. It is undisputed that Dela Cruz was neither assisted by a lawyer nor was his confession reduced into writing. Further, when the police officers informed Dela Cruz of his right to a lawyer, the latter did not say anything. Even so, such silence did not constitute a valid waiver of his right to remain silent and to have a competent and independent counsel. Article III, Section 12 of the Constitution states that "[t]hese rights cannot be waived except in writing and in the presence of counsel." Dela Cruz was merely told of his Constitutional rights, but he was never asked whether he understood what he was told or whether he wanted to exercise or avail himself of such rights. x x x This kind of perfunctory giving of the so-called Miranda rights is what this Court has previously frowned upon as ineffective and inadequate compliance with the mandates of the Constitution. Any confession obtained under these circumstances is flawed and cannot be used as evidence not only against the declarant but also against his co-accused. In *People v. Jara*, this Court held

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[1] "Jerry" is spelled as "Gery" in his Certificate of Live Birth (RTC records, p. 226). However, the Regional Trial Court Decision (CA *rollo,* p. 55) and the Court of Appeals Decison (*Rollo*, p. 3) used the name "Jerry".

that where a confession was illegally obtained from two (2) of the accused, and consequently were not admissible against them, with much more reason should the same be inadmissible against a third accused who had no participation in its execution. Hence, Dela Cruz's extrajudicial confession is likewise inadmissible against appellant Opiniano.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.— The Regional Trial Court aptly gave credence to Dela Cruz's "graphic account of what transpired . . . that fateful night of November 29, 1997." The Regional Trial Court determined Lumayag as the lead man, "who hatched the plan to rob the couple," along with appellant as his co-conspirator. As a rule, findings of the trial court on the credibility of a witness will generally not be disturbed on appeal as it was the trial court which had the opportunity to observe the demeanor of the witness during trial. Here, there is no showing that the Regional Trial Court overlooked or arbitrarily disregarded facts and circumstances of significance to the case.

3. ID.; ID.; ID.; INCONSISTENCIES ON MINOR DETAILS DO NOT AFFECT THE CREDIBILITY OF THE WITNESS; CREDIBILITY OF THE WITNESS IS ENHANCED BY THE ABSENCE OF ANY ILL MOTIVE. — These inconsistencies do not minimize the value of Dela Cruz's testimony. These minor contradictions pertained to matters surrounding the arrest of appellant Opiniano and do not affect his credibility. They do not disturb the fact that Dela Cruz saw appellant Opiniano and Lumayag commit the gruesome crime, and the consistency of his testimony on these points. The Regional Trial Court's conclusions were founded principally on the direct, positive, and categorical assertions made by Dela Cruz as regards *material* events in the crime. Dela Cruz's credibility is enhanced by the absence of any improper motive. There was no evidence adduced to show that he harbored any ill-feelings towards appellant Opiniano. In fact, they were town mates from Gandara, Samar. Even appellant Opiniano admits that he could not think of a single reason why Dela Cruz implicated him in the crime.

4. CRIMINAL LAW; ROBBERY WITH HOMICIDE, ESTABLISHED; CIVIL LIABILITY.— [T]he prosecution proved appellant Opiniano's guilt beyond reasonable doubt of

the crime of robbery with homicide. We affirm the findings of fact and conclusions of law of the Court of Appeals. As to civil liability, we reduce the actual damages to ₱121,550.00 because these were the only expenses proven with receipts. Hence, appellant Opiniano's and Lumayag's share in the actual damages would be ₱101,550.00. Further, in line with current jurisprudence, this Court increases appellant Opiniano's and Lumayag's share in the award of civil indemnity and moral damages from ₱80,000.00 to ₱130,000.00 each, for the death of the two (2) victims. Interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded 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

LEONEN, *J.*:

This resolves the appeal filed by Diony Opiniano y Verano (Opiniano) under Rule 124, Section 13(c)[2] of the Revised Rules of Criminal Procedure, from the Decision[3] dated July 31, 2007

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[2] RULES OF COURT, Rule 124, Sec. 13(c), as amended by A.M. No. 00-5-03-SC, provides:

RULE 124. PROCEDURE IN THE COURT OF APPEALS

. . . . . .

SEC. 13. *Certification or appeal of case to the Supreme Court.* — . . .

. . . . . .

(c) In cases where the Court of Appeals imposes *reclusion perpetua,* life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. *The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals*. (Emphasis supplied)

[3] *Rollo*, pp. 3-24. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevara-Salonga and Jose C. Reyes, Jr. of the Special Twelfth Division, Court of Appeals, Manila.

of the Court of Appeals affirming his conviction for the special complex crime of robbery with homicide.[4]

In the Information[5] dated December 3, 1997, Opiniano,[6] Romaldo Lumayag (Lumayag), and Jerry Dela Cruz (Dela Cruz) were charged with the crime of robbery with homicide:

That on or about the 29th day of November 1997, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping one another, with intent of gain and by means of force, violence and intimidation against persons, to wit: by entering the residence of Eladio Santos y Gutierrez and Leonor Santos y Reyes located at No. 548 Tahimik St., Pag-ibig sa Nayon, this City, and once inside for the purpose of enabling said accused, to take, steal and carry away cash money from the house of said Eladio Santos y Gutierrez and Leonor Santos y Reyes, the said accused with intent to kill and taking advantage of their superior strength, did then and there, wilfully, unlawfully, feloniously and treacherously attack, assault and employ personal violence upon said Eladio Santos y Gutierrez and Leonor Santos y Reyes, by stabbing them repeatedly with the use of bladed weapons and big wooden stick, hitting them on the different parts of their bodies, thereby inflicting upon them mortal wounds which were the direct and immediate cause of their deaths and thereafter, the said accused pursuant to their conspiracy, with intent of gain, did then and there, wilfully, unlawfully and feloniously take, steal and carry away

One (1)	bag containing money in different denominations amounting to ₱5,139.00, more or less with some paper bills, black leather belt, wallet with ID, sleeveless green shirt, Marlboro cigarettes, and three (3) lighters and bids [sic] of rosary,
One (1)	pair of gold earrings with diamond,
Two (2)	pieces of coins roughing [sic] paper with markings,

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[4] *Id.* at 24.

[5] CA *rollo*, pp. 21-23.

[6] The name indicated in the Information was Diony Penano. However, "Penano" was later changed to "Opiniano" upon motion of Atty. Raul Rivera, counsel for the three accused, during trial (CA *rollo*, p. 57, Regional Trial Court Decision).

One (1) [C]itizen watch worth ₱1,500.00

One (1) gold ring with big stone (brillante) worth ₱55,000.00,

One (1) gold ring with small stone (brillante) worth ₱15,000.00,

One (1) pair of earrings with diamonds worth ₱5,000.00,

One (1) pair of earrings with pearl worth ₱20,000.00,

from the house of said Eladio Santos y Gutierrez and Leonor Santos y Reyes, to the damage and prejudice of the heirs of Eladio Santos y Gutierrez and Leonor Santos y Reyes.

CONTRARY TO LAW.[7]

The three (3) accused pleaded not guilty during their arraignment on January 12, 1998. No stipulations of fact were entered during pre-trial. Joint trial ensued.[8]

The prosecution presented Honorata S. Estrella (Estrella), daughter of the victims; PO2 Rodolfo Paule (PO2 Paule) of the Caloocan Police Station; SPO2 Rolando Ko (SPO2 Ko), PO3 Alberto Gomez, Jr. (PO3 Gomez), and PO2 Ferdinand Flores (PO2 Flores) of the La Loma Police Station; National Bureau of Investigation Medico-Legal Officer Dr. Floresto Arizala, Jr. (Dr. Arizala); and National Bureau of Investigation Forensic Biologist I Pet Byron T. Buan (Forensic Biologist Buan) as witnesses.[9] On the other hand, the defense presented Dela Cruz and Opiniano as witnesses. [10]

Evidence for the prosecution established the following facts:

On November 30, 1997, at around 2:30 a.m., spouses Eladio Santos (Eladio) and Leonor Santos (Leonor) were found dead in the garage of their house at No. 548 Tahimik St., Brgy. Pag-

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[7] CA *rollo*, pp. 21-22, Information.

[8] *Id*. at 57, Regional Trial Court Decision.

[9] *Rollo*, pp. 6-7, Court of Appeals Decision.

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

ibig sa Nayon, Quezon City.[11] At the time of the incident, Eladio was 72 years old while Leonor was 71 years old.[12]

The Spouses Santos were dealers of soft drinks and beer. They maintained a store, adjacent to their two-storey house which sold other commodities such as rice, cigarettes, and canned goods. Their daughter, Estrella, helped manage the store daily from 8:00 a.m. or 9:00 a.m. to 3:00 p.m. or 4:00 p.m.[13] Dela Cruz was their stay-in helper. He had been working for them for only three (3) to five (5) days before the couple were killed.[14]

Around 2:30 a.m. of November 30, 1997, Estrella received a call from her sister that their parents were stabbed. She and her husband hurriedly went to the store. They noticed policemen and reporters waiting outside the store. When she entered the garage, Estrella saw the bloodied and dead bodies of her parents, while the police took pictures of the victims. She saw the store and the house in disarray. She noticed that cigarettes, lighters, coins, and bills were missing.[15] Estrella remembered wrapping some coins and signing her initials on them for eventual bank deposit.[16]

When she went up to the second floor, she found the master bedroom in shambles, and noticed that some money and her mother's pieces of jewelry were missing. The missing pieces of jewelry were a watch worth ₱1,500.00, a ring with a big diamond stone worth more than ₱55,000.00, a ring with small diamonds worth at least ₱15,000.00, a pair of earrings with a Russian diamond worth ₱5,000.00, and a pair of pearl earrings worth ₱20,000.00. Estrella estimated that the total cash missing

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[11] CA *rollo*, p. 57, Regional Trial Court Decision, and TSN, January 28, 1998, p. 4, Testimony of Honorata S. Estrella.

[12] CA *rollo*, p. 57, Regional Trial Court Decision.

[13] TSN, January 28, 1998, pp. 4-6, Testimony of Honorata S. Estrella.

[14] TSN, January 28, 1998, pp. 4-6, Testimony of Honorata S. Estrella, and TSN, March 4, 1998, p. 7, Testimony of Honorata S. Estrella.

[15] TSN, January 28, 1998, pp. 6-10, Testimony of Honorata S. Estrella.

[16] *Id*. at 13.

amounted to ₱100,000.00.[17] She also noticed that the kitchen knife was missing.[18] It had a "black rubber band wrapped around the handle[.]"[19] She later found the knife full of blood inside a case of beer. The knife was turned over to the La Loma police.[20]

Around 9:00 p.m. of the previous day, November 29, 1997, PO2 Paule and SPO1 Eduardo Roderno (SPO1 Roderno) of the Caloocan police were traversing C-3 Road aboard a police-marked vehicle when they noticed a man carrying a heavy-looking bag. When they approached him, the man ran away. After a brief chase, the man was cornered. PO2 Paule noticed that he was nervous and sweating. His right leg was stained with blood and his right waistline was bulging with an object, which turned out to be a double bladed 9-inch mini kris.[21] He did not answer when asked about the bloodstain on his leg.[22]

They brought him to the police station where he identified himself as Jerry Dela Cruz.[23] The bag yielded three (3) reams of Marlboro cigarettes, a lighter, some coins, and a blue denim wallet with cash in different denominations amounting to ₱1,470.00. PO2 Paule also noticed that the ₱500.00 bill in the wallet was stained with fresh blood.[24]

Upon further interrogation, Dela Cruz verbally confessed that he and his companions, whom he later revealed as "Ango" or Lumayag,[25]

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[17] *Id*. at 10-13.

[18] *Id*. at 12.

[19] *Id*.

[20] *Id*.

[21] TSN, April 1, 1998, pp. 7-9, Testimony of PO2 Rodolfo Paule, TSN, July 21, 1998, p. 7, Testimony of PO2 Rodolfo Paule, and CA *rollo*, p. 68, Regional Trial Court Decision.

[22] TSN, April 1, 1998, p. 9, Testimony of PO2 Rodolfo Paule.

[23] The TSN, April 1, 1998 spells his name as "Gerry", while other parts of the RTC records spell his name as "Jerry."

[24] TSN, April 1, 1998, pp. 11-14, Testimony of PO2 Rodolfo Paule.

[25] TSN, July 21, 1998, p. 16, Testimony of PO2 Rodolfo Paule, TSN, August 11, 1998, p. 7, Testimony of PO2 Ferdinand Flores, and TSN, September 29, 1998, pp. 4-5, Testimony of PO2 Ferdinand Flores.

and Opiniano,[26] "had just killed and robbed an old couple."[27] He was supposed to bring the contents of the bag to his cohorts in the illegal settlers' area in Malabon.[28] During cross-examination, PO2 Paule affirmed that Dela Cruz was not aided by a lawyer, nor was his confession reduced into writing. PO2 Paule further testified that when they informed Dela Cruz of his right to a lawyer, the latter remained silent.[29]

Dela Cruz then accompanied the police officers to the scene of the crime. When they peeped through the gate, using a search light, they saw a "female lying on the floor,"[30] covered with blood.[31] They called the La Loma Police Station, which had jurisdiction over the case.[32] PO2 Paule and the other Caloocan police operatives, together with Dela Cruz, then proceeded to Letre, Malabon where they were able to apprehend Opiniano.[33]

SPO2 Ko, the officer on duty at Station 1, Mayon, La Loma, Quezon City at that time, was assigned to investigate the case. When he arrived at the crime scene at around 3:00 a.m. of November 30, 1997, members of the Scene of the Crime Operative led by a certain Lt. Pelotin, and members of media and barangay tanods were already in the area.[34] Estrella also arrived.[35]

Upon the arrival of a barangay official, the gate was opened.[36] SPO2 Ko saw Leonor "sprawled on the ground leaning on the

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[26] TSN, April 1, 1998, pp. 22-23, Testimony of PO2 Rodolfo Paule.

[27] TSN, April 1, 1998, p. 15, Testimony of PO2 Rodolfo Paule.

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

[29] TSN, July 21, 1998, pp. 10-11, Testimony of PO2 Rodolfo Paule.

[30] TSN, April 1, 1998, p. 16, Testimony of PO2 Rodolfo Paule.

[31] *Id*.

[32] *Id*. at 17.

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

[34] TSN, February 11, 1998, pp. 3-4, Testimony of SPO2 Rolando Ko.

[35] *Id*. at 5.

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

wall of the garage and . . . [Eladio] was placed on top of a bicycle[.]"[37] Both were dead. He also saw that "[t]he store was forcibly opened and some of the store articles were disarranged."[38] Inside the house, he found one (1) of the rooms in the second floor ransacked and in total disarray. He requested the Scene of the Crime Operative team, which took pictures of the crime scene,[39] to bring the bodies of the victims to the morgue for appropriate autopsy by the National Bureau of Investigation. He proceeded to the Caloocan police precinct where he saw Dela Cruz and Opiniano.[40]

The Caloocan police turned over to SPO2 Ko the multi-colored bag with its contents and the mini-kris that were recovered from Dela Cruz. SPO2 Ko brought the bloodstained bills, the mini-kris, and the knife found by Estrella to the National Bureau of Investigation for testing of human blood.[41] He did not take the fingerprints of the accused or submit the items for fingerprinting at the Philippine National Police Crime Laboratory before submitting them to the National Bureau of Investigation because he thought it was no longer necessary.[42]

SPO2 Ko brought Dela Cruz and Opiniano to the La Loma Police Station for further investigation.[43] PO3 Gomez conducted the body search on the suspects. As Opiniano was undressing, a pair of earrings dropped to the floor.[44] When asked whose they were, Opiniano replied that they belonged to a distant relative.[45]

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[37] *Id*. at 5.

[38] *Id*. at 4.

[39] *Id*.

[40] *Id*. at 5.

[41] *Id*. at 7-8.

[42] TSN, February 18, 1998, pp. 16-17, Testimony of SPO2 Rolando Ko.

[43] TSN, February 11, 1998, p. 9, Testimony of SPO2 Rolando Ko.

[44] RTC records, p. 302, Affidavit of Apprehension of PO3 Alberto Gomez, Jr.

[45] TSN, March 25, 1998, pp. 7-8, Testimony of PO3 Alberto Gomez, Jr.

About 1:00 p.m. on November 30, 1997, PO2 Flores and other La Loma police officers, together with Dela Cruz, were dispatched to Kaysikat, Antipolo, Rizal where they arrested Lumayag.[46] When Lumayag was frisked, two (2) coin wrappers bearing initials were found inside his pocket.[47] Estrella later identified the initials in the coin wrappers as hers.[48]

Dr. Arizala, the medico-legal officer of the National Bureau of Investigation who conducted the autopsies of the victims, testified that Eladio suffered 14 incised wounds, two (2) contusions, one (1) abrasion, and five (5) stab wounds.[49] On the other hand, Leonor sustained 28 incised wounds, a contusion, five (5) abrasions, two (2) lacerations, and three (3) stab wounds.[50] Dr. Arizala said that the incised wounds could have been caused by a knife while the numerous wounds could be attributed to more than one (1) assailant.[51] He also found that the stab wounds sustained by the victims were mostly fatal.[52]

Forensic Biologist Buan testified that he had examined the blood on the knives and peso bills recovered by the police, and his findings, which were all stated in his Biology Report No. B-97-1349,[53] were as follows:[54]

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[46] TSN, August 11, 1998, pp. 5-8, Testimony of PO2 Ferdinand Flores, and TSN, September 29, 1998, pp. 3-4, Testimony of PO2 Ferdinand Flores.

[47] TSN, August 11, 1998, pp. 8-9, Testimony of PO2 Ferdinand Flores.

[48] TSN, February 11, 1998, p. 9, Testimony of SPO2 Rolando Ko, and TSN, October 6, 1998, pp. 4-5 and 8, Testimony of Honorata S. Estrella.

[49] TSN, February 25, 1998, pp. 30 and 34-46, Testimony of Dr. Floresto Arizala, Jr.

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

[51] *Id.* at 36 and 55-56.

[52] *Id.* at 43-45 and 58-60.

[53] RTC records, p. 285.

[54] TSN, February 25, 1998, pp. 2 and 11-22, Testimony of Pet Byron T. Buan.

Specimen	Result
1. One (1) bladed weapon about 12" inches long including its rubberized handle.	POSITIVE RESULTS for the presence of [h]uman blood showing the reaction of Group "B".
2. One (1) curved bladed weapon about 9" inches long including its handle with improvised holster.	NEGATIVE RESULTS for the presence of [h]uman blood.
3. One (1) ₱500.00 peso bill.	POSITIVE RESULTS for the presence of [h]uman blood showing the reactions of Group "B".
4. Nine (9) ₱100.00 peso bills.	POSITIVE RESULTS for the presence of [h]uman blood showing the reactions of Group "O".
5. Two (2) ₱50.00 peso bills.	POSITIVE RESULTS for [h]uman blood showing the reaction of Group "B".[55]

Forensic Biologist Buan further testified that he had also examined the fresh blood sample of Leonor and Eladio. His examination showed that Leonor's blood belonged to group type "O," while that of Eladio belonged to group type "B."[56]

On the other hand, the defense presented their version of the facts as follows:

Dela Cruz, who at the time of the commission of the crime was only 16 years old,[57] testified that he was employed on

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[55] RTC records, p. 285, Biology Report No. B-97-1349. The 12-inch bladed weapon with rubberized handle was marked as Exhibit "K", the 9-inch bladed weapon with improvised holster was marked as Exhibit "L", the ₱500.00 peso bill was marked as Exhibit "M", the ₱100.00 peso bills were marked as Exhibit "N", the ₱50.00 peso bills were marked as Exhibit "O" (TSN, February 25, 1998, pp. 12-14, Testimony of Pet Byron T. Buan).

[56] TSN, February 25, 1998, pp. 22-24, Testimony of Pet Byron T. Buan.

[57] RTC records, p. 226, Certificate of Live Birth of Gerry Diaz Dela Cruz. Gerry was born on July 28, 1981.

November 25, 1997 by the victims, whom he called Lolo and Lola. On November 26, 1997, Lumayag, his first cousin,[58] visited him at his employer's house. Lumayag borrowed from him ₱50.00 to buy food. The following day, November 27, 1997, Lumayag visited him again to ask for cigarettes. Before leaving, however, Lumayag disclosed that he would come back on November 29, 1997 to rob his employer's house.[59] When Dela Cruz dissuaded Lumayag from his plans, the latter merely replied, "*Bahala ka, pupunta rin ako dyan.*"[60]

Around 8:00 p.m. of November 29, 1997, Dela Cruz was eating in the kitchen when he heard Leonor shouting for help. When he went out of the kitchen, he saw Lumayag holding Leonor by the neck.[61] When he asked Lumayag, "*Bakit ganon?*"[62] the latter responded, "*Wala kang pakialam. Lakad namin ito*."[63]

While Leonor was being held by Lumayag, Eladio "came out of the room [in the lower portion of the house], he went inside the store [and] took a knife."[64] When Eladio came out of the store, Lumayag threw Leonor to Opiniano, grabbed the knife from Eladio, and stabbed Eladio several times. Dela Cruz just stood by in fear. He attempted to stop Lumayag, but the latter threatened him. As Eladio fell, Dela Cruz turned around and saw Leonor already dead. Opiniano stabbed her with a knife.[65]

Lumayag then went upstairs and came down carrying money in paper bills. He counted the money, which amounted to

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[58] TSN, November 17, 1998, p. 2, Testimony of Romaldo Lumayag.

[59] TSN, June 15, 1999, pp. 8-13, Testimony of Jerry Dela Cruz, and TSN, July 20, 1999, pp. 13-16, Testimony of Jerry Dela Cruz.

[60] *Id*. at 16.

[61] *Id*. at 19-21.

[62] *Id*. at 21.

[63] *Id*.

[64] TSN, June 15, 1999, p. 22, Testimony of Jerry Dela Cruz, and TSN, August 4, 1999, pp. 3-4, Testimony of Jerry Dela Cruz.

[65] TSN, June 15, 1999, pp. 22-27, Testimony of Jerry Dela Cruz.

₱25,000.00, and pocketed them.[66] He then went to the store, took the paper-wrapped coins from the drawer,[67] and placed them inside Dela Cruz's bag.[68] He also searched Leonor and got money from her. Likewise, he took Eladio's wallet and placed the money in the wallet.[69]

Lumayag then directed Dela Cruz to go with them.[70] Dela Cruz told them, "*Patayin n'yo na lang ako; wala ng iba; madadamay din ako.*"[71] Lumayag answered him, "*Hindi kita papatayin pero sumama ka na lang sa akin.*"[72] Dela Cruz told him that he would think it over. Lumayag then instructed Dela Cruz to bring the money to Letre, Malabon or else he would kill him.[73]

After the two (2) had left, Dela Cruz also left for Letre, but was caught by the Caloocan police officers upon reaching Monumento.[74]

For his part, Opiniano put up the defense of denial and alibi. He testified that when he was arrested on the night of November 29, 1997, he was babysitting his cousin Manang Ligaya Verano's child at her house in Letre, Malabon.[75] He did not know the victims or why Dela Cruz, who was his town mate from Samar, implicated him in the crime.[76]

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

[67] *Id*. at 30.

[68] *Id*.

[69] *Id*. at 31.

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

[71] *Id*. at 33.

[72] *Id*.

[73] *Id*. at 33-34.

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

[75] TSN, December 1, 1998, pp. 3-8 and 10-11, Testimony of Diony Opiniano, and TSN, January 19, 1999, pp. 6-8, Testimony of Diony Opiniano.

[76] TSN, December 1, 1998, p. 15, Testimony of Diony Opiniano, and TSN, January 12, 1999, pp. 3-11, Testimony of Diony Opiniano.

On February 8, 2000, Branch 76, Regional Trial Court, Quezon City rendered a Decision,[77] which found Opiniano and Lumayag guilty as principals of the crime of robbery with homicide and imposed upon them the penalty of *reclusion perpetua.* On the other hand, the trial court found Dela Cruz as an accessory to the crime and imposed upon him an indeterminate prison sentence of two (2) years, four (4) months, and one (1) day to four (4) years and two (2) months of *prision correccional.*[78] The dispositive portion of the decision read:

> WHEREFORE, finding the accused Romaldo Lumayag and Diony Opiniano guilty beyond reasonable doubt as principals in conspiracy with each other, for the crime of robbery with homicide described and penalized under Art. 294 of the Revised Penal Code, as amended by RA 7659 there being no modifying circumstance, and applying Art. 63 par. 2 of the Revised Penal Code, they are hereby sentenced to each suffer imprisonment of reclusion perpetua. Also, finding the accused Jerry dela Cruz guilty beyond reasonable doubt as accessory for the crime of robbery with homicide, with the mitigating circumstance of minority, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of two years[,] 4 months and 1 day to 4 years and 2 months of prision correccional.
>
> As to the civil liability, the accused Romaldo Lumayag and Diony Opiniano are ordered to indemnify the heirs of Eladio Santos and Leonor Santos, jointly and solidarily as follows:
>
> 1. The amount of ₱80,000.00 as their share in the civil indemnity for the death of the two victims;
>
> 2. The amount of ₱80,000.00 as their share in the moral damages for death of the two victims;
>
> 3. The amount of ₱134,775.00 as their share in the actual damages for the expenses incurred as a result of their death;
>
> 4. The amount of ₱81,500 representing their share in the reimbursement of the value of the pieces of jewelry taken during the robbery.

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[77] CA *rollo*, pp. 55-76. The Decision was penned by Judge Monina A. Zenarosa.

[78] *Id*. at 75.

As to the civil liability of Jerry dela Cruz who was found guilty as accessory, he is also ordered to indemnify the heirs of Eladio and Leonor Santos as follows:

1. [T]he amount of ₱20,000.00 as his share in the civil indemnity for the two victims;

2. The amount of ₱20,000.00 as his share in the moral damages;

3. The amount of ₱20,000.00 as his share in the actual damages;

4. The amount of ₱10,000.00 as his share in the reimbursement for the articles taken.

The earrings recovered has already been returned to the Santos heirs. The cash in bills and coins in the amount of ₱5,000.00 more or less and the reams of Marlboro cigarettes are ordered returned to the heirs of Eladio and Leonor Santos.

SO ORDERED.[79] (Underscoring in the original)

Only Opiniano appealed the Regional Trial Court's decision.[80] In view of *People v. Mateo*,[81] this Court referred the case to the Court of Appeals for intermediate review.[82]

On July 31, 2007, the Special Twelfth Division of the Court of Appeals affirmed in *toto*[83] the Regional Trial Court's decision. According to the Court of Appeals, the direct testimony of Dela Cruz admitting their participation in the crime and Opiniano's possession of the stolen items were clear proofs of his involvement in the crime.[84] Thus:

WHEREFORE, premise[s] considered the **Appeal** is **DISMISSED**. The Decision dated February 8, 2000 of the Regional Trial Court, Branch 76, Quezon City is **AFFIRMED IN TOTO**.

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[79] *Id*. at 75-76.

[80] RTC records, p. 267, Regional Trial Court Order.

[81] 477 Phil. 752, 770-773 (2004) [Per *J*. Vitug, *En Banc*].

[82] *Rollo*, pp. 4-5, Court of Appeals Decision.

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

[84] *Id*. at 17-24.

SO ORDERED.[85] (Emphasis in the original)

The records of this case were elevated to this Court on February 14, 2008,[86] pursuant to the Court of Appeals' October 18, 2007 Resolution,[87] which gave due course to Opiniano's Notice of Appeal.[88]

At issue is the sufficiency of evidence to convict the appellant of robbery with homicide.

The Regional Trial Court considered the following circumstances sufficient to prove the culpability of the appellant for the offense:

1. That Jerry dela Cruz was caught albeit by chance by Caloocan City policemen while carrying a heavy bag which when opened yielded reams of Marlboro cigarettes and cash in coins and bills, among others;

2. The fact that dela Cruz' leg had fresh bloodstains and a 9-inch kris found in his person. His immediate story to the police led to the discovery of the dead bodies of the Santos couple in their residence;

3. That articles such as the cigarettes and bills in different denominations were among those taken from the victims' house; the bloodstains found on some bills corresponded to the blood types of Eladio and Leonor Santos;

4. That the pair of earrings which fell from the underwear of Diony Opiniano when under investigation at the police station belonged to the old woman and among those missing from her room; and

5. That the two paper wrappers found in Lumayag's pants bore the initial HE for Honorata Estrella, the daughter of the Santoses who herself used to wrap the coins in the store and would add her initials prior to bringing them to the bank for deposit.[89]

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[85] *Id*. at 24.

[86] *Id*. at 1, Court of Appeals Judicial Records Division's Letter to Supreme Court Judicial Records Office.

[87] CA *rollo*, p. 250.

[88] *Id*. at 245.

[89] *Id*. at 67-68.

Appellant Opiniano contends, however, that the totality of the circumstantial evidence is "insufficient to support [his] conviction beyond reasonable doubt."[90] He further argues that the extra-judicial confession of Dela Cruz, implicating him in the crime, is inadmissible in evidence, as it was obtained without the assistance of counsel.[91] Lastly, Opiniano points to inconsistencies in the testimonies of Dela Cruz and of the police officers, which allegedly make their story incredible.[92]

We sustain the conviction of appellant Opiniano.

I

Dela Cruz's extrajudicial confession without counsel at the police station without a valid waiver of the right to counsel — that is, in writing and *in the presence of counsel* — is inadmissible in evidence.[93] It is undisputed that Dela Cruz was neither assisted by a lawyer nor was his confession reduced into writing.[94] Further, when the police officers informed Dela Cruz of his right to a lawyer, the latter did not say anything.[95] Even so,

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[90] *Id*. at 131, Brief for the Accused-Appellants Romaldo Lumayag and Diony Opiniano.

[91] *Id*. at 131-133.

[92] *Id*. at 135-136.

[93] *People v. Bariquit*, 395 Phil. 823, 847 (2000) [*Per Curiam, En Banc*]; *People v. Bonola*, G.R. No. 116394, June 19, 1997, 274 SCRA 238, 254 [Per *J*. Puno, *En Banc*].

CONST., Art. III, Sec. 12(1) and (3) provide:

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

. . . . . .

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

[94] TSN, July 21, 1998, p. 10, Testimony of PO2 Rodolfo Paule.

[95] *Id*. at 11.

such silence did not constitute a valid waiver of his right to remain silent and to have a competent and independent counsel. Article III, Section 12 of the Constitution states that "[t]hese rights cannot be waived except in writing and in the presence of counsel."

Dela Cruz was merely told of his Constitutional rights, but he was never asked whether he understood what he was told or whether he wanted to exercise or avail himself of such rights.

Q You stated that after a thorough interrogation, he confessed to killing and robbing two couples. When he made that confession, was he assisted by a lawyer?

A No.

Q Was his confession in writing?

A No, sir, but he verbally admitted.

Q Did you inform the accused of his right to a lawyer of his own choice?

A Yes, sir.

Q And what did he say?

A Nothing, sir.

Q He did not tell you that he wanted a lawyer?

A No, sir, because our normal procedure sir is, every time we interrogate the person, we always inform him of his constitutional rights.[96]

This kind of perfunctory giving of the so-called Miranda rights is what this Court has previously frowned upon as ineffective and inadequate compliance with the mandates of the Constitution.[97] Any confession obtained under these

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

[97] *People v. Obrero*, 387 Phil. 937, 953 (2000) [Per *J*. Mendoza, Second Division], citing *People v. Santos*, 347 Phil. 723, 733 (1997) [Per *J*. Panganiban, Third Division], *People v. Binamira*, 343 Phil. 1, 21 (1997) [Per *J*. Panganiban, Third Division], and *People v. Ramirez*, 292 Phil. 413, 427-431 (1993) [Per *J*. Davide, Jr., Third Division].

circumstances is flawed and cannot be used as evidence not only against the declarant but also against his co-accused.[98]

In *People v. Jara*,[99] this Court held that where a confession was illegally obtained from two (2) of the accused, and consequently were not admissible against them, with much more reason should the same be inadmissible against a third accused who had no participation in its execution.

Hence, Dela Cruz's extrajudicial confession is likewise inadmissible against appellant Opiniano.

II

Nonetheless, even without Dela Cruz's extra-judicial confession, Opiniano's conviction still stands. The eyewitness account of Dela Cruz, corroborated by the testimony and findings of Dr. Arizala and Forensic Biologist Buan, suffices to convict accused-appellant Opiniano of the crime charged.

The Regional Trial Court aptly gave credence to Dela Cruz's "graphic account of what transpired . . . that fateful night of November 29, 1997."[100] The Regional Trial Court determined Lumayag as the lead man, "who hatched the plan to rob the couple,"[101] along with appellant as his co-conspirator.[102] As a rule, findings of the trial court on the credibility of a witness will generally not be disturbed on appeal as it was the trial court which had the opportunity to observe the demeanor of the witness during trial.[103] Here, there is no showing that the

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[98] *People v. Artellero*, 395 Phil. 876, 885-888 (2000) [Per *J*. Quisumbing, Second Division].

[99] 228 Phil. 490, 508 (1986) [Per *J*. Gutierrez, Jr., *En Banc*].

[100] CA *rollo*, p. 69.

[101] *Id*.

[102] *Id*.

[103] *People v. Gamo*, 351 Phil. 944, 951-952 (1998) [Per *J*. Romero, Third Division]; *People v. Sotto*, 341 Phil. 184, 194 (1997) [Per *J*. Regalado, Second Division]; *People v. Arcamo*, *et al.*, 193 Phil. 124, 129-130 (1981) [*Per Curiam, En Banc*].

Regional Trial Court overlooked or arbitrarily disregarded facts and circumstances of significance to the case.

Dela Cruz's straightforward narration showed how Lumayag and appellant Opiniano acted in concert to commit the robbery with homicide:

ATTY. PEREZ:

. . . . . .

Q Will you demonstrate to me what you saw or what did Romaldo Lumayag do to your lola?

A (Witness demonstrating; Romaldo Lumayag held the neck of the lola with his right arm.)

Q When you saw this being done by Romaldo Lumayag, what did you do, Mr. Witness?

A When I asked him "Bakit ganon?" He answered: "Wala kang pakialam. Lakad namin ito."

Q Do you remember what happened thereafter?

A Yes, sir.

Q What happened?

A While lola was being held and she was shouting, lolo came out from the room.

Q And what happened after your lolo came out from the room?

A When my lolo came out of the room, he went inside the store and [sic] took a knife.

. . . . . .

Q Was he able to get a knife?

A Yes, sir.

Q And what did he do after he got the knife?

A When my lolo came out of the store, my cousin threw my lola towards Opiniano and Romaldo Lumayag grabbed the knife from lolo.

. . . . . .

Q . . . [B]efore Romaldo dragged your lola to Opiniano, where was Opiniano then?

A He was outside the store, si[r].

Q Why? What was he doing there?

A He closed the store.

Q That is after lola shouted for help?

A Yes, sir.

Q And when your cousin Romaldo Lumayag was able to grab the knife from your lolo, what did Romaldo Lumayag do?

A He stabbed my lolo.

Q You saw this Romaldo Lumayag stabbed your lolo?

A Yes, sir.

Q And what did you do?

A I just stood there because I was afraid.

Q You did not help your lolo?

A I tried to pacify but I could not do so.

Q Why?

A Romaldo did not want me to pacify him. He was threatening me.

Q Do you remember how many times did Romaldo Lumayag stab your lolo?

A Several times, sir.

. . . . . .

Q Is that in one moment, Mr. Witness?

A Yes, sir.

Q And what happened thereafter, Mr. Witness? What happened to your lolo?

A He fell by the sidecar.

Q By the way, Mr. Witness, you earlier testified that at that time, Opiniano was holding also your lolo, is that correct?

A Yes, sir.

Q Do you remember what happened thereafter?

A When I turned around, I saw my lola already dead.

Q Why?

A Opiniano killed my lola.

Q And do you remember what he used in killing your lola?

A Knife, sir.

Q Did you see that knife?

A Yes, sir.

. . . . . .

Q You made mention, Mr. Witness, that your lolo was stabbed by Romaldo Lumayag. Did you see what he used in stabbing your lolo?

A Yes, sir.

. . . . . .

Q Kindly examine this knife, Mr. Witness, and tell us if that was the knife that was used?

A This is the same knife used by Romaldo Lumayag.

Q And that was the knife which was taken by your lolo from the store?

A Yes, sir, which he grabbed.

. . . . . .

Q You said, Mr. Witness, that your lola was being held by Opiniano. Is that correct?

A Yes, sir.

Q Will you kindly tell us again, Mr. Witness, what happened to her.

. . . . . .

A She was stabbed by Opiniano.

Q And did you see the knife used by Opiniano in stabbing your lola?

A Yes, sir.

. . . . . .

Q What happened after that?

A My cousin went upstairs.

. . . . . .

Q Then, after that what happened?

A When he went downstairs, he was carrying money.

. . . . . .

Q Did you know how much was that money Romaldo Lumayag was holding then?

. . . . . .

A ₱25,000.00, sir.

Q How did you know that the money he was holding was ₱25,000.00?

A He counted it on the floor.

Q Thereafter, what did he do with the money?

A He put them in his pocket.

Q Do you remember what did he do after that?

. . . . . .

A While carrying my bag, he went inside the store, he took the money from the drawer and removed my clothes and threw them in the store and then, he put the money inside the bag.

. . . . . .

Q After putting these denominations in your bag, Mr. Witness, do you remember what did Romaldo Lumayag do afterwards?

A He frisked my lola and got the money from her pocket.

Q Do you remember where did Romaldo Lumayag put the money which he got from the pockets of your lola?

A He took the wallet of my lolo and put the money there.

. . . . . .

Q Mr. Witness, do you remember what did Romaldo Lumayag do with the wallet after putting the money of your lola inside?

A He put it inside the pocket of the bag.

. . . . . .

Q After Romaldo Lumayag put the wallet at the side pocket of this bag, Mr. Witness, do you remember what happened next?

A He told me to go with them.[104]

"The testimony of a single witness, if credible and positive, is sufficient to produce a conviction."[105] Dela Cruz was categorical and coherent in stating appellant Opiniano's participation in the robbing and killing of the Spouses Santos. His testimony remained unshaken even on a lengthy and intense cross-examination from appellant Opiniano's counsel and the prosecutor. His answers were candid and spontaneous, which, according to the Regional Trial Court, "could not have been glamorized or embellished by someone ignorant and unknowing as Jerry [D]ela Cruz."[106] He positively identified Lumayag and Opiniano as the assailants who stabbed the victim spouses with a knife. Dr. Arizala testified that Eladio and Leonor died as a result of several stab wounds, inflicted by *sharp-edged*[107] *and single-bladed*[108] *instruments*, on different areas of their bodies. Moreover, the contents of the bag seized from Dela Cruz –

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[104] TSN, June 15, 1999, pp. 21-33, Testimony of Jerry Dela Cruz.

[105] *People v. Correa*, 349 Phil. 615, 627 (1998) [Per *J*. Martinez, *En Banc*]. *See* also *People v. Macaliag*, 392 Phil. 284, 296 (2000) [Per *J*. Ynares-Santiago, First Division].

[106] CA *rollo*, p. 70, Regional Trial Court Decision.

[107] TSN, February 25, 1998, p. 44, Testimony of Dr. Floresto Arizala, Jr.

[108] *Id*. at 60.

Marlboro cigarettes and coins in wrappers – were the same things Estrella claimed to have been taken from the store of her parents.[109] The bloodstains on the cash recovered from Dela Cruz correspond to the blood types of the victims.[110]

When several accused are tried together, the confession made by one (1) of them during the trial implicating the others is evidence against the latter.[111]

In *People v. De la Cruz*:[112]

> An accused is always a competent witness for or against his co-accused, and the fact that he had been discharged from the information does not affect the quality of his testimony, for the admissibility, the relevancy, as well as the weight that should be accorded his declarations are to be determined by the Rules on Evidence. And in this connection, it has been held that the uncorroborated testimony of an accused, when satisfactory and convincing, may be the basis for a judgment of conviction of his co-accused.[113]

Appellant Opiniano points to inconsistencies in Dela Cruz's testimony *vis à vis* the testimonies of the police officers. For instance, Dela Cruz testified that the police recovered a knife, a pair of earrings, and a ring from appellant Opiniano. However, PO2 Paule testified that no jewelry or weapon was taken from appellant Opiniano.[114] Also, Dela Cruz's testimony that appellant

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[109] TSN, March 4, 1998, pp. 3-4, Testimony of Honorata S. Estrella.

[110] TSN, February 25, 1998, pp. 11-24, Testimony of Pet Byron T. Buan.

[111] *People v. Guiapar, et al.*, 214 Phil. 475, 485 (1984) [Per *J*. Makasiar, *En Banc*], citing *People v. Cañete, et al.*, 150 Phil. 17 (1972) [*Per Curiam*, *En Banc*], *People v. Orzame, et al.*, 123 Phil. 931, 936 (1966) [*Per Curiam*, *En Banc*], *United States v. Manabat and Simeon*, 42 Phil. 569, 573-574 (1921) [Per *J*. Ostrand, *En Banc*], and *United States v. Remegio*, 37 Phil. 599, 610-611 (1918) [Per *J*. Malcolm, *En Banc*].

[112] 215 Phil. 144 (1984) [Per *J*. Escolin, Second Division].

[113] *Id*. at 148, *citing United States v. Wayne Shoup*, 35 Phil. 56, 60 (1916) [Per *J*. Johnson, *En Banc*], and *United States v. Remigio*, 37 Phil. 599, 610-611 (1918) [Per *J*. Malcolm, *En Banc*].

[114] CA *rollo*, p. 135, Brief for the Accused-Appellants Romaldo Lumayag and Diony Opiniano.

Opiniano was "slumped in a bangketa"[115] when he was arrested in Letre, Malabon was allegedly contradicted by PO2 Paule's testimony that appellant was "lying on a bench"[116] when they found him.[117]

These inconsistencies do not minimize the value of Dela Cruz's testimony. These minor contradictions pertained to matters surrounding the arrest of appellant Opiniano and do not affect his credibility.[118] They do not disturb the fact that Dela Cruz saw appellant Opiniano and Lumayag commit the gruesome crime, and the consistency of his testimony on these points. The Regional Trial Court's conclusions were founded principally on the direct, positive, and categorical assertions made by Dela Cruz as regards *material* events in the crime.

Dela Cruz's credibility is enhanced by the absence of any improper motive.[119] There was no evidence adduced to show that he harbored any ill-feelings towards appellant Opiniano. In fact, they were town mates from Gandara, Samar.[120] Even appellant Opiniano admits that he could not think of a single reason why Dela Cruz implicated him in the crime.[121]

In contrast, appellant Opiniano could only offer a lame denial and alibi, which were replete with inconsistencies. There is no corroborative evidence that appellant Opiniano was in another place at the time the crime was committed; neither was it clearly

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[115] *Id*. at 136.

[116] *Id*.

[117] *Id*. at 135-136.

[118] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> 9 [Per *J*. Peralta, *En Banc*], *citing People v. Cabtalan*, 682 Phil. 164, 168 (2012) [Per *J*. Del Castillo, First Division].

[119] *People v. Alicando*, 321 Phil. 656, 720 (1995) [Per *J*. Puno, *En Banc*].

[120] TSN, November 17, 1998, pp. 2-3, Testimony of Romaldo Lumayag.

[121] TSN, December 1, 1998, p. 15, Testimony of Diony Opiniano, and TSN, January 12, 1999, pp. 3-11, Testimony of Diony Opiniano.

shown that it was physically impossible for him to be present at the scene of the crime.[122]

All told, the prosecution proved appellant Opiniano's guilt beyond reasonable doubt of the crime of robbery with homicide. We affirm the findings of fact and conclusions of law of the Court of Appeals.

As to civil liability, we reduce the actual damages to ₱121,550.00 because these were the only expenses proven with receipts.[123] Hence, appellant Opiniano's and Lumayag's share in the actual damages would be ₱101,550.00. Further, in line with current jurisprudence,[124] this Court increases appellant Opiniano's and Lumayag's share in the award of civil indemnity and moral damages from ₱80,000.00 to ₱130,000.00 each, for the death of the two (2) victims. Interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[125]

WHEREFORE, the July 31, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01265, is **AFFIRMED with MODIFICATION** as to the amounts awarded. Accused-

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[122] See *People v. Peralta*, G.R. No. 208524, June 1, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208524.pdf> 9 [Per J. Del Castillo, Second Division], citing *People v. Madeo*, 617 Phil. 638, 660 (2009) [Per *J*. Del Castillo, Second Division], and *People v. Lozada*, 454 Phil. 241, 253 (2003) [*Per Curiam, En Banc*].

[123] RTC Records, pp. 272-273.

[124] *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc. judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> 14 [Per *J*. Peralta, *En Banc*].

[125] *People v. Jumawan*, 733 Phil. 102, 159 (2014) [Per *J*. Reyes, First Division]; *People v. Vidaña*, 720 Phil. 531, 545 (2013) [Per *J*. Leonardo-De Castro, First Division]; *People v. Cruz*, 714 Phil. 390, 400-401 (2013) [Per *J*. Reyes, First Division], citing *People v. Cabungan*, 702 Phil. 177, 190 (2013) [Per *J*. Del Castillo, Second Division]; *People v. Gani*, 710 Phil. 466, 476 (2013) [Per *J*. Peralta, Third Division], citing *People v. Amistoso*, 701 Phil. 345, 364 (2013) [Per *J*. Leonardo-De Castro, First Division]; *People v. Arpon*, 678 Phil. 752, 792 (2011) [Per *J*. Leonardo-De Castro, First Division].

appellant Diony Opiniano y Verano is found **GUILTY** beyond reasonable doubt of the special complex crime of robbery with homicide and sentenced to suffer the penalty of *reclusion perpetua*.

Accused-appellants Diony Opiniano and Romaldo Lumayag are jointly and severally ordered to pay the heirs of the victims, the following amounts:

1. ₱130,000.00 as their share in the civil indemnity for the death of the two (2) victims;
2. ₱130,000.00 as their share in the moral damages for the death of the two (2) victims;
3. ₱101,550.00 as their share in the actual damages for the expenses incurred as a result of their death;
4. ₱81,500.00 representing their share in the reimbursement of the value of the pieces of jewelry taken during the robbery.

Furthermore, all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185647. July 26, 2017]

DY TEBAN TRADING, INC., *petitioner, vs.* **PETER C. DY, JOHNNY C. DY and RAMON C. DY,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; TWO TESTS TO DETERMINE INTRA-CORPORATE CONTROVERSY.—** Under the *relationship test*, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. The *nature of the controversy test*, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association. In *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*, we explained that the controversy "must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation."

2. **ID.; ID.; INTRA-CORPORATE DISPUTE, NOT A CASE OF.—** [W]e agree with the CA that the complaint filed by DTTI before the RTC was a civil action for injunction and **not** an intra-corporate dispute. First, a reading of the complaint will reveal that it contains no allegation that the defendants therein (respondents in the present petition) are stockholders of the corporation. x x x Second, the nature of the controversy does not involve an intra-corporate dispute. The complaint for injunction asks the RTC to order respondents to cease from controlling DTTI's Montilla branch and allow DTTI to use the same. x x x Third, DTTI, in its complaint, asked the RTC to: (1) prevent respondents from physically possessing its branch store; and (2) allow DTTI to have access and control of the building. Nowhere in its complaint did DTTI ask for a determination of the parties' rights under the Corporation Code, its articles of incorporation or its by-laws.

3. **REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; THE REGIONAL TRIAL COURT SITTING AS A COMMERCIAL COURT HAS JURISDICTION OVER**

PETITIONER'S CIVIL ACTION FOR INJUNCTION.— Our jurisdiction recognizes a civil action for injunction. It is a suit brought for the purpose of enjoining the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his or her compulsion to continue performance of a particular act. As a civil action, it falls within the general jurisdiction of the RTCs. Nevertheless, we disagree with respondents' contention that the RTC, sitting as a commercial court, had no jurisdiction over the civil action for injunction filed by DTTI. This matter has already been clarified by this Court in *Gonzales v. GJH Land, Inc. (formerly S.J. Land, Inc.)*. x x x Thus, that DTTI's civil action for injunction was raffled to, and heard by, an RTC sitting as a commercial court, is more an issue of procedure than one of jurisdiction. *Gonzales*, in fact, directs that when an ordinary civil case is mistakenly raffled to a branch designated as a Special Commercial Court, the remedy is to refer said case to the Executive Judge for re-docketing and re-raffling among "all courts of the same RTC **(including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches)**, as provided for under existing rules."

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE RIGHT TO CROSS-EXAMINE THE WITNESS IS ESSENTIAL TO THE PRINCIPLE OF DUE PROCESS; BUT THE RIGHT TO CROSS-EXAMINATION IS A PERSONAL RIGHT THAT MAY BE WAIVED.— No person shall be deprived of life, liberty or property without due process of law. Due process is fundamental in our judicial system. In court litigation, it is upheld through the establishment of, and strict adherence to, procedural rules that govern the behavior of party litigants. In our adversarial system, the right of a litigant to cross-examine a witness is essential to the principle of due process. The right to cross-examine a witness does not imply, however, an absolute command that an actual cross-examination be had. The right is sufficiently protected when there is a real opportunity to conduct a cross-examination. What our laws proscribe is the absence of a chance to cross-examine. Further, the right to cross-examination is a personal right that may be waived. x x x The waiver of the right to cross-examine a witness may be express or implied. In these instances, no violation of the constitutional right to due process is committed as the party himself or herself

has opted not to exercise the right. The validity of a waiver of the right to cross-examine is recognized in our jurisdiction. The difficulty, however, is in cases where the waiver of the right is only implied. An implied waiver may take various forms. In ascertaining whether a party has waived his or her right to cross-examine a witness, this Court has identified a general standard that depends, for its application, on the surrounding facts of each particular case.

5. **ID.; ID.; ID.; ID.; WHERE THE REASONS FOR FAILURE TO EXERCISE THE RIGHT TO CROSS-EXAMINE THE WITNESS WERE PURELY ATTRIBUTABLE TO RESPONDENTS AND THEIR COUNSEL, THEY ARE CONSIDERED TO HAVE WAIVED THEIR RIGHT TO CROSS-EXAMINATION.—** We find that the RTC had consistently given respondents several opportunities to cross-examine Lorencio. In fact, the trial court had been lenient in granting their motions for postponement even if, as this Court finds, the reasons for such postponements were unmeritorious. This notwithstanding, respondents still failed to attend the hearing set on June 18, 2007 without any explanation as to why no counsel appeared. To the mind of this Court, there was never any insurmountable obstacle to respondents' conduct of Lorencio's cross-examination. On the contrary, their failure to actually cross-examine Lorencio arose out of reasons attributable to their counsel. Unfortunately for respondents, counsel's negligence binds the client. x x x [T]here was never any insurmountable obstacle to the conduct of the cross-examination. If respondents failed to exercise their right, this failure arose out of reasons purely attributable to them and their counsel. Hence, in accordance with this Court's consistent rulings, the trial court correctly declared them to have waived their right to cross-examination.

6. **ID.; ID.; ID.; WAIVER OF THE RIGHT TO PRESENT EVIDENCE; FAILURE OF THE RESPONDENTS AND THEIR COUNSEL TO APPEAR IN THE HEARING SET FOR PRESENTATION OF THEIR EVIDENCE CONSTITUTES A WAIVER.—** [W]e rule that the CA erred in reversing the RTC's Order declaring respondents to have waived their right to present evidence. x x x We emphasize that the CA **never** issued a TRO or an injunction to halt the proceedings before the RTC. Despite this, respondents and their

lawyers still chose not to appear in the hearing set for presentation of their evidence. Instead, they merely filed an urgent motion for continuance, arguing that their presentation of evidence should be postponed due to the pendency of the *certiorari* case before the CA. There is, however, no law or rule requiring the RTC not to proceed with the case because of the pendency of a special civil action for *certiorari* involving an interlocutory order issued by the trial court during the course of the proceedings. x x x Thus, as the motion for continuance put forward no valid ground, and taking into consideration the clear procedural requirement that the RTC must proceed with the case as well as the fact that the proceedings have already been unduly delayed, the RTC was warranted in holding that respondents waived their right to present evidence. We find that respondents were given sufficient opportunity to participate in the proceedings. The order setting the case for hearing for the presentation of their evidence was issued with enough time for respondents to prepare. While they had the option to file a motion for continuance as a matter of strategy, respondents had no right to expect that it will be granted. Prudence should have impelled respondents (and their lawyers) to appear before the RTC prepared to present their evidence in the event of a denial of their motion. This they failed to do. The RTC thus cannot be faulted for refusing to allow the case to be delayed any further. As in *Gohu v. Gohu*, the RTC's Order actually "upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party."

APPEARANCES OF COUNSEL

Wilfred D. Asis for petitioner.
Noriega Bazar Noriega Law Offices for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court. Petitioner Dy Teban Trading, Inc. (DTTI)

[1] *Rollo*, pp. 4-225.

seeks the reversal of the Decision[2] dated December 17, 2008 (Decision) of the Court of Appeals (CA) which nullified the Orders dated June 18, 2007[3] and May 26, 2008[4] of the Regional Trial Court (RTC), Butuan City.

DTTI is a domestic closed corporation owned by the Dy siblings. It has its principal office at Concepcion St., Butuan City and a branch in Montilla Boulevard.[5] Due to certain disagreements relating to its management, DTTI instituted an action for injunction against Peter C. Dy, Johnny C. Dy and Ramon C. Dy (respondents) before the RTC on September 7, 2004. This was docketed as an intra-corporate case. Respondents, on the other hand, filed an action for dissolution of the corporation.[6]

In its petition before the RTC, DTTI alleged that Johnny C. Dy (Johnny), an employee in its Montilla branch, had "squandered cash sales and stocks" from the branch either for his personal benefit or that of Peter C. Dy (Peter) and Ramon C. Dy (Ramon).[7] To prevent further losses, DTTI decided to close its Montilla branch and had the doors of the branch store welded shut. This notwithstanding, DTTI claimed that respondents forcibly opened the branch store and have continuously deprived it of the use of the same.[8]

Both actions were raffled to Branch 33 of the RTC which, incidentally, was also the designated commercial court. The RTC heard the cases jointly.[9] The action for the dissolution of

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[2] *Id*. at 227-244, penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

[3] *Id*. at 250-252.

[4] *Id*. at 349-353.

[5] *Id*. at 228.

[6] *Id*. at 1062.

[7] *Id*. at 578.

[8] *Id*. at 578-580.

[9] *Id*. at 16.

the corporation was, however, eventually dismissed due to the respondents' failure to pay the proper docket fees.[10]

During the trial, DTTI presented Lorencio C. Dy (Lorencio) as a witness on June 28, 2005. Lorencio's cross-examination by respondents did not push through on the same date but was scheduled to continue on August 30, 2005.[11] During this hearing, however, the scheduled cross-examination did not proceed as Atty. Dollfuss R. Go (Atty. Go), one of respondents' counsels, could not make it due to certain health problems. Atty. Clementino C. Rabor (Atty. Rabor), respondents' other counsel, moved in open court for the postponement of Lorencio's cross-examination. The RTC granted this motion and issued an Order[12] setting the next hearing to September 22, 2005. Since respondents were being represented by two lawyers, the RTC warned that the scheduled cross-examination must proceed regardless of Atty. Go's absence, otherwise respondents' right to cross-examine Lorencio will be deemed waived.[13]

The trial was further delayed when then Presiding Judge Victor A. Tomaneng died and his cases ordered transferred to the *sala* of Judge Eduardo S. Casals who set the case for hearing on January 17, 2006.[14] As the parties needed to clarify with this Court whether the transfer of cases included intra-corporate disputes, the hearing scheduled on January 17, 2006 did not push through and Lorencio's cross-examination by respondents twice rescheduled to May 9, 2006[15] and October 16, 2006. When Atty. Wilfredo Asis (Atty. Asis), counsel for DTTI, could not make it to the October 16 hearing due to health problems, the RTC granted DTTI's motion for postponement without objection

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[10] *Id*. at 1068.

[11] *Id*. at 542.

[12] *Id*.

[13] *Id.*

[14] *Rollo*, p. 1065.

[15] *Id*. at 543.

from respondents' counsel and the hearing was again reset to March 5, 2007.[16]

On March 5, 2007, Atty. Asis marked three additional documents in connection with Lorencio's testimony. Atty. Go thereafter moved in open court that he be given time to study the documents and adequately prepare for the cross-examination. The RTC thus issued an Order[17] setting the cross-examination on June 18, 2007.

On June 18, 2007, however, neither Atty. Go nor Atty. Rabor attended the hearing for respondents. No motion for postponement was also filed. Atty. Asis thus moved that respondents be declared to have waived their right to cross-examine Lorencio, who was DTTI's last witness. He also asked for 15 days within which to file his written formal offer of evidence. The RTC granted this motion and issued an Order[18] which states:

> WHEREFORE, in view of the foregoing, the Court hereby considers Atty. Dollfuss R. Go to have waived his right to cross-examine witness Lorencio C. Dy. Accordingly, Atty. Wilfred D. Asis is hereby given a period of fifteen (15) days from today within which to file his written formal offer of exhibits. The defendants are given the same number of days reckoned from their receipt of a copy of plaintiff's formal offer of exhibits within which to file their comment or opposition thereto, after which the said formal offer of exhibits shall be deemed submitted for resolution.
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> SO ORDERED.[19]

Respondents, through Atty. Go, filed a motion[20] seeking reconsideration of the Order. They argued that the RTC, in declaring them to have waived their right to cross-examine

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[16] *Id*. at 544.

[17] *Id*. at 546.

[18] *Id*. at 250-252.

[19] *Id*. at 252.

[20] *Id*. at 685-699.

Lorencio, deprived them of their right to due process. Respondents also alleged that Atty. Go had, on June 16, 2007 or two days prior to the June 18, 2007 hearing, called Atty. Asis to inform him that he could not make it to the hearing because he had to fly to Cebu for another case. While Atty. Go recognized that he should have filed a motion for continuance before the court, he explained that he was only informed of the necessity of attending the hearing in Cebu on June 16, 2007, a Saturday.[21] Since there was no more time to draft a motion, he called Atty. Asis to ask him to accommodate another resetting of the cross-examination. Atty. Go claims that Atty. Asis agreed to his request over the phone. To his surprise, however, Atty. Asis, during the June 18, 2007 hearing, instead moved that respondents be declared to have waived their right to cross-examine Lorencio.[22]

In an Order[23] dated October 10, 2007, the RTC denied respondents' motion for reconsideration. It explained that, as early as August 30, 2005, it had already warned respondents that failure to conduct the cross-examination on the scheduled dates will lead to a declaration that they have waived their right to cross-examine DTTI's witness. The RTC also found Atty. Go's explanation insufficient, stating that he should have filed a formal motion for postponement before the court. Any alleged agreement with DTTI's counsel is irrelevant insofar as the court is concerned. The RTC also noted that Atty. Go could have requested his co-counsel, Atty. Rabor, to appear before the court and request for postponement. It then highlighted that granting continuance belongs to the sole discretion of the court. Lawyers must not assume that any motion for postponement will be granted.

Aggrieved, respondents, on November 16, 2007, went to the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court (*certiorari* case). Their petition, docketed

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[21] *Id*. at 695.

[22] *Id*. at 694-698.

[23] *Id*. at 647-652.

as CA-G.R. SP No. 02051-MIN, challenged the June 18, 2007 and October 10, 2007 Orders of the RTC but did not include a prayer for the issuance of a temporary restraining order (TRO).[24]

On July 11, 2007, DTTI filed a motion for admission of its exhibits.[25] This was granted in an Order[26] dated March 3, 2008. In the same Order, the RTC set respondents' initial presentation of evidence on May 26, 2008.

Respondents filed a supplemental petition[27] dated April 2, 2008 in the *certiorari* case challenging the RTC's March 3, 2008 Order. This included an application for the issuance of a TRO or a writ of preliminary injunction.

On May 26, 2008, the scheduled hearing proceeded but neither respondents nor their counsel appeared. Instead, they filed an urgent motion for continuance,[28] arguing that the presentation of evidence should be postponed because of the pendency of the *certiorari* case before the CA. They also highlighted that they have an existing application for the issuance of a TRO or a writ of preliminary injunction which the CA has yet to resolve.

During this hearing, DTTI moved for the denial of the urgent motion for continuance. It argued that Section 7, Rule 65 of the Rules of Court requires that the case must proceed within 10 days from the filing of a petition for *certiorari* where no TRO or preliminary injunction has been issued. DTTI also stressed that the case is an action for injunction which, by its very nature, requires speedy disposition. As the case has already been pending for four years, it asked the RTC to declare respondents to have waived their right to present evidence. In an Order[29] dated May 26, 2008, the RTC held:

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[24] *Id.* at 51, 227.

[25] *Id.* at 550-553.

[26] *Id.* at 279-283.

[27] *Id.* at 259-278.

[28] *Id.* at 925-928.

[29] *Id.* at 349-353.

WHEREFORE, in the light of the foregoing, the motion for continuance of the defendants is hereby DENIED for lack of merit. The defendants are hereby declared to have waived their right to present their evidence and that this case is now deemed submitted for decision.

SO ORDERED.[30]

On August 5, 2008, the CA denied the application for a TRO or writ of preliminary injunction.[31]

On August 22, 2008, the RTC rendered its Decision,[32] ruling in DTTI's favor. Basing its findings solely on Lorencio's unchallenged testimony and the documentary evidence presented by DTTI, the RTC granted the injunction and ordered respondents to pay compensatory damages in the amount of ₱2,000,000 for loss of stocks, ₱160,000/month for unrealized income from September 2004 until respondents vacate the building, ₱150,000 as damages under Article 2205(2) of the Civil Code, ₱150,000 as nominal damages, ₱100,000 as exemplary damages, ₱500,000 as attorney's fees, and ₱500,000 as litigation expenses.[33]

On October 8, 2008, DTTI filed a motion for execution of the RTC Decision.[34] Respondents, on the other hand, filed a second supplemental petition[35] before the CA in the *certiorari* case to challenge the RTC Decision. This, however, was ordered by the CA to be stricken off the records.[36]

In a Decision[37] dated December 17, 2008, the CA held that the RTC acted with grave abuse of discretion when it issued the June 18, 2007 and May 26, 2008 Orders. It held:

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[30] *Id*. at 353.

[31] *Id.* at 445.

[32] *Id*. at 430-454.

[33] *Id*. at 454.

[34] *Id*. at 949-960.

[35] *Id*. at 321-348.

[36] *Id*. at 942-944.

[37] *Supra* note 2.

WHEREFORE, in view of the foregoing, the twin Orders of 18 June 2007 and of 26 May 2008 and the Decision of 22 August 2008 rendered in Civil Case No. 1235 by public respondent are hereby ordered **ANNULLED** and **SET ASIDE** and the case **REMANDED** to the trial court for further and appropriate proceedings conformably with the above discussions.

SO ORDERED.[38]

DTTI thus filed this petition for review on *certiorari*[39] under Rule 45 of the Rules of Court assailing the CA's Decision. It insists that the RTC correctly declared as waived respondents' right to cross-examination and presentation of evidence. DTTI argues that respondents not only failed to file a written motion for postponement of the scheduled cross-examination, the reason invoked to justify the postponement was also not valid. Moreover, DTTI adds that respondents were not entitled, *as a matter of right*, to the grant of their motion for continuance. Similarly, DTTI argues that the RTC correctly found that respondents waived their right to present evidence when they failed to appear on the scheduled date.

In their comment,[40] respondents challenge the jurisdiction of the RTC in taking cognizance of the action for injunction as an intra-corporate case. According to respondents, since the action for injunction does not involve an intra-corporate dispute, the RTC, sitting as a commercial court, lacked jurisdiction. Its decision on the case is therefore void. Finally, respondents argue that the CA properly reversed the RTC. They claim that they were deprived of their right to due process when the RTC haphazardly declared them to have waived the right to cross-examine DTTI's witness and to present their evidence.

The issues thus presented are:

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[38] *Rollo*, pp. 243-244.

[39] *Supra* note 1.

[40] *Rollo*, pp. 1060-1102.

(1) Whether the action filed before the RTC was an intra-corporate case properly heard by the RTC acting as a special commercial court; and

(2) Whether the CA was correct in reversing the orders of the RTC and holding that respondents were deprived of their right to present evidence and to cross-examine DTTI's witness.

I

Section 5 of the Securities Regulation Code[41] transferred the jurisdiction of the Securities and Exchange Commission (SEC) over intra-corporate disputes to RTCs designated by the Supreme Court as commercial courts.

The existence of an intra-corporate dispute must be properly alleged in a complaint filed before a commercial court because the allegations in the complaint determine a tribunal's jurisdiction over the subject matter.[42] This means that the complaint must make out a case that meets both the relationship and the nature of the controversy tests.

Under the *relationship test*, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[43]

The *nature of the controversy test*, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association.[44] In

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[41] Republic Act No. 8799 (2000).

[42] See *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461.

[43] *Abejo v. De la Cruz*, G.R. No. 63558, May 19, 1987, 149 SCRA 654, 671-672.

[44] *Lozano v. De los Santos*, G.R. No. 125221, June 19, 1997, 274 SCRA 452, 457-458.

Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation,[45] we explained that the controversy "must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation."[46]

Applying the foregoing tests, we agree with the CA that the complaint filed by DTTI before the RTC was a civil action for injunction and **not** an intra-corporate dispute.

First, a reading of the complaint will reveal that it contains no allegation that the defendants therein (respondents in the present petition) are stockholders of the corporation. Notably, the complaint even identified Johnny as a DTTI employee. The complaint also does not allege that the other defendants therein have acted in their capacity as stockholders in depriving DTTI of access to its Montilla branch.

Second, the nature of the controversy does not involve an intra-corporate dispute. The complaint for injunction asks the RTC to order respondents to cease from controlling DTTI's Montilla branch and allow DTTI to use the same. In claiming that respondents illegally possessed the branch store, the complaint does not allege that it arose out of a disagreement between the stockholders. Rather, the complaint states that Johnny, DTTI's employee, colluded with co-respondents Peter and Ramon in forcibly opening the Montilla branch store and preventing DTTI from using the property.

Third, DTTI, in its complaint, asked the RTC to: (1) prevent respondents from physically possessing its branch store; and (2) allow DTTI to have access and control of the building.[47] Nowhere in its complaint did DTTI ask for a determination of

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[45] G.R. No. 187872, November 17, 2010, 635 SCRA 380.

[46] *Id.* at 391. Citation omitted.

[47] *Rollo*, pp. 582-583.

the parties' rights under the Corporation Code, its articles of incorporation or its by-laws.

Our jurisdiction recognizes a civil action for injunction. It is a suit brought for the purpose of enjoining the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his or her compulsion to continue performance of a particular act.[48] As a civil action, it falls within the general jurisdiction of the RTCs.[49]

Nevertheless, we disagree with respondents' contention that the RTC, sitting as a commercial court, had no jurisdiction over the civil action for injunction filed by DTTI. This matter has already been clarified by this Court in *Gonzales v. GJH Land, Inc. (formerly S.J. Land, Inc.)*.[50] There we held:

> [T]he fact that a particular branch which has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the *imprimatur* of statutory law, *i.e.*, *Batas Pambansa Bilang* (BP) 129. To restate, the designation of Special Commercial Courts was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's **exercise of jurisdiction**. x x x The RTC's general jurisdiction over ordinary civil cases is therefore not abdicated by an internal rule streamlining court procedure.[51] (Emphasis and italics in the original, citations omitted.)

Thus, that DTTI's civil action for injunction was raffled to, and heard by, an RTC sitting as a commercial court, is more an issue of procedure than one of jurisdiction. *Gonzales*, in fact, directs that when an ordinary civil case is mistakenly raffled to a branch designated as a Special Commercial Court, the remedy is to refer said case to the Executive Judge for re-docketing

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[48] *Manila Banking Corporation v. Court of Appeals*, G.R. No. L-45961, July 3, 1990, 187 SCRA 138, 144-145.

[49] *B.P. Blg.* 129, Sec. 19; *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71, 78-79.

[50] G.R. No. 202664, November 10, 2015, 774 SCRA 242.

[51] *Id.* at 269-271.

and re-raffling among "all courts of the same RTC **(including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches)**, as provided for under existing rules."[52] In any case, we find that respondents have waived any objection on this issue when they submitted to the authority of the RTC, asked for remedies therein, and participated in the proceedings. They are not allowed to raise this question of procedural propriety *only on appeal*.

II

No person shall be deprived of life, liberty or property without due process of law.[53] Due process is fundamental in our judicial system. In court litigation, it is upheld through the establishment of, and strict adherence to, procedural rules that govern the behavior of party litigants.[54] In our adversarial system, the right of a litigant to cross-examine a witness is essential to the principle of due process. The right to cross-examine a witness does not imply, however, an absolute command that an actual cross-examination be had. The right is sufficiently protected when there is a real opportunity to conduct a cross-examination. What our laws proscribe is the absence of a chance to cross-examine.[55] Further, the right to cross-examination is a personal right that may be waived. In *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*,[56] this Court explained:

> The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However,

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[52] *Id.* at 273. Emphasis supplied.

[53] CONSTITUTION, Art. III, Sec. 1.

[54] *Paredes v. Verano*, G.R. No. 164375, October 12, 2006, 504 SCRA 264, 273.

[55] *Equitable PCI Banking Corporation v. RCBC Capital Corporation*, G.R. No. 182248, December 18, 2008, 574 SCRA 858, 892.

[56] G.R. No. L-38964, January 31, 1975, 62 SCRA 258.

the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.[57] (Citations omitted.)

The waiver of the right to cross-examine a witness may be express or implied. In these instances, no violation of the constitutional right to due process is committed as the party himself or herself has opted not to exercise the right. The validity of a waiver of the right to cross-examine is recognized in our jurisdiction. The difficulty, however, is in cases where the waiver of the right is only implied. An implied waiver may take various forms. In ascertaining whether a party has waived his or her right to cross-examine a witness, this Court has identified a general standard that depends, for its application, on the surrounding facts of each particular case. In *Savory Luncheonette*, this Court said that a party may be deemed to have waived his or her right to cross-examine a witness when he or she was given an opportunity to confront and cross-examine an opposing witness but failed to do so for reasons attributable to himself or herself alone.[58]

The petitioners in *Savory Luncheonette* questioned the trial court's order to strike out the testimony of its witness due to the impossibility of conducting cross-examination (as the witness has since died). Petitioners contended that private respondents should be deemed to have waived their right to cross-examine due to their repeated failure and refusal to cross-examine despite all the time and opportunities granted them.[59] We set aside the

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[57] *Id.* at 263-265.

[58] *Id.* at 265.

[59] *Id.* at 267. Respondents in *Savory Luncheonette* were given five opportunities to cross-examine the witness but they failed to do so due to counsel's absence or unpreparedness, notwithstanding the court's persistent admonition that further failure to cross-examine will be deemed a waiver of this right.

trial court's order and held that "[b]y such repeated absence and lack of preparation on the part of the counsel of private respondents, the latter lost their right to examine the witness x x x and they alone must suffer the consequences."[60]

This is also the tenor of our ruling in *SCC Chemicals Corporation v. Court of Appeals*[61] where this Court held that petitioner's repeated failure to conduct the cross-examination despite the numerous opportunities granted to it amounts to a waiver of the right to cross-examine the opposing witness.[62]

This Court finds that the facts here are similar to the facts in the foregoing cases. The RTC initially set Lorencio's cross-examination on August 30, 2005. It was reset at respondents' instance to September 22, 2005. Although they had at that time two lawyers, one of whom was present during the hearing, respondents still moved for postponement because of their second counsel's illness. In fact, as early as August 30, 2005, the RTC had warned respondents that further failure to conduct the cross-examination by reason of Atty. Go's absence will warrant a ruling that they have waived their right to cross-examine. On March 5, 2007, (the sixth time the hearing was reset and third time at respondents' instance), respondents' counsel Atty. Go again asked for a resetting as he claimed that he needed to study three additional documents marked by DTTI during the hearing. The RTC granted this motion. However, on June 18, 2007, the date set for the cross-examination, no counsel for respondents appeared. Neither was a motion for postponement filed.

We find that the RTC had consistently given respondents several opportunities to cross-examine Lorencio. In fact, the trial court had been lenient in granting their motions for postponement even if, as this Court finds, the reasons for such postponements were unmeritorious. This notwithstanding,

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[60] *Id.*

[61] G.R. No. 128538, February 28, 2001, 353 SCRA 70.

[62] *Id.* at 76.

respondents still failed to attend the hearing set on June 18, 2007 without any explanation as to why no counsel appeared. To the mind of this Court, there was never any insurmountable obstacle to respondents' conduct of Lorencio's cross-examination. On the contrary, their failure to actually cross-examine Lorencio arose out of reasons attributable to their counsel. Unfortunately for respondents, counsel's negligence binds the client.[63]

This Court further finds Atty. Go's explanation unmeritorious. He claims that he missed the June 18, 2007 hearing because he had to attend another hearing in Cebu. He further claims that he called DTTI's counsel, Atty. Asis, to request that the hearing be moved to a later date, which, according to him, Atty. Asis agreed to. He did not file a motion for postponement. Instead, he merely hoped that the opposing lawyer will make the motion for him on the day of the hearing. In other words, Atty. Go simply relied on the generosity of the RTC and Atty. Asis that his request for postponement will be granted.

Jurisprudence is replete with standards as to the proper course of action a lawyer must take in instances similar to this case.

Courts possess the duty and authority to control the proceedings before it. This includes the setting of trial dates and allowing postponement of hearings. Lawyers, in turn, as officers of the court, are duty bound to obey and respect court orders. Hence, when courts set trial dates and a lawyer finds that he or she may not be able to attend the hearing, the proper course of action is to move for the court to set the hearing at another date. However, even when a motion for postponement is filed before the court, there is never an obligation for the court to grant it. Far from being a right, the grant of a motion for postponement is a privilege addressed to the court's sound discretion. Hence, a party filing such motion must not assume that it will be granted. In *Spouses Santos v. Alcazar*,[64] we

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[63] *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 648.

[64] G.R. No. 183034, March 12, 2014, 718 SCRA 636.

reminded that: "[A] party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court or on the generosity of the adverse party."[65] As for a lawyer who finds himself or herself in a predicament when he or she has two hearings set on the same day, this Court has also stated that he or she has no right to assume that the court will grant him or her a continuance:

> The most ethical thing for him to do in such a situation is to inform the prospective client of all the facts so that the latter may retain another attorney. If the client, having full knowledge of all the facts, still retain[s] the attorney, he assumes the risk himself and cannot complain of the consequences if the postponement is denied and finds himself without attorney to represent him at the trial.[66] (Citation omitted.)

The facts of this case and the relevant jurisprudence warrant an affirmation of the trial court's order that respondents have waived their right to cross-examine DTTI's witness Lorencio. Atty. Go's explanation for his failure to attend the hearing, after years of persistent resetting of the cross-examination, merits no consideration. He cannot rely on his claim that he had allegedly called Atty. Asis to agree to the resetting. As counsel for respondents, he had, at the very least, the duty to file a motion for postponement before the court instead of shifting the burden to the opposing lawyer. Further, he had no right to expect that the trial court will grant postponement given that as early as August 30, 2005, it had already warned respondents that further resetting of the hearing on account of Atty. Go's absence will lead to a waiver of their right to cross-examine.

To repeat, there was never any insurmountable obstacle to the conduct of the cross-examination. If respondents failed to exercise their right, this failure arose out of reasons purely attributable to them and their counsel. Hence, in accordance

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[65] *Id*. at 655. Citation omitted.

[66] *Id*. at 656.

with this Court's consistent rulings, the trial court correctly declared them to have waived their right to cross-examination.

III

We also find that respondents have waived their right to present evidence.

Court litigation is a search for the truth.[67] An adversarial system of litigating cases is in place as it allows for opposing parties to present their claims and adduce evidence. There is a recognized utility to this system as an adversarial system sharpens the presentation of issues before the courts. This, in turn, allows courts to ferret out the truth. Thus, while our procedural rules allow instances when a case may be decided after one party presents evidence *ex parte*, this Court has nevertheless consistently reminded lower courts that orders denying one party the right to present evidence must be rendered with great caution.

As in the case of the right to cross-examine an opposing witness, the right to present evidence may also be waived expressly or impliedly. Further, similar to the right to cross-examine a witness, an implied waiver of the right to present evidence may take various forms. In *Reyes v. Court of Appeals*,[68] this Court explained:

> [T]he postponement of the trial of a case to allow the presentation of evidence of a party is a matter which lies in the discretion of the trial court, but it is a discretion which must be exercised wisely, considering the **peculiar circumstances obtaining in each case and with a view to doing substantial justice**.[69] (Emphasis and underscoring supplied, citation omitted.)

In ascertaining the presence of this implied waiver, this Court's consistent rulings call for a balancing of interests relating to the administration of justice and an examination of the unique facts of each particular case.

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[67] *People v. Almendras*, G.R. No. 145915, April 24, 2003, 401 SCRA 555, 574.

[68] G.R. No. 111682, February 6, 1997, 267 SCRA 543.

[69] *Id.* at 550.

The interplay among the right to due process, the value of speedy disposition of cases, and an adversarial system as a mechanism to ferret out the truth goes into the interests that courts must consider in holding a party to have waived his or her right to present evidence. On one hand, waiver orders aid in hastening litigation when it is apparent that one party is attempting to delay a case or is unable to present evidence for the trial. On the other hand, speed is not the overarching goal in a trial. Paramount interests of justice should not be sacrificed for the sake of speed and efficiency.[70] Further, courts must also keep in mind that it must hold a party to have impliedly waived his or her right to present evidence when he or she has been consistently given the right to participate in the proceedings but failed to do so without any justifiable reason. Courts must be wary of attempts to delay trial. Moreover, courts have the duty to regulate the proceedings before it and must not allow the trial of a case to depend on the negligence or dilatory tactics of parties and their lawyers. It is in instances where the courts have neutrally afforded the parties sufficient opportunity to exercise their right to participate in the trial but persistently failed to do so that courts are justified in holding them to have waived their right to present evidence without violating the essence of due process. Trials cannot be held hostage by the whims of one party. All other parties involved have the right to a speedy disposition of the case.[71]

These interests serve as guideposts in ascertaining whether the facts of each particular case require a finding that a party has waived his or her right to present evidence.

Thus, in *Bautista v. Court of Appeals*,[72] a civil case for quieting of title, we affirmed the holding of the CA that petitioners waived their right to present evidence. In this case, the petitioners had

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[70] *Id.* at 554.

[71] See *Dela Cruz v. People*, G.R. No. 163494, August 3, 2016, 799 SCRA 216; *Palanca v. Guides*, G.R. No. 146365, February 28, 2005, 452 SCRA 461; and *Bautista v. Court of Appeals*, G.R. No. 157219, May 28, 2004, 430 SCRA 353.

[72] *Supra*.

filed three prior motions for postponement on three separate occasions which the trial court granted. This notwithstanding, petitioners still chose to file a fourth motion for postponement on the day of the hearing itself. We agreed with the RTC that the petitioners waived their right to present evidence. We explained:

> Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.[73] (Citation omitted.)

Trial courts successfully perform their duty to afford a party his or her right to due process when he or she is granted meaningful and sufficient opportunity to participate in the proceedings. Trial courts, however, do not have the duty to submit to unreasonable, dilatory, or negligent acts of the parties in handling their own cases. While parties to a case possess the right to due process, they have the correlative duty to exercise it properly and not use it as an excuse for their negligence or deliberate tactics to delay a case.

In *Bautista*, we also explained that the grant of a motion for postponement is not a matter of right. As we have said earlier, neither a party nor his lawyer has the right to expect that the filing of a motion for postponement will suffice to prevent a hearing from pushing through. The grant of a motion for postponement depends upon the discretion of the court. The court has the power and duty to control the proceedings before it, including the power to deny a motion for postponement. Parties and their lawyers must not assume that their motion for postponement will be granted. Even when such a motion is filed, parties must make sure that their lawyers appear and ready to proceed with the hearing in the event that their motion for postponement is denied.

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[73] *Id*. at 357.

Applying these principles, we rule that the CA erred in reversing the RTC's Order declaring respondents to have waived their right to present evidence.

As earlier shown, the proceedings before the RTC have already been delayed several times due to repeated postponements. In fact, the RTC was compelled to declare that respondents had already waived their right to cross-examination. Respondents challenged this Order through a special civil action for *certiorari* before the CA. However, since no injunction or TRO was issued by the CA, the RTC proceeded with the trial and, during the course thereof, admitted DTTI's offer of exhibits on March 3, 2008. Respondents again challenged this order by filing a supplemental petition for *certiorari* dated April 2, 2008 before the CA. The RTC, which remained bound to proceed with the case in the absence of a TRO or a writ of injunction, set respondents' presentation of evidence on May 26, 2008.

We emphasize that the CA **never** issued a TRO or an injunction to halt the proceedings before the RTC. Despite this, respondents and their lawyers still chose not to appear in the hearing set for presentation of their evidence. Instead, they merely filed an urgent motion for continuance, arguing that their presentation of evidence should be postponed due to the pendency of the *certiorari* case before the CA. There is, however, no law or rule requiring the RTC not to proceed with the case because of the pendency of a special civil action for *certiorari* involving an interlocutory order issued by the trial court during the course of the proceedings. On the contrary, Section 7, Rule 65 of the Rules of Court is unequivocal. This provision states:

> Sec. 7. Expediting proceedings; injunctive relief. —
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> x x x x x x x x x
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

Thus, as the motion for continuance put forward no valid ground, and taking into consideration the clear procedural requirement that the RTC must proceed with the case as well as the fact that the proceedings have already been unduly delayed, the RTC was warranted in holding that respondents waived their right to present evidence.

We find that respondents were given sufficient opportunity to participate in the proceedings. The order setting the case for hearing for the presentation of their evidence was issued with enough time for respondents to prepare. While they had the option to file a motion for continuance as a matter of strategy, respondents had no right to expect that it will be granted. Prudence should have impelled respondents (and their lawyers) to appear before the RTC prepared to present their evidence in the event of a denial of their motion. This they failed to do. The RTC thus cannot be faulted for refusing to allow the case to be delayed any further. As in *Gohu v. Gohu*,[74] the RTC's Order actually "upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party."[75]

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Decision dated December 17, 2008 of the Court of Appeals is **REVERSED**. The Decision of the Regional Trial Court, Butuan City dated August 22, 2008 and its Orders dated June 18, 2007 and May 26, 2008 are **REINSTATED**.

SO ORDERED.

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

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[74] G.R. No. 128230, October 13, 2000, 343 SCRA 114.

[75] *Id*. at 122.

SECOND DIVISION

[G.R. No. 197032. July 26, 2017]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **PRICE RICHARDSON CORPORATION, CONSUELO VELARDE-ALBERT, and GORDON RESNICK,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE AS AN EXECUTIVE FUNCTION, EXPLAINED; REMEDIES OF THE ACCUSED IN CASE OF ERRONEOUS DETERMINATION BY THE PUBLIC PROSECUTOR.—** It has long been established that the determination of probable cause to charge a person of a crime is an executive function, which pertains to and lies within the discretion of the public prosecutor and the justice secretary. If the public prosecutor finds probable cause to charge a person with a crime, he or she causes the filing of an information before the court. The court may not pass upon or interfere with the prosecutor's determination of the existence of probable cause to file an information regardless of its correctness. It does not review the determination of probable cause made by the prosecutor. It does not function as the prosecutor's appellate court. Thus, it is also the public prosecutor who decides "what constitutes sufficient evidence to establish probable cause." However, if the public prosecutor erred in its determination of probable cause, an appeal can be made before the Department of Justice Secretary. Simultaneously, the accused may move for the suspension of proceedings until resolution of the appeal.

2. **ID.; ID.; ID.; JUDICIAL DETERMINATION OF PROBABLE CAUSE, NATURE AND PURPOSE OF.—** Upon filing of the information before the court, judicial determination of probable cause is initiated. The court shall make a personal evaluation of the prosecutor's resolution and its supporting evidence. Unlike the executive determination of probable cause, the purpose of judicial determination of probable cause is "to ascertain whether a warrant of arrest should be issued against

the accused." This determination is independent of the prosecutor's determination of probable cause and is a function of courts for purposes of issuance of a warrant of arrest. x x x [A] judge may immediately dismiss the case if he or she finds that there is no probable cause to issue a warrant of arrest based on the records. To protect the accused's right to liberty, the trial court may dismiss an information based on "its own independent finding of lack of probable cause" when an information has already been filed and the court is already set to determine probable cause to issue a warrant of arrest.

3. ID.; ID.; ID.; EXECUTIVE DETERMINATION OF PROBABLE CAUSE MAY BE INTERFERRED WITH ONLY BY THE COURT WHEN THERE IS GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION, EXPLAINED.— [T]he general rule is that the determination of probable cause is an executive function which courts cannot pass upon. As an exception, courts may interfere with the prosecutor's determination of probable cause only when there is grave abuse of discretion. Grave abuse of discretion constitutes "a refusal to act in contemplation of law or a gross disregard of the Constitution, law, or existing jurisprudence, [accompanied by] a whimsical and capricious exercise of judgment amounting to lack of jurisdiction." A prosecutor gravely abuses his or her discretion in not finding probable cause by disregarding or overlooking evidence that "are sufficient to form a reasonable ground to believe that the crime . . . was committed and that the respondent was its author." Further, "what is material to a finding of probable cause is the commission of acts constituting [the offense], the presence of all its elements and the reasonable belief, based on evidence, that the respondent had committed it."

4. ID.; ID.; ID.; ID.; THERE IS GRAVE ABUSE OF DISCRETION IN CASE AT BAR WARRANTING THE COURT'S INTERFERENCE IN THE CONDUCT OF EXECUTIVE DETERMINATION OF PROBABLE CAUSE; CONTRARY TO EXECUTIVE FINDINGS, PROBABLE CAUSE EXISTS TO FILE AN INFORMATION AGAINST RESPONDENT CORPORATION FOR VIOLATING THE LAWS.— In this case, grave abuse of discretion exists, which warrants this Court's interference in the conduct of the executive determination of probable cause. x x x Petitioner provided sufficient bases to form a belief that a crime was possibly

committed by respondent Price Richardson. x x x An examination of the records reveals that probable cause exists to file an information against respondent Price Richardson for violating the laws. Based on the Certification dated October 11, 2001 issued by the Market Regulation Department of the Securities and Exchange Commission, respondent Price Richardson "has never been issued any secondary license to act as broker/dealer in securities, investment house and dealer in government securities." Petitioner also certified that respondent Price Richardson "is not, under any circumstances, authorized or licensed to engage and/or solicit investments from clients." x x x The evidence gathered by petitioner and the statement of respondent Price Richardson are facts sufficient enough to support a reasonable belief that respondent is probably guilty of the offense charged.

5. **ID.; ID.; ID.; ID.; PRIVATE RESPONDENTS CANNOT BE INDICTED FOR VIOLATING SECURITIES REGULATION CODE AND THE REVISED PENAL CODE IN VIEW OF PETITIONER'S FAILURE TO ALLEGE SPECIFIC ACTS SHOWING THEIR PARTICIPATION IN THE ALLEGED VIOLATIONS.—** [R]espondents Velarde-Albert and Resnick cannot be indicted for violations of the Securities Regulation Code and the Revised Penal Code. Petitioner failed to allege the specific acts of respondents Velarde-Albert and Resnick that could be interpreted as participation in the alleged violations. There was also no showing, based on the complaints, that they were deemed responsible for Price Richardson's violations. x x x A corporation's personality is separate and distinct from its officers, directors, and shareholders. To be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.

APPEARANCES OF COUNSEL

A.A. Amador Associates for respondent.

Gatchalian Castro & Mawis co-counsel for respondent Gordon Resnick.

Manuel Luis G. Limpin for respondent Consuelo Velarde-Albert.

D E C I S I O N

LEONEN, *J.*:

The determination of probable cause for purposes of filing an information is lodged with the public prosecutor. It is not reviewable by courts unless it is attended by grave abuse of discretion.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, praying that the Court of Appeals Decision[2] dated May 26, 2011 and the Department of Justice Resolutions dated April 12, 2005[3] and July 5, 2006[4] be reversed and set aside.[5] The Court of Appeals affirmed the assailed Resolutions of the Department of Justice, which denied the Petition for Review filed by the Securities and Exchange Commission (petitioner).[6] Petitioner prays for the filing of an Information against Price Richardson Corporation, Consuelo Velarde-Albert, and Gordon Resnick (respondents) for violating Sections 26.3 and 28 of the Securities Regulation Code.[7]

Respondent Price Richardson Corporation (Price Richardson) is a Philippine corporation duly incorporated under Philippine laws on December 7, 2000.[8] Its primary purpose is "[t]o provide

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[1] *Rollo*, pp. 355-388.

[2] *Id*. at 391-399. The Decision, docketed as CA-G.R. SP No. 96258, was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 400-404. The Resolution was penned by Secretary Raul M. Gonzalez.

[4] *Id*. at 405-406. The Resolution was penned by Secretary Raul M. Gonzalez.

[5] *Id*. at 383.

[6] *Id*. at 399, 400 and 403.

[7] *Id*. at 383, Petition for Review.

[8] *Id*. at 407, Certificate of Incorporation.

administrative services which includes but is not limited to furnishing all necessary and incidental clerical, bookkeeping, mailing and billing services."[9]

On October 17, 2001, its former employee, Michelle S. Avelino, (Avelino) executed a sworn affidavit at the National Bureau of Investigation's Interpol Division,[10] alleging that Price Richardson was "engaged in boiler room operations, wherein the company sells non[-]existent stocks to investors using high pressure sales tactics."[11] Whenever this activity was discovered, the company would close and emerge under a new company name.[12] Pertinent portions of her sworn statement read:

Q03: State your reason why you are here at the NBI Interpol?
A: I am here to give a statement about the "boiler room" operation of PRICE RICHARDSON CORPORATION.

Q04: What do you mean by "boiler room"?
A: A boiler room is a company which sells non-existent stocks to investors by using high pressure sales tactics. They had no intention of paying the duped investors and when their operation ha[s] been discovered this company would close and would spring up under a new name. I know this for a fact because I used to work before with New Millennium Market Research, Inc. which was shut down after the duped victims reported to authorities [its] illegal activities. New Millennium Market Research, Inc. eventually became Price Richardson. Boiler Room operation is an illegal activity considering that the company has no license from the Securities and Exchange Commission to deal on securities or stocks.

Q05: Why do you know that Price Richardson is a "boiler room"?
A: I used to work there as a telemarketer from September 3, 2001 to October 15, 2001.

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[9] *Id.* at 408, Articles of Incorporation.

[10] *Id*. at 392, Court of Appeals Decision.

[11] *Id*.

[12] *Id*.

Q06: As telemarketer at Price Richardson what do you do?
A: Our supervisor would give "leads" for me to call. "Leads" are names of prospective investors. Upon contracting a prospective investor, I would read a prepared "script" or presentation of the company's profile and the services it offers. If the prospect is interested, I will write all the information about this person and would forward the same to our supervisor JOVY AGUDO. All our leads or prospects are foreigners.

Q07: As a telemarketer, how many calls do you make in a day and how many investors do you qualify?
[A:] I average 100 calls a day and I can qualify an average of six (6) would[-]be investors daily.

. . . . . .

Q10: After you qualify a prospective investor, what happens next?
A: The company will send him a newsletter and then the salesman would contact him and [use] high-pressure sales tactics to make a sale of non-existent stocks. The salesmen would use the data and information gathered by the telemarketers and would make reference to the calls or initial contact made by telemarketers. If the investor agreed, the salesman would give him instructions on how to send the money to the company. Usually, the payment is made through telegraphic transfers. After the payment has been received, a confirmation receipt would then be sen[t] by the courier to the investor indicating therein the name of the company where the alleged investment was made, the number of shares, the amount per share, the tax and commissions paid. However, no hard copy of the stocks or certificates will be issued for in truth and in fact there was no actual sale or transfer of stocks or certificates for they are non-existent. In the event that the investor would then sell his certificates or stocks, the salesman would try to convince the investor not to sell in order not to release the money. Eventually, the company would disappear and would spring up under a new name.

Q11: Who are these salesmen?
A: The salesmen are all foreigners of various nationalities. They used also a prepared script to induce the prospective client to invest.

. . . . . .

Q13: Do you know if these salesmen are licensed stockbrokers duly authorized by the Securities and Exchange Commission?

A: They are not licensed by the Securities and Exchange Commission. They are tourists here in the country and they used aliases to hide their identities.[13]

Janet C. Rillo corroborated Avelino's claims.[14] She was a former employee of Capital International Consultants, Inc. (Capital International), a corporation that allegedly merged with Price Richardson.[15] She claimed that their calls to prospective investors should be in Price Richardson's name.[16] Pertinent portions of her sworn statement read:

07. Q: You said that **CAPITAL INTERNATIONAL CONSULTANTS CORP.** has just merged with Price Richardson Inc., can you elaborate on this?

A: Yes, just this September, we have been informed of the [merge]. In fact we have been instructed to use the name of Price Richardson in our calls starting September 2001.

. . . . . .

09. Q: Can you describe the process in, as you said – "qualify clients as possible investors"?

A: I make overseas calls to individuals listed in our Client Leads. The "Client Leads" contains a list of the names of the top-level personnel of international companies, it includes their address and telephone numbers. From these leads, we select clients to call and offer them a free subscription of our "Financial News Letter".

. . . . . .

11. Q: What does these "Financial News Letter" contain?

A: It contains the current status of the worldwide stock market.

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[13] *Id.* at 424-425, Michelle S. Avelino's Sworn Statement.

[14] *Id.* at 392, Court of Appeals Decision.

[15] *Id.*

[16] *Id.*

12: Q: So what happens when a client agrees to subscribe in your news letter?

A: We then check from our list if the information we have regarding their address and telephone numbers [is] correct. This is to check their mail preference – where they would like us to send the news letter.

13. Q: What happens after that?

A: Those who agree to receive the subscription are considered as qualified clients. We then fill out a "SALES LEAD" card, which reflects the information of the client. We then forward these cards to the marketing department, consisting of the encoders and other telemarketers. These people are the ones who send the newsletters and transaction receipts to clients. Their office is located at the Price Richardson Office, 31st Floor Citibank Tower, Paseo De Roxas, Makati. It is from these cards that our foreigner salesmen could get possible investors. These possible investors would then be sold with non-existent stocks.

. . . . . .

15. Q: So are you saying that CAPITAL INTERNATIONAL CONSULTANTS CORP and/or PRICE RICHARDSON, Inc. is engaged in the illegal trading of stocks to clients?

A: Yes. When I applied for the job, I was briefed by ANNE BENWICK, the Operations Manager, about the nature of their [b]usiness. She said that the company is engaged in trading stocks, and my job as a Telemarketer would be to "qualify clients" who might become possible investors. I am also aware of the nature of their business since I have been employed in a similar company.[17]

Upon application of the National Bureau of Investigation Interpol Division[18] and the Securities and Exchange Commission[19] on November 15, 2001, Branch 143, Regional Trial Court, Makati City issued three (3) search warrants against

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[17] *Id.* at 428-429, Janet C. Rillo's Sworn Statement.

[18] The National Bureau of Investigation Interpol Division was represented by Agent Jeralyn Jalagat.

[19] The Securities and Exchange Commission was represented by Atty. Elmira Alconaba.

Capital International and Price Richardson for violation of Section 28[20] of the Securities Regulation Code.[21] The Regional Trial Court ordered the seizure of Price Richardson's and Capital International's office equipment, documents, and other items that were connected with the alleged violation.[22]

On November 16, 2001, the search warrants were served and Price Richardson's office equipment and documents were seized.[23]

On December 4, 2001, the Securities and Exchange Commission filed before the Department of Justice its complaint against Price Richardson, Clara Arlene Baybay (Baybay), Armina A. La Torre (La Torre), Manuel Luis Limpin (Limpin), Editha C. Rupido (Rupido), Jose C. Taopo (Taopo), Consuelo Velarde-Albert (Velarde-Albert), and Gordon Resnick (Resnick) for violation of Article 315(1)(b)[24] of the Revised Penal Code and

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[20] SECURITIES CODE, Sec. 28.1 provides:

> Section 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

[21] *Rollo*, p. 392.

[22] *Id.*

[23] *Id.* at 392 and 536.

[24] REV. PEN. CODE, Art. 315, Sec. 1(b) provides:

> Article 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> . . . .
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> *4th.* By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means
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> 1. With unfaithfulness or abuse of confidence, namely:
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> . . . .
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> (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the

Sections 26.3[25] and 28 of the Securities Regulation Code.[26] Baybay, La Torre, Limpin, Rupido, and Taopo (the incorporators and directors) were Price Richardson's incorporators and directors.[27] Velarde-Albert was its Director for Operations and Resnick was its Associated Person.[28]

The Securities and Exchange Commission alleged that Price Richardson was neither licensed nor registered "to engage in the business of buying and selling securities within the Philippines or act as salesman, or an associated person of any broker or dealer."[29] As shown by the seized documents and equipment, Price Richardson engaged in seeking clients for the buying and selling of securities, thereby violating Sections 26.3 and 28 of the Securities Regulation Code.[30]

The Securities and Exchange Commission claimed that Velarde-Albert and Resnick should be liable for acting as brokers or salesmen despite not being registered.[31] Meanwhile, the incorporators and directors' liability was based on being

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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.

[25] SECURITIES CODE, Sec. 26.3 provides:

Section 26. Fraudulent Transactions. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

. . . . . .

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

[26] *Rollo*, pp. 392-393 and 535.

[27] *Id*. at 535-537.

[28] *Id*. at 391-392.

[29] *Id*. at 536.

[30] *Id*. at 536-537.

[31] *Id*. at 537.

responsible "for the corporate management with the obligation to ensure that [Price Richardson] operate[d] within the bounds of law."[32]

Price Richardson, Velarde-Albert, Resnick, and the incorporators and directors were also charged with Estafa under Article 315(1)(b) of the Revised Penal Code. The Securities and Exchange Commission averred that they obtained their investors' confidence by comporting themselves as legitimate stock brokers.[33] Thus, when they failed to return the investments they received, their act "constitute[d] misappropriation with abuse of confidence."[34]

In defense, the incorporators and directors denied knowing or agreeing to the offenses charged. They countered that they already transferred their respective shares to various individuals in December 2000, as shown by their registered Deeds of Absolute Sale of Shares of Stock.[35] Velarde-Albert denied the Securities and Exchange Commission's allegations against her while Resnick did not submit any evidence refuting the charges.[36]

On March 13, 2002, State Prosecutor Aristotle M. Reyes (State Prosecutor Reyes) issued a Resolution,[37] dismissing the Securities and Exchange Commission's complaint "for lack of probable cause."[38] He found that:

> [C]omplainant SEC failed to adduce evidence showing respondent Price's alleged unauthorized trading. While it is true that based on the certification issued by the SEC, respondent-corporation has no

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[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 537-538.

[36] *Id*. at 538.

[37] *Id*. at 535-542. The Resolution was recommended for approval by the Task force on Securities Chairman, Senior State Prosecutor Miguel F. Gudio. It was approved by Assistant Chief State Prosecutor Nilo C. Mariano.

[38] *Id*. at 393-394 and 540.

license to buy or sell securities, it does not, however, follow, that said corporation had indeed engaged in such business. It is imperative for complainant to prove the respondent-corporation's affirmative act of buying and selling securities to constitute the offense charged. It cannot be established on the expedient reason that a corporation is not license[d] or authorize[d] to trade securities. He who alleges a positive statement has the burden of proving the same.

The various "confirmation of trade" receipts . . . taken singly, does not prove violation of Sections 26.3 and 28 of the Securities Regulation Code. Far from proving the offense charged, those confirmation of trade could very well mean that indeed respondent Price was merely "providing administrative services of furnishing all necessary and incidental clerical, bookkeeping, mailing and billing services" pursuant to its primary purpose as embodied in its articles of incorporation. There is no evidence that indeed anyone transacted business much less purchased or sold securities with any of the respondents acting as broker or dealer in securities. In other words, the burden of proving that respondents made various offers to sell unregistered securities; that the offers were accepted; and, that agreements of sale were reached and consummated, has not been dislodged by the complainant. Independent proof of the various stages of a sale transaction is necessary to show violation of Sections 26.3 and 28 of the Securities Regulation Code.[39]

State Prosecutor Reyes absolved the incorporators and directors from any liability considering that they already relinquished their positions as directors of Price Richardson when they transferred their shares to third parties.[40] He also found Velarde-Albert and Resnick not liable for lack of sufficient proof that they engaged in the trading of securities.[41]

On the allegation of conspiracy, State Prosecutor Reyes held that because the facts failed "to establish the alleged unauthorized trading, or the fraudulent investments that constitute the crime charged, there can be no basis in determining collective criminal

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[39] *Id*. at 538-539.

[40] *Id*. at 539.

[41] *Id*. at 539-540.

responsibility."[42] Finally, State Prosecutor Reyes ruled that there was no sufficient evidence to show that Price Richardson, Velarde-Albert, Resnick, and the incorporators and directors deceived investors that would constitute the crime of estafa with abuse of confidence.[43]

In the meantime, individuals claiming to have agreed to purchase securities from Price Richardson and have been defrauded surfaced and executed sworn statements against it.[44] They claimed that Price Richardson engaged in illegal trade of securities.[45] They filed complaints against Price Richardson before the Department of Justice for violation of Article 315(1)(b) of the Revised Penal Code and Sections 26.3 and 28 of the Securities Regulation Code.[46]

The Securities and Exchange Commission moved for reconsideration[47] of the March 13, 2002 Resolution, which was denied by State Prosecutor Reyes in a Resolution[48] dated May 31, 2002.

The Securities and Exchange Commission filed before the Department of Justice a Petition for Review[49] of State Prosecutor Reyes' March 13, 2002 and May 31, 2002 Resolutions. This was denied in the April 12, 2005 Resolution[50] of Department of Justice Secretary Raul M. Gonzalez (Secretary Gonzalez).

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[42] *Id*. at 540.

[43] *Id*.

[44] *Id*. at 394; *rollo,* p. 613, Complaint-Affidavit of Johannes Jacob Van Prooyen; *rollo,* pp. 674-675, Complaint-Affidavit of Don Sextus Nilantha.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 543-553.

[48] *Id*. at 579-582. The Resolution was recommended for approval by Assistant Chief State Prosecutor Nilo C. Mariano and was approved by Chief State Prosecutor Jovencito R. Zuño.

[49] *Id*. at 583-605.

[50] *Id*. at 400-404.

The Securities and Exchange Commission filed a Motion for Reconsideration[51] of the April 12, 2005 Resolution but this was denied by Secretary Gonzalez in his July 5, 2006 Resolution.[52]

The Securities and Exchange Commission filed a Petition for Certiorari[53] against Secretary Gonzalez, Price Richardson, Velarde-Albert, and Resnick before the Court of Appeals for the annulment of Secretary Gonzalez's April 12, 2005 and July 5, 2006 Resolutions.[54]

On May 26, 2011, the Court of Appeals promulgated a Decision[55] affirming the assailed Resolutions.[56] The Court of Appeals held that there was no grave abuse of discretion on the part of Secretary Gonzalez when he affirmed State Prosecutor Reyes' Resolutions, which found no probable cause to file an information.[57]

The Court of Appeals found that the affidavits executed by Price Richardson's employees were merely surmises.[58] They did not have personal knowledge of the security trading since their jobs were limited to persuading people to get newsletter subscriptions.[59] Indeed, the documents seized from Price Richardson's office showed a transaction between it and an investor.[60] However, "no clear and specific acts of buying or selling of securities were alleged and substantiated by the SEC[.]"[61]

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[51] *Id*. at 606-612.

[52] *Id*. at 405-406.

[53] *Id*. at 632-660.

[54] *Id*. at 658.

[55] *Id*. at 391-399.

[56] *Id*. at 399.

[57] *Id*.

[58] *Id*. at 398.

[59] *Id*.

[60] *Id*.

[61] *Id*.

The alleged investors' affidavits were not sufficient to find probable cause because the alleged transactions transpired over the phone and while these investors were not in the Philippines.[62] Moreover, since the traded stocks were not of domestic corporations or from corporations doing business in the Philippines, Philippine penal laws could not be applied.[63]

Lastly, there was no basis for the complaints against Velarde-Albert and Resnick because they were neither board members nor stockholders of the corporation. The complaint did not allege any particular act that can be interpreted as their direct participation in the purported illegal stock trading.[64]

Hence, on July 26, 2011, the Securities and Exchange Commission filed a Petition for Review[65] before this Court against Price Richardson, Velarde-Albert, and Resnick. It assailed the May 26, 2011 Decision of the Court of Appeals and the April 12, 2005 and July 5, 2006 Resolutions of Secretary Gonzalez and prayed for the filing of an information against respondents for violation of Sections 26.3 and 28 of the Securities Regulation Code.[66]

Petitioner claims that Secretary Gonzalez committed grave abuse of discretion in not finding probable cause to indict respondents.[67] The complainants who claimed to have been defrauded by respondents and the documents and equipment seized show that respondent Price Richardson was engaged in buying and selling securities without license or authority.[68] On the liability of respondents Velarde-Albert and Resnick, petitioner asserts that the seized documents sufficiently show that they

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[62] *Id*.

[63] *Id*.

[64] *Id*. at 399.

[65] *Id*. at 355-388.

[66] *Id*. at 383.

[67] *Id*. at 371-376.

[68] *Id*. at 379-382.

acted as salesmen or associated persons under Section 28 of the Securities Regulation Code.[69]

On December 7, 2011, respondent Price Richardson filed its Comment,[70] arguing that the determination of probable cause is an executive function and is reviewable by courts only upon showing of grave abuse of discretion.[71] The Department of Justice did not gravely abuse its discretion when it found that there was no probable cause to indict respondents for violation of the Securities Regulation Code.[72] Respondent Price Richardson's former employees' sworn statements contained factual claims that were outside their personal knowledge or conclusions of law that were beyond their capacity to make.[73]

Respondent Price Richardson insists that Section 28 of the Securities Regulation Code prohibits anyone from engaging in the business of buying and selling securities without registration from the Securities and Exchange Commission if those transactions are offered "to the public within the Philippines[.]"[74] This provision does not apply in this case because the alleged buyers of securities were not citizens of or resided in the Philippines. Additionally, the allegedly sold or offered securities were registered outside the Philippines, where the alleged sales also transpired. Hence, these sales are not under the Philippine jurisdiction.[75]

Respondent Resnick filed his Comment[76] on January 11, 2012 while respondent Velarde-Albert filed her Comment[77] on April

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[69] *Id*. at 383.

[70] Id. at 709-726.

[71] *Id*. at 711-712.

[72] *Id*. at 712-715.

[73] *Id*. at 721-723.

[74] *Id*. at 717.

[75] *Id*. at 719.

[76] *Id*. at 736-742.

[77] *Id*. at 775-779.

23, 2013. Both respondents argue that the complaints did not allege any act attributable to them or related to the alleged transactions involved.[78] Respondent Velarde-Albert also contends that there was no question of law raised in the Petition, which is required in a Rule 45 petition.[79]

On November 4, 2013, petitioner filed its Consolidated Reply.[80] Petitioner posits that direct invocation of this Court's original jurisdiction is allowed as its petition is an exception to the rule that only questions of law may be raised in a Rule 45 petition.[81] Petitioner alleges that the Court of Appeals' grave abuse of discretion and its Decision, which was based on a misapprehension of facts and was contradicted by evidence on record,[82] make its Petition an exception to the rule.[83]

On December 2, 2013, this Court issued a Resolution,[84] giving due course to the Petition and required the parties to file their respective memoranda.

Petitioner filed its Memorandum[85] on March 21, 2014. Respondents Velarde-Albert, Resnick, and Price Richardson submitted their Memoranda on February 24, 2014,[86] April 3, 2014,[87] and May 8, 2014,[88] respectively.

This Court resolves the following issues:

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[78] *Id*. at 738 and 776-777.

[79] *Id*. at 776.

[80] *Id*. at 797-810.

[81] *Id*. at 807.

[82] *Id*. at 808.

[83] *Id*. at 807-808.

[84] *Id*. at 813.

[85] *Id*. at 1062-1093.

[86] *Id*. at 823-835.

[87] *Id*. at 884-897.

[88] *Id*. at 908-922.

First, whether courts may pass upon the prosecutor's determination of probable cause; and

Finally, whether there is probable cause to indict respondents for violation of Sections 26.3 and 28 of the Securities Regulation Code and Article 315(1)(b) of the Revised Penal Code.

I

Courts may pass upon the prosecutor's determination of probable cause only upon a showing of grave abuse of discretion.

Probable cause, in relation to the filing of an information, was explained by this Court in *Villanueva v. Secretary of Justice*:[89]

> Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the private respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause 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.[90]

The definition of probable cause was lifted from Rule 112, Section 1, paragraph 1 of the Revised Rules of Criminal Procedure, which states:

> RULE 112
> Preliminary Investigation
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> Section 1. Preliminary Investigation Defined; When Required. — Preliminary investigation is an inquiry or proceeding to determine

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[89] 512 Phil. 145 (2005) [Per *J.* Callejo, Sr., Second Division].

[90] *Id.* at 159, citing *Baytan v. COMELEC*, 444 Phil. 812, 818 (2003) [Per *J.* Carpio, *En Banc*].

whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Under Rule 112, preliminary investigation must be conducted to determine the existence of probable cause.[91] In *Andres v. Justice Secretary Cuevas*,[92] this Court stressed that:

[Preliminary investigation] is not the occasion for the full and exhaustive display of their evidence. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.

In fine, the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[93] (Citations omitted)

It has long been established that the determination of probable cause to charge a person of a crime is an executive function,[94] which pertains to and lies within the discretion of the public prosecutor and the justice secretary.[95]

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[91] See *ABS-CBN Corporation v. Gozon*, G.R. No. 195956, March 11, 2015, 753 SCRA 1, 32 [Per *J.* Leonen, Second Division].

[92] 499 Phil. 36 (2005) [Per *J.* Carpio Morales, Third Division].

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

[94] *Corpuz v. Del Rosario*, 653 Phil. 36, 38 (2010) [Per *J.* Del Castillo, First Division]; *Unilever v. Tan*, 725 Phil. 486, 492 (2014) [Per *J.* Brion, Second Division]; *Mendoza v. People, et al.*, 733 Phil. 603, 610 (2014) [Per *J.* Leonen, Third Division], citing *People v. Castillo, et al.*, 607 Phil. 754, 764 (2009) [Per *J.* Quisumbing, Second Division]; *People v. Borje, Jr.*, 479 Phil. 719, 726–727 (2014) [Per *J.* Peralta, Third Division]; *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016, 779 SCRA 1, 19 [Per *J.* Leonen, Second Division]; *Napoles v. De Lima*, G.R. No. 213529, July 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/213529.pdf> 9–10 [Per J. Leonen, Second Division]; *Maza v. Turla*, G.R. No. 187094, February 15, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187094.pdf> 14 [Per *J.* Leonen, Second Division].

[95] *Unilever v. Tan*, 725 Phil. 486, 492 (2014) [Per *J.* Brion, Second Division].

If the public prosecutor finds probable cause to charge a person with a crime, he or she causes the filing of an information before the court.[96] The court may not pass upon or interfere with the prosecutor's determination of the existence of probable cause to file an information regardless of its correctness.[97] It does not review the determination of probable cause made by the prosecutor. It does not function as the prosecutor's appellate court.[98] Thus, it is also the public prosecutor who decides "what constitutes sufficient evidence to establish probable cause."[99]

However, if the public prosecutor erred in its determination of probable cause, an appeal can be made before the Department of Justice Secretary. Simultaneously, the accused may move for the suspension of proceedings until resolution of the appeal.[100]

Upon filing of the information before the court, judicial determination of probable cause is initiated. The court shall make a personal evaluation of the prosecutor's resolution and its supporting evidence.[101] Unlike the executive determination of probable cause, the purpose of judicial determination of probable cause is "to ascertain whether a warrant of arrest should be issued against the accused."[102] This determination is independent of the prosecutor's determination of probable cause and is a function of courts for purposes of issuance of a warrant of arrest.

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[96] *Mendoza v. People, et al.*, 733 Phil. 603, 609 (2014) [Per *J.* Leonen, Third Division].

[97] *Id.* at 610, citing *People v. Castillo, et al.*, 607 Phil. 754, 764-765 (2009) [Per *J.* Quisumbing, Second Division].

[98] *Id.* at 611.

[99] *Unilever v. Tan*, 725 Phil. 486, 493 (2014) [Per *J.* Brion, Second Division].

[100] *Mendoza v. People, et al.*, 733 Phil. 603, 612 (2014) [Per *J.* Leonen, Third Division], citing *People v. Court of Appeals*, 361 Phil. 401, 421 (1999) [Per *J.* Panganiban, Third Division].

[101] *Id.* at 609-610.

[102] *Id.* at 610, citing *People v. Castillo, et al.*, 607 Phil. 754, 764-765 (2009) [Per *J.* Quisumbing, Second Division].

Judicial determination of probable cause is in consonance with Article III, Section 2 of the Constitution:

> ARTICLE III
> Bill of Rights
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> . . . . . .
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> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge* after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

Accordingly, a judge may immediately dismiss the case if he or she finds that there is no probable cause to issue a warrant of arrest based on the records.[103] To protect the accused's right to liberty,[104] the trial court may dismiss an information based

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[103] RULES OF COURT, Rule 112, Sec. 6(a) provides:

> Rule 112. Preliminary Investigation
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> . . . . . .
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> Section 6. When Warrant of Arrest May Issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. *He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.* If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information. (Emphasis supplied)

[104] See *Mendoza v. People, et al.*, 733 Phil. 603, 604-605 (2014) [Per J. Leonen, Third Division].

on "its own independent finding of lack of probable cause"[105] when an information has already been filed and the court is already set to determine probable cause to issue a warrant of arrest.

Thus, the general rule is that the determination of probable cause is an executive function which courts cannot pass upon. As an exception, courts may interfere with the prosecutor's determination of probable cause only when there is grave abuse of discretion.[106] Grave abuse of discretion constitutes "a refusal to act in contemplation of law or a gross disregard of the Constitution, law, or existing jurisprudence, [accompanied by] a whimsical and capricious exercise of judgment amounting to lack of jurisdiction."[107]

A prosecutor gravely abuses his or her discretion in not finding probable cause by disregarding or overlooking evidence that "are sufficient to form a reasonable ground to believe that the crime . . . was committed and that the respondent was its author."[108] Further, "what is material to a finding of probable cause is the commission of acts constituting [the offense], the presence of all its elements and the reasonable belief, based on evidence, that the respondent had committed it."[109]

In this case, grave abuse of discretion exists, which warrants this Court's interference in the conduct of the executive determination of probable cause.

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[105] *Mendoza v. People, et al.*, 733 Phil. 603, 608 (2014) [Per *J.* Leonen, Third Division].

[106] *Asetre, et al. v. Asetre, et al.*, 602 Phil. 840, 852-853 (2009) [Per *J.* Quisumbing, Second Division].

[107] *Valderrama v. People, et al.*, G.R. No. 220054, March 27, 2017 [Per *J.* Leonen, Second Division], *citing Republic v. Caguioa*, 704 Phil. 315, 333 (2013) [Per *J.* Brion, Second Division]. See also *Unilever v. Tan*, 725 Phil. 486, 493-494 (2014) [Per *J.* Brion, Second Division], and *Asetre, et al. v. Asetre, et al.*, 602 Phil. 840, 853 (2009) [Per *J.* Quisumbing, Second Division].

[108] *Unilever v. Tan*, 725 Phil. 486, 495 (2014) [Per *J.* Brion, Second Division].

[109] *Id*.

II

Petitioner provided sufficient bases to form a belief that a crime was possibly committed by respondent Price Richardson.

The complaint alleged that respondents committed violations of the following:

SECURITIES REGULATION CODE

Section 26. Fraudulent Transactions. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

. . . . . .

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

. . . . . .

Section 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

REVISED PENAL CODE

ARTICLE 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

. . . . . .

4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

. . . . . .

(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.

An examination of the records reveals that probable cause exists to file an information against respondent Price Richardson for violating the laws.

Based on the Certification[110] dated October 11, 2001 issued by the Market Regulation Department of the Securities and Exchange Commission, respondent Price Richardson "has never been issued any secondary license to act as broker/dealer in securities, investment house and dealer in government securities."[111] Petitioner also certified that respondent Price Richardson "is not, under any circumstances, authorized or licensed to engage and/or solicit investments from clients."[112]

However, the documents seized from respondent Price Richardson's office show possible sales of securities. These documents include:

a) A company brochure consisting of 8 pages which declares that it is a financial consultant geared towards portfolio investment advice and other financial services to investors . . .

b) Detailed Quotes of OWTNF Otis-Winston Ltd. shares downloaded from the Bloomberg.com website which indicates its price, return, fundamentals and other matters . . .

c) Confirmation of Trade issued by the respondent to its client MR. PETER VAN DER HAEGEN which indicates that he bought on Oc[to]ber 16, 2001 750 Otis-[W]inston Ltd at $4.15 price per share for $3,112.50 . . .

d) Confirmation of Trade issued by the respondent to MR. RENNY NAIR who bought 500 shares of Hugo International (HGOI) at $5.75 per share for which he paid $2,932.50 . . . and Telegraphic Transfer from Oman U.A.E. Exchange Centre

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[110] *Rollo*, p. 481.

[111] *Id*.

[112] *Id*.

& Co. LLC made by Mr. Nair to PRICE RICHARDSON to the latter's bank account No. 103-719221-0 in China Banking Corporation in the amount of $2932.50 . . .

e) Confirmation of Trade issued by the respondent to MR. JOHANNES DE KORTE who bought 500 shares of Otis-Winston Ltd (OWTNF) at $5.05 per share for which he paid $2,575.50 . . .

f) Confirmation of Trade issued by the respondent to MR. JUERGEN GEIGER who bought 2500 shares of Hugo International at $4.65 per share for which he paid $11,857.50 . . .

g) Confirmation of Trade issued by the respondent to MR. ZULKEPLI HAMID who bought 2000 shares of OWTNF at $5.05 per share for which he paid $10,302 . . .

h) Telegraphic Transfers issued by China Banking Corporation to Union Bank of California International NY with Price Richardson as the Order Party and M.L. Vitale as the beneficiary in the amount of $2000 and Citibank Belgium as the Beneficiary Bank . . .

i) Confirmation of Trade issued by the respondent to MR. Junzo Watanabe who bought 2500 shares of OWTNF at $3.90 per share and sold 1500 Geoalert (GEOA) shares for which he paid $3,525 . . .

j) First Hawaiian Bank check issued by Junzo Watanabe payable to the Order of Price Richardson[.][113]

Petitioner further supports its charges by submitting the complaint-affidavits and letters of individuals who transacted with Price Richardson:

The SEC has submitted the complaint of Mr. Don Sextus Nilantha, a citizen of Sri Lanka who clearly named Price Richardson as selling him 1000 shares of Hugo Intl. Telecom, Inc. sometime in April 2001. At such time, and until today, Price Richardson was not authorized to act as traders or brokers o[f] securities in the Philippines.

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[113] *Id*. at 448-450, Complaint-Affidavit.

Furthermore, there are other complainants against Price Richardson who deserve to have their complaints aired and tried before the proper court. Mr. Johannes Jacob Van Prooyen filed a complaint against Price Richardson with the National Bureau of Investigation . . . In the said complaint, Mr. Van Prooyen clearly pointed to Price Richardson as the ones who contacted him on June 12, 2001 to buy 2000 shares of Hugo Intl. Telecom, Inc. and on July 10, 2001 to buy 2000 shares of GeoAlert. At no time at such relevant dates was Price Richardson licensed to act as traders or brokers of securities in the Philippines.

Mr. Bjorn L. Nymann of Oslo, Norway wrote about Price Richardson to this very same Department of Justice, which letter was received on July 9, 2002. In his letter Mr. Nymann admitted dealing with Price Richardson. He admitted to having bought 3000 shares of Hugo Intl. Telecom, Inc. . . . Although Mr. Nymann is not a complaining witness against Price Richardson, his letter is relevant as at no time at such relevant date was Price Richardson licensed to act as traders or brokers of securities in the Philippines.[114]

In addition, respondent Price Richardson stated in its Memorandum:

If this Honorable Court were to consider the set-up of Price Richardson, it was as if it engaged in outsourced operations wherein persons located in the Philippines called up persons located in foreign locations to inform them of certain securities available in certain locations, and to determine if they wanted to buy these securities which are offered in a different country.[115]

The evidence gathered by petitioner and the statement of respondent Price Richardson are facts sufficient enough to support a reasonable belief that respondent is probably guilty of the offense charged.

III

However, respondents Velarde-Albert and Resnick cannot be indicted for violations of the Securities Regulation Code and the Revised Penal Code.

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[114] *Id*. at 607-608.

[115] *Id*. at 921.

Petitioner failed to allege the specific acts of respondents Velarde-Albert and Resnick that could be interpreted as participation in the alleged violations. There was also no showing, based on the complaints, that they were deemed responsible for Price Richardson's violations. As found by State Prosecutor Reyes in his March 13, 2002 Resolution:

> [T]here is no sufficient evidence to substantiate SEC's allegation that individual respondents, Connie Albert and Gordon Resnick, acted as broker, salesman or associated person without prior registration with the Commission. The evidence at hand merely proves that the above-named respondents were not licensed to act as broker, salesman or associated person. No further proof, however, was presented showing that said respondents have indeed acted as such in trading securities. Although complainant SEC presented several confirmation of trade receipts and documents intended to establish respondents Albert and Resnick illegal activities, the said documents, standing alone as heretofore stated, could not warrant the indictment of the two respondents for the offense charged.[116]

A corporation's personality is separate and distinct from its officers, directors, and shareholders. To be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.[117]

WHEREFORE, premises considered, the Petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated May 26, 2011 and Department of Justice Secretary Raul M. Gonzalez's Resolutions dated April 12, 2005 and July 5, 2006 are **AFFIRMED** in so far as they find no grave abuse of discretion in the dismissal of the complaints for lack of probable cause against Consuelo Velarde-Albert and Gordon Resnick for: a) committing Estafa under Article 315(1)(b) of the Revised Penal Code and b) violating Sections 26.3 and 28 of the Securities Regulation Code.

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[116] *Id.* at 539-540.

[117] *ABS-CBN Corporation v. Gozon*, G.R. No. 195956, March 11, 2015, 753 SCRA 1, 78-79 [Per *J.* Leonen, Second Division].

This Court, however, finds that the dismissal of the complaint for lack of probable cause against Price Richardson Corporation for violation of Sections 26.3 and 28 of the Securities Regulation Code was rendered with grave abuse of discretion amounting to lack or excess of jurisdiction and is, thus, **ANNULLED** and **SET ASIDE**.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 197526. July 26, 2017]

CE LUZON GEOTHERMAL POWER COMPANY, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. Nos. 199676-77. July 26, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF INTERNAL REVENUE, *petitioner, vs.* **CE LUZON GEOTHERMAL POWER COMPANY, INC.,** *respondent.*

SYLLABUS

1. TAXATION; REFUND OR TAX CREDIT; CLAIM FOR REFUND OR TAX CREDIT OF INPUT TAX IS GOVERNED BY SECTION 112 (C) AND NOT SECTION 229 OF THE NATIONAL INTERNAL REVENUE CODE; TAX CREDIT SYSTEM ON A VAT-REGISTERED ENTITY, EXPLAINED.— Excess input tax or creditable input

tax is not an erroneously, excessively, or illegally collected tax. Hence, it is Section 112(C) and not Section 229 of the National Internal Revenue Code that governs claims for refund of creditable input tax. The tax credit system allows a VAT-registered entity to "credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports." The VAT paid by a VAT-registered entity on its imports and purchases of goods and services from another VAT-registered entity refers to input tax. On the other hand, output tax refers to the VAT due on the sale of goods, properties, or services of a VAT-registered person. Ordinarily, VAT-registered entities are liable to pay excess output tax if their input tax is less than their output tax at any given taxable quarter. However, if the input tax is greater than the output tax, VAT-registered persons can carry over the excess input tax to the succeeding taxable quarter or quarters. Nevertheless, if the excess input tax is attributable to zero-rated or effectively zero-rated transactions, the excess input tax can only be refunded to the taxpayer or credited against the taxpayer's other national internal revenue tax. Availing any of the two (2) options entail compliance with the procedure outlined in Section 112, not under Section 229, of the National Internal Revenue Code.

2. ID.; ID.; THE 120-DAY AND 30-DAY PERIODS FOR FILING JUDICIAL CLAIM ARE BOTH MANDATORY AND JURISDICTIONAL; THE CLAIM WAS PREMATURE WHERE IT WAS FILED WITHOUT WAITING FOR THE COMMISSIONER OF INTERNAL REVENUE TO RENDER A DECISION OR FOR THE 120-DAY PERIOD TO LAPSE.— The *Aichi* doctrine was reiterated by this Court in *San Roque*, which held that the 120-day and 30-day periods in Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional. In the present case, only CE Luzon's second quarter claim was filed on time. Its claims for refund of creditable input tax for the first, third, and fourth quarters of taxable year 2003 were filed prematurely. It did not wait for the Commissioner of Internal Revenue to render a decision or for the 120-day period to lapse before elevating its judicial claim with the Court of Tax Appeals.

3. ID.; ID.; ID.; ID.; EXCEPTION; CLAIMANTS ARE SHIELDED FROM THE VICE OF PREMATURITY WHEN THEY RELIED ON THE BUREAU OF INTERNAL

REVENUE RULING DA-489-03, FROM ITS ISSUANCE ON DECEMBER 10, 2003 UNTIL ITS REVERSAL ON OCTOBER 6, 2010.— [D]espite its non-compliance with Section 112(C) of the National Internal Revenue Code, CE Luzon's judicial claims are shielded from the vice of prematurity. It relied on the Bureau of Internal Revenue Ruling DA-489-03, which expressly states that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the [Court of Tax Appeals] by way of a Petition for Review." *San Roque* exempted taxpayers who had relied on the Bureau of Internal Revenue Ruling DA-489-03 from the strict application of Section 112(C) of the National Internal Revenue Code. This Court characterized the Bureau of Internal Revenue Ruling DA-489-03 as a general interpretative rule, which has "misle[d] all taxpayers into filing prematurely judicial claims with the C[ourt] [of] T[ax] A[ppeals]." Although the Bureau of Internal Revenue Ruling DA-489-03 is an "erroneous interpretation of the law," this Court made an exception explaining that "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law." Taxpayers who have relied on the Bureau of Internal Revenue Ruling DA-489-03, from its issuance on December 10, 2003 until its reversal on October 6, 2010 by this Court in *Aichi,* are, therefore, shielded from the vice of prematurity. CE Luzon may claim the benefit of the Bureau of Internal Revenue Ruling DA-489-03. Its judicial claims for refund of creditable input tax for the first, third, and fourth quarters of 2003 should be considered as timely filed.

4. REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; WHETHER CLAIMANT DULY SUBSTANTIATED ITS CLAIM FOR REFUND OF CREDITABLE INPUT TAX IS A FACTUAL MATTER WHICH IS BEYOND THE SCOPE OF THIS REVIEW.— In a Rule 45 Petition, only questions of law may be raised. "This Court is not a trier of facts." The determination of whether CE Luzon duly substantiated its claim for refund of creditable input tax for the second quarter of taxable year 2003 is a factual matter that is generally beyond the scope of a Petition for Review on Certiorari. Unless a case falls under any of the exceptions, this Court will not undertake a factual review and look into the parties' evidence and weigh them anew.

In the Petition docketed as G.R. Nos. 199676-77, the Commissioner of Internal Revenue failed to establish that this case is exempted from the general rule. Hence, this Court will no longer disturb the Court of Tax Appeals' findings on the matter.

APPEARANCES OF COUNSEL

Office of the Solicitor General for Republic of the Philippines represented by Bureau of Internal Revenue.

Sycip Salazar Hernandez & Gatmaitan for CE Luzon Geothermal Power Company, Inc.

D E C I S I O N

LEONEN, *J.*:

The 120-day and 30-day reglementary periods under Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional. Non-compliance with these periods renders a judicial claim for refund of creditable input tax premature.

Before this Court are two (2) consolidated Petitions for Review concerning the prescriptive period in filing judicial claims for unutilized creditable input tax or input Value Added Tax (VAT).

The first Petition,[1] docketed as G.R. No. 197526, was filed by CE Luzon Geothermal Power Company, Inc. (CE Luzon) against the Commissioner of Internal Revenue. The second Petition,[2] docketed as G.R. Nos. 199676-77, was instituted by the Bureau of Internal Revenue, on behalf of the Republic of the Philippines, against CE Luzon.

CE Luzon is a domestic corporation engaged in the energy industry.[3] It owns and operates the CE Luzon Geothermal Power Plant, which generates power for sale to the Philippine National

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[1] *Rollo* (G.R. No. 197526), pp. 14-90.

[2] *Rollo* (G.R. Nos. 199676-77), pp. 10-38.

[3] *Rollo* (G.R. No. 197526), p. 21, Petition for Review on *Certiorari*.

Oil Company-Energy Development Corporation by virtue of an energy conversion agreement.[4] CE Luzon is a VAT-registered taxpayer with Tax Identification Number 003-924-356-000.[5]

The sale of generated power by generation companies is a zero-rated transaction under Section 6 of Republic Act No. 9136.[6]

In the course of its operations, CE Luzon incurred unutilized creditable input tax amounting to ₱26,574,388.99 for taxable year 2003.[7] This amount was duly reflected in its amended quarterly VAT returns.[8] CE Luzon then filed before the Bureau of Internal Revenue an administrative claim for refund of its unutilized creditable input tax as follows:

Quarter	Date of Filing	Unutilized Creditable Input Tax
1st	January 20, 2005	[₱]4,785,234.70
2nd	March 31, 2005	[₱]4,568,458.49
3rd	June 7, 2005	[₱]7,455,413.97
4th	June 7, 2005	[₱]9,765,281.83
	Total	[₱]26,574,388.99[9]

[4] *Id.*

[5] *Id.* at 20.

[6] *Rollo* (G.R. Nos. 199676-77), p. 15.

Rep. Act No. 9136, Sec. 6, par. 5 provides:

Section 6. Generation Sector. —

. . . . . .

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

[7] *Rollo* (G.R. No. 197526), p. 22.

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

[9] *Id.* at 22.

Without waiting for the Commissioner of Internal Revenue to act on its claim, or for the expiration of 120 days, CE Luzon instituted before the Court of Tax Appeals a judicial claim for refund of its first quarter unutilized creditable input tax on March 30, 2005.[10] The petition was docketed as CTA Case No. 7180.[11]

Meanwhile, on June 24, 2005, CE Luzon received the Commissioner of Internal Revenue's decision denying its claim for refund of creditable input tax for the second quarter of 2003.[12]

On June 30, 2005, CE Luzon filed before the Court of Tax Appeals a judicial claim for refund of unutilized creditable input tax for the second to fourth quarters of taxable year 2003.[13] The petition was docketed as CTA Case No. 7279.[14]

The material dates are summarized below:

Period of Claim Taxable Year 2003	Date of Filing Administrative Claim	Expiration of 120 days	Date of Receipt of Denial of Claim	Date of Filing of Petition for Review
1st quarter	January 20, 2005	May 20, 2005	-	March 30, 2005
2nd quarter	May 31, 2005	-	June 24, 2005	June 30, 2005
3rd quarter	June 7, 2005	October 5, 2005	-	June 30, 2005
4th quarter	June 7, 2005	October 5, 2005	-	June 30, 2005[15]

[10] *Id.* at 217, Comment.

[11] *Id.*

[12] *Id.* at 216.

[13] *Id.* at 217.

[14] *Id.*

[15] *Id.*

In his Answer,[16] the Commissioner of Internal Revenue asserted, among others, that CE Luzon failed to comply with the invoicing requirements under the law.[17]

In the Decision[18] dated April 21, 2009, the Court of Tax Appeals Second Division partially granted CE Luzon's claim for unutilized creditable input tax. It ruled that both the administrative and judicial claims of CE Luzon were brought within the two (2)-year prescriptive period.[19] However, the Court of Tax Appeals Second Division disallowed the amount of ₱3,084,874.35 to be refunded.[20] CE Luzon was only able to substantiate ₱22,647,638.47 of its claim.[21] The Court of Tax Appeals Second Division ordered the Commissioner of Internal Revenue to issue a tax credit certificate or to refund CE Luzon the amount of ₱22,647,638.47 representing CE Luzon's creditable input tax for taxable year 2003.[22]

CE Luzon and the Commissioner of Internal Revenue both moved for reconsideration.[23] In the Resolution[24] dated October 19, 2009, the Court of Tax Appeals Second Division denied both motions for lack of merit.

CE Luzon and the Commissioner of Internal Revenue then filed their respective Petitions for Review before the Court of

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[16] *Id*. at 110.

[17] *Rollo* (G.R. Nos. 199676-77), pp. 17-19.

[18] *Rollo* (G.R. No. 197526) pp. 107-126. The Decision was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez of the Second Division, Court of Tax Appeals, Quezon City.

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

[20] *Id*. at 23.

[21] *Id*. at 119.

[22] *Id*. at 125.

[23] *Id*. at 23.

[24] *Id*. at 128-133.

Tax Appeals En Banc. The Petitions were docketed as C.T.A. EB No. 553 and C.T.A. EB No. 554, respectively.[25]

In the Decision[26] dated July 20, 2010, the Court of Tax Appeals En Banc partially granted CE Luzon's Petition for Review.[27] The Court of Tax Appeals En Banc ordered the Commissioner of Internal Revenue to issue a tax credit certificate or to refund CE Luzon the amount of ₱23,489,514.64, representing CE Luzon's duly substantiated creditable input tax for taxable year 2003.[28]

However, on November 22, 2010, the Court of Tax Appeals En Banc rendered an Amended Decision,[29] setting aside its Decision dated July 20, 2010.[30] The Court of Tax Appeals En Banc ruled that CE Luzon failed to observe the 120-day period under Section 112(C) of the National Internal Revenue Code. Hence, it was barred from claiming a refund of its input VAT for taxable year 2003.[31] The Court of Tax Appeals En Banc held that CE Luzon's judicial claims were prematurely filed.[32] CE Luzon should have waited either for the Commissioner of

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[25] *Id*. at 23-24.

[26] *Id*. at 136-162. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Ernesto D. Acosta dissented while Associate Justices Erlinda P. Uy and Amelia R. Cotangco-Manalastas were on leave.

[27] *Id*. at 160.

[28] *Id*. at 160-161.

[29] *Id*. at 171-179. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista dissented.

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

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

[32] *Id*. at 176.

Internal Revenue to render a decision or for the 120-day period to expire before instituting its judicial claim for refund:[33]

> WHEREFORE, premises considered:
>
> 1) the Commissioner of Internal Revenue's "Motion for Reconsideration" is hereby GRANTED. Accordingly, our Decision dated July 20, 2010 in the above[-]captioned case is hereby RECALLED and SET ASIDE, and a new one is hereby entered DISMISSING CE Luzon's Petition for Review in C.T.A. EB No. 553 and GRANTING CIR's Petition for Review in C.T.A. EB No. 554. Accordingly, the Decision dated April 21, 2009 and Resolution dated October 19, 2009 rendered by the Former Second Division in C.T.A. CASE Nos. 7180 and 7279 are hereby REVERSED and SET ASIDE.
>
> 2) For being moot and academic, CE LUZON's "Motion for Partial Reconsideration" is hereby DENIED.
>
> SO ORDERED.[34]

CE Luzon moved for partial reconsideration.[35] On June 27, 2011, the Court of Tax Appeals En Banc rendered a second Amended Decision,[36] partially granting CE Luzon's claim for unutilized creditable input tax but only for the second quarter of taxable year 2003 and only up to the extent of ₱3,764,386.47.[37] The Court of Tax Appeals En Banc relied on *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[38] in partially granting the petition.

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[33] *Id*.

[34] *Id*. at 178-179.

[35] *Id*. at 26.

[36] *Id*. at 91-105. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista dissented.

[37] *Id*. at 104.

[38] *Id*. at 95. 646 Phil. 710 (2010) [Per *J*. Del Castillo, First Division].

The Court of Tax Appeals En Banc found that CE Luzon's judicial claim for refund of input tax for the second quarter of 2003 was timely filed.[39] However, the Court of Tax Appeals En Banc disallowed ₱804,072.02 to be refunded because of CE Luzon's non-compliance with the documentation and invoicing requirements:[40]

> WHEREFORE, premises considered, CE Luzon Geothermal Power Company, Inc.'s "Motion for Reconsideration" is PARTLY GRANTED. Accordingly, our Amended Decision dated November 22, 2010 only in so far as it dismissed CE Luzon Geothermal Power Company, Inc.'s 2nd quarter claim, is hereby LIFTED and SET ASIDE, and another one is hereby entered ordering the Commissioner of Internal Revenue to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in favor of CE Luzon Geothermal Power, Inc. in the reduced amount of THREE MILLION SEVEN HUNDRED SIXTY FOUR THOUSAND THREE HUNDRED EIGHTY SIX AND 47/100 PESOS (₱3,764,386.47), representing its unutilized input VAT for the second quarter of taxable year 2003.
>
> SO ORDERED.[41]

On September 2, 2011, CE Luzon filed before this Court a Petition for Review on Certiorari[42] challenging the second Amended Decision dated June 27, 2011 of the Court of Tax Appeals En Banc.[43] The Petition was docketed as G.R. No. 197526.[44]

On January 27, 2012, the Commissioner of Internal Revenue filed a Petition for Review on Certiorari[45] assailing the second Amended Decision dated June 27, 2011 and the Resolution dated

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[39] *Id*. at 101.

[40] *Id*. at 101-103.

[41] *Id*. at 104.

[42] *Id*. at 14-90.

[43] *Id*. at 27.

[44] *Id*. at 14.

[45] *Rollo* (G.R. Nos. 199676-77), pp. 10-38.

December 1, 2011 of the Court of Tax Appeals En Banc[46] insofar as it granted CE Luzon's second quarter claim for refund.[47] The Petition was docketed as G.R. Nos. 199676-77.[48]

The Commissioner of Internal Revenue filed a Comment on the Petition for Review[49] in G.R. No. 197526 on February 7, 2012.

On April 11, 2012, the Petitions were consolidated.[50]

In the Resolution dated August 1, 2012, CE Luzon was required to file a comment on the Petition in G.R. Nos. 199676-77 and a reply to the comment in G.R. No. 197526.[51]

On November 14, 2012, CE Luzon filed its Comment on the Petition in G.R. Nos. 199676-77[52] and its Reply to the comment on the Petition in G.R. No. 197526.[53]

In the Resolution[54] dated June 26, 2013, this Court gave due course to the petitions and required the parties to submit their respective memoranda. Meanwhile, on July 19, 2013, CE Luzon filed a Supplement to its Petition.[55]

The Commissioner of Internal Revenue filed his Memorandum[56] on September 16, 2013 while CE Luzon filed its Memorandum[57] on September 20, 2013.

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[46] *Id*. at 11.

[47] *Id*. at 33.

[48] *Id*. at 10.

[49] *Rollo* (G.R. No. 197526), pp. 214-242.

[50] *Rollo* (G.R. Nos. 199676-77), pp. 343-344.

[51] *Id*. at 345.

[52] *Id*. at 358-375.

[53] *Rollo* (G.R. No. 197526), pp. 269-308.

[54] *Id*. at 323-323-A.

[55] *Id*. at 328-339.

[56] *Id*. at 344-366.

[57] *Id*. at 368-405.

In its Petition docketed as G.R. No. 197526, CE Luzon asserts that its judicial claims for refund of input VAT attributable to its zero-rated sales were timely filed.[58] Relying on *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,*[59] CE Luzon argues that the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code[60] governs both the administrative and judicial claims for refund of creditable input tax.[61] CE Luzon contends that creditable input tax attributable to zero-rated sales is excessively collected tax.[62]

CE Luzon asserts that since the prescriptive periods in Section 112(C) of the National Internal Revenue Code are merely permissive, it should yield to Section 229.[63] Moreover, Section 112(C) does not state that a taxpayer is barred from filing a judicial claim for non-compliance with the 120-day period.[64]

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[58] *Id.* at 28.

[59] 551 Phil. 519 (2007) [Per *J.* Chico-Nazario, Third Division].

[60] TAX CODE, Sec. 229 provides:

> Section 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[61] *Rollo* (G.R. No. 197526), p. 28.

[62] *Id.* at 39-42.

[63] *Id.* at 43-45.

[64] *Id.* at 45.

CE Luzon emphasizes that the doctrine in *Atlas* directly addressed the correlation between Section 229 and Section 112(C) of the National Internal Revenue Code. *Atlas* stated that a taxpayer seeking a refund of input VAT may invoke Section 229 because input VAT was an "erroneously collected national internal revenue tax."[65] CE Luzon points out that *Aichi* never established a binding rule regarding the prescriptive periods in filing claims for refund of creditable input tax.[66]

Assuming that *Aichi* correctly interpreted Section 112(C) of the National Internal Revenue Code, CE Luzon states that it should not be applied in this case because CE Luzon's claims for refund were filed before *Aichi's* promulgation.[67] The prevailing rule at the time when CE Luzon instituted its judicial claim for refund was that both the administrative and judicial claims should be filed within two (2) years from the date the tax is paid.[68]

In any case, CE Luzon argues that the Commissioner of Internal Revenue is estopped from assailing the timeliness of its judicial claims.[69] The Commissioner of Internal Revenue categorically stated in several of its rulings that taxpayers need not wait for the expiration of 120 days before instituting a judicial claim for refund of creditable input tax.[70] CE Luzon relies on the following Bureau of Internal Revenue issuances: (1) Section 4.104-2, Revenue Regulations No. 7-95; (2) Revenue Memorandum Circular No. 42-99; (3) Revenue Memorandum Circular No. 42-2003, as amended by Revenue Memorandum Circular No. 49-2003; (4) Revenue Memorandum Circular No. 29-2009; and (5) Bureau of Internal Revenue Ruling DA-489-03.[71]

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[65] *Id*. at 53.

[66] *Rollo* (G.R. No. 197526), p. 50.

[67] *Id*. at 301-303.

[68] *Id*. at 39.

[69] *Id*. at 66.

[70] *Id*.

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

On the other hand, the Commissioner of Internal Revenue argues that Sections 112(C) and 229 of the National Internal Revenue Code need not be harmonized because they are clear and explicit.[72] Laws should only be construed if they are "ambiguous or doubtful in meaning."[73] Section 112(C) clearly provides that in claims for refund of creditable input tax, taxpayers can only elevate their judicial claim upon receipt of the decision denying their administrative claim or upon the lapse of 120 days.[74] Moreover, the tax covered in Section 112 is different from the tax in Section 229. Section 112(C) covers unutilized input tax. In contrast, Section 229 pertains to national internal revenue tax that is erroneously or illegally collected.[75]

The Commissioner of Internal Revenue further contends that CE Luzon's reliance on *Atlas* is misplaced.[76] *Atlas* neither directly nor indirectly raised the issue of prescriptive periods in filing claims for refund of input VAT. In addition, *Atlas* was decided under the old tax code.[77] The clear and categorical precedent regarding the issue of prescriptive periods in refunds of input VAT is *Aichi*.[78]

Although the Bureau of Internal Revenue has ruled that judicial claims for refund of input VAT may be brought within the two (2)-year period under Section 229, the Commissioner of Internal Revenue asserts that the State cannot be estopped by the errors or mistakes of its agents.[79] An erroneous construction does not create a vested right on those who have relied on it. Taxpayers

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[72] *Id*. at 225-231. The Commissioner meant Section 112(C) in her Comment which mentioned Section 112 (D) instead.

[73] *Id*. at 227.

[74] *Id*. at 229.

[75] *Id*.

[76] *Id*. at 234-235.

[77] *Id*. at 236.

[78] *Id*. at 237.

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

can neither prevent the correction of the erroneous interpretation nor excuse themselves from compliance.[80]

In the Petition docketed as G.R. Nos. 199676-77, the Commissioner of Internal Revenue assails the June 27, 2011 Amended Decision and December 1, 2011 Resolution of the Court of Tax Appeals En Banc insofar as it granted CE Luzon's second quarter claim for refund of VAT for taxable year 2003.[81]

According to the Commissioner of Internal Revenue, taxpayers should comply with the provisions of Sections 236, 110(A), 113, and 114 of the National Internal Revenue Code when claiming a refund of unutilized creditable input tax. They should also meet the requirements enumerated under the relevant Bureau of Internal Revenue regulations. Moreover, it must be proven that the input tax being claimed is attributable to zero-rated sales.[82] The Commissioner of Internal Revenue asserts that CE Luzon failed to comply with these requirements.[83]

On the other hand, CE Luzon argues that the Commissioner of Internal Revenue is estopped from questioning CE Luzon's non-compliance with the documentation requirements under the law. It points out that its administrative claim for input VAT for the second quarter of taxable year 2003 was denied by the Commissioner of Internal Revenue based on the finding that CE Luzon presumptively opted to carry over its excess input tax to the succeeding taxable quarters.[84]

CE Luzon further contends that non-submission of complete documents is not fatal to a judicial claim for refund of input tax.[85] The Court of Tax Appeals is not bound by the conclusions and findings of the Bureau of Internal Revenue.[86]

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[80] *Id*. at 232.

[81] *Rollo* (G.R. Nos. 199676-77), p. 11.

[82] *Id*. at 28-29.

[83] *Id*. at 30.

[84] *Id*. at 363-364.

[85] *Id*. at 365-367.

[86] *Id*. at 369.

Finally, CE Luzon asserts that it has proven its entitlement to a refund of input VAT for the second quarter of 2003.[87] First, its judicial claim for refund was timely filed.[88] Second, its sales were effectively zero-rated transactions under Republic Act No. 9136.[89] Third, although it opted to carry over its excess input tax, its actual claim was deducted from the total excess input VAT and was not part of what was carried over to the succeeding taxable quarters.[90] CE Luzon adds that the Commissioner of Internal Revenue did not identify which documents it failed to submit.[91]

This case presents two (2) issues for resolution:

First, whether CE Luzon Geothermal Power, Inc.'s judicial claims for refund of input Value Added Tax for taxable year 2003 were filed within the prescriptive period;[92] and

Finally, whether CE Luzon Geothermal Power, Inc. is entitled to the refund of input Value Added Tax for the second quarter of taxable year 2003.[93] Subsumed in this issue is whether it has substantiated this claim.[94]

I

Excess input tax or creditable input tax is not an erroneously, excessively, or illegally collected tax.[95] Hence, it is Section 112(C)

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[87] *Id.* at 370.

[88] *Id.*

[89] *Id.* at 371.

[90] *Id.*

[91] *Id.*

[92] *Rollo* (G.R. No. 197526), p. 28.

[93] *Rollo* (G.R. Nos. 199676-77) p. 25.

[94] *Id.*

[95] *Commissioner of Internal Revenue v. San Roque Power Corp.,* 703 Phil. 310, 365 (2013) [Per *J.* Carpio, *En Banc*].

and not Section 229 of the National Internal Revenue Code that governs claims for refund of creditable input tax.

The tax credit system allows a VAT-registered entity to "credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports."[96]

The VAT paid by a VAT-registered entity on its imports and purchases of goods and services from another VAT-registered entity refers to input tax.[97] On the other hand, output tax refers to the VAT due on the sale of goods, properties, or services of a VAT-registered person. [98]

Ordinarily, VAT-registered entities are liable to pay excess output tax if their input tax is less than their output tax at any given taxable quarter. However, if the input tax is greater than the output tax, VAT-registered persons can carry over the excess input tax to the succeeding taxable quarter or quarters.[99]

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[96] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 332 (2005) [Per *J.* Panganiban, Third Division].

[97] TAX CODE, Sec. 110(A)(3) provides:

> Section 110. *Tax Credits.* –
>
> (A) *Creditable Input Tax.* –
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> . . . . . .
>
> (3) . . . . . .
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> The term *"input tax"* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> The term *"output tax"* means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

[98] *See* TAX CODE, Sec. 110(A)(3).

[99] TAX CODE, Sec. 110(B) provides:

> SECTION 110. *Tax Credits.* –
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> . . . . . .

Nevertheless, if the excess input tax is attributable to zero-rated or effectively zero-rated transactions, the excess input tax can only be refunded to the taxpayer or credited against the taxpayer's other national internal revenue tax. Availing any of the two (2) options entail compliance with the procedure outlined in Section 112,[100] not under Section 229, of the National Internal Revenue Code.

Section 229 of the National Internal Revenue Code, in relation to Section 204(C), pertains to the recovery of excessively, erroneously, or illegally collected national internal revenue tax. Sections 204(C) and 229 provide:

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may–
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> . . . . . .
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> . . . . . .
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> Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery

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> (B) *Excess Output or Input Tax*. –If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

[100] TAX CODE, Sec. 110(B).

of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided*, *however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The procedure outlined above provides that a claim for refund of excessively or erroneously collected taxes should be made within two (2) years from the date the taxes are paid. Both the administrative and judicial claims should be brought within the two (2)-year prescriptive period. Otherwise, they shall forever be barred.[101] However, Section 229 presupposes that the taxes sought to be refunded were wrongfully paid.[102]

It is unnecessary to construe and harmonize Sections 112(C) and 229 of the National Internal Revenue Code. Excess input tax or creditable input tax is not an excessively, erroneously, or illegally collected tax because the taxpayer pays the proper amount of input tax at the time it is collected.[103] That a VAT-registered taxpayer incurs excess input tax does not mean that it was wrongfully or erroneously paid. It simply means that the input tax is greater than the output tax, entitling the taxpayer to carry over the excess input tax to the succeeding taxable quarters.[104]

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[101] *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748, 762-764 (2015) [Per *J*. Perlas-Bernabe, First Division].

[102] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 368-369 (2013) [Per *J*. Carpio, *En Banc*].

[103] *Id*. at 365.

[104] TAX CODE, Sec. 110(B).

If the excess input tax is derived from zero-rated or effectively zero-rated transactions, the taxpayer may either seek a refund of the excess or apply the excess against its other internal revenue tax.[105]

The distinction between "excess input tax" and "excessively collected taxes" can be understood further by examining the production process vis-à-vis the VAT system. In *Commissioner of Internal Revenue v. San Roque*:[106]

> The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
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> In a claim for refund or credit of "excess" input VAT under Section 110 (B) and Section 112 (A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. *The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is*

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[105] TAX CODE, Sec. 112(A).

[106] 703 Phil. 310 (2013) [Per *J.* Carpio, *En Banc*].

more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.[107] (Citations omitted, emphasis supplied)

Considering that creditable input tax is not an excessively, erroneously, or illegally collected tax, Section 112(A) and (C) of the National Internal Revenue Code govern:

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

(A) *Zero-rated or Effectively Zero-rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided*, *however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided*, *further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales . . .

. . . . . .

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

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected

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[107] *Id*. at 365-366.

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

Section 112(C) of the National Internal Revenue Code provides two (2) possible scenarios.[108] The first is when the Commissioner of Internal Revenue denies the administrative claim for refund within 120 days.[109] The second is when the Commissioner of Internal Revenue fails to act within 120 days.[110] Taxpayers must await either for the decision of the Commissioner of Internal Revenue or for the lapse of 120 days before filing their judicial claims with the Court of Tax Appeals.[111] Failure to observe the 120-day period renders the judicial claim premature.[112]

CE Luzon's reliance on *Atlas* is misplaced because *Atlas* did not squarely address the issue regarding the prescriptive period in filing judicial claims for refund of creditable input tax.[113] *Atlas* did not expressly or impliedly interpret Section 112(C) of the National Internal Revenue Code.[114] The main issue in *Atlas* was the reckoning point of the two (2)-year prescriptive period stated in Section 112(A).[115] The interpretation in *Atlas* was later rectified in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation.*[116]

It was *Aichi*[117] that directly tackled and interpreted Section 112(C) of the National Internal Revenue Code. In determining

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[108] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,* 646 Phil. 710, 732 (2010) [Per *J.* Del Castillo, First Division].

[109] *Id.*

[110] *Id.*

[111] *Id.* at 730-732.

[112] *Id.* at 732.

[113] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 357-358 (2013) [Per *J.* Carpio, *En Banc*].

[114] *Id.* at 358.

[115] *Id.*

[116] 586 Phil. 712 (2008) [Per *J.* Velasco, Jr., Second Division].

[117] 646 Phil. 710 (2010) [Per *J.* Del Castillo, First Division].

whether *Aichi*'s judicial claim for refund of creditable input tax was timely filed, this Court declared:

> Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
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> . . . . . .
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years . . . apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.[118]

The *Aichi* doctrine was reiterated by this Court in *San Roque*,[119] which held that the 120-day and 30-day periods in Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional.[120]

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[118] *Id*. at 731.

[119] 703 Phil. 310 (2013) [Per *J*. Carpio, *En Banc*].

[120] *Id*. at 371.

In the present case, only CE Luzon's second quarter claim was filed on time. Its claims for refund of creditable input tax for the first, third, and fourth quarters of taxable year 2003 were filed prematurely. It did not wait for the Commissioner of Internal Revenue to render a decision or for the 120-day period to lapse before elevating its judicial claim with the Court of Tax Appeals.

However, despite its non-compliance with Section 112(C) of the National Internal Revenue Code, CE Luzon's judicial claims are shielded from the vice of prematurity. It relied on the Bureau of Internal Revenue Ruling DA-489-03,[121] which expressly states that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the [Court of Tax Appeals] by way of a Petition for Review."[122]

San Roque exempted taxpayers who had relied on the Bureau of Internal Revenue Ruling DA-489-03 from the strict application of Section 112(C) of the National Internal Revenue Code.[123] This Court characterized the Bureau of Internal Revenue Ruling DA-489-03 as a general interpretative rule,[124] which has "misle[d] all taxpayers into filing prematurely judicial claims with the C[ourt] [of] T[ax] A[ppeals]."[125] Although the Bureau of Internal Revenue Ruling DA-489-03 is an "erroneous interpretation of the law,"[126] this Court made an exception explaining that "[t]axpayers should not be prejudiced by an erroneous

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[121] *Rollo* (G.R. No. 197526), pp. 67-68.

[122] *Id.* at 68.

[123] 703 Phil. 310, 372-377 (2013) [Per *J.* Carpio, *En Banc*]. See *CBK Power Co., Ltd. v. Commissioner of Internal Revenue,* 744 Phil. 559 (2014) [Per *J.* Leonen, *En Banc*].

[124] *Id.* at 376.

[125] *Id.* at 373.

[126] *Id.* at 376. *See* Separate Opinion of *J.* Leonen in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 372-377 (2013) [Per *J.* Carpio, *En Banc*].

interpretation by the Commissioner, particularly on a difficult question of law."[127]

Taxpayers who have relied on the Bureau of Internal Revenue Ruling DA-489-03, from its issuance on December 10, 2003 until its reversal on October 6, 2010 by this Court in *Aichi,* are, therefore, shielded from the vice of prematurity.[128] CE Luzon may claim the benefit of the Bureau of Internal Revenue Ruling DA-489-03. Its judicial claims for refund of creditable input tax for the first, third, and fourth quarters of 2003 should be considered as timely filed.

However, the case should be remanded to the Court of Tax Appeals for the proper computation of creditable input tax to which CE Luzon is entitled.

II

In a Rule 45 Petition, only questions of law may be raised.[129] "This Court is not a trier of facts."[130] The determination of whether CE Luzon duly substantiated its claim for refund of creditable input tax for the second quarter of taxable year 2003 is a factual matter that is generally beyond the scope of a Petition for Review on Certiorari. Unless a case falls under any of the exceptions, this Court will not undertake a factual review and look into the parties' evidence and weigh them anew.

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[127] *Id.* at 374.

[128] *Id.* at 371-377.

[129] RULES OF COURT, Rule 45, Sec. 1 provides:

> Section 1. Filing of Petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, 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 shall raise only questions of law which must be distinctly set forth.

[130] *Don Orestes Romualdez Electric Cooperative, Inc. v. National Labor Relations Commission*, 377 Phil. 268, 274 (1999) [Per *J.* Pardo, First Division], citing *Caruncho III v. Commission on Elections,* 374 Phil. 308 (1999) [Per *J.* Ynares-Santiago, *En Banc*].

In the Petition docketed as G.R. Nos. 199676-77, the Commissioner of Internal Revenue failed to establish that this case is exempted from the general rule. Hence, this Court will no longer disturb the Court of Tax Appeals' findings on the matter.

WHEREFORE, the Petition in G.R. No. 197526 is **GRANTED** while the Petition in G.R. Nos. 199676-77 is **DENIED**. The Amended Decision dated June 27, 2011 of the Court of Tax Appeals En Banc in C.T.A. EB NO. 554 is **REVERSED** and **SET ASIDE**. However, the case is **REMANDED** to the Court of Tax Appeals for the determination and computation of creditable input tax to which CE Luzon Geothermal Power Company, Inc. is entitled.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 199825. July 26, 2017]

BRO. BERNARD OCA, BRO. DENNIS MAGBANUA, CIRILA N. MOJICA, ALEJANDRO N. MOJICA, JOSEFINA PASCUAL, SILVESTRE PASCUAL and ST. FRANCIS SCHOOL OF GENERAL TRIAS, CAVITE, INC., *petitioners, vs.* **LAURITA CUSTODIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT.— Contempt of court is willful disobedience to the court and disregard or defiance of its authority, justice, and dignity. It constitutes conduct which "tends to bring the authority

of the court and the administration of law into disrepute or in some manner to impede the due administration of justice" or "interfere with or prejudice parties[‘] litigant or their witnesses during litigation." All courts are given the inherent power to punish contempt. This power is an essential necessity to preserve order in judicial proceedings and to enforce the due administration of justice and the court's mandates, orders, and judgments. It safeguards the respect due to the courts and, consequently, ensures the stability of the judicial institution. x x x This Court has ruled that while the power to cite parties in contempt should be used sparingly, it should be allowed to exercise its power of contempt to maintain the respect due to it and to ensure the infallibility of justice where the defiance is so clear and contumacious and there is an evident refusal to obey.

2. ID.; ID.; ID.; TYPES OF CONTEMPT OF COURT; DIRECT CONTEMPT AND INDIRECT CONTEMPT, DISTINGUISHED.— There are two (2) types of contempt of court: (i) direct contempt and (ii) indirect contempt. Direct contempt consists of "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before [it]." It includes: (i) disrespect to the court, (ii) offensive behavior against others, (iii) refusal, despite being lawfully required, to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition. It can be punished summarily without a hearing. Indirect contempt is committed through any of the acts enumerated under Rule 71, Section 3 of the Rules of Court: x x x Indirect contempt is only punished after a written petition is filed and an opportunity to be heard is given to the party charged.

3. ID.; ID.; ID.; INDIRECT CONTEMPT; AS ALL ORDERS OF THE TRIAL COURT IN INTRA-CORPORATE CONTROVERSIES ARE IMMEDIATELY EXECUTORY (AM 01-2-04-SC ON PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES), PETITIONERS COULD NOT STUBBORNLY REFUSE TO COMPLY WITH THE SAID ORDERS' JUST BECAUSE THEY OPINED THAT THEY WERE INVALID.— In intra-corporate controversies, all orders of the trial court are immediately executory: x x x Questioning the trial court orders does not stay its enforcement or implementation. There is no showing that the trial court orders (which pertain to the render of report and the turn over of all collectibles, all fees and all accounts

to the school Cashier) were restrained by the appellate court. Hence, petitioners could not refuse to comply with the trial court orders just because they opined that they were invalid. It is not for the parties to decide whether they should or should not comply with a court order. Petitioners did not obtain any injunction to stop the implementation of the trial court orders nor was there injunction to prevent the trial court from hearing and ruling on the contempt case. Petitioners' stubborn refusal cannot be excused just because they were convinced of its invalidity. [Petitioner's filing of numerous pleadings reveals their contumacious refusal to comply and their abuse of court processes]. Their resort to the processes of questioning the orders does not show that they are in good faith.

4. **ID.; PRINCIPLE OF JUDICIAL COURTESY; SUSPENDING A LOWER COURT'S PROCEEDINGS APPLIES ONLY IF THE CONTINUATION OF SAID PROCEEDINGS WILL RENDER MOOT THE ISSUE RAISED IN THE HIGHER COURT.—** Judicial courtesy is exercised by suspending a lower court's proceedings although there is no injunction or an order from a higher court. The purpose is to avoid mooting the matter raised in the higher court. It is exercised as a matter of respect and for practical considerations. However, this principle applies only if the continuation of the lower court's proceedings will render moot the issue raised in the higher court.

5. **ID.; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; PUNISHMENT FOR CONTEMPT IS CLASSIFIED INTO TWO: CIVIL CONTEMPT AND CRIMINAL CONTEMPT.—** The punishment for contempt is classified into two (2): civil contempt and criminal contempt. Civil contempt is committed when a party fails to comply with an order of a court or judge "for the benefit of the other party." A criminal contempt is committed when a party acts against the court's authority and dignity or commits a forbidden act tending to disrespect the court or judge. This stems from the two (2)-fold aspect of contempt which seeks: (i) to punish the party for disrespecting the court or its orders; and (ii) to compel the party to do an act or duty which it refuses to perform. x x x The difference between civil contempt and criminal contempt was further elaborated in *People v. Godoy*: x x x [Thus,] [c]ivil contempt proceedings seek to compel the contemnor to obey a court order, judgment, or decree which he or she refuses to do for the benefit of another

party. It is for the enforcement and the preservation of a right of a private party, who is the real party in interest in the proceedings. The purpose of the contemnor's punishment is to compel obedience to the order. Thus, civil contempt is not treated like a criminal proceeding and proof beyond reasonable doubt is not necessary to prove it.

6. ID.; ID.; ID.; NON-LITIGANT MAY BE CITED FOR CONTEMPT IF PROVED THAT HE OR SHE CONSPIRED WITH THE PARTIES IN VIOLATING THE COURT ORDER.— In *Ferrer v. Rodriquez*, this Court ruled that a non-litigant may be cited in contempt if he or she acted in conspiracy with the parties in violating the court order: x x x However, there is no evidence of conspiracy in this case. The power to punish contempt must be "exercised cautiously, sparingly, and judiciously." Without evidence of conspiracy, it cannot be said that the non-litigants are guilty of contempt. x x x The burden of proving contempt is upon complainants and there is no presumption of guilt in contempt proceedings such that the party accused of contempt must prove that he is innocent.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioners.
Hernandez Grimares & Manzano Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] assailing the May 25, 2011 Decision[2] and the December 19, 2011 Resolution[3] of the Court of Appeals in CA-G.R. CR. No. 31985.

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[1] The Petition was filed under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 10-23. The Decision was penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan of the Sixteenth Division, Court of Appeals, Manila.

[3] *Id.* at 25. The Resolution was penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan of the Former Sixteenth Division, Court of Appeals, Manila.

The assailed Decision affirmed the Regional Trial Court Decision,[4] which found petitioners Bro. Bernard Oca, Bro. Dennis Magbanua, Cirila N. Mojica, Alejandro N. Mojica, Josefina Pascual, Atty. Silvestre Pascual, and St. Francis School of General Trias, Cavite, Inc. (petitioners) guilty of Indirect Contempt. The assailed Resolution denied petitioners' Motion for Reconsideration.[5]

This indirect contempt case stemmed from an intra-corporate controversy among the Board of Trustees of petitioner St. Francis School of General Trias, Cavite, Inc. (St. Francis School).[6]

St. Francis School was established with the assistance of the La Salle brothers on July 9, 1973 by respondent Laurita Custodio (Custodio), petitioner Cirila N. Mojica (Cirila), petitioner Josefina Pascual (Josefina), Monsignor Felix Perez, and Brother Vernon Poore.[7] These five (5) incorporators served as St. Francis School's Board of Trustees until the latter two (2) passed away.[8]

Without a written agreement, the La Salle brothers agreed to give the necessary supervision to establish the school's academic foundation.[9]

On September 8, 1988, the incorporators and the La Salle brothers formalized their arrangement in a Memorandum of Agreement, under which De La Salle Greenhills (La Salle) would supervise the academic affairs of St. Francis School to increase enrollment. La Salle appointed supervisors to sit in the Board of Trustees without voting rights.[10]

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[4] *Id*. at 97-111. The Decision, dated February 6, 2008, was penned by Executive Judge Perla V. Cabrera-Faller of Branch 90, Regional Trial Court, Dasmariñas, Cavite.

[5] *Id*. at 25.

[6] *Id*. at 350-360.

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

[8] *Id*. at 33.

[9] *Id*.

[10] *Id*.

In 1998, petitioner Bro. Bernard Oca (Bro. Oca) became a member of St. Francis School as a La Salle-appointed supervisor. He sat in the Board of Trustees and was later elected as its Chairman and St. Francis School's President.[11] In 2000, petitioner Bro. Dennis Magbanua (Bro. Magbanua) was also admitted as a La Salle-appointed supervisor.[12] He sat as a trustee and was later elected as Treasurer of St. Francis School.[13]

Sometime in August 2001, the members of the Board of Trustees came into a disagreement regarding the school's administrative structure and La Salle's supervision over the school. Cirila, Josefina, Bro. Oca, and Bro. Magbanua wanted to expand the scope of La Salle's supervision to include matters relating to the school's finances, administration, and operations.[14]

This was opposed by Custodio.[15] After several incidents relating to the disagreement, Custodio filed a complaint against St. Francis School, Bro. Oca, and Bro. Magbanua on June 7, 2002 with Branch 23, Regional Trial Court, Trece Martires, Cavite. She alleged that Bro. Oca and Bro. Magbanua were never qualified to sit in the Board of Trustees.[16] She also prayed for a Temporary Restraining Order to prevent Bro. Oca from calling a special membership meeting to remove her from the Board of Trustees.[17]

This case was dismissed.[18] Custodio was subsequently removed from the Board of Trustees and as Curriculum Administrator.[19]

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[11] *Id*.

[12] *Id*. at 34.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 37-38.

[17] *Id*. at 38.

[18] *Id*. at 39.

[19] *Id*.

Custodio filed a motion for reconsideration of the dismissal but eventually withdrew her appeal to file a new suit instead.[20]

On October 3, 2002, Custodio again filed a complaint against petitioners for violating the Corporation Code with Branch 21, Regional Trial Court, Imus, Cavite.[21] She sought to disqualify Bro. Oca and Bro. Magbanua as members and trustees of the school and to declare void all their acts as President and Treasurer, respectively.[22] She likewise prayed for a temporary restraining order and/or a preliminary injunction to enjoin the remaining board members from holding meetings and to prevent Bro. Oca and Bro. Magbanua from discharging their functions as members, trustees, and officers of St. Francis School.[23] This case was docketed as SEC Case No. 024-02.[24]

On October 8, 2002, the Regional Trial Court heard Custodio's prayer for the issuance of a Temporary Restraining Order.[25]

The day after the hearing, Custodio filed a Manifestation and Motion dated October 9, 2002. She alleged that after the hearing for the Temporary Restraining Order, the counsel for petitioners went to St. Francis School to instruct several parents not to acknowledge Custodio's administration as she had been removed as a member, trustee, and curriculum administrator and that her complaint had been dismissed. The parents were also allegedly directed to pay the students' matriculation fees exclusively to petitioner Alejandro N. Mojica (Alejandro), son of petitioner Cirila. Alejandro held office at the Rural Bank of General Trias, Inc. which was allegedly owned by the family of petitioner Josefina.[26] This meeting allegedly caused 15

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[20] *Id*.

[21] *Id*. at 12.

[22] *Id*. 40-41, Petition.

[23] *Id*. at 40.

[24] *Rollo*, p. 97, RTC Decision.

[25] *Id*. at 265, Manifestation and Motion dated October 9, 2002.

[26] *Id*.

teachers to hold a strike, which nearly disrupted classes and caused parents to request the early dismissal of their children for fear that violence would ensue.[27] Custodio reiterated her prayer for a Temporary Restraining Order. She moved that the hearing be converted into an injunction hearing or that a status quo order be issued to allow her to continue functioning as school director and curriculum administrator.[28]

Custodio also filed a Motion for Clarification praying that the trial court clarify to whom the school's fees should be paid while her Complaint and Manifestation and Motion were still pending. Petitioners allegedly manifested that the payment of matriculation fees must be made to Alejandro. However, Custodio pointed out that Alejandro was not the school cashier and that the Rural Bank of General Trias, Inc. was not authorized to receive payments for St. Francis School. She also manifested that prior to October 8, 2002, the school cashier was Ms. Herminia Reynante (Reynante).[29] This Motion was set for hearing on October 18, 2002.[30]

On October 21, 2002**,** the Regional Trial Court issued an Order designating Reynante to act as school cashier "with authority to collect all fees" and, together with Custodio, "to pay all accounts."[31] The trial court also directed all parties in the case to submit a report on and to turn over to Reynante all money previously collected, thus:

> Regarding the collection of matriculation fees and other collectibles, *Ms. Herminia Reynante is hereby designated by the Court to act as cashier of the school to the exclusion of others with authority to collect all fees and, together with plaintiff Laurita Custodio, to pay*

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[27] *Id*. at 266, Manifestation and Motion dated October 9, 2002.

[28] *Id*. at 12. Acting on respondent's October 9, 2002 *Manifestation and Motion* for TRO or Status Quo, the RTC issued a *Status Quo Order* dated August 21, 2003 allowing respondent to continue as school director and curriculum administrator (*rollo,* p. 48).

[29] *Id*. at 269-270, Motion for Clarification dated October 14, 2002.

[30] *Id*. at 271, Notice of Hearing.

[31] *Id*. at 272.

all accounts. Said authority shall continue until the matter of the application for temporary restraining order and preliminary injunction is heard and resolved. This is hereby ordered so that an orderly operation of the school will be achieved.

Plaintiff and defendants, as well as Mr. Al Mojica, are directed to turn-over to Ms. Herminia Reynante all money previously collected and to submit a report on what have been collected, how much, from whom, and the dates collected. Effective October 22, 2002, Ms. Herminia Reynante shall submit to the Court, to the plaintiff and to all the defendants a monthly report of all receivables collected and all disbursements made.

SO ORDERED.[32] (Emphasis supplied)

Petitioners filed a motion for reconsideration, alleging that they would have proven that Reynante lacked the moral integrity to act as court-appointed cashier had they been given the opportunity to be heard.[33]

On January 3, 2003, the Regional Trial Court denied reconsideration.[34]

On February 21, 2003, petitioners filed an Explanation, Manifestation and Compliance. They alleged that they partially complied with the October 21, 2002 Order by submitting an accounting on the tuition fee collections and by turning over to Reynante a manager's check in the amount of ₱397,127.64 payable to St. Francis School.[35] The amount allegedly represented the school's matriculation fees from October to December 2002.[36] However, they alleged that Reynante refused to accept the check and required that the amount be turned over in cash or in a check payable to cash. Thus, petitioners placed the check in the custody of the Regional Trial Court for safekeeping.[37]

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[32] *Id*.

[33] *Id*. at 43.

[34] *Id*. at 43.

[35] *Id*. at 273-274.

[36] *Id*. at 275-276.

[37] *Id*. at 273-274.

Custodio filed a Comment dated February 26, 2003.[38] Custodio manifested that petitioners did not even substantially comply with the October 21, 2002 Order because it excluded from its accounting and turnover the following amounts:

1) ₱4,339,601.54 deposited in Special Savings Deposit No. 239 of the Rural Bank of General Trias, Inc.;
2) ₱5,639,856.11 deposited in Special Savings Deposit No. 459 of the Rural Bank of General Trias, Inc.;
3) ₱92,970.00 representing fees paid by the school canteen; and
4) All other fees collected from January 2003 to February 19, 2003.[39]

Custodio also claimed that petitioners violated the trial court order that only she and Reynante were authorized to pay the outstanding accounts of St. Francis School. Petitioners allegedly made salary payments to four (4) employees who had resigned.[40]

On March 24, 2003, the Regional Trial Court issued another Order[41] directing petitioners to fully comply with its earlier order to submit a report and to turn over to Reynante all the money they had collected:

> This treats of defendants' explanation, manifestation and compliance and plaintiff's comments thereto.
>
> A perusal of the allegations of defendants' pleading shows that they merely turned-over a manager's check in the amount of ₱397,127.64 representing money collected from the students from October 2002 to December 2002. The Order of October 21, 2002 directed plaintiff and defendants, as well as, Mr. Al Mojica to turn-over to Ms. Herminia Reynante all money previously collected and to submit a report on what have been collected, how much, from whom and the dates collected.

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[38] *Id*. at 275-280.

[39] *Id*. at 276-277.

[40] *Id*. at 277.

[41] *Id*. at 281.

Defendants and Mr. Al Mojica are hereby directed, within ten days from receipt hereof, to submit a report and to turn-over to Ms. Herminia Reynante all money collected by them, more particularly:

(1) ₱4,339,601.54 deposited in Special Savings Deposit No. 239 (Rural Bank of Gen. Trias, Inc.);

(2) ₱5,639,856.11 deposited in Special Savings Deposit No. 459 (Rural Bank of Gen. Trias, Inc.);

(3) ₱92,970.00 representing amount paid by the school canteen;

(4) Other fees collected from January 2003 to February 19, 2003; and

(5) Accounting on how and how much defendants are paying Ms. Daisy Romero and three (3) other teachers who already resigned.

SO ORDERED.[42]

Petitioners filed a Manifestation, Observation, Compliance, Exception and Motion on April 18, 2003, praying, among others, that the trial court issue an order excluding from its March 24, 2003 Order the amounts which were not covered in its October 21, 2002 Order.[43]

On August 5, 2003, the Regional Trial Court issued an Order denying all motions raised in petitioners' Manifestation, Observation, Compliance, Exception and Motion and declared that they had not complied with the March 24, 2003 Order:[44]

This treats of defendants' manifestation, observation, compliance, exception and motion dated April 18, 2003, plaintiff's comment/ opposition and defendants' rejoinder thereto filed on July 2, 2003.

Defendants are asking the Court first to set aside its orders dated October 21[, 2002] and March 24, 2003 for having been issued "without notice and hearing" and in "acting without or in excess of its authority/ jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction" . . .

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[42] *Id*.

[43] *Id*. at 46.

[44] *Id*. at 282-283.

With respect to the first matter, the motion is denied for being a prohibited pleading under Section 8 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC). The motion which assails the two questioned orders is actually a motion for reconsideration but worded differently – "motion to set aside March 24, 2003 Order" but both have the same purpose and objective and that is to reconsider the order(s).

. . . . . .

On the contrary, the court found out that defendants have not complied with the order of the court dated March 24, 2003 directing defendants and Mr. Al Mojica to submit a report and to turn over to Ms. Herminia Reynante all money collected by them, more particularly:

1. ₱4,339,601.54 deposited in Special Savings Deposit No. 239 (Rural Bank of Gen. Trias, Inc.)

2. ₱5,639,856.11 deposited in Special Savings Deposit No. 459 (Rural Bank of Gen. Trias, Inc.)

3. ₱92,970.00 representing amount paid by the school canteen.

4. Other fees collected from January 2003 to February 19, 2003.

5. Accounting on how and how much defendants are paying Ms. Daisy Romero and the three (3) other teachers who already resigned.

Accordingly, the defendants and Mr. Al Mojica are hereby directed to comply with the aforementioned order of March 24, 2003, within ten days from receipt hereof.

. . . . . .

SO ORDERED.[45]

In the meantime, La Salle served Custodio a notice dated January 4, 2003, that they were terminating the Memorandum of Agreement with St. Francis School.[46]

On August 21, 2003, the Regional Trial Court issued an Order

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[45] *Id*.

[46] *Id*. at 13.

granting Custodio's Manifestation and Motion dated October 9, 2002 and issuing a status quo order[47] allowing Custodio to discharge her functions as school director and curriculum administrator.[48] The trial court ruled in favor of Custodio when it found that petitioners had already established another school, the Academy of St. John (Academy of St. John) in Sta. Clara, General Trias, Cavite:[49]

> This treats of plaintiff's manifestation and motion praying that the court "immediately issue a temporary restraining order . . . where plaintiff will be allowed to continue discharging the functions of a school director and curriculum administrator . . ."
>
> During the hearing of the said motion and manifestation on October 11, 2002, both parties and counsel agreed before the court that no incident similar to what happened on October 8, 2002 will occur while the motion is being heard.
>
> Plaintiff and defendants presented evidence, testimonial and documentary, to prove their respective causes. It took them nine months to present their evidence before the matter was submitted for the court's resolution.
>
> After a thorough review of all the evidences presented by both parties, the Court is inclined to rule in favor of the plaintiff. The [pieces of] evidence of both parties are convincing. But, the factor that convinced the Court to rule in favor of plaintiff was the information conveyed to the court by plaintiff and admitted by defendants, through their counsel, that another school named Academy of St. John, a new La Sallian Supervised School in Sta. Clara, General Tria[s], Cavite, was opened by defendants Josefina A. Pascual and Cirila N. Mojica and their respective families. In a brochure handed by plaintiff's counsel to the court during the hearing on June 17, 2003 with a heading of Academy of Saint John, De La Salle[-]Supervised, General Tria[s], Cavite, it said that "such idea was conceived as a result of the corporate problems and the never ending dispute in a former La Salle[-]supervised school that finally brought confusion and havoc in the said community."

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[47] *Id.* at 539-540.

[48] *Id.* at 658, Petitioners' Memorandum; *rollo*, pp. 539-540.

[49] *Id.* at 539-540.

It further said that "alarmed with the impending loss of the La Salle Supervision which they both thought of leaving it as a legacy to the youth, Mrs. Pascual and Mrs. Mojica together with their respective families were convinced to continue their mission of spreading quality education etc."

It appears from the brochure that defendants Pascual and Mojica have set up another school in the same municipality where the St. Francis School is located. The name of the school is Academy of St. John. The Academy of St. John likewise offers the same courses as th[ose] offered by St. Francis [S]chool. Needless to state, this action of defendants Pascual and Mojica is very inimical to the interest of St. Francis School as the Academy of St. John put up by the aforementioned defendants is in direct competition with St. Francis School. In other words, a conflict of interest now exists insofar as defendants Pascual and Mojica are concerned in view of their establishment of the Academy of St. John which is of the same kind and of the same nature of business as that of St. Francis School. One cannot serve two masters a[t] the same time. And as already intimated above, considering that there are now two competing schools in the same locality where defendants Pascual and Mojica hold an interest, they cannot be expected to give their full devotion and cooperation to one without being disloyal and unfaithful to the other.

WHEREFORE, in view of the foregoing, the motion is granted. Accordingly, a status quo order is hereby issued wherein the plaintiff is hereby allowed to continue discharging her functions as school director and curriculum administrator as well as those who are presently and actually discharging functions as school officer[s] to continue performing their duties until the application for the issuance of a temporary restraining order is resolved.

SO ORDERED.[50]

Petitioners filed their Motion for Clarification.[51] They alleged that the bulk of the money ordered to be turned over to Custodio and Reynante was allotted to St. Francis School's teachers' retirement fund. Considering that it must be preserved, petitioners raised several queries. They wanted to know if Custodio and

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[50] *Id*.

[51] *Id*. at 285-289.

Reynante would use the money for other purposes other than for the teachers' retirement benefit and if Custodio and Reynante would be required to file a bond to guaranty its safekeeping and exclusive use as teacher's retirement compensation. Finally, they asked who would be held liable in case of Custodio and Reynante's unlawful use of this fund.[52]

On September 2, 2003, Custodio filed the Petition to Cite Respondents in Contempt of Court[53] under Rule 71 of the Rules of Court.[54] She likewise prayed that an order be issued reiterating the Orders dated October 21, 2002, March 24, 2003, and August 5, 2003.[55]

In response to petitioners' Motion for Clarification, the trial court issued an Order dated October 8, 2003[56] clarifying that the retirement fund was to be held in trust by Custodio and Reynante. It also directed Custodio and Reynante to file a bond of ₱300,000.00 each.[57] Later, it ordered petitioners to comply with the mandate in the March 24, 2003 and August 5, 2003 Orders and directed them to disclose to the court the total amount of the fund deposited and reserved for teachers' retirement benefit and its bank details:[58]

> This treats of the motion for clarification filed by the defendants through counsel.
>
> The motion sprung from the Order dated March 24, 2003 and again reiterated in the Order of August 5, 2003 which required the defendants and Mr. Al Mojica to turn-over to Ms. Herminia Reynante all the money which [is] in their possession enumerated in the aforesaid orders.

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[52] *Id.* at 286.

[53] *Id*. at 350-360.

[54] The Petition mentioned "Rule 17" but meant "Rule 71."

[55] *Rollo,* p. 359.

[56] *Id*. at 348-349.

[57] *Id*.

[58] *Id*.

Considering that the bulk of the money pertains to the teacher[s'] retirement funds, defendants seek to clarify (1) for what purpose the funds will be used by the plaintiff and Ms. Reynante; (2) whether the funds will be turned-over to the plaintiff and Ms. Reynante without them having to put up a bond as a security for the protection of the teachers; and (3) whether defendants will be held liable civilly and criminally, in case of unlawful use and disbursement of the funds.

Teachers' retirement funds are funds principally set aside for the purpose of the retirement of the teachers. As such, these funds cannot be used for any other purpose other than that for which it is intended. Thus, neither the plaintiff nor Ms. Reynante may use this amount for the operation of the school. They should hold the same in trust for the beneficiaries of the same.

As to whether the plaintiff and Ms. Reynante shall be required to put up a bond as a security for the protection of the teachers before they receive the teachers' retirement funds, the same is not only correct but also proper. Considering that they will hold these funds in trust for the retiring teachers, they should be required to file a bond to guarantee their obligations as trustees of these funds. Accordingly, the plaintiff and Ms. Herminia Reynante are hereby directed to file a bond in the amount of ₱300,000.00 each.

As to whether the defendants will be held liable, civilly and criminally, in case of unlawful use and disbursement of the teachers' retirement funds, the answer is in the negative. A person cannot be held liable for his action when such was done in compliance with the lawful order of the court. Besides, considering that the plaintiff and Ms. Reynante are required to file a bond, the bond shall guarantee for whatever damage the retiring teachers may incur by reason of the unlawful use and disbursement of the funds.

WHEREFORE, in view of the foregoing, the defendants are hereby ordered to comply with the mandate contained in the order dated March 24 and August 5, 2003.

Defendants are further directed to inform the court of the total amount of the funds deposited reserved for teachers' retirement, and in what bank and under what account the same is deposited.

SO ORDERED.[59]

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[59] *Id*. at 348-349.

On October 10, 2003, petitioners filed their Petition for Certiorari before the Court of Appeals to question the Regional Trial Court's Orders[60] dated August 5, 2003, August 21, 2003 and October 8, 2003. Eventually, this was elevated to this Court and was docketed as G.R. No. 174996.[61]

Meanwhile, trial commenced for the contempt case. Custodio presented as her lone witness, Joseph Custodio (Joseph), St. Francis School's finance and property resource development administrator. Petitioners did not present any witness.[62]

In its Decision[63] dated February 6, 2008, Branch 90, Regional Trial Court, Dasmariñas, Cavite found petitioners guilty of indirect contempt for failing to comply with the Orders dated October 21, 2002 and March 24, 2003 and ordered them to

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[60] The Petition mentions in *rollo* p. 48 that the Orders questioned were Orders dated October 21, 2002, March 24, 2003, and August 5, 2003. However, in Custodio's Comment (See *rollo*, p. 497) and Memorandum (See *rollo*, p. 706), Custodio stated that petitioners questioned the Orders dated August 5, 2003, August 21, 2003, and October 8, 2003. In *rollo*, p. 659, petitioners stated in their Memorandum that they questioned the Orders dated August 5, 2003, August 21, 2003, and October 8, 2003. In G.R. No. 174996, this Court stated that what petitioners questioned are Orders dated August 5, 2003, August 21, 2003, and October 8, 2003.

[61] *Id*. at 48-49. The Supreme Court has rendered a Decision on this case. See *Oca v. Custodio,* 749 Phil. 186, 202 (2014) [Per *J.* Leonardo-De Castro, First Division]. The dispositive portion read:

> **WHEREFORE**, premises considered, the petition is **PARTLY GRANTED**. The assailed Decision dated September 16, 2005 and the Resolution dated October 9, 2006 of the Court of Appeals in CA-G.R. SP No. 79791 are hereby **AFFIRMED** in part insofar as they upheld the assailed August 5, 2003 and October 8, 2003 Orders of the trial court. They are **REVERSED** with respect to the assailed August 21, 2003 *Status Quo* Order which is hereby **SET ASIDE** for having been issued with grave abuse of discretion. The trial court is further **DIRECTED** to resolve respondent's application for injunctive relief with dispatch.
>
> **SO ORDERED**.

[62] *Rollo*, p. 15.

[63] *Id*. at 97-111.

jointly and severally pay a fine of ₱30,000.00.[64] It likewise directed them to account for the amount that they had paid the four (4) teachers who had already resigned:[65]

> WHEREFORE, premises considered, judgment is hereby rendered finding the respondents, namely: Bro. Bernard Oca, Bro. Dennis Magbanua, Ms. Cirila N. Mojica, Mrs. Josefina Pascual, Al N. Mojica, Atty. Silvestre Pascual and St. Francis School of General Trias, Cavite, GUILTY of INDIRECT CONTEMPT of Court against the Regional Trial Court, Branch 21, Imus, Cavite for their failure to comply with the Orders of the Court dated October 21, 2002 and March 24, 2003, and they are hereby ordered to pay a FINE, jointly and severally, in the amount of Php30,000.00 for the restoration of the dignity of the Court and to comply with the Orders of the Court dated October 21, 2002 and March 24, 2003 within fifteen (15) days from receipt of this judgment.
>
> . . . . . .
>
> SO ORDERED.[66]

In its May 25, 2011 Decision, the Court of Appeals affirmed the trial court Decision.[67] It found that it was sufficiently established that petitioners did not remit all the money they had previously collected despite the trial court's October 21, 2002 Order, which they admitted to be lawful.[68]

It found that the March 24, 2003 Order merely reiterated the October 21, 2002 Order directing the payment of all money they had collected and specified the amounts to be remitted.[69] It noted that the trial court already clarified which funds to turn over but petitioners still refused to obey the orders.[70]

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[64] *Id*. at 110.

[65] *Id*. at 110-111.

[66] *Id*.

[67] *Id*. at 23.

[68] *Id*. at 20.

[69] *Id*. at 21.

[70] *Id*. at 22.

The Court of Appeals ruled that defying the trial court orders amounted to contumacious conduct, which "tended to prejudice St. Francis School's operations due to lack of operational funds."[71]

The Court of Appeals also noted that petitioners did not deny that the Motion for Clarification dated October 14, 2002 was heard on October 18, 2002; thus, contradicting their claim that they were not afforded an opportunity to be heard.[72]

The Court of Appeals denied reconsideration in its Resolution dated December 19, 2011.[73]

Petitioners filed a Petition for Review via Rule 45 arguing that they complied with the October 21, 2002 Order in good faith and that the validity of the March 24, 2003 and August 5, 2003 Orders were being assailed in a separate case with this Court.[74] Likewise, they contended that there was reasonable doubt on their guilt and that the Court of Appeals erred in failing to dismiss the petition with respect to petitioners Alejandro and Atty. Silvestre Pascual (Atty. Silvestre) who were not parties in SEC Case No. 024-02 where the assailed orders were issued.[75]

Petitioners held that to be cited for contempt, the contemnor must be guilty of willful disobedience.[76] However, they did not disobey the trial court orders.[77] They insisted that they had complied in good faith because the trial court October 21, 2002 Order only pertained to the school's matriculation fees and not

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[71] *Id*.

[72] *Id*.

[73] *Id*. at 25.

[74] *Id*. at 61. As per footnote 80 and 81, on October 10, 2003, petitioners filed a Petition for *Certiorari* with the Court of Appeals seeking to set aside as void Orders of the Regional Trial Court, later elevated to the Supreme Court under G.R. No. 174996.

[75] *Id*. at 53.

[76] *Id*. at 54-55.

[77] *Id*.

any other fees.[78] They claimed that the October 21, 2002 Order was a response to Custodio's Motion for Clarification dated October 14, 2002, which only requested that the matriculation fees be turned over to Reynante.[79] Thus, they averred that it was reasonable for them to conclude that the subject of the turnover was the matriculation fees only.[80]

Petitioners further claimed that in Custodio's Comment to their February 19, 2003 Explanation, Manifestation and Compliance, Custodio surreptitiously included a prayer for the turnover of other funds.[81] They attested that Custodio's Comment became a litigated motion that should have been set for hearing by the trial court.[82] However, the trial court did not set a hearing or require the filing of a responsive pleading.[83] They insisted that they were denied due process because the trial court's March 24, 2003 Order expanded the scope of its October 21, 2002 Order and required the turnover of additional sums which were not included in the October 21, 2002 Order.[84]

Petitioners insisted that the lack of due process and the expansion of the scope of the October 21, 2002 Order rendered the trial court March 24, 2003 and August 5, 2003 Orders unlawful.[85] They questioned these orders in G.R. No. 174996 and insisted that their resort to legal remedies showed that they acted in good faith. They argued that to be charged with indirect contempt, the violated order must have been a lawful order.[86] Since the validity of the trial court orders was being questioned

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[78] *Id*. at 55.

[79] *Id*.

[80] *Id*. at 56.

[81] *Id*. at 57.

[82] *Id*. at 60.

[83] *Id*.

[84] *Id*. at 58.

[85] *Id*. at 59-63.

[86] *Id*. at 61-63.

in G.R. No. 174996, the Court of Appeals' ruling was premature as it should have waited for this Court's finding on the orders' validity before charging them with indirect contempt.[87]

Petitioners asserted that these circumstances showed that there was reasonable doubt on their guilt and their acquittal was warranted.[88]

Lastly, they held that Alejandro and Atty. Silvestre ought to be dropped as parties in the petition for indirect contempt as they were not parties in the intra-corporate controversy filed with the trial court and were not subject to its jurisdiction. Alejandro and Atty. Silvestre could not have been aware of the trial court's orders. They averred that there was no showing that they acted in conspiracy with the other petitioners and that their guilt could not be assumed or based on mere inference.[89]

In its March 5, 2012 Resolution, this Court denied the Petition on the ground that the issues raised were factual in nature and petitioners failed to raise any reversible error on the part of the Court of Appeals.[90]

Petitioners filed a Motion for Reconsideration.[91]

In its February 18, 2013 Resolution, this Court set aside its March 5, 2012 Resolution and ordered Custodio to file a Comment.[92]

Custodio filed her Comment[93] arguing that there was clear and contumacious defiance of the trial court orders and that the guilt of petitioners was established beyond reasonable doubt.[94]

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[87] *Id*. at 63.

[88] *Id*. at 65.

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

[90] *Id*. at 447.

[91] *Id*. at 448-470.

[92] *Id*. at 472.

[93] *Id*. at 479-512.

[94] *Id*. at 506.

Custodio posited that petitioners only remitted the matriculation fees in the amount of ₱397,127.64. They did not render a report on the amount or turned over any other amounts. They only partially complied with the trial court orders.[95]

Custodio pointed out that petitioners paid the salaries of four (4) teachers who had already resigned despite the trial court order that only Custodio and Reynante were authorized to settle St. Francis School's accountabilities.[96]

Custodio argued that petitioners did not refute the evidence she presented but merely attested that the orders only pertained to matriculation fees.[97]

Custodio averred that petitioners were afforded due process. She pointed out that her Motion for Clarification dated October 14, 2002 was set for hearing on October 18, 2002, which was attended by petitioners' counsel.[98]

Custodio claimed that petitioners' Explanation, Manifestation and Compliance dated February 19, 2003 was heard by the trial court. Thus, petitioners were not denied due process when she filed her Comment. If petitioners wanted to assail the Comment, they could have easily filed a Reply.[99]

Custodio insisted that the trial court March 24, 2003 Order was a clarification, not an expanded version, of its October 21, 2002 Order. Custodio reasoned that the March 24, 2003 Order was not even among the orders they questioned in G.R. No. 174996; thus, showing that they were not acting in good faith. She insisted that their claim of lack of due process was merely an afterthought after they were directed several times to comply with the trial court orders.[100]

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[95] *Id*. at 502.

[96] *Id*.

[97] *Id*.

[98] *Id*. at 502-503.

[99] *Id*. at 503-504.

[100] *Id*.

Similarly, Custodio claimed that the August 5, 2003 Order of the Regional Trial Court was not a violation of petitioners' right to due process. It was issued in connection with their motion to set aside the March 24, 2003 Order, which was heard. Moreover, the August 5, 2003 Order was a mere reiteration of the March 24, 2003 Order.[101]

Custodio held that the trial court orders are deemed valid and are entitled to respect while they are not yet reversed by a higher court.[102]

Custodio averred that despite the trial court's rulings on the issues raised, petitioners insisted on filing prohibited pleadings under A.M. No. 01-2-04-SC, or the Interim Rules of Procedure for Intra-Corporate Controversies. These pleadings by petitioners were their (i) Motion for Reconsideration dated November 8, 2002, (ii) Explanation, Manifestation, and Compliance dated February 19, 2003, (iii) Manifestation, Observation, Compliance, Exception and Motion dated April 18, 2003, and (iv) Motion for Clarification dated September 1, 2003.[103]

Custodio posited that in filing these pleadings, petitioners abused court processes as they served no purpose other than to avoid compliance with the trial court orders.[104]

She claimed that Alejandro and Atty. Silvestre were equally guilty of indirect contempt. Despite the fact that they were not parties to the complaint, Alejandro collected the matriculation fees for the school while Atty. Silvestre, as a member of the Board of Trustees, was empowered to cause compliance of court orders.[105]

Lastly, Custodio pointed out that petitioners' raising of factual issues was not proper in a Petition for Review on Certiorari.[106]

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[101] *Id*. at 505.

[102] *Id*.

[103] *Id*. at 506-508.

[104] *Id*.

[105] *Id*. at 509.

[106] *Id*.

Petitioners filed their Reply.[107]

Later, the parties filed their respective Memoranda.[108]

Meanwhile, on December 3, 2014, during the pendency of this indirect contempt case, this Court issued a Decision in G.R. No. 174996, which found that the assailed Orders dated August 5, 2003 and October 8, 2003 of the Regional Trial Court were valid. The dispositive portion of the December 3, 2014 Decision read:

> **WHEREFORE**, premises considered, the petition is **PARTLY GRANTED**. The assailed Decision dated September 16, 2005 and the Resolution dated October 9, 2006 of the Court of Appeals in CA-G.R. SP No. 79791 are hereby **AFFIRMED** in part insofar as they upheld the assailed August 5, 2003 and October 8, 2003 Orders of the trial court. They are **REVERSED** with respect to the assailed August 21, 2003 *Status Quo* Order which is hereby **SET ASIDE** for having been issued with grave abuse of discretion. The trial court is further **DIRECTED** to resolve respondent's application for injunctive relief with dispatch.
>
> **SO ORDERED**.[109]

For resolution is whether petitioners are guilty of indirect contempt.

To resolve this, it is important to determine:

First, whether petitioners are guilty of willful disobedience;

Second, whether petitioners can refuse to follow the orders of the Regional Trial Court on the premise that their legality is being questioned in this Court; and

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[107] *Id*. at 546-565.

[108] *Id*. at 642-684, Petitioners' Memorandum; *rollo,* pp. 686-723, Respondent's Memorandum.

[109] *Oca v. Custodio,* 749 Phil. 186, 202 (2014) [Per *J*. Leonardo-De Castro, First Division].

Finally, whether Alejandro N. Mojica and Atty. Silvestre Pascual are equally guilty of indirect contempt despite the fact that they are not parties to the complaint.

I

This Court rules that petitioners Oca, Magbanua, Cirila, and Josefina are guilty of indirect contempt. There is a contumacious refusal on their part to comply with the Regional Trial Court Orders.

Contempt of court is willful disobedience to the court and disregard or defiance of its authority, justice, and dignity.[110] It constitutes conduct which "tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice" or "interfere with or prejudice parties[']litigant or their witnesses during litigation."[111]

All courts are given the inherent power to punish contempt.[112] This power is an essential necessity to preserve order in judicial proceedings and to enforce the due administration of justice and the court's mandates, orders, and judgments.[113] It safeguards the respect due to the courts and, consequently, ensures the stability of the judicial institution.[114]

In *Sison v. Caoibes, Jr.*:[115]

Thus, the power to declare a person in contempt of court and in dealing with him accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity

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[110] *Halili v. Court of Industrial Relations,* 220 Phil. 507, 526 (1985) [Per *J*. Makasiar, *En Banc*] *citing* 12 Am. jur 389 and 17 C.J.S. 4.

[111] *Id*.

[112] *Id*. at 527, citing 12 Am. jur 389 and 17 C.J.S. 4.

[113] *Id*.

[114] *Id*. at 529 citing *Salcedo v. Hernandez*, 61 Phil. 724 (1935) [Per *J*. Diaz, *En Banc*]; *Cornejo v. Tan*, 85 Phil. 772 (1985) [Per J. Bengzon, First Division].

[115] 473 Phil. 251, 260-261 (2004) [*Per Curiam*, *En Banc*].

of the court, the solemnity of the proceedings therein, and the administration of justice from callous misbehavior, offensive personalities, and contumacious refusal to comply with court orders. Indeed, the power of contempt is power assumed by a court or judge to coerce cooperation and punish disobedience, disrespect or interference with the court's orderly process by exacting summary punishment. The contempt power was given to the courts in trust for the public, by tradition and necessity, in as much as respect for the courts, which are ordained to administer the laws which are necessary to the good order of society, is as necessary as respect for the laws themselves.[116] (Citations omitted)

There are two (2) types of contempt of court: (i) direct contempt and (ii) indirect contempt.

Direct contempt consists of "misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before [it]."[117] It includes: (i) disrespect to the court, (ii) offensive behavior against others, (iii) refusal, despite being lawfully required, to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition. It can be punished summarily without a hearing.[118]

Indirect contempt is committed through any of the acts enumerated under Rule 71, Section 3 of the Rules of Court:

(a) Misbehavior of an officer of a court in the performance of his [or her] official duties or in his [or her] official transactions;

(b) *Disobedience of or resistance to a lawful writ, process, order, or judgment of a court,* including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

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[116] *Id*. at 260-261.

[117] RULES OF COURT, Rule 71, Sec. 1.

[118] RULES OF COURT, Rule 71, Sec. 1.

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him [or her].[119] (Emphasis supplied)

Indirect contempt is only punished after a written petition is filed and an opportunity to be heard is given to the party charged.[120]

In the case at bar, petitioners were charged with indirect contempt through "disobedience of or resistance to a lawful writ, process, order, or judgment of a court."

II

Petitioners insist that they have complied with the October 21, 2002 Order in good faith as they have already turned over the matriculation fees to Reynante.[121] They claim that this Order pertained to the matriculation fees only, excluding any other fees, as it was issued in connection with Custodio's Motion for Clarification dated October 14, 2002, which requested that the matriculation fees be turned over to Reynante.[122] Custodio's Motion for Clarification dated October 14, 2002 allegedly did not cover other fees.[123]

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[119] RULES OF COURT, Rule 71, Sec. 3.

[120] RULES OF COURT, Rule 71, Sec. 3.

[121] *Rollo*, pp. 56-57.

[122] *Id.* at 55.

[123] *Id.*

However, the October 21, 2002 Order did not pertain to matriculation fees only:

> Regarding the collection of matriculation fees *and other collectibles*, *Ms. Herminia Reynante is hereby designated by the Court to act as cashier of the school to the exclusion of others with authority to collect* ***all fees*** *and, together with plaintiff Laurita Custodio, to pay* ***all accounts***. Said authority shall continue until the matter of the application for temporary restraining order and preliminary injunction is heard and resolved. This is hereby ordered so that an orderly operation of the school will be achieved.
>
> *Plaintiff and defendants, as well as Mr. Al Mojica, are directed to* ***turn-over*** *to Ms. Herminia Reynante* ***all money previously collected*** *and to* ***submit a report on what have been collected, how much, from whom and the dates collected.*** Effective October 22, 2002, Ms. Herminia Reynante shall submit to the Court, to the plaintiff and to all the defendants a monthly report of all receivables collected and all disbursements made.
>
> SO ORDERED.[124] (Emphasis supplied)

The wording of the October 21, 2002 Order is clear that the amounts do not pertain only to the matriculation fees but to *all* collectibles, *all* fees, *and all* accounts. It also states that petitioners were to render a report and turn over *all* the amounts they had previously collected. It does not state that only matriculation fees were to be handed over.

Likewise, the subject of Custodio's Motion for Clarification dated October 14, 2002 did not solely cover matriculation fees. Her prayer sought to clarify "where the matriculation fees *and other fees* should be paid pending the hearing of the Complaint and the Manifestation and Motion."[125] She also prayed for other just and equitable reliefs.[126] Thus, the trial court ordered that *all* amounts be turned over to Reynante for the orderly operation

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[124] *Id*. at 272.

[125] *Id*. at 270.

[126] *Id*.

of the school.[127] Understandably, the school would operate better if all accounts were handled by one (1) person and not divided into two (2) arguing factions.

Petitioners insist that Custodio's Comment to their February 19, 2003 Explanation, Manifestation and Compliance surreptitiously included a prayer for the turnover of other funds, making it a litigated motion.[128] Petitioners claim that they were denied due process because the trial court did not set it for hearing.[129] Moreover, in its March 24, 2003 Order, the trial court allegedly required the turnover of additional sums which were not included in the October 21, 2002 Order.[130]

This Court finds that the subsequent trial court orders did not unduly expand the scope of the October 21, 2002 Order as petitioners argue. The October 21, 2002 Order itself already directed that *all fees* be turned over to Reynante.

Furthermore, Custodio's Comment dated February 26, 2003 simply argued that petitioners did not comply with the October 21, 2002 Order because they did not remit the following amounts:

1) ₱4,339,601.54 deposited in Special Savings Deposit No. 239 of the Rural Bank of General Trias, Inc.;

2) ₱5,639,856.11 deposited in Special Savings Deposit No. 459 of the Rural Bank of General Trias, Inc.;

3) ₱92,970.00 representing fees paid by the school canteen; and

4) All other fees collected from January 2003 to February 19, 2003.[131]

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[127] *Id*. at 272.

[128] *Id*. at 57-58.

[129] *Id*. at 58, 60.

[130] *Id*.

[131] *Id*. at 276-277, Comment/Opposition.

Custodio pointed out that petitioners paid the salaries of four (4) other employees who had already resigned, violating the court order that only Reynante and Custodio were authorized to pay the outstanding accounts of St. Francis School.[132]

Thus, it cannot be said that Custodio inserted a surreptitious prayer for the turnover of funds not included in the October 21, 2002 Order. She simply stated that petitioners failed to substantially comply with the October 21, 2002 Order and specified the other amounts that petitioners needed to turn over.[133] When she prayed for the turnover of the other amounts, she merely sought petitioners' compliance of the trial court October 21, 2002 Order.[134]

The trial court reiterated this in its March 24, 2003 Order and specified more particularly the amounts that needed to be remitted. It stated:

> A perusal of the allegations of defendants' pleading shows that they merely turned-over a manager's check in the amount of ₱397,127.64 representing money collected from the students from October 2002 to December 2002. The Order of October 21, 2002 directed plaintiff and defendants, as well as, Mr. Al Mojica to turn-over to Ms. Herminia Reynante all money previously collected and to submit a report on what have been collected, how much, from whom and the dates collected.
>
> Defendants and Mr. Al Mojica are hereby directed, within ten days from receipt hereof, to submit a report and to turn-over to Ms. Herminia Reynante all money collected by them, more particularly:
>
> 1. ₱4,339,601.54 deposited in Special Savings Deposit No. 239 (Rural Bank of Gen. Trias, Inc.);
>
> 2. ₱5,639,856.11 deposited in Special Savings Deposit No. 459 of (Rural Bank of Gen. Trias, Inc.);

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[132] *Id*. at 277.

[133] *Id*. at 276.

[134] *Id*.

3. ₱92,970.00 representing amount paid by the school canteen;

4. Other fees collected from January 2003 to February 19, 2003;

5. Accounting on how and how much defendants are paying Ms. Daisy Romero and three (3) other teachers who already resigned.

SO ORDERED.[135]

Consequently, the Regional Trial Court did not unduly expand the scope of the October 21, 2002 Order when it issued its March 24, 2003 Order.

However, despite its clear wording, petitioners still did not comply with the March 24, 2003 Order. Instead, they filed a Manifestation, Observation, Compliance, Exception and Motion on April 18, 2003, praying that the trial court exclude the other amounts, which were allegedly not included in the October 21, 2002 Order.[136]

The trial court denied petitioners' Manifestation, Observation, Compliance, Exception and Motion in its August 5, 2003 Order for being a differently worded motion for reconsideration, which is a prohibited pleading under Section 8 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC).[137] The trial court noted that petitioners still had not complied with its March 24, 2003 Order and reiterated that they must submit a report and turn over all the money they had collected.[138]

Still, petitioners refused to comply.

On August 21, 2003, the trial court granted Custodio's Manifestation and Motion dated October 9, 2002. It issued a

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[135] *Id*. at 281, March 24, 2003 Order.

[136] *Id*. at 46.

[137] *Id*. at 282-283.

[138] *Id*.

status quo order allowing Custodio to discharge her functions as school director and curriculum administrator because it found that petitioners had already established a new school. [139]

However, petitioners still did not comply despite this Order. Instead, they filed their September 1, 2003 Motion for Clarification, raising questions on Custodio's use of the turned over money, Custodio's and Reynante's bonds as guaranty to the money's exclusive use as teachers' retirement fund, and petitioners' liability in case of Custodio's misuse of this amount.[140]

This prompted Custodio to petition the trial court to cite petitioners in indirect contempt.[141]

The trial court responded to petitioners' Motion for Clarification dated September 1, 2003 and issued its October 8, 2003 Order, agreeing that the retirement fund would be merely held in trust by Custodio and Reynante.[142] It also directed Custodio and Reynante to file a bond of ₱300,000.00 each. Again, it ordered petitioners to comply with the mandate in its March 24, 2003 and August 5, 2003 Orders and directed them to inform the court the total amount of the money deposited and reserved for teachers' retirement and its bank account details.[143]

Nonetheless, *petitioners still did not comply*. Instead, they argued in the contempt proceeding that the March 24, 2003 and August 5, 2003 Orders were unlawful and were being questioned in G.R. No. 174996. They claimed that their availment of legal remedies showed their good faith.[144]

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[139] *Id*. at 539-540, Order dated August 21, 2003.

[140] *Id*. at 285-289.

[141] *Id*. at 350-360.

[142] *Id*. at 348-349.

[143] *Id*.

[144] *Id*. at 61-63.

All these acts show petitioners' contumacious refusal to abide by the orders of the trial court.

Again, the trial court did not exclude any other kind of money in its October 21, 2002, March 24, 2003, and August 5, 2003 Orders, all of which directed petitioners to turn over *all* monies.[145] Petitioners, however, still insisted that they had complied because they had remitted the matriculation fees. Even after clarification, petitioners were defiant.

The trial court also noted that even after petitioners had already established another competitor school and Custodio and Reynante had already posted bond, petitioners still refused to comply.[146]

The trial court reiterated the orders to turn over the amounts at least thrice. Petitioners' filing of numerous pleadings reveals their contumacious refusal to comply and their abuse of court processes.

Their defense that they were denied due process deserves little consideration. Petitioners had attended hearings and had filed several pleadings showing that they were given several opportunities to present their position on the matter. All these were considered before the trial court rendered its orders.

In *Oca vs. Custodio*,[147] this Court ruled on the validity of the trial court August 5, 2003 and October 8, 2003 Orders:

> With regard to the right to due process, we have emphasized in jurisprudence that while it is true that the right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense, the Court has time and again held that where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," there is no denial of due

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[145] *Id.* at 109.

[146] *Id.*

[147] *Oca v. Custodio,* 749 Phil. 186 (2014) [Per J. Leonardo-De Castro, First Division]. http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/174996.pdf

process because what the law proscribes is the lack of opportunity to be heard.

In the case at bar, we find that petitioners were not denied due process by the trial court when it issued the assailed Orders dated August 5, 2003, August 21, 2003 and October 8, 2003. The records would show that petitioners were given the opportunity to ventilate their arguments through pleadings and that the same pleadings were acknowledged in the text of the questioned rulings. Thus, petitioners cannot claim grave abuse of discretion on the part of the trial court on the basis of denial of due process.[148] (Citation omitted)

Thus, the question of whether petitioners were denied due process has already been settled.

This Court notes that petitioners' justification for refusing to turn over the stated amounts was that the amounts constituted teachers' retirement fund, which consequently did not belong to St. Francis School and was not covered by the assailed Orders.[149] However, the trial court lent credence to Joseph's testimony that the amounts deposited in the Special Savings Accounts were funds for the operations of the school.[150]

In any case, whether the amounts are for the teachers' retirement fund or the school's operation fund, the trial court had determined who was to have custody over these amounts during the pendency of the intra-corporate case. Thus, it is not for petitioners to choose which amounts to turn over.

III

The same principle applies to petitioners' argument that the trial court orders were being questioned in G.R. No. 174996.

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[148] http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/174996.pdf. *Id*. at 199-200.

[149] *Id*. at 107-110.

[150] *Id*. at 109.

In intra-corporate controversies, all orders of the trial court are immediately executory:[151]

> Section 4. *Executory nature of decisions and orders.* — All decisions and orders issued under these Rules shall immediately be executory except the awards for moral damages, exemplary damages and attorney's fees, if any. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

Questioning the trial court orders does not stay its enforcement or implementation. There is no showing that the trial court orders were restrained by the appellate court.

Hence, petitioners could not refuse to comply with the trial court orders just because they opined that they were invalid. It is not for the parties to decide whether they should or should not comply with a court order. Petitioners did not obtain any injunction to stop the implementation of the trial court orders nor was there an injunction to prevent the trial court from hearing and ruling on the contempt case.[152] Petitioners' stubborn refusal cannot be excused just because they were convinced of its invalidity. Their resort to the processes of questioning the orders does not show that they are in good faith.

Petitioners likewise cannot invoke the principle of judicial courtesy.

Judicial courtesy is exercised by suspending a lower court's proceedings although there is no injunction or an order from a higher court.[153] The purpose is to avoid mooting the matter raised in the higher court.[154] It is exercised as a matter of respect and for practical considerations.[155]

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[151] Adm. Matter No. 01-2-04-SC (2001) or the *Interim Rules of Procedure Governing Intra-Corporate Controversies,* as amended by OCA Circular No. 139-06 (2006).

[152] *Rollo*, p. 108.

[153] *Sara Lee Phils., Inc. v. Macatlang,* 750 Phil. 646, 654 (2015) [Per *J.* Perez, Special Second Division].

[154] *Id*.

[155] *Id*.

However, this principle applies only if the continuation of the lower court's proceedings will render moot the issue raised in the higher court.[156]

In the two (2) cases involved, there are two (2) separate issues. In G.R. No. 174996, the issue was whether the orders of the trial court were valid. In this indirect contempt case, the issue is whether petitioners willfully disobeyed the orders of the trial court. Although this Court may find the orders invalid in G.R. No. 174996, the petitioners may still be cited in contempt for their contumacious refusal and defiance of the trial court orders. Therefore, the finding of indirect contempt will not render moot this Court's ruling in G.R. No. 174996.

This Court has acknowledged the trial court's power to cite parties in indirect contempt for their refusal to follow its orders, although the validity of the orders is being questioned in another proceeding.

In *Roxas v. Tipon,*[157] this Court found a party guilty of contempt although the disobeyed order was the subject of a pending petition before the Court of Appeals:

> The issue of indirect contempt needs further discussion because while the Order of the RTC to allow audit of books of HEVRI has been rendered moot, it does not change the fact that at the time that the Order was a standing pronouncement, petitioners refused to heed it . . .
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> . . . . . .
>
> Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect

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[156] *Id*.

[157] 688 Phil. 372 (2012) [Per *J*. Perez, Second Division].

or to interfere with or prejudice parties-litigant or their witnesses during litigation. *The asseverations made by petitioners to justify their refusal to allow inspection or audit were rejected by the trial court.*

. . . . . .

The RTC initiated the contempt charge. In the Order dated 9 January 2002, petitioners were directed to appear in court and to show cause why they should not be held in contempt of court for their refusal to allow Financial Catalyst, Inc. to audit the books of HEVRI. *Petitioners filed an urgent motion for reconsideration claiming that said order was the subject of a pending petition before the Court of Appeals and that they can only be cited for contempt by the filing of a verified petition.* The RTC denied the motion and reiterated in its Order on 26 April 2002 explaining that it chose to initiate the contempt charge.

The RTC acted on the basis of the unjustified refusal of petitioners to abide by its lawful order. It is of no moment that private respondents may have filed several pleadings to urge the RTC to cite petitioners in contempt. Petitioners utterly violated an order issued by the trial court which act is considered contemptuous. Thus, in *Leonidas v. Judge Supnet*, the MTC's order to the bank to show cause why it should not be held in contempt, was adjudged as a legitimate exercise of the MTC's judicial discretion to determine whether the bank should be sanctioned for disregarding its previous orders.[158] (Emphasis supplied, citations omitted)

In this case, petitioners were given several opportunities to comply with the trial court orders. Even after the trial court clarified which funds to turn over, they still refused to obey. While petitioners questioned the legality of these orders, they are immediately executory. Moreover, the parties do not have the power to determine for themselves what should and should not be excluded from the orders. Their failure to turn over the amounts showed petitioners' defiance and disregard for the authority of the trial court.

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[158] *Id.* at 381-383.

Petitioners argue that contempt proceedings are similar to criminal proceedings, and thus, there must be proof beyond reasonable doubt of their guilt.[159]

The punishment for contempt is classified into two (2): civil contempt and criminal contempt.

Civil contempt is committed when a party fails to comply with an order of a court or judge "for the benefit of the other party."[160] A criminal contempt is committed when a party acts against the court's authority and dignity or commits a forbidden act tending to disrespect the court or judge.[161]

This stems from the two (2)-fold aspect of contempt which seeks: (i) to punish the party for disrespecting the court or its orders; and (ii) to compel the party to do an act or duty which it refuses to perform.[162]

In *Halili v. Court of Industrial Relations*:[163]

> Due to this twofold aspect of the exercise of the power to punish them, contempts are classified as civil or criminal. *A civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein;* and a criminal contempt, is conduct directed against the authority and dignity of a court or of a judge, as in unlawfully assailing or discrediting the authority or dignity of the court or judge, or in doing a duly forbidden act. Where the punishment imposed, whether against a party to a suit or a stranger, is wholly or primarily to protect or vindicate the dignity and power of the court, either by fine payable to the government or by imprisonment, or both, it is deemed a judgment in a criminal case. Where the punishment is by fine directed to be paid to a party in the nature of damages for the wrong inflicted, or by imprisonment

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[159] *Rollo*, p. 65.

[160] *Halili v. Court of Industrial Relations,* 220 Phil. 507, 527 (1985) [Per *J*. Makasiar, *En Banc*].

[161] *Id*. at 527.

[162] *Id*.

[163] *Halili v. Court of Industrial Relations,* 220 Phil. 507 (1985) [Per *J*. Makasiar, *En Banc*].

as a coercive measure to enforce the performance of some act for the benefit of the party or in aid of the final judgment or decree rendered in his behalf, the contempt judgment will, if made before final decree, be treated as in the nature of an interlocutory order, or, if made after final decree, as remedial in nature, and may be reviewed only on appeal from the final decree, or in such other mode as is appropriate to the review of judgments in civil cases. . . . The question of whether the contempt committed is civil or criminal, does not affect the jurisdiction or the power of a court to punish the same. . . .[164] (Emphasis supplied)

The difference between civil contempt and criminal contempt was further elaborated in *People v. Godoy*:[165]

It has been said that the real character of the proceedings is to be determined by the relief sought, or the dominant purpose, and the proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial.

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

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[164] *Id*. at 527-528.

[165] 312 Phil. 977 (1995) [Per *J.* Regalado, *En Banc*].

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, *they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required.* As otherwise expressed, a proceeding for civil contempt is *one instituted to preserve and enforce the rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant.* So a proceeding is one for civil contempt, regardless of its form, *if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience.* The *rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings . . .*

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.

Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. In proceedings for civil contempt, there is no presumption, although the burden of proof is on the complainant, and *while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence. It has been said that the burden of proof in a civil contempt proceeding lies somewhere between the criminal "reasonable doubt" burden and the civil "fair preponderance" burden.*[166] (Citations omitted)

Civil contempt proceedings seek to compel the contemnor to obey a court order, judgment, or decree which he or she refuses to do for the benefit of another party. It is for the enforcement and the preservation of a right of a private party, who is the real party in interest in the proceedings. The purpose of the contemnor's punishment is to compel obedience to the order. Thus, civil contempt is not treated like a criminal proceeding and proof beyond reasonable doubt is not necessary to prove it.[167]

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[166] *Id*. at 1000-1002.

[167] *Id*.

In the case at bar, the dispositive portion of the Decision of the trial court, as affirmed by the Court of Appeals, read:

> WHEREFORE, premises considered, judgment is hereby rendered finding the respondents, namely: Bro. Bernard Oca, Bro. Dennis Magbanua, Ms. Cirila N. Mojica, Mrs. Josefina Pascual, Al N. Mojica, Atty. Silvestre Pascual and St. Francis School of General Trias, Cavite, GUILTY of INDIRECT CONTEMPT of Court against the Regional Trial Court, Branch 21, Imus, Cavite for their failure to comply with the Orders of the Court dated October 21, 2002 and March 24, 2003, and they are hereby ordered to pay a FINE, jointly and severally, in the amount of Php30,000.00 for the restoration of the dignity of the Court and to comply with the Orders of the Court dated October 21, 2002 and March 24, 2003 within fifteen (15) days from receipt of this judgment.
>
> . . . . . .
>
> SO ORDERED.[168]

While the nature of the punishment imposed is a mixture of both criminal and civil, the contempt proceeding in this case is more civil than criminal.

The purpose of the filing and the nature of the contempt proceeding show that Custodio was seeking enforcement of the trial court orders in the intra-corporate controversy because petitioners refused to comply. Hence, this is a civil contempt case, which does not need proof beyond reasonable doubt.

This Court has ruled that while the power to cite parties in contempt should be used sparingly, it should be allowed to exercise its power of contempt to maintain the respect due to it and to ensure the infallibility of justice where the defiance is so clear and contumacious and there is an evident refusal to obey.[169]

This Court finds that it was sufficiently proven that there was willful disobedience on the part of petitioners. Therefore, petitioners ought to be cited in contempt.

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[168] *Rollo,* pp. 110-111.

[169] *Province of Camarines Norte v. Province of Quezon,* 419 Phil. 372, 389 (2001) [Per *J.* Sandoval-Gutierrez, *En Banc*].

IV

However, this Court rules that the charges against Alejandro and Atty. Silvestre ought to be dismissed.

While they were not parties to SEC Case No. 024-02, the trial court ruled that they were guilty of indirect contempt on the following premise:

> The latter Orders are directed to "ALL" the defendants in SEC Case No. 024-02, namely: Bro. Bernard Oca, Bro. Dennis Magbanua, Ms. Cirila N. Mojica, Mrs. Josefina Pascual and St. Francis School; while the respondent Al N. Mojica was particularly mentioned in the said orders in view of the fact that it was he that collected matriculation fees, as a cashier. With respect to Atty. Silvestre Pascual, the latter was impleaded in this case because he was a member of the Board of St. Francis School at the time the petition was filed, and he is empowered to cause compliance with these Orders. His failure to prove that he has the intention to comply with the subject orders showed his acquiescence to the collective act of defiance.[170]

In *Ferrer v. Rodriguez*,[171] this Court ruled that a non-litigant may be cited in contempt if he or she acted in conspiracy with the parties in violating the court order:

> Nevertheless, persons who are not parties in a proceeding may be declared guilty of contempt for willful violation of an order issued in the case if said persons are guilty of conspiracy with any of the parties in violating the court's order.
>
> "In a proceeding to punish for criminal contempt for willful disobedience of an injunction, the fact that those disobeying the injunction were not parties *eo nomine* to the action in which it was granted, and were not personally served, is no defense, where the injunction restrains not only the parties, but those who act in connection with the party as attorneys, agents, or employees, and the parties accused, with knowledge of the order and its terms, acting as the employees of a party, willfully violate it." (People *ex rel.* Stearns, et al. *vs*. Marr, et al., 74 N.E. 431.)[172]

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[170] *Rollo,* p. 110.

[171] 116 Phil. 1, 5 (1962) [Per *J*. Labrador, *En Banc*].

[172] *Id*. at 5.

However, there is no evidence of conspiracy in this case. The power to punish contempt must be "exercised cautiously, sparingly, and judiciously."[173] Without evidence of conspiracy, it cannot be said that the non-litigants are guilty of contempt.

This Court finds that there is no sufficient evidence of conspiracy to hold both Alejandro and Atty. Silvestre liable for contempt.

Alejandro merely collected the matriculation fees as a designated cashier who worked in the Rural Bank of General Trias, Inc. He neither exercised power over the money nor had the authority to order how it would be kept or disposed. Moreover, it has been established that the matriculation fees had already been turned over to Reynante.

Atty. Silvestre was indeed a member of the Board of Trustees. However, decisions of the Board of Trustees are not subject to the control of just one (1) person. While a board member may protest, the majority of the board may overrule him or her. Thus, it is not correct to say that a board member is empowered to cause compliance of the trial court orders. It does not matter if Atty. Silvestre was unable to prove his intention to comply with the orders. The burden of proving contempt is upon complainants and there is no presumption of guilt in contempt proceedings such that the party accused of contempt must prove that he is innocent. [174]

In the absence of proof of conspiracy, it cannot be said that Alejandro and Atty. Silvestre are guilty of contempt.

WHEREFORE, the Petition is **DENIED**. The May 25, 2011 Decision[175] and December 19, 2011 Resolution[176] of the Court

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[173] *Balindong v. Court of Appeals,* G.R. Nos. 177600 & 178684, October 19, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/177600.pdf> 15 [Per *J*. Bersamin, First Division].

[174] *People v. Godoy,* 312 Phil. 977, 1000-1002 (1995) [Per *J*. Regalado, *En Banc*].

[175] *Rollo*, pp. 10-23.

[176] *Id*. at 25.

of Appeals in CA-G.R. CR. No. 31985 are **AFFIRMED**. However, the complaint against Alejandro Mojica and Atty. Silvestre Pascual is hereby **DISMISSED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 204530. July 26, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **POTENCIANO A. LARRAZABAL, SR., VICTORIA LARRAZABAL LOCSIN and BETTY LARRAZABAL MACATUAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATE POWERS; EMINENT DOMAIN; RA No. 8974 ON PROVIDING PAYMENT OF THE AMOUNT EQUIVALENT TO 100% OF THE CURRENT ZONAL VALUE OF THE PROPERTY APPLIES ONLY PROSPECTIVELY.— The Court had already squarely ruled in *Spouses Arrastia v. National Power Corporation* that RA No. 8974 applies only prospectively. x x x RA No. 8974 [provides] payment of the amount equivalent to 100% of the current zonal value of the property. x x x [T]he Court ruled that RA No. 8974 cannot be made to apply retroactively since it is a substantive law; there is nothing in RA No. 8974 which expressly provides for retroactive application; and retroactivity could not necessarily be implied from RA No. 8974 or in any of its provisions.

2. ID.; ID.; ID.; JUST COMPENSATION; WHEN ASCERTAINED AND FACTORS TO BE CONSIDERED.— [A]s ruled in *National Power Corporation v. Diato-Bernal*, "[i]t is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint." x x x As ruled in *National Power Corporation v. YCLA Sugar Development Corporation*, factors such as acquisition cost, current market value of like properties, tax value of the properties of respondents, and the sizes, shapes, and locations of the properties, should have been considered, x x x [I]n the absence of any actual and reliable data — and the abject failure to explain this absence — there can be no other conclusion that can be drawn except that the RTC's determination of just compensation was arbitrary.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Larrazabal Law Office for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is petition for review on *certiorari*[1] of the Decision[2] and Resolution[3] dated October 19, 2011 and November 12, 2012, respectively, of the Court of Appeals (CA) in CA-G.R. CEB-CV

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[1] *Rollo*, pp. 24-57.

[2] *Id*. at 60-69. Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes concurring.

[3] *Id*. at 71-72. Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Edgardo L. Delos Santos and Carmelita Salandanan-Manahan concurring.

No. 00810. The CA affirmed the Decision[4] dated December 5, 2003 of the Regional Trial Court (RTC) of Ormoc City, Branch 12 in Civil Case No. 3734-0 which fixed the just compensation for the lot of respondent Potenciano A. Larrazabal (Potenciano) at ₱10,000.00 per square meter, the improvements therein at ₱1,000,000.00; and for the lots of respondents Victoria Larrazabal Locsin (Victoria) and Betty Larrazabal Macatual (Betty) at ₱4,000.00 per square meter.

The Facts

Sometime in November 1991, heavy rains in Ormoc City caused the Malbasag River to overflow resulting in a flashflood throughout the city.[5] To avoid a similar tragedy, the petitioner, through the Department of Public Works and Highways, undertook a massive flood mitigation project at the Malbasag River, which required a right of way.[6]

On September 15, 1999, petitioner filed a Complaint[7] with the RTC for expropriation of portions of three parcels of land that respondents Potenciano, Victoria, and Betty owned.

Respondent Potenciano's commercial property is Lot No. 844 located at Poblacion, Municipality of Ormoc, Leyte, covered by Transfer Certificate of Title (TCT) No. 28 with a total area of 2,629 square meters.[8] Respondents Victoria's and Betty's residential properties are Lot No. 1 located at Barangay Canadieng, Ormoc City, Leyte, covered by TCT No. 16337, and with a total area of 5,682 square meters, and Lot No. 2 in the same barangay, covered by TCT No. 16518, with a total area of 5,683 square meters, respectively.[9] Petitioner sought to expropriate 1,027 square meters of respondent Potenciano's

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[4] *Id*. at 95-99. Penned by Presiding Judge Francisco C. Gedorio, Jr.

[5] *Id*. at 61.

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

[7] *Id*. at 73-80.

[8] *Id*. at 61.

[9] *Id*.

property, 575 square meters of respondent Victoria's property, and 4,638 square meters of respondent Betty's property.[10] Based on Resolution No. 8-98, Series of 1998,[11] of the Ormoc City Appraisal Committee (Resolution No. 8-98), the properties were appraised at ₱1,000.00 per square meter for commercial lots and ₱800.00 for residential lots.[12]

After the filing of the Complaint, petitioner was allowed to enter the properties, demolish the improvements thereon, and to deposit the amounts corresponding to the provisional payments for the properties.[13] Subsequently, respondents filed their Answer where they prayed that the just compensation for respondent Potenciano's property be fixed at ₱25,000.00 per square meter, and ₱15,000.00 per square meter for respondents Victoria's and Betty's properties.[14]

On December 16, 1999, the RTC directed the release of the cash that petitioner deposited in the amount of ₱5,745,520.00, divided as follows: ₱1,575,120.00 to respondent Potenciano; ₱460,000.00 to respondent Victoria, and ₱3,710,400.00 to respondent Betty.[15] And on February 18, 2000, the RTC appointed a set of Commissioners composed of Atty. Bibiano C. Reforzado, Clerk of Court of the RTC, as Chairman, Atty. Arturo P. Suarez, Register of Deeds of Ormoc City, and Alfredo P. Pantino, resident of Fatima Village, Cogon, Ormoc City, to evaluate and recommend the amount of just compensation for the properties.[16]

On November 20, 2001, the Commissioners submitted their Report[17] with the following estimated fair market values of the

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[10] *Id*. at 62.

[11] *Id*. at 94.

[12] *Id*. at 62.

[13] *Id*.

[14] *Id*. at 63.

[15] *Id*. at 97.

[16] *Id*. at 63. See CA Decision note 11.

[17] Records, pp. 140-145.

properties: ₱10,000.00 per square meter for respondent Potenciano's property, or a total of ₱12,620,000.00; and ₱4,000.00 per square meter for respondents Victoria's and Betty's properties, or a total of ₱2,300,000.00 and ₱18,552,000.00, respectively.[18]

The Commissioners considered the three properties as commercial lots[19] and found that one real estate transaction — sale of the property of William Gothong and Aboitiz where the lot was sold at ₱30,000.00 per square meter — nearly reflected the fair market value of commercial lots in Ormoc City.[20] The Commissioners' Report states:

> 2. Finding the Buyer's Market – that is how much really the buyer paid for the property is quite hard to produce. It is widely practiced in real estate transactions that the documented deed of sale is very much undervalued or reduced to evade capital gains and Documentary taxes. There is one real estate transaction which nearly reflects the average FMV of commercial lots in Ormoc City. Last November 14, 1997, William Gothong and Aboitiz sold commercial lot located at Corner Bonifacio and Burgos Sts., Ormoc City for ₱30,000.00 per square meter on the documented deed of sale (Annex 3). This could be much higher considering its location which is a choice lot (highly commercial). Please take note that the authority given to the undersigned broker ranges from ₱25,000.00 to ₱30,000.00 per square meter which we can safely presume that it is the FMV of highly commercial lots in the city.[21]

The Commissioners found that the estimated fair market value of Potenciano's property was ₱10,000.00 per square meter, and ₱4,000.00 per square meter for Betty's and Victoria's properties, thus:

> A. POTENCIANO LARRAZABAL, SR. – Lot No. 844 with an area of 2,629 sq. m. is located along the banks of Malbasag

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[18] *Rollo*, p. 64; see records, p. 144.

[19] Records, p. 142.

[20] *Id*. at 143.

[21] *Id*. at 143-144.

River. On the Northern side, it is facing Lot 829 and 841 likewise also owned by Mr. Larrazabal. Lot 829 & 841 is facing Aviles St. According to some information, there were some bodega building inside the perimeter which were demolished but we could not give some appraisals because at the time of inspection they were already leveled-off and new perimeter CHB walling were already installed along the boundary of the expropriated land and other remaining areas.

LAND = 1,262 sq. meters [at] ₱10,000.[00] = ₱12,620,000.00

B. BETTY L. MACATUAL – Property of Mrs. Betty Macatual (Lot 2) is also located along Malbasag [R]iver. It has no improvement that were affected by the JICA Project. Its location is in Brgy. Can-adieng, Ormoc City. This area is classified as commercial/residential and class C.

LAND = 4,638 sq. meters at ₱4,000.00 = ₱18,552,000.00

C. VICTORIA L. LOCSIN – Property of Mrs. Locsin is located beside that of Mrs. Betty Macatual. This area is also classified as Commercial C.

LAND = 575 sq. meters at ₱4,000.00 = ₱2,300,000.00[22]

Petitioner then filed its Comment on the Commissioners' Report stating that the appraisal values as stated in Resolution No. 8-98 should be applied instead of the just compensation determined by the Commissioners.[23]

Ruling of the RTC

In its Decision, the RTC approved the value of the properties as fixed by the Commissioners in their Report.[24] The RTC ruled that in eminent domain cases, the value of the property as of the date of the filing of the complaint is generally determinative of the just compensation.[25] The RTC further ruled that "sales

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[22] *Id*. at 144.

[23] *Rollo*, p. 97.

[24] *Id*. at 99.

[25] *Id*. at 98.

so taken in the neighborhood of the same year of taking, have been considered fair enough as to reflect fair market value of the property."[26]

As basis for approving the value fixed by the Commissioners, the RTC relied on the sales of properties that were made on November 14, 1997 involving the property of William Gothong and Aboitiz and on July 10, 2000 involving the property of Mariano Tan, thus:

> Applying now as basis the sales of the properties of William Gothong and Aboitiz located at Corner Bonifacio and Burgos Sts., Ormoc City sold at ₱30,000.00 per square meter on November 14, 1997 (Annex "3"); and that of Mariano Tan located at Real St., Ormoc City which was at ₱6,726.00 per square meter made on July 10, 2000 (Annex "5"), this Court hereby fixes just compensation on the property of defendant Potenciano A. Larrazabal, Sr. at ₱10,000.00 per square meter and the properties of defendants Victoria Larrazabal Locsin and Betty Larrazabal Macatual at ₱4,000.00 per square meter thus approving the value fixed by the Commissioners in their Report dated November 20, 2001.[27]

The dispositive portion of the RTC Decision states:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered directing plaintiff to pay the amount of just compensation for defendant Potenciano A. Larrazabal, Sr. for Lot No. 844 covered by TCT No. 288 with an expropriated area of 1,262 square meters at ₱10,000.00 per square meter, or an aggregate amount of ₱12,620,000.00 plus 1 Million pesos for the improvements, for defendant Victoria Larrazabal Locsin for Lot No. 1 covered by TCT No. 16337 with an expropriated area of 575 square meters at ₱4,000.00 per square meter, or an aggregate amount of ₱2,300,000.00; for defendant Betty Larrazabal Macatual for Lot No. 2 covered by TCT No. 16518 with an expropriated area of 4,638 square meters at ₱4,000.00 per square meter, or an aggregate amount of ₱18,552,000.00 plus twelve percent (12%) interest thereof per annum computed from

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[26] *Id.*, citing *Republic v. Lichauco*, 122 Phil. 33 (1965).

[27] *Id.* at 99.

the date of the filing of the present complaint on September 23, 1999 until fully paid. No pronouncement as to costs.

SO ORDERED.[28]

Ruling of the Court of Appeals

The CA in its Decision and Resolution affirmed the RTC Decision. The CA made an extensive discussion on why the RTC correctly disregarded Republic Act (RA) No. 8974, entitled *An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes* and its Implementing Rules in determining the just compensation to be paid to respondents for their properties.[29]

The CA ruled that RA No. 8974 was not applicable since it only applies prospectively. Since the Complaint was filed as early as September 15, 1999, RA No. 8974 was not applicable because it was signed into law on November 7, 2000 and became effective only on November 26, 2000.[30]

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the assailed December 5, 2003 Decision of RTC, Branch 12, Ormoc City, in Civil Case No. 3734-0, is hereby **AFFIRMED**. No costs.

SO ORDERED.[31]

Petitioner moved for reconsideration,[32] but the CA denied it in its Resolution.

Hence, this petition.

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[28] *Id*.

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

[30] *Id*. at 66.

[31] *Id*. at 69.

[32] *Id*. at 122-135.

Issues

The issues in this petition have focused on whether RA No. 8974 is applicable to the determination of the just compensation to be paid to respondents for their properties, and whether the CA acted correctly in affirming the RTC Decision on the just compensation for the properties.

Ruling of the Court

The petition is **GRANTED** in part.

Petitioner, through the Office of the Solicitor General (OSG), posits that it was error for the CA, the RTC, and the Commissioners to disregard the standards set in RA 8974 on the argument that RA 8974 can and should be made to apply.[33] Petitioner is mistaken.

The Court had already squarely ruled in *Spouses Arrastia v. National Power Corporation*[34] that RA No. 8974 applies only prospectively. In *Spouses Arrastia,* the complaint for eminent domain was filed on December 4, 1996. After the approval of RA No. 8974 on November 7, 2000, the petitioners therein moved for the RTC to require respondent National Power Corporation (NPC) to comply with the provisions of RA No. 8974 on payment of the amount equivalent to 100% of the current zonal value of the property upon filing of the complaint. The RTC granted the motion and ruled that RA No. 8974 was procedural in nature and could therefore be given retroactive effect.[35]

This was set aside by the CA which ruled that RA No. 8974 cannot be applied retroactively because to do so would inflict substantial injury to a substantive right of the State. The CA further ruled that a retroactive application of RA No. 8974 would impose a greater burden on the State where none had existed before.[36]

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[33] See Petition, p. 30, *id*. at 53.

[34] 555 Phil. 263 (2007).

[35] *Id*. at 266 and 268.

[36] *Id*. at 269.

In the appeal before this Court, the OSG, representing respondent NPC, argued against the retroactive application of RA No. 8974[37] — a position that it is completely opposite to the position it now takes in this petition.

In affirming the CA, the Court ruled that RA No. 8974 cannot be made to apply retroactively since it is a substantive law; there is nothing in RA No. 8974 which expressly provides for retroactive application; and retroactivity could not necessarily be implied from RA No. 8974 or in any of its provisions.[38] Thus, the Court ruled:

> It is a well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward).
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> In the application of RA No. 8974, the Court finds no justification to depart from this rule. *First*, RA No. 8974 is a substantive law. *Second,* there is nothing in RA No. 8974 which expressly provides that it should have retroactive effect. *Third,* neither is retroactivity necessarily implied from RA No. 8974 or in any of its provisions. Unfortunately for the petitioners, the silence of RA No. 8974 and its Implementing Rules on the matter cannot give rise to the inference that it can be applied retroactively. In the two (2) cases wherein this Court applied the provisions of RA No. 8974, the complaints were filed at the time the law was already in full force and effect. Thus, these cases cannot serve as binding precedent to the case at bench.[39] (Citations omitted)

The Court follows the foregoing ruling, and reiterates here that RA No. 8974 can only be applied prospectively.

Here, since the complaint for eminent domain was filed on September 15, 1999, or prior to the effectivity of RA No. 8974

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[37] *Id*. at 270.

[38] *Id*. at 272.

[39] *Id*.

on November 26, 2000, then RA No. 8974 and the standards indicated therein are not applicable in determining the just compensation in the present case.

That said, as to the issue of whether the CA acted correctly in affirming the RTC Decision on the just compensation for the properties, the Court, for reasons given below, is constrained to reverse the CA and the RTC, and to order the remand of this case to the RTC for the proper determination of just compensation.

The RTC Decision — which was affirmed by the CA — had relied on the Commissioners' Report that, in turn, considered only the sale of the property of William Gothong and Aboitiz located at Bonifacio corner Burgos Streets, Ormoc City, sold at ₱30,000.00 per square meter on November 14, 1997[40] as the transaction that "x x x nearly reflects the average [fair market value] of commercial lots in Ormoc City."[41] The RTC also mentioned the sale of the property of Mariano Tan located at Real Street, Ormoc City, which sold at ₱6,726.00 per square meter made on July 10, 2000.[42] Although the sale of the property of Mariano Tan was attached to the Commissioners' Report, the Commissioners did not mention the sale of the property in arriving at the fair market value of the properties of Potenciano, Betty, and Victoria. Also attached to the Commissioners' Report was the sale of a property on December 28, 1995 between Spouses Emmanuel and Evelyn Antig and Marie Paz Kathryn Porciuncula of a 138-square meter property for ₱450,000.00.[43]

The RTC's reliance on the sale of the properties of William Gothong and Mariano Tan deviated from the settled rule that just compensation should be determined as of the time of the taking. Thus, as ruled in *National Power Corporation v. Diato-*

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[40] *Rollo*, p. 99.

[41] Records, p. 143.

[42] *Rollo*, p. 99.

[43] See Deed of Absolute Sale, records, pp. 152-153.

Bernal,[44] "[i]t is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint."[45]

Since the Complaint in this case was filed on September 15, 1999, with petitioner being allowed entry to the property thereafter, the just compensation should therefore be reckoned as of the time of the filing of the Complaint. The two sales relied upon by the RTC were made on November 14, 1997 and July 10, 2000. These sales — the first being almost 2 years prior to, and the second, being 10 months after, the filing of the Complaint on September 15, 1999 — were not and could not have been proper bases for determining the just compensation for the properties. The same is true for the sale between Emmanuel Antig and Marie Paz Kathryn Porciuncula as the sale was made on December 28, 1995, or almost four years before the filing of the Complaint. Sales around the time of September 15, 1999, or the year 1999, are the proper bases for determining the just compensation for the properties, especially considering that no reasons can be found in the records as to why no such sales during this period were considered by the Commissioners or the RTC.

More than this, however, the error of the RTC was exacerbated by its reliance solely on comparative sales of other properties. As ruled in *National Power Corporation v. YCLA Sugar Development Corporation*,[46] factors such as acquisition cost, current market value of like properties, tax value of the properties of respondents, and the sizes, shapes, and locations of the properties, should have been considered,[47] thus:

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[44] 653 Phil. 345 (2010).

[45] *Id.* at 354, citing *B.H. Berkenkotter & Co. v. Court of Appeals,* 290-A Phil. 371, 375 (1992).

[46] 723 Phil. 616 (2013).

[47] *Id*. at 624.

> [J]ust compensation cannot be arrived at arbitrarily; several factors must be considered such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location. But before these factors can be considered and given weight, the same must be supported by documentary evidence. The amount of just compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property. A commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.[48] (Citations omitted)

Here, the records reveal that the RTC's determination of just compensation did not consider any of the foregoing factors. The RTC Decision miserably failed to even explain how the amounts of ₱10,000.00 per square meter for respondent Potenciano's property, and ₱4,000.00 per square meter for respondents Victoria's and Betty's properties were arrived at. There was no consideration made of the acquisition cost, current market value of like properties, the tax value of the properties of respondents, and the size, shape and location of the properties. Clearly, in the absence of any actual and reliable data — and the abject failure to explain this absence — there can be no other conclusion that can be drawn except that the RTC's determination of just compensation was arbitrary.

In view of the foregoing, the Court is left with no option except to reverse and set aside the CA Decision and Resolution that affirmed the RTC Decision.

The Court, however, is not in a position to fix the amount of just compensation for indeed, a review of the records shows that there is no sufficient evidence to allow any determination of the proper just compensation. In this regard, the Court cannot also rely only on Resolution No. 8-98 as this cannot substitute for the judicial determination of just compensation, based on all the factors mentioned above as jurisprudentially mandated.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **PARTIALLY GRANTED**.

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[48] *Id.* at 624-625

The Decision dated October 19, 2011 of the Court of Appeals in CA-G.R. CEB-CV No. 00810 and the Decision dated December 5, 2003 of the Regional Trial Court of Ormoc City, Branch 12, in Civil Case No. 3734-0 are hereby **SET ASIDE**. This case is **REMANDED** to the trial court which is ordered to make, with utmost dispatch, the proper determination of just compensation, in conformity with this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205614. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAIME SEGUNDO *y* IGLESIAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; PROOF BEYOND REASONABLE DOUBT IS REQUIRED IN ESTABLISHING THE *CORPUS DELICTI* WHOSE CORE IS THE CONFISCATED ILLICIT DRUG.— In sustaining a conviction for illegal sale of prohibited drugs, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Accordingly, these entail proof "that the ***sale transaction transpired,*** coupled with the ***presentation in court of the corpus delicti."*** Proof beyond reasonable doubt requires "that unwavering exactitude be observed in establishing

the *corpus delicti*—the body of the crime whose core is the confiscated illicit drug." Moreover, "every fact necessary to constitute the crime must be established." The rule on chain of custody plays this role in buy-bust operations, warranting that there are no doubts on the identity of evidence."Proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court." This is a pre-condition "for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."

2. ID.; ID.; ID.; CHAIN OF CUSTODY, EXPLAINED; COMPLIANCE WITH THE CHAIN OF CUSTODY IS NECESSARY DUE TO THE UNIQUE NATURE OF NARCOTICS.— Chain of custody is composed of testimonies on each link of the sequence. The account starts from the time the item was taken until it was presented as evidence such that each person who had contact with "the exhibit would describe how and from whom it was received, where it was and what happened to it while in [his or her] possession, the condition in which it was received and . . . in which it was delivered to the next." Every person in the chain must attest to the precautions observed while in his or her possession to guarantee that the item's condition has not been altered and that there is no opportunity for anyone not in the chain to take hold of it. Compliance with the chain of custody is necessary due to the unique nature of narcotics.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE CHAIN OF CUSTODY RULE MAY BE DISPENSED ONLY WHEN THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED AND THAT THE PROSECUTION PROVED JUSTIFIABLE REASONS FOR NON-COMPLIANCE.— Failure to comply with Section 21 "is not fatal to the prosecution's case provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers." This exception, however, "will only be triggered by the existence of a ground that justifies departure from the general rule." In this case, the prosecution offered no justifiable reason why they failed to comply with the conditions provided for under the law. To

underscore, "for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved." Simply put, "the justifiable ground for noncompliance must be proven as a fact." Hence, courts cannot assume what these reasons are, if they even exist at all.

4. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES CANNOT DEFEAT THE CONSTITUTIONALLY ENSHRINED RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT.— [T]he presumption of regularity in the performance of their duties cannot work in favor of the law enforcers since the records revealed severe lapses in complying with the requirements provided for under the law. "The presumption stands when no reason exists in the records by which to doubt the regularity of the performance of official duty." Thus, this presumption "will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused to be presumed innocent."

5. ID.; ID.; ID.; IN VIEW OF THE SIGNIFICANT LAPSES IN THE MARKING, INVENTORY, AND PHOTOGRAPHING OF THE ALLEGED SEIZED ITEMS WHICH CAST DOUBT ON THE INTEGRITY OF THE *CORPUS DELICTI*, THE COURT ACQUITS THE ACCUSED AS HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.— Although the miniscule quantity of confiscated illicit drugs is solely by itself not a reason for acquittal, this instance accentuates the importance of conformity to Section 21 that the law enforcers in this case miserably failed to do so. If initially there were already significant lapses on the marking, inventory, and photographing of the alleged seized items, a doubt on the integrity of the *corpus delicti* concomitantly exists. For this reason, this Court acquits Segundo as his guilt was not proven beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

Although the miniscule quantity of confiscated illicit drugs is by itself not a reason for acquittal, this instance accentuates the importance of conformity to Section 21[1] of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

This is an appeal[2] filed by Jaime Segundo y Iglesias (Segundo) from the June 26, 2012 Decision[3] of the Court of Appeals in CA-G.R. CR–HC No. 04377.

The Court of Appeals affirmed the Regional Trial Court's ruling[4] that Segundo was guilty beyond reasonable doubt of sale of dangerous drugs or of violation of Section 5 of Republic Act No. 9165.[5]

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[1] *People v. Holgado*, 741 Phil. 78, 93(2014) [Per *J.* Leonen, Third Division].

[2] CA *rollo,* pp. 150-151.

[3] *Rollo,* pp. 2-14. The Decision was penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela of the Fifteenth Division of the Court of Appeals, Manila.

[4] CA *rollo,* pp. 13-35. The Decision, promulgated on February 25, 2010, was penned by Judge Carlos A. Valenzuela of Branch 213, Regional Trial Court, Mandaluyong City.

[5] Rep. Act No. 9165, Sec. 5, Par. 1 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 of such transactions.

On July 8, 2001, an Information[6] for violation of Section 5 of Republic Act No. 9165, docketed as Criminal Case No. MC-03-7134-D,[7] was filed before Branch 213, Regional Trial Court, Mandaluyong City against Segundo.[8]

> The undersigned Associate Prosecution Atty. II accuses JAIME SEGUNDO of the crime of VIOLATION OF SECTION 5, ARTICLE II OF THE REPUBLIC ACT 9165, committed in the manner herein narrated, as follows:
>
> > That on or about the 6th day of July 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously sell to a poseur-buyer, PO1 Cesar Claveron, (1) heat-sealed transparent plastic sachet with markings "JSI-1" containing 0.03 gram of white crystalline substance, which was found positive to the test for Methyamphetamine [sic] Hydrochloride, commonly known as "shabu", a [prohibited] drug for the amount of two (2) pieces of One Hundred Pesos with serial no. SN HZ558445 and BT254391, without the corresponding license and prescription in violation of the above[-]cited law.
>
> CONTRARY TO LAW.[9]

On the same date, two (2) separate Informations for violation of Sections 11[10] and 12[11] in relation to Section 14[12] of Republic

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[6] CA *rollo*, pp. 11-12. The Information was filed by Associate Prosecution Atty. II Regina T. Figura-Tronco.

[7] *Id*. at 13.

[8] *Id*. at 11.

[9] *Id*.

[10] 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:

. . . . . .

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

Act No. 9165 were also filed against Dominador Gubato y Ibuho (Gubato).[13]

. . . . . .

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), ***if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs*** such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis supplied)

[11] Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*. — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

[12] Section 14. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings*. — The maximum penalty provided for in Section 12 of this Act shall be imposed upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons.

[13] *Rollo,* pp. 4-5, CA Decision.

Criminal Case No. MC-03-7135-D

The undersigned Associate Prosecution Atty. II accuses **DOMINADOR GUBATO y IBUHO** of the crime of **VIOLATION OF SECTION 11, ARTICLE II OF THE REPUBLIC ACT 9165**, committed in the manner herein narrated, as follows:

> That on or about the 6th day of July 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug, did, then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control two (2) heat-sealed transparent plastic sachet with markings "JSI-1" containing 0.03 grams and 0.30 grams or a total of 0.33 grams of white crystalline substance, which was found positive to the test for Methylamphetamine [sic] Hydrochloride, commonly known as "shabu", and one (1) heat-sealed transparent plastic sachet with markings "JSI-3" containing 2.27 grams of dried suspected Marijuana fruiting tops, without the corresponding license and prescription.
>
> CONTRARY TO LAW. [14]

Criminal Case No. MC-03-7136-D

The undersigned Associate Prosecution Atty. II accuses **DOMINADOR GUBATO y IBUHO** of the crime of **VIOLATION OF SECTION 12 IN RELATION TO SECTION 14, ARTICLE II OF THE REPUBLIC ACT 9165**, committed in the manner herein narrated, as follows:

> That on or about the 6th day of July 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously and knowingly possess and have in his control one (1) strip aluminium foil with markings "JSI-7" containing traces of white crystalline substance and one (1) improvised glass tooter with markings "JSI-4" containing traces of white crystalline substance, all equipments and other paraphernalia, which are fit or intended for smoking, consuming,

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[14] *Id.*

administering or inducing a dangerous drug into the body, a violation of the above-cited law.

CONTRARY TO LAW.[15] (Emphasis in the original)

Upon arraignment, both accused pleaded not guilty to the charges.[16]

On August 27, 2003, Gubato posted bail for his provisional liberty,[17] however, he later jumped bail.[18]

Joint trial on the merits commenced.[19]

The testimonies of the prosecution's witnesses corroborated the following account of events:

At around 3:00 p.m.[20] of July 6, 2003,[21] a tip was received by the Mandaluyong Police Station from a "confidential informant" about Segundo's sale of illegal drugs in Talumpong Street, Barangay Malamig, Mandaluyong City.[22]

A buy-bust team was created upon the order of Officer in Charge PO3 Victor Santos (PO3 Santos)[23] to PO2 Oliver Yumul (PO2 Yumul), who was stationed as team leader of the operatives at the Drug Enforcement Unit.[24] PO1 Cesar Claveron (PO1

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[15] *Id*. at 5.

[16] *Id*.

[17] CA *rollo*, p. 16.

[18] *Rollo,* p. 5.

[19] *Id*.

[20] *Id*. at 6. Claveron stated 1:00 p.m. while Occeña claimed it was at 12:30 p.m. *See* CA *rollo,* pp. 19 and 25, respectively.

[21] The date appearing on p. 22 of the RTC Decision was June 6, 2003 however it should be July 6, 2003 pursuant to the Information attached.

[22] *Rollo,* p. 6. Claveron testified that it was Occeña who received the tip while Occeña stated that it was Yumul. *See* CA *rollo,* pp. 19 and 25, respectively.

[23] CA *rollo*, p. 19.

[24] *Id*. at 22.

Claveron) was assigned as the poseur-buyer while PO2 Yumul, PO1 Angel Von Occeña (PO1 Occeña), PO2 Pascual, PO1 Garro, PO1 Buted, PO1 Boyles, PO2 Pucan, and POS Bernardino Adriano (POS Adriano) operated as backups.[25]

Two (2) ₱100.00 bills served as marked buy-bust money.[26] PO1 Occeña prepared a pre-coordination form, which was faxed to the Philippine Drug Enforcement Agency before the operation.[27]

When the police officers reached their destination, PO1 Claveron and the confidential informant came near Segundo, who was then positioned along an alley.[28] Meanwhile, PO2 Yumul was about 10 to 15 meters away where he could supervise the operation without being easily noticed.[29] PO1 Claveron was introduced as a buyer of shabu.[30] Segundo was initially hesitant but the confidential informant persuaded him to finally sell illegal drugs.[31]

PO1 Claveron gave the buy-bust money to Segundo.[32] In return, Segundo handed him "one heat-sealed transparent plastic sachet" with *shabu*.[33] PO2 Yumul allegedly saw this exchange although he could not tell what Segundo gave PO1 Claveron, considering his distance.[34]

PO1 Claveron made the pre-arranged signal, which prompted the other members of the team to make the arrest.[35] Segundo

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[25] *Rollo,* p. 6. The complete names of the other police officers are not mentioned in any of the documents.

[26] *Id.*

[27] CA *rollo*, p. 19.

[28] *Rollo,* p. 6.

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

[30] *Rollo,* p. 6.

[31] *Id.*

[32] *Id.*

[33] *Id.*

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

[35] *Rollo,* p. 6.

ran to his house and was pursued by PO2 Yumul, PO1 Occeña, and POS Adriano.[36]

Inside Segundo's house, the police officers coincidentally saw Gubato "repacking prohibited drugs scattered on the floor."[37] POS Adriano pursued Segundo[38] while PO2 Yumul apprehended Gubato[39] and PO1 Occeña collected the evidence.[40] Later, POS Adriano arrested Segundo.[41]

PO1 Occeña made a body search on Segundo and Gubato.[42] He retrieved "one (1) heat[-]sealed transparent plastic sachet containing three (3) suspected shabu and one (1) heat[-]sealed transparent plastic sachet containing marijuana" from Gubato's right pocket.[43] PO2 Yumul marked these items in the presence of the two (2) accused as "JSI 1" to "JSI 10," where "JSI" stood for "Jaime Segundo y Iglesias."[44]

Segundo and Gubato were subsequently brought to the Mandaluyong Medical Center and to the Criminal Investigation Unit[45] while the drug paraphernalia and shabu were submitted to the investigator.[46]

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[36] *Id*.

[37] *Id*. PO1 Occeña claimed it was *shabu* while PO2 Yumul held that it was marijuana. *See* CA *rollo*, pp. 26 and 23, respectively.

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

[39] *Id*. and 20.

[40] PO1 Occeña stated that the pieces of evidence collected were "on top of the table" while PO2 Yumul attested that they were "scattered on the floor." *See* CA *rollo*, pp. 26 and 23, respectively.

[41] CA *rollo,* p. 20.

[42] *Id*. at 26.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] *Rollo,* p. 6 and CA *rollo,* p. 20.

PO2 Yumul prepared a request for the examination of the seized items,[47] which was submitted to Karen Palacios,[48] and the Spot Report, which PO1 Occeña forwarded to the Philippine Drug Enforcement Agency.[49] The drug paraphernalia and the plastic sachet yielded positive for methamphetamine hydrochloride.[50]

During cross examination, PO1 Claveron testified that he only knew the names of the accused during the investigation. He identified Segundo as the person who gave him the alleged shabu after taking the ₱200.00 buy-bust money. Additionally, he mentioned that he did not state in his affidavit that the confidential informant told Segundo, "[P]are, may kasama ako dito. Iiskor siya. Kung pwede pagbigyan mo."[51]

Further, PO1 Claveron admitted that PO3 Santos did not give him a receipt for the bills used as marked money but he photocopied them in their office. He clarified that he had no personal knowledge on what happened inside Segundo's house when Segundo was pursued by the police officers. He averred that Segundo and Gubato did not have a counsel when they were brought in for investigation.[52]

PO2 Yumul attested that he made the inventory and took the photographs of the pieces of evidence collected. However, he admitted that the photos were lost and could not be submitted to the prosecutor for inquest. He claimed that he did not know the two (2) accused before their arrest on the day of the operation.[53]

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

[48] *Id*. at 24.

[49] *Id*. at 20.

[50] *Id*. The substance was misspelled as "methylamphetamine hydrochloride."

[51] *Id*.

[52] *Id*. at 21.

[53] *Id*. at 25. The RTC Decision reported June 6, 2003. However, it should be July 6, 2003, which was the date appearing on the Information against Segundo.

PO1 Occeña averred that he did not know Segundo prior to their operation and confirmed that "there was no representative of the media and the Barangay when the markings were placed on the recovered evidence."[54]

PO3 Romarico D. Sta. Maria, the police investigator on duty when this case was brought to the Mandaluyong Criminal Investigation Unit for proper action,[55] identified the marked bills as the buy-bust money used in the operation.[56] He verified that the items and the operational coordination form were submitted to him.[57]

SPO1 Ruperto Balsamo (SPO1 Balsamo), the assigned investigator to the case,[58] affirmed that the two (2) accused and the physical evidence were turned over to him.[59] He confirmed that the prohibited drugs retrieved from the accused were recorded in their book at the Drug Enforcement Unit. He admitted that "***no picture [was] taken*** on the alleged recovered object evidence."[60]

On the other hand, the defense presented Segundo, who denied all the accusations against him and accused the police officers of extortion.[61]

Segundo insisted that on the date of the incident, he was in his sari-sari store when he saw several police officers barging in his neighbor's house. Suddenly, two (2) men in civilian clothes stood in front of his store and several others entered his store. They hurriedly handcuffed Segundo and "poked a

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[54] *Id*. at 27.

[55] *Id*. at 21.

[56] *Id*. at 22.

[57] *Id*.

[58] *Id*. at 18.

[59] *Id*. at 19.

[60] *Id*.

[61] *Id*. at 27.

gun at him."[62] Segundo was dragged outside and was boarded into a van.[63]

He was allegedly brought for a medical examination at the Mandaluyong Medical Center. Thereafter, they proceeded to the office of the Drug Enforcement Unit where he was bodily searched in a small room. When they got nothing from him, one (1) of the police officers demanded ₱100,000.00. Since he could not give the demanded amount, he was subsequently detained.[64]

Gubato was reportedly at large since November 15, 2005.[65] For this reason, the defense had no other witness to present.[66] Hence, the case was submitted for decision.[67]

On February 25, 2010, the Regional Trial Court[68] found Segundo guilty of selling dangerous drugs.[69] It ruled that in prosecution of illegal possession or sale of prohibited drugs, great weight is given to prosecution witnesses, particularly when they are police officers.[70] In the absence of any ill-motive on their part, the presumption of regularity in the performance of their duty stands except when there is proof to the contrary.[71] Hence, this presumption prevails over the accused's unsubstantiated defense of denial and claim of frame-up.[72] The dispositive portion of the decision read:

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[62] *Rollo*, p. 7.

[63] *Id*.

[64] *Id*.

[65] CA *Rollo,* p. 27.

[66] *Id*.

[67] *Id*.

[68] *Id*. at 13-35.

[69] *Id*. at 34.

[70] *Id*. at 32.

[71] *Id*.

[72] *Id*.

WHEREFORE, premises considered, judgment is hereby rendered, *viz*:

a) in **Criminal Case No. MC-03-7134-D**, accused **JAIME SEGUNDO y IGLESIAS** is hereby found **GUILTY** beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 or for sale of dangerous drugs. As a consequence thereof, accused **JAIME SEGUNDO y IGLESIAS** is sentenced to suffer the penalty of ***LIFE IMPRISONMENT*** and to pay the fine of FIVE HUNDRED THOUSAND PESOS (**₱500,000.00**);

b) in **Criminal Case No. MC-03-7135-D**, accused **DOMINADOR GUBATO y IBUHO** is hereby found **GUILTY** beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 or for illegal possession [of] dangerous drugs. Accused **DOMINADOR GUBATO y IBUHO** is sentenced to suffer the penalty of imprisonment from **TWELVE (12) YEARS AND ONE (1) DAY**, as minimum, **to FIFTEEN (15) YEARS,** as maximum, and to pay the fine of THREE HUNDRED THOUSAND PESOS (**₱300,000.00**); and

c) in **Criminal Case No. MC-03-7136-D**, accused **DOMINADOR GUBATO y IBUHO** is hereby found **GUILTY** beyond reasonable doubt for violation of Section 12 in relation to Section 14, Article II of Republic Act No. 9165 or for illegal drug paraphernalia. Accused **DOMINADOR GUBATO y IBUHO** is sentenced to suffer the penalty of imprisonment from **SIX (6) MONTHS AND ONE (1) DAY**, as minimum, **to FOUR (4) YEARS,** as maximum, and to pay the fine of TWENTY THOUSAND PESOS (**₱20,000.00**).

All the pieces of evidence confiscated are forfeited in favor of the government to be disposed of in accordance with law.

The period of detention of accused, Jaime Segundo y Iglesias, at the Mandaluyong City Jail is hereby credited in his favor.

Finally, considering that accused **DOMINADOR GUBATO y IBUHO** is at-large, issue an **ALIAS WARRANT** for his immediate arrest to serve the sentence imposed upon him in Criminal Case Nos. MC-03-7135-D and MC-03-7136-D.

SO ORDERED.[73] (Emphasis in the original)

In his appeal, Segundo assailed the broken chain of custody in handling the alleged confiscated shabu.[74]

On June 26, 2012, the Court of Appeals[75] affirmed the trial court's ruling.[76] It held that the prosecution's failure to prove that the police handled the seized items based on the guidelines provided for under Section 21 of Republic Act No. 9165 and its implementing rules did not immediately make Segundo's arrest illegal and the confiscated items inadmissible as evidence.[77]

The Court of Appeals held that non-compliance with the rules was permissible provided that the reasons were justifiable "and as long as the integrity and evidentiary value of the confiscated/seized items, [were] properly preserved by the apprehending officer/team."[78] Nevertheless, records of this case revealed that the confiscated items "were marked at the scene of the incident in the presence of appellant."[79]

Hence, an appeal[80] before this Court has been submitted.

On February 1, 2013[81] the Court of Appeals elevated to this Court the records of this case pursuant to its July 31, 2012 Resolution,[82] which gave due course to the Notice of Appeal[83] filed by Segundo.

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[73] *Id.* at 34-35.

[74] *Rollo*, p. 7.

[75] *Id.* at 2-14.

[76] *Id.* at 14.

[77] *Id.* at 10.

[78] *Id.*

[79] *Id.*

[80] *Id.* at 15-16.

[81] *Id.* at 1.

[82] *Id.* at 18.

[83] CA *Rollo,* pp. 150-151.

In its April 10, 2013 Resolution,[84] this Court noted the records of the case forwarded by the Court of Appeals. The parties were then ordered to file their supplemental briefs, should they desire, within 30 days from notice.

On June 6, 2013, the Office of the Solicitor General filed a Manifestation[85] on behalf of the People of the Philippines stating that it would no longer file a supplemental brief. A similar Manifestation[86] was filed by the Public Attorney's Office on behalf of Segundo.

For resolution is whether Jaime Segundo's guilt was proven beyond reasonable doubt. Subsumed in this issue is whether the police officers complied with the chain of custody provided for under Section 21 of Republic Act No. 9165 and its Implementing Rules in handling the alleged confiscated shabu.

Segundo insists,[87] that in the prosecution for illegal sale of dangerous drugs, it is essential that there is evidence showing that the sale occurred, together with the presentation in court of proof of *corpus delicti*.[88]

In this case, the prosecution failed to establish the elements of the crime.[89] To emphasize, it was only PO1 Claveron and the confidential informant who purportedly met Segundo to purchase the prohibited drugs.[90] The other members of the buy-bust team namely PO2 Yumul, POS Adriano, and PO3 Occeña were positioned as immediate back-ups.[91] PO2 Yumul and PO3 Occeña even stated that they failed to see what Segundo gave PO1 Claveron in exchange for the buy-bust money.[92]

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[84] *Rollo*, p. 31.

[85] *Id.* at 23-24.

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

[87] CA *Rollo*, pp. 49-69, Brief for the Accused-Appellant.

[88] *Id.* at 58.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

Similarly, while PO1 Claveron claims that Segundo handed him "a small plastic sachet containing white crystalline substance," there was still no assurance that what it contained was shabu.[93]

Segundo asserts that PO2 Yumul was incompetent to identify the marked seized items since he was not the one who confiscated them.[94] Worse, he failed to clearly recognize which among those items was the one retrieved from Segundo.[95]

Segundo contends that the testimonies of the police officers were not categorical and reliable.[96] The following inconsistencies on the material circumstances of this case should be underscored:

1. PO2 Claveron testified that PO3 Occeña was the one who faxed the pre-coordination form to the PDEA. PO3 Occeña, however, did not confirm the same, and instead relayed that it was PO3 Victor Santos who faxed the said form.
2. In their joint affidavit, the police officers stated that when they arrived at the target area, the accused-appellant was seen waiting for customers. PO1 Claveron, however, testified that the accused-appellant was just standing along the alley.
3. PO1 Claveron stated that it was PO3 Occeña who received the information from the confidential informant about the selling of prohibited drugs in Talumpong Street, Mandaluyong. PO2 Yumul, however, relayed that it was POS Adriano who received the said information.
4. PO1 Claveron narrated that after Jaime [Segundo] and Dominador [Gubato] were arrested, they were brought to the Mandaluyong Medical Center for medical examination. PO2 Yumul, however, declared that the duo was brought to their office to file the necessary charges.
5. PO1 Claveron admitted that the recovered items were not inventoried so as to avoid trouble in the area. PO2 Yumul,

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[93] *Id*.

[94] *Id*.

[95] *Id*. at 59.

[96] *Id*. at 63.

however, testified that he was the one who inventoried the said items.

6. PO3 Occeña declared that PO2 Yumul placed the markings on the seized items. PO2 Yumul, however, did not categorically state he was the one who placed the markings.

7. SPO1 Ruperto Balzamo[97] admitted that no photographs were taken on the confiscated items. PO2 Yumul, however, recalled that pictures were taken, but they could no longer be found.[98] (Citations omitted)

Segundo insists that even assuming that he perpetrated the charge, the trial court still erred in finding him guilty due to the broken chain of custody of the alleged seized prohibited drugs.[99] In this case, no picture was taken.[100] Similarly, PO3 Occeña confessed that "no members of the media and representative from the barangay were present when the said items were allegedly marked.[101]

His claim of extortion should not be immediately disfavored.[102] Hence, there is a need to be "extra vigilant in trying drug cases" because there are circumstances when "law enforcers resort to the practice of planting evidence to extract information or even harass civilians."[103] An assumption on regularity cannot prevail over the accused's constitutional presumption of innocence.[104]

On the other hand, the Office of the Solicitor General[105] contends that the prosecution was able to prove that Segundo

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[97] Balzamo also spelled as **Balsamo**. *See* CA *rollo,* p. 18, RTC Decision.

[98] CA *rollo,* pp. 61-63.

[99] *Id*. at 64.

[100] *Id*.

[101] *Id*.

[102] *Id*. at 67.

[103] *Id*.

[104] *Id*.

[105] *Id*. at 109-127, Brief for the Appellee.

illegally sold prohibited drugs. PO1 Claveron's testimony, together with the identification of the *corpus delicti*, has substantiated the claim against Segundo. Apart from PO1 Claveron's narration of how Segundo sold him shabu, this assertion was also corroborated by the other members of the buy-bust team.[106]

The Office of the Solicitor General also insists that the police officers' failure to strictly comply with Section 21 of Republic Act No. 9165 and its implementing rules neither "render[ed] [Segundo's] arrest illegal nor the evidence adduced against him inadmissible."[107]

The Office of the Solicitor General mainly relies on the police officers' presumption of regularity in the performance of their duties. It asserts that in drug cases, the presumption that the police officers have fulfilled their duties in a regular manner absent evidence to the contrary prevails and their testimonies are given weight.[108]

Furthermore, the defense of frame-up is generally disfavored because "it can easily be concocted and is a common and standard defense ploy in most prosecutions for violation of [Republic Act No.] 9165."[109] In this kind of defense, "the evidence must be clear and convincing."[110]

The Office of the Solicitor General then concludes "that the positive identification of the accused—when categorical and consistent and without any ill motive on the part of the prosecution witnesses—prevails over alibi and denial which are negative and self-serving, undeserving of weight in law."[111]

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[106] *Id*. at 120.

[107] *Id*. at 122.

[108] *Id*. at 123.

[109] *Id*. at 124.

[110] *Id*.

[111] *Id*.

Compared with the well-substantiated resolution of the trial court, Segundo's denial is immaterial.[112]

This Court rules in favor of Segundo.

I

Every criminal prosecution begins with the "constitutionally-protected presumption of innocence in favor of the accused that can only be defeated by proof beyond reasonable doubt."[113] "Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment" is crucial in defeating the presumption of innocence.[114]

During proceedings, the prosecution initially presents proof substantiating the elements of the charge.[115] The prosecution must rest "on the strength of its case rather than on the weakness of the case for the defense."[116] After proving the elements, "the burden of evidence shifts to the accused" to negate the prosecution's claim.[117] Thereafter, the courts shall resolve whether the guilt of the accused was proven beyond reasonable doubt.[118]

In sustaining a conviction for illegal sale of prohibited drugs, the prosecution must establish the following elements:

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[112] *Id*.

[113] *People v. Garcia y Ruiz,* 599 Phil. 416, 426 (2009) [Per *J*. Brion, Second Division].

[114] *People v. Sanchez y Espiritu,* 590 Phil. 214, 230 (2008) [Per *J*. Brion, Second Division].

[115] *People v. Garcia y Ruiz,* 599 Phil. 416, 426 (2009) [Per *J*. Brion, Second Division].

[116] *People v. Sanchez y Espiritu,* 590 Phil. 214, 230 (2008) [Per *J*. Brion, Second Division].

[117] *People v. Garcia y Ruiz,* 599 Phil. 416, 426 (2009) [Per *J*. Brion, Second Division].

[118] *Id*.

(1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[119]

Accordingly, these entail proof "that the ***sale transaction transpired***, coupled with the ***presentation in court of the corpus delicti***."[120]

Proof beyond reasonable doubt requires "that unwavering exactitude be observed in establishing the *corpus delicti*—the body of the crime whose core is the confiscated illicit drug."[121] Moreover, "every fact necessary to constitute the crime must be established."[122] The rule on chain of custody plays this role in buy-bust operations, warranting that there are no doubts on the identity of evidence.[123]

"Proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court."[124] This is a pre-condition "for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."[125]

Although the meaning of chain of custody is not explicitly provided for under Republic Act No. 9165, it is defined[126] in

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[119] *People v. Pagaduan y Tamayo*, 641 Phil. 432, 442-443 (2010) [Per *J.* Brion, Third Division].

[120] *Id*.

[121] *Id*. at 447.

[122] *Id*.

[123] *Id*.

[124] *People v. Kamad y Ambing,* 624 Phil. 289, 300 (2010) [Per *J*. Brion, Second Division].

[125] *Id*.

[126] *People v. Dahil,* 750 Phil. 212, 226 (2012) [Per *J*. Mendoza, Second Division].

Section 1(b) of Dangerous Drugs Board Regulation No. 1,[127] Series of 2002:

> b. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

Chain of custody is composed of testimonies on each link of the sequence. The account starts from the time the item was taken until it was presented as evidence such that each person who had contact with "the exhibit would describe how and from whom it was received, where it was and what happened to it while in [his or her] possession, the condition in which it was received and . . . in which it was delivered to the next."[128] Every person in the chain must attest to the precautions observed while in his or her possession to guarantee that the item's condition has not been altered and that there is no opportunity for anyone not in the chain to take hold of it.[129]

Compliance with the chain of custody is necessary due to the unique nature of narcotics. In *Mallillin v. People,*[130]

> *A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.* The Court cannot

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[127] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment (2002).

[128] *Lopez v. People,* 725 Phil. 499, 507 (2014) [Per *J.* Perez, Second Division].

[129] *Id.*

[130] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. *Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.*[131] (Emphasis provided)

The prosecution offered testimonies to establish the identity of the buyer and seller, as well as the consideration that sustained the alleged deal and how the sale had transpired.[132] It failed, however, to comply with the chain of custody that would supposedly ensure that the miniscule amount of 0.03 grams of *shabu* offered as evidence in court was the one retrieved from Segundo at the time of the operation.

II

To confirm the tip that Segundo was selling prohibited drugs, a buy-bust operation was conducted.[133] This manner of action has been attested to be useful in "flush[ing] out illegal transactions that are otherwise conducted covertly and in secrecy."[134]

A buy-bust operation, however, poses a danger "that has not escaped the attention of the framers of the law."[135] Thus, it is prone to abuse, "the most notorious of which is its use as a tool for extortion."[136] As explained in *People v. Tan,*[137]

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[131] *Id.* at 588-589.

[132] *People v. Garcia y Ruiz,* 599 Phil. 416, 426 (2009) [Per *J.* Brion, Second Division].

[133] *Rollo,* p. 6.

[134] *People v. Garcia y Ruiz,* 599 Phil. 416, 426-427 (2009) [Per *J.* Brion, Second Division].

[135] *Id.*

[136] *Id.*

[137] 401 Phil. 259 (2000) [Per *J.* Melo, Third Division].

[B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals***, the possibility of abuse is great.***[138] (Emphasis provided)

For this reason, Republic Act No. 9165 provides for a definite procedure relevant to the confiscation and handling of prohibited drugs.[139] Accordingly, the prosecution is mandated to prove that this procedure has been complied with to establish the elements of the charge.[140]

The initial procedural safeguard[141] provided for under Section 21, paragraph 1 of Republic Act No. 9165,[142] the then prevailing law,[143] states:

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[138] *Id*. at 273.

[139] *People v. Garcia y Ruiz,* 599 Phil. 416, 427 (2009) [Per *J*. Brion, Second Division].

[140] *Id*.

[141] *Id*.

[142] Comprehensive Dangerous Drugs Act (2002).

[143] This was ***amended by Republic Act No. 10640 (2013)*** which provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs **shall**, *immediately after seizure and confiscation, physically inventory and photograph the same* in *the* ***presence of the accused or*** *the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel*, *a representative from the* ***media*** **and** the ***Department of Justice*** (DOJ), **and** any ***elected public official*** who shall be required to *sign the copies of the inventory and be given a copy* thereof [.] (Emphasis supplied)

In this case, a perusal of the testimonies of the prosecution witnesses reveals that the procedure provided for under Republic Act No. 9165 was not complied with "despite [its] mandatory nature as indicated by the use of ***'shall'*** in the directives of the law."[144]

PO2 Occeña testified that PO2 Yumul marked the seized items with "JSI 1" to "JSI 10" inside Segundo's house and in

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of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

The ***Implementing Rules and Regulations*** of Republic Act No. 10640 was issued on May 28, 2015 and was further amended on August 3, 2016.

[144] *People v. Morales y Midarasa*, 630 Phil. 215, 230 (2010) [Per *J.* Del Castillo, Second Division].

front of the two (2) accused.[145] PO2 Yumul's testimony, however, did not reveal much about the marking he allegedly made. He merely stated that he was the one who "inventoried and took photographs of the pieces of evidence recovered."[146] PO3 Occeña added that when the items were marked, "no representative of the media and the [b]arangay" were present.[147]

Furthermore, the prosecution's initial witness, SPO1 Balsamo, admitted that no pictures of the alleged confiscated items were taken.[148] Contrary to this assertion, PO2 Yumul testified differently. While he insisted that that he took photographs of the seized items, which he also inventoried, the photos purportedly got lost.[149]

Apparently, these were the only testimonies that comprise the entirety of the prosecution's evidence on the inventory and photographs of the confiscated items. To underscore, the step-by-step process under Republic Act No. 9165 is "a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality."[150] The law has been "crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[151]

The ***concern with narrowing the window of opportunity for tampering with evidence*** found legislative expression in Section 21 (1) of RA 9165 *on the inventory of seized dangerous drugs and paraphernalia by putting in place a three-tiered requirement on the time, witnesses, and proof of inventory by imposing on the apprehending team having initial custody and control of the drugs*

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[145] CA *rollo*, p. 26.

[146] *Id*. at 25.

[147] *Id*. at 27.

[148] *Id*. at 19.

[149] *Id*. at 25.

[150] *People v. Umipang y Abdul,* 686 Phil. 1024, 1038 (2012) [Per *C.J.* Sereno, Second Division].

[151] *Id*.

the duty to "immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the ***accused*** *or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a* ***representative from the media*** *and the* ***Department of Justice*** *(DOJ), and any* ***elected public official*** *who shall be required to sign the copies of the inventory and be given a copy thereof."*[152] (Emphasis provided)

The varying testimonies on the photographing of the articles direct this Court to a logical conclusion that there were really no photos taken during the seizure of the items. Apart from this, nothing in the records shows that there was "genuine and sufficient effort to seek the third-party representatives" specified under the law.[153] Despite having enough time to contact the needed parties after the tip was received, the police officers merely dispensed with this requirement. To note, it is the prosecution who had the concomitant part to "establish that earnest efforts were employed in contacting the representatives enumerated" under the law.[154]

Section 21 sets out "matters that are imperative."[155] Accomplishing acts which seemingly exact compliance but do not really conform with the pre-conditions provided for under Section 21 are not enough.[156] "This is especially so when the prosecution claims that the seizure of drugs and drug paraphernalia is the result of carefully planned operations, as is the case here."[157]

Moreover, a perusal of the Informations against Segundo and Gubato creates doubt whether the seized items were properly

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[152] *Id*. at 1039.

[153] *Id*. at 1050.

[154] *Id*. at 1053.

[155] *Lescano y Carreon v. People,* G.R. No. 214490, January 13, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf> 12 [Per *J*. Leonen, Second Division].

[156] *Id*. at 14.

[157] *Id*. at 12.

marked. As pointed out by Segundo, both Informations explicitly contained the markings "JSI-1".[158]

In Criminal Case No. MC-03-7134-D Segundo was charged with selling prohibited drugs.

> [T]the above-named accused, did, then and there willfully, unlawfully and feloniously sell to a poseur-buyer, PO1 Cesar Claveron, ***one (1) heat-sealed transparent plastic sachet with markings "JS1-1"*** containing 0.03 gram of white crystalline substance, which was found positive to the test for Methylamphetamine [sic] Hydrochloride, commonly known as "shabu[.]"[159] (Emphasis provided)

On the other hand, the other Information in Criminal Case No. MC-03-7135-D charged Gubato with possession of dangerous drugs.

> [T]he above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug, did, then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control ***two (2) heat-sealed transparent plastic sachet with markings "JSI-1" containing 0.03 grams and 0.30 grams or a total of 0.33 grams of white crystalline substance***, which was found positive to the test for Methylamphetamine [sic] Hydrochloride, commonly known as "shabu[.]"[160] (Emphasis provided)

Based on the prosecution's narration of the story, the articles allegedly retrieved from Segundo were different from the ones seized from Gubato. Supposedly, these separate items should be marked differently to identify which among the articles were seized from Segundo and which ones were from Gubato.

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. ***Marking after seizure is the starting point in the custodial link,*** thus it is vital that the seized contraband[s] are immediately marked because succeeding handlers of the specimens will use the

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[158] CA *rollo*, p. 59.

[159] *Rollo,* p. 4.

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

markings as reference. The ***marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting", or contamination of evidence.***[161] (Emphasis provided)

However, the two (2) Informations both involve an article similarly marked as "JSI 1" that creates confusion. Hence, it casts doubt on whether the prosecution was able to establish the identity of the alleged seized shabu.[162]

Negligible departures from the procedures under Republic Act No. 9165 would not certainly absolve the accused from his or her charges. Nonetheless, "when there is gross disregard of the procedural safeguards prescribed in the substantive law . . . serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence."[163]

This Court also emphasizes that there were apparent inconsistencies in the testimonies of the police officers who were part of the buy-bust team.

First, according to PO1 Claveron, who was allegedly at their office that time, it was PO1 Occeña who received the tip from the informant.[164] However, PO3 Occeña who was supposedly "on duty,"[165] testified differently, and said that it was PO2 Yumul who received the information.[166]

Further, according to PO1 Claveron, it was PO1 Occeña who prepared the request for Segundo's drug test, as well as the

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[161] *People v. Umipang y Abdul,* 686 Phil. 1024, 1049 (2012) [Per *C.J.* Sereno, Second Division].

[162] CA *rollo*, p. 59.

[163] *People v. Umipang y Abdul,* 686 Phil. 1024, 1054 (2012) [Per *C.J.* Sereno, Second Division].

[164] CA *rollo*, p. 19.

[165] *Id.* at 25.

[166] *Id.*

drug examination of the seized articles.[167] On the contrary, PO2 Yumul testified that he "prepared a request addressed to the . . . Crime Laboratory for the examination of the evidence confiscated."[168]

According to PO2 Yumul, when he apprehended Gubato, he directed "PO1 Occeña to gather all evidence scattered on the floor."[169] But according to PO1 Occeña, he confiscated the articles "on top of the table."[170]

As the law enforcers who planned and conducted the operation, they should know the details of the incident. In this case, however, the police officers posited contradictory statements, casting uncertainty on the veracity of their narrative.

III

This Court acknowledges that strict conformity with the conditions provided for under Section 21 of Republic Act No. 9165 might not be probable under field situations. "[T]he police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence."[171] With this, Section 21, paragraph 1 of the Implementing Rules and Regulations of Republic Act No. 9165 reads:

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment —*

. . . . . .

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[167] *Id*. at 20.

[168] *Id*. at 23.

[169] *Id*. at 23.

[170] *Id*. at 26.

[171] *People v. Pagaduan y Tamayo*, 641 Phil. 432, 446 (2010) [Per *J*. Brion, Third Division].

(a) *The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy* thereof: ***Provided***, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further***, ***that non-compliance with these requirements*** *under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*[.] (Emphasis provided)

Failure to comply with Section 21 "is not fatal to the prosecution's case provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers."[172] This exception, however, "will only be triggered by the existence of a ground that justifies departure from the general rule."[173]

In this case, the prosecution offered no justifiable reason why they failed to comply with the conditions provided for under the law. To underscore, "for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved."[174] Simply put, "the

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[172] *People v. Jaafar y Tambuyong,* G.R. No. 219829, January 18, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/219829.pdf>8 [Per *J.* Leonen, Second Division].

[173] *Id*.

[174] *People v. Pagaduan y Tamayo,* 641 Phil. 432, 447 (2010) [Per *J.* Brion, Third Division].

justifiable ground for noncompliance must be proven as a fact."[175] Hence, courts cannot assume what these reasons are, if they even exist at all.[176]

Moreover, the presumption of regularity in the performance of their duties cannot work in favor of the law enforcers since the records revealed severe lapses in complying with the requirements provided for under the law.[177] "The presumption stands when no reason exists in the records by which to doubt the regularity of the performance of official duty."[178] Thus, this presumption "will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused to be presumed innocent."[179]

To emphasize, this case merely involves 0.03 grams of shabu. Thus, "the miniscule amount of narcotics supposedly seized . . . amplifies the doubts on their integrity."[180]

To sum, "[l]aw enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia."[181] Thus, "[t]his is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."[182]

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[175] *Id*.

[176] *Id*.

[177] *People v. Dahil,* 750 Phil. 212, 238 (2015) [Per *J*. Mendoza, Second Division].

[178] *Id*.

[179] *Id*.

[180] *Lescano y Carreon v. People,* G.R. No. 214490, January 13, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf> 14 [Per *J*. Leonen, Second Division].

[181] *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per *J*. Leonen, Third Division].

[182] *Id*.

Although the miniscule quantity of confiscated illicit drugs is solely by itself not a reason for acquittal, this instance accentuates the importance of conformity to Section 21[183] that the law enforcers in this case miserably failed to do so. If initially there were already significant lapses on the marking, inventory, and photographing of the alleged seized items, a doubt on the integrity of the *corpus delicti* concomitantly exists. For this reason, this Court acquits Segundo as his guilt was not proven beyond reasonable doubt.

This Court ends with the words in *People v Holgado:*[184]

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[185]

WHEREFORE, the June 26, 2012 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04377 is **REVERSED and SET-ASIDE.** Accused-appellant JAIME SEGUNDO y IGLESIAS is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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[183] *Id.* at 93.

[184] *Id.* at 100.

[185] *Id.*

Let a copy of this decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this decision. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

Let entry of judgment be issued immediately.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207765. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULITO DIVINAGRACIA, SR.,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES ARE IMMATERIAL AND DO NOT DIMINISH THEIR CREDIBILITY.— The alleged inconsistencies in the testimonies of AAA, BBB, and Sister Mary Ann are immaterial as these are not elements of the crime and do not detract from the credibility of the witnesses. In fact, minor inconsistencies may even be expected from AAA and BBB who are not accustomed to public trial and were only eight (8) and nine (9) years old, respectively, at the time of their father's

sexual abuse. The rule cited in *People v. Pacala* that inconsistencies on minor details and collateral matters do not affect the veracity, substance, or weight of the witness' testimony finds application in the case at bar. x x x These supposed discrepancies, not being elements of the crime, do not diminish the credibility of AAA's declarations. Jurisprudence has held "youth and immaturity [to be] badges of truth and sincerity" and has generally given leeway to minor witnesses when relating traumatic incidents of the past.

2. CRIMINAL LAW; RAPE; BECOMES QUALIFIED WHEN COMMITTED BY A PARENT AGAINST HIS CHILD LESS THAN 18 YEARS OF AGE; ELEMENTS OF QUALIFIED RAPE; PROVEN IN CASE AT BAR.— Rape becomes qualified when committed by a parent against his child less than 18 years of age. x x x The elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) [done] by force and without consent; . . . (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim." It was not disputed that AAA was eight (8) years old in November 1996. The medical findings of Dr. Biag, as interpreted and testified to by Dr. Poca, also corroborate AAA's allegations of her father's abuse. Dr. Poca testified that x x x the lacerations at 8:00 and 5:00 positions could have only been caused by the insertion of a penis, object, or finger into the vagina x x x Dr. Poca likewise testified that given AAA's revelation of her ordeal caused by her father, "the complete healed laceration at 8:00 o'clock," is indicative of sexual abuse. x x x It is well-established that "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses." The physical evidence of the healed lacerations in AAA's vagina strongly corroborates AAA and BBB's testimonies that AAA was raped by their father.

3. ID.; ID.; PENALTY FOR RAPE IS *RECLUSION PERPETUA*; CIVIL LIABILITY.— The Regional Trial Court correctly set the penalty of *reclusion perpetua* for rape. x x x Divinagracia is directed to Pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages , and ₱100,000.00 as exemplary damages.

4. ID.; CIVIL INDEMNITY AND OTHER DAMAGES IN CRIMINAL CASES, CONCEPT OF.— Civil indemnity *ex*

delicto, as a form of monetary restitution or compensation to the victim, attaches upon a finding of criminal liability because "[e]very person criminally liable for a felony is also civilly liable." On the other hand, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." The award of moral damages is meant to restore the status *quo ante*; thus, it must be commensurate to the suffering and anguish experienced by the victim. Finally, exemplary or corrective damages are imposed as an example to the public, serving as a deterrent to the commission of similar acts. Exemplary damages are also awarded "as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances."

5. ID.; ACTS OF LASCIVIOUSNESS; PENALTY AND CIVIL LIABILITY.— Accused-appellant Julio Divinagracia, Sr. is sentenced to suffer x x x the indeterminate penalty of 12 years of *prision mayor*, as minimum, to 20 years of *reclusion temporal*, as maximum, for the crime of acts of lasciviousness in relation to Republic Act No. 7610. x x x For acts of lasciviousness against BBB, this Court adopts the ruling in *People v. Santos* and directs Divinagracia to pay BBB ₱20,000.00 as civil indemnity and ₱30,000.00 as moral damages. However, in light of the heinous nature of the crime committed, exemplary damages are increased from ₱2,000.00 to ₱20,000.00. In addition, interest at the legal rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.

6. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL MUST FAIL IN LIGHT OF CATEGORICAL AND COMPETENT TESTIMONY OF THE WITNESS.— Divinagracia only managed to present a defense of denial, which must fail in light of AAA's categorical and competent testimony as well as the undisputed findings of healed lacerations in her vagina. This Court is not swayed by Divinagracia's argument that his daughters were manipulated by his in-laws into filing these charges against him. *People v. Venturina* aptly stated that "[n]ot even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true."

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

"Pa, don't do that[,] Pa."[1]

Child victims of rape by their very own fathers usually continue to live in an environment where the perpetrators consistently underscore the weakness and worthlessness of their victims. In addition to the continued economic dependence of the child victims, this ensures enormous difficulty to find a safe space for them to reveal their ordeal and ensure protection. The animosity and intolerable indignity that child victims experience often lead them to find the courage to seek succor from someone who appears to have moral ascendancy over their perpetrator. This is often their mother, although at times, it may also be a relative.

This case is the story of the courage of AAA and BBB, sisters who were sexually molested by their father.

This resolves the appeal, through Rule 124, Section 13, paragraph (c)[2] of the Rules of Court, as amended by Administrative Matter No. 00-5-03-SC dated September 28, 2004, of the October 7, 2009 Joint Judgment[3] of Branch 28,

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[1] TSN dated April 24, 2002, p. 17.

[2] RULES OF COURT, Rule 124, Sec. 13(c) provides:
Section 13. Certification or appeal of case to the Supreme Court. —
. . . . . .
(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[3] CA *rollo,* pp. 31-49. The Joint Judgment was penned by Judge Marilyn Lagura-Yap.

Regional Trial Court, Mandaue City in Criminal Case Nos. DU-8072 and DU-8074. The trial court found accused Julito Divinagracia, Sr. (Divinagracia) guilty beyond reasonable doubt of one (1) count of rape in relation to Republic Act No. 7610 and one (1) count of acts of lasciviousness in relation to Republic Act No. 7610. The Court of Appeals,[4] upon intermediate review, affirmed the trial court's Decision.

This Court restates the facts as found by the lower courts.

Divinagracia and CCC were husband and wife with seven (7) children.[5] The family lived in a one (1)-room house at Jagobiao, Mandaue City near the boundary of Riverside, Consolacion.[6]

Sometime in November 1996,[7] Divinagracia and CCC quarrelled, prompting CCC to leave and spend the night at her sibling's house. Their daughters AAA and BBB were then left by themselves[8] since their other siblings were either at their grandmother's house or with their friends.[9]

Later that evening, while AAA and BBB were sleeping side by side inside their house, BBB suddenly woke up to her father's tight embrace from behind and felt him roughly running his hand over her leg and breasts. BBB then felt her father poking his hard penis against her buttocks. BBB begged her father to stop, saying that she still had to go to school the following

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[4] *Rollo,* pp. 3-19. The Decision, promulgated on July 30, 2012 and docketed as CA-G.R. CEB-CR-H.C. No. 01134, was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles of the Twentieth Division, Court of Appeals, Cebu City.

[5] TSN dated November 13, 2003, pp. 4-5.

[6] *Id*. at 5, 10-11.

[7] *Rollo,* p. 8. The narration reported "November 1986" but meant "November 1996." BBB was nine (9) years old at that time while AAA was eight (8) years old.

[8] TSN dated April 24, 2002, pp. 7-8.

[9] *Id*. at 6.

day. Divinagracia moved away from BBB and went out of the house.[10]

BBB was nine (9) years old at that time.[11]

A few minutes later, Divinagracia went back inside the house and lay down beside AAA.[12] AAA woke up and asked her father where her mother was. Divinagracia pinched her ear and ordered her to keep quiet.[13]

AAA noticed that BBB, who was then lying beside her, slowly moved away. AAA tried to follow BBB, but Divinagracia pulled AAA towards him and made her face him. Divinagracia pulled down AAA's shorts and put his finger inside her vagina. Afterwards, Divinagracia got on top of AAA and inserted his penis inside her vagina. AAA's father then continued to molest her.[14]

AAA cried to her sister for help but BBB could do nothing but weep and cover her ears.[15] AAA was eight (8) years old at that time.[16]

The following day, AAA was shocked and scared to find blood stains on her shorts. Divinagracia merely laughed when he saw AAA's distress.[17]

When CCC arrived later that day, AAA told her that she was molested by Divinagracia. AAA did not say that she was raped because she was afraid that her parents would only quarrel again. However, CCC did not believe her daughter. AAA

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[10] *Id.* at 30-32.

[11] *Rollo,* p. 8, Court of Appeals Decision. The narration reported "November 1986" but meant "November 1996."

[12] TSN dated April 24, 2002, p. 33.

[13] TSN dated April 23, 2002, p. 4.

[14] *Id.* at 5.

[15] *Id.* at 5-6.

[16] *Rollo*, p. 8, Court of Appeals Decision.

[17] *Id.* at 6.

claimed that CCC told Elvira Aburido (Aburido), Divinagracia's sister, about the molestation.[18]

On January 19, 1999, or a little over two (2) years after the incident, Sister Mary Ann Abuna (Sister Mary Ann), CCC's sister and a nun,[19] visited her family in Cebu.[20]

That same day, AAA told Sister Mary Ann that she wanted to stop her schooling and begged to go with her back to Manila because she did not want to see her father anymore. Sister Mary Ann asked AAA's sisters if their father had changed his ways. BBB and their other sister responded that he had not reformed and even almost raped them.[21]

Sister Mary Ann asked the sisters to leave Cebu and go back with her to Manila to prevent their father from further molesting them. She brought AAA, BBB, their other sister, and CCC back with her to Manila. A few days later they all went to Pampanga where Sister Mary Ann was a missionary.[22]

While in Pampanga, AAA saw CCC crying because she wanted to go back to Cebu. AAA then went to Sister Mary Ann and declared that if CCC would return to Cebu, she would not go back with her. It was at this point that AAA opened up to Sister Mary Ann about the sexual abuse she suffered from her father.[23]

Sister Mary Ann brought AAA to the Hospital Ning in Angeles City to be examined by a doctor.[24] After examining AAA, Dr. Lauro C. Biag (Dr. Biag) issued a medical certificate,[25] a portion of which read:

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[18] TSN dated April 24, 2002, pp. 20-22.

[19] Sister Mary Ann Abuna was a member of the religious order of the Missionaries of Eucharistic Love, Children's Home of the Immaculate Heart of Mary in Pampanga. *See* TSN dated September 4, 2002, p. 2.

[20] TSN dated September 4, 2002, pp. 3-4.

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

[22] *Id*. at 5-6.

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

[24] *Id*. at 7-8.

[25] RTC records (DU-8072), p. 76.

Genitalia: labia majora/minora – well coaptated.

Hymen: orifice 0.7 cm old healed complete laceration on 11, 8, 2 o'clock.

old healed incomplete laceration 5 & 10 o'clock.

(-) abrasion, (-) hematoma, (-) discharge[26]

Sister Mary Ann helped the girls file their respective complaints[27] against their father. At first, BBB was hesitant to file a complaint but she finally agreed because AAA would not stop crying and was always afraid.[28]

On November 13, 2000, Divinagracia was charged with rape and acts of lasciviousness in relation to Republic Act No. 7610.[29] Pertinent portions of the Information for rape read:

That on or about the month of November 1996 in the Municipality of Consolacion, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with [AAA], his own daughter an [8-year-old] girl at that time, against her will and consent.

CONTRARY TO LAW.[30]

The Information for acts of lasciviousness read:

That on or about the month of November 1996 in the Municipality of Consolacion, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with force and intimidation and with lewd designs, did then and there wilfully, unlawfully and feloniously commit an act of lasciviousness against [BBB], his own daughter, a [12-year-old] girl by embracing

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[26] *Id*.

[27] RTC records (DU-8072), pp. 3-5 and (DU-8074), pp. 5-6.

[28] TSN dated September 4, 2002, pp. 9-10.

[29] Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

[30] RTC Records (DU-8072), p. 1.

her, pressing his penis against her buttocks and touching her breasts, against her will and consent.

CONTRARY TO LAW.[31]

Divinagracia, assisted by counsel, pleaded not guilty to the charge of rape against him.[32] During pre-trial, defense admitted the following facts and stipulations:

1. The existence of a birth certificate of the private offended party. Her birth certificate shows that she was born in Consolacion, Cebu on October 29, 1988;

2. The accused is the father of the private offended party;

3. On November 1996 and prior thereto, the accused had been living together with his wife and children at Riverside, Consolacion, Cebu;

4. The existence of a medical certificate of the private offended party signed by a certain Dr. Lauro Biag, Medical Officer III of Hospital Ning Angeles City[.][33]

The prosecution, in turn, admitted the following facts and stipulations:

1. The house where the family of the accused stays at Riverside, Consolacion, Cebu is a one room affair, is about 6 x 8 meters which is more or less half of the area of this courtroom;

2. The whole family which includes seven (7) children, the accused and his wife slept in the same house;

3. The next door neighbor is about four (4) feet away from the house of the accused;

4. Elvira Divinagracia Aburido, sister of the accused, also lives at Riverside, Consolacion, Cebu;

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[31] RTC Records (DU-8074), p. 1.

[32] RTC Records (DU-8072), p. 17. The Information stated that BBB was 12 years old in November 1996 but it was established that she was only 9 years old considering the date of birth shown on her birth certificate.

[33] *Rollo,* p. 6, Court of Appeals Decision.

5. The complaint against the accused was filed at the Provincial Prosecutor's Office on July 31, 2000.[34]

The complaints for rape and acts of lasciviousness against Divinagracia were eventually consolidated for trial.[35]

Divinagracia, assisted by counsel, also pleaded not guilty to the charge of acts of lasciviousness against him.[36] Defense then admitted the following facts and stipulations during pre-trial:

1. The accused is the father of the complaining witness;

2. The accused and the private complainant (his daughter) were residing at Riverside, Consolacion, Cebu at the time this incident occurred in November 1996 and prior thereto. As a matter of fact, according to Atty. Rodriguez, all the members of the family of the accused lived together at this place at this given time;

3. The existence of a Certificate of Live Birth and Baptismal Certificate of the complaining witness.[37]

On the other hand, the prosecution admitted the following stipulations:

1. All the seven (7) children including the father and the mother lived together in a one-room house at Riverside, Consolacion, Cebu;

2. The mother of the complaining witness is a housewife;

3. The uncles and aunties of the complaining witness also live in Consolacion, Cebu;

4. The next door neighbor of the family of the complaining witness at Riverside, Consolacion, Cebu is about 4 feet away from their house;

5. The records show a [Si]numpaang Salaysay executed by the complaining witness and subscribed before the City Prosecutor of Angeles City on November 1999.[38]

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

[35] CA *Rollo,* p. 32.

[36] RTC records (DU-8074), p. 20.

[37] *Rollo,* p. 7.

[38] *Id*. at 7-8.

The prosecution presented the following as witnesses: AAA, BBB, Sister Mary Ann, and Dr. Naomi Poca (Dr. Poca).

Dr. Poca, a pediatrician who was also a child protection specialist,[39] interpreted the medical findings of Dr. Biag, who failed to attend the hearings due to the distance of Angeles City, Pampanga from Mandaue City, Cebu.[40]

Dr. Poca testified that the healed lacerations at 11:00, 2:00, and 10:00 positions are "more likely congenital rather than acquired".[41] However, the lacerations at 8:00 and 5:00 positions could have only been caused by penetration into the vagina.[42] Moreover, given AAA's disclosure, Dr. Poca opined that the healed laceration at 8:00 position suggested sexual abuse.[43]

The defense presented the following as its witnesses: Divinagracia, his neighbors Pamela Sison (Sison), Alvin Ho (Ho), Darwin Isok (Isok), and his sister Aburido.

Divinagracia denied abusing his daughters[44] and claimed that they had a happy[45] family life. He further claimed that he only found out about the complaints for molestation against him when he was arrested in 2001.[46] Divinagracia then accused his wife's family of plotting against him.[47]

Sison testified that Divinagracia and his family had been her neighbors as far back as the 1980s. Sison claimed that CCC used to go to her house all the time to complain about her financial

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[39] TSN dated February 12, 2003, pp. 3 and 5.

[40] RTC Records (DU-8072), pp. 31-32, 64.

[41] TSN dated February 12, 2003, p. 7.

[42] *Id*.

[43] *Id*. at 8-9.

[44] TSN dated November 13, 2003, pp. 13-14.

[45] *Id*. at 7.

[46] *Id*.

[47] *Id*. at 14.

problems and quarrels with Divinagracia.[48] Sison further averred that despite beating his wife, Divinagracia appeared to be a loving father because he was very affectionate and sent his children to school, even if he was financially hard-up most of the time.[49]

Ho, who had been Divinagracia's neighbor since 1992, attested that Divinagracia would often quarrel with and hit CCC.[50] He claimed that it was impossible for Divinagracia to abuse his children because they were always playful.[51] He added that he had never seen the children look weak and tired or heard them complain.[52]

Isok claimed that he was friends with some of Divinagracia's children as they all lived in the same neighborhood.[53] Isok testified that he was close with and fond of Divinagracia's family, yet he never heard of any problems between Divinagracia and his children.[54]

Aburido testified to being Divinagracia's sister and aunt to AAA and BBB.[55] She claimed that she was not close to Divinagracia and his family but that her nieces and nephews would sometimes ask her for rice. Her brother would also go to her whenever he had any financial problem. Aburido claimed that she first found out about her brother's supposed abuse of AAA and BBB when he was arrested.[56]

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[48] TSN dated September 20, 2004, pp. 4-7.

[49] TSN dated September 23, 2004, pp. 8-9.

[50] TSN dated February 7, 2005, pp. 3-5.

[51] TSN dated February 8, 2005, pp. 8-9.

[52] TSN dated February 7, 2005, pp. 6-7.

[53] TSN dated May 9, 2005, pp. 3-4.

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

[55] TSN dated August 9, 2005, p. 3.

[56] *Id*. at 5-6.

In its Joint Judgment[57] dated October 7, 2009, Branch 28, Regional Trial Court, Mandaue City found Divinagracia guilty beyond reasonable doubt of the charges of rape and acts of lasciviousness against him.

In DU-8072, the Regional Trial Court ruled that AAA's testimony was direct, candid, and convincing, clearly proving that Divinagracia had carnal knowledge of AAA when she was only eight (8) years old. The Regional Trial Court also held that Dr. Poca's testimony corroborated AAA's version of the abuse she experienced.[58]

In DU-8074, the Regional Trial Court found BBB's testimony to be clear and convincing on the acts of lasciviousness committed by her father. The Regional Trial Court held that BBB was direct and remained consistent and steadfast during her testimony.[59]

The Regional Trial Court further held that Sister Mary Ann's testimony corroborated both the testimonies of AAA and BBB.[60]

The dispositive portion of the Regional Trial Court's Joint Judgment read:

> WHEREFORE, in DU-8072, Joint Judgment is hereby rendered finding the accused Julito Divinagracia, Sr., guilty beyond reasonable doubt of rape. The Court hereby imposes upon him the indeterminate sentence of reclusion perpetua together with the accessory penalties of the law.
>
> In DU-8074, judgment is hereby rendered finding the accused Julito Divinagracia, Sr., guilty beyond reasonable doubt of acts of lasciviousness. The Court hereby imposes upon him the penalty of 14 years and 4 months of reclusion temporal as the minimum term to 17 years and 4 months of reclusion temporal as the maximum term together with the accessory penalties of the law.

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[57] CA *Rollo,* pp. 31-50.

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

[59] *Id*. at 46.

[60] *Id*. at 47.

The accused shall be given credit of his preventive detention but he shall not be eligible for parole.

With costs against the accused.

IT IS SO ORDERED.[61]

On March 8, 2010, after Divinagracia filed an appeal from the Joint Judgment, the Regional Trial Court transmitted the records of the case to the Court of Appeals.[62]

On July 30, 2012, the Court of Appeals[63] denied Divinagracia's appeal.

The Court of Appeals agreed with the Regional Trial Court that AAA's testimony on her father's rape was clear, candid, and deserving of belief. Additionally, her testimony was corroborated by BBB.[64] The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, this appeal is **DENIED.** The *Joint Judgment* dated October 7, 2009 rendered by the Regional Trial Court (RTC), Branch 28, Mandaue City, in Criminal Case Nos. DU-8072 and DU-8074 finding him guilty for *Rape* and *Acts of Lasciviousness,* respectively, is hereby **AFFIRMED in toto.** Costs against the appellant.

SO ORDERED.[65]

Divinagracia filed a Notice of Appeal[66] with the Court of Appeals. On August 28, 2013, this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their respective supplemental briefs. This

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[61] *Id*. at 49.

[62] *Id*. at 3.

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

[64] *Id*. at 15-16.

[65] *Id*. at 18.

[66] CA *Rollo,* pp. 109-111.

Court also required the Chief Superintendent of the New Bilibid Prison to confirm Divinagracia's confinement therein.[67]

On November 12, 2013, Divinagracia manifested[68] that he would be adopting in toto the contents of his brief[69] filed before the Court of Appeals.

On November 15, 2013, the Office of the Solicitor General also manifested[70] that it would be adopting its brief[71] filed before the Court of Appeals.

In his Appellant's Brief, Divinagracia points to several inconsistencies in the testimonies of AAA and BBB that purportedly lessen their credibility as witnesses.

First, he claims that it was not clear when AAA told Sister Mary Ann about her rape. AAA claimed that she confided to her aunt Sister Mary Ann when she visited them in Cebu in 1996. However, Sister Mary Ann testified that AAA only told her about the rape when they were in Pampanga in 1999.[72]

Second, AAA testified that she told her mother about the rape the following day after it happened. This contradicts Sister Mary Ann's testimony that AAA's mother only learned of the rape after AAA was physically examined in Pampanga. Furthermore, AAA said that after she told her mother, CCC disclosed what happened to Aburido. During her testimony, Aburido denied that she knew about the rape and claimed that she only found out about it when her brother was arrested.[73]

Third, Divinagracia emphasizes that BBB never actually saw him having sexual intercourse with AAA since BBB only testified

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[67] *Rollo,* p. 25.

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

[69] CA *Rollo,* pp. 14-30, Brief for the Accused-Appellant.

[70] *Rollo,* pp. 31-32.

[71] CA *Rollo,* pp. 65-88, Brief for the Appellee.

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

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

to seeing him on top of AAA. Divinagracia also insists that BBB's accusation of acts of lasciviousness against him was uncorroborated, even by AAA who was in the same room when it supposedly happened.[74]

Finally, Divinagracia asserts that the charges of rape and acts of lasciviousness against him were unfounded and that his guilt was never established beyond reasonable doubt.[75]

The prosecution, in turn, avers that it was able to prove Divinagracia's guilt on both charges beyond reasonable doubt.[76]

The prosecution posits that the straightforward and candid testimonies of AAA and BBB, with the medical certificate issued by Dr. Biag corroborating AAA's testimony, sufficiently proved the elements of the charges against their father.[77]

The prosecution contends that the supposed inconsistencies on when AAA told Sister Mary Ann of the abuse or when CCC and Aburido learned of the ordeal she underwent are trivial matters, which have no bearing on the crimes committed.[78]

The issue for resolution before this Court is whether the prosecution proved beyond reasonable doubt Divinagracia's guilt for the crimes of rape and acts of lasciviousness against his minor daughters.

This Court affirms Divinagracia's conviction with some modifications.

I

The alleged inconsistencies in the testimonies of AAA, BBB, and Sister Mary Ann are immaterial as these are not elements of the crime and do not detract from the credibility of the

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

[75] *Id*. at 28.

[76] *Id*. at 74.

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

[78] *Id*. at 84.

witnesses. In fact, minor inconsistencies may even be expected from AAA and BBB who are not accustomed to public trial and were only eight (8) and nine (9) years old, respectively, at the time of their father's sexual abuse.[79]

The rule cited in *People v. Pacala*[80] that inconsistencies on minor details and collateral matters do not affect the veracity, substance, or weight of the witness' testimony finds application in the case at bar.[81]

Divinagracia insists on inconsistencies on when AAA and BBB told Sister Mary Ann about their father's attack. AAA claims that she told her aunt sometime in 1996,[82] contradicting Sister Mary Ann's testimony that AAA told her about the rape in 1999.[83]

The records show that AAA admitted that she could no longer recall when she told her aunt of the rape, but AAA was consistent in her testimony that she eventually told her aunt about the rape when they left Cebu.[84] This corroborates Sister Mary Ann's testimony that she only learned of AAA's rape in 1999, when they were no longer in Cebu. As found by the Court of Appeals:

> Stress is made that per the victim's testimony, when Sister [Mary] Ann visited their family here in Cebu in 1996, she (AAA) did not say that she was raped but was molested. She only divulged the real incident when they were already in Manila and even then, her relatives required that she undergo a medical examination, which could have been an avenue for them to verify and ascertain that what she was telling, that is, about being raped by her father, was the truth.
>
> Moreover, it was BBB who was adamant that they told Sister Mary Anne [sic] about the incident in 1999 while they were already in Manila.

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[79] *People v. Avanzado, Sr.,* 242 Phil. 163, 169 (1988) [Per *J.* Melencio-Herrera, Second Division].

[80] 157 Phil. 365 (1974) [Per *J.* Antonio, *En Banc*].

[81] *Id*. at 375.

[82] TSN dated April 24, 2002, p. 26.

[83] TSN dated September 4, 2002, pp. 5-7.

[84] TSN dated April 24, 2002, pp. 23-24.

Sister Mary Anne [sic] herself even testified that she was told that the children were abused while still in Cebu and was told about the rape only in Manila. She even asked her niece AAA to undergo a medical examination in order to confirm if AAA was really raped.[85] (Citations omitted)

These supposed discrepancies, not being elements of the crime, do not diminish the credibility of AAA's declarations. Jurisprudence has held "youth and immaturity [to be] badges of truth and sincerity"[86] and has generally given leeway to minor witnesses when relating traumatic incidents of the past.[87]

II

Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provides the elements for the crime of rape:

Article 266-A. Rape: When And How Committed.—Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

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.

Rape becomes qualified when committed by a parent against his child less than 18 years of age. This is provided for under paragraph 1, Article 266-B:

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[85] *Rollo,* pp. 17-18.

[86] *People v. Dimanawa,* 628 Phil. 678, 689 (2010) [Per *J.* Nachura, Third Division].

[87] *People v. Dominguez,* 667 Phil. 105, 119 (2011) [Per *J.* Sereno (now Chief Justice), Third Division].

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

. . . . . .

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[.]

The elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) [done] by force and without consent; . . . (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."[88]

It was not disputed that AAA was eight (8) years old in November 1996. The medical findings of Dr. Biag, as interpreted and testified to by Dr. Poca, also corroborate AAA's allegations of her father's abuse. Dr. Poca testified that while some of the healed lacerations could still be considered as normal variant finding rather than acquired, the lacerations at 8:00 and 5:00 positions could have only been caused by the insertion of a penis, object, or finger into the vagina:

At 11, 8 and 2 – the findings at 11 and 2 o'clock are still considered, based on studies, more likely congenital rather than acquired, whereas the 8 o'clock finding is more likely an acquired condition and that could have been caused by penetration of the vagina. Then the old healed incomplete laceration . . . at 5 and 10 o'clock, again the 10 o'clock might still be a normal finding or a normal variant finding, but the 5 o'clock is more probably the result of an acquired condition like trauma.[89]

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[88] *People v. Buclao,* 736 Phil. 325, 336 (2014) [Per *J.* Leonen, Third Division] citing *People v. Candellada,* 713 Phil. 623, 635 (2013) [Per *J.* Leonardo-De Castro, First Division].

[89] TSN dated February 12, 2003, p. 7.

Dr. Poca likewise testified that given AAA's revelation of her ordeal caused by her father, "the complete healed laceration at 8:00 o'clock" is indicative of sexual abuse.[90]

People v. Noveras[91] emphasized that when a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge."[92]

It is well-established that "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses."[93] The physical evidence of the healed lacerations in AAA's vagina strongly corroborates AAA and BBB's testimonies that AAA was raped by their father.

Nonetheless, this Court notes that even if AAA was only physically examined almost three (3) years after she was sexually abused by her father, the defense never questioned the credibility of the expert witness, nor was Dr. Poca's testimony impeached.

The trial court, as upheld by the Court of Appeals, also ruled that AAA's testimony was credible and competent, sufficiently proving the charge of rape against her father, thus:

> The private complainant categorically stated that the accused (her father) had sexual intercourse with her. The private complainant clearly described the rape incident. "*After he pulled my waist, he had me face him and he pulled down my shorts and at that time I was not wearing any panty then he inserted his penis into my vagina but first he inserted his finger.*" This candid description of the molestations is a direct statement that undoubtedly shows carnal knowledge by the accused with his daughter.[94] (Emphasis in the original)

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[90] *Id*. at 8-9.

[91] 550 Phil. 871 (2007) [Per *J*. Callejo, Sr., Third Division].

[92] *Id*. at 887.

[93] *People v. Sacabin,* 156 Phil. 707, 713 (1974) [Per *J*. Fernandez, Second Division].

[94] CA *Rollo,* p. 44, Regional Trial Court Joint Judgment.

It is likewise immaterial that it took AAA more than two (2) years before divulging the sexual abuse she experienced at her father's hands.

The records show that the day following her abuse, AAA immediately told her mother but CCC did not believe her. This lack of support from the very person she was expecting it from naturally made AAA wary of whom she could trust. It was only when she became close to and felt safe with Sister Mary Ann and after she was no longer in Cebu under her father's control that she found the courage to reveal her traumatic experience. This is consistent with the normal reaction of a child raped by her father.

Dr. Poca, a child protection specialist, also confirmed that AAA's failure to immediately disclose her abuse is a normal reaction of children:

> Given her disclosure or her revelation that her father inserted his finger and later his penis into her vagina *but not having disclosed immediately because of fear which is a normal reaction of children*, *and then having disclosed only to an aunt about 3 years later, which again is a normal reaction of children especially if they do find a person whom they can trust and whom they can feel safe with*, between 1996 and 1999 if there were any injuries at that point in 1996, that could have healed and giving us these results in 1999.[95] (Emphasis supplied)

This Court also notes that AAA asked, "*Pa, where is Nanay?*"[96] when she woke up to find her father lying beside her. Her question was telling. At that moment, she perhaps already entertained a fear that something so wrong was about to happen to her. At the same time, she was trying to tell him that her mother would not approve of what he was about to do.

Furthermore, BBB testified that her father groped her and poked his penis against her buttocks but that he stopped and

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[95] TSN dated February 12, 2003, p. 8.

[96] TSN dated April 23, 2002, p. 4.

left the house after she pleaded with him. However, she saw him go back a few minutes later and she tried to warn AAA by pinching her, but AAA did not wake up. When AAA did wake up, Divinagracia was already beside her.[97]

BBB testified that she saw her father get on top of AAA, who could not repel his advances. BBB admitted that AAA was crying and calling out for help the whole time their father was on top of her, but BBB lamented that she was unable to go to her sister because she could not move due to fear.[98]

BBB's reaction is consistent with the normal, expected actuations of a child seeing her father doing despicable acts on her younger sister, especially after she herself had fallen victim to his acts of lasciviousness. Her action is a mixture of denial and fear—denial that the father whom she trusted could do these acts and fear, not so much for her physical safety, but more for her economic and financial support.

The rule is settled that the factual findings and the evaluation of witnesses' credibility and testimony made by the trial court should be entitled to great respect, unless it is shown that the trial court may have "overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[99]

Aside from the supposed inconsistencies in AAA's and Sister Mary Ann's testimonies, Divinagracia only managed to present a defense of denial, which must fail in light of AAA's categorical and competent testimony as well as the undisputed findings of healed lacerations in her vagina. This Court is not swayed by Divinagracia's argument that his daughters were manipulated by his in-laws into filing these charges against him. *People v. Venturina*[100] aptly stated that "[n]ot even the most ungrateful

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[97] TSN dated April 24, 2002, pp. 30-33.

[98] *Id*. at 33-35.

[99] *People v. De Jesus,* 695 Phil. 114, 122 (2012) [Per *J*. Brion, Second Division].

[100] 694 Phil. 646 (2012) [Per *J.* Del Castillo, Second Division].

and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true."[101]

Even the well-meaning testimonies of the other defense witnesses[102] did not disprove AAA's account of the rape since they only managed to prove that Divinagracia and his wife constantly quarrelled. What their testimonies inadvertently revealed, though, was Divinagracia's proclivity towards violence, particularly when dealing with his wife. His sister and neighbors testified that they would regularly hear and see Divinagracia quarrelling with CCC, with Divinagracia usually hitting CCC in the course of their arguments. Divinagracia's violent nature frames an inference of a lack of appreciation of the humanity of every member of the family and highlights his attitude of impunity.

This Court sees no reason to reverse the findings of the Regional Trial Court and the Court of Appeals that Divinagracia was guilty beyond reasonable doubt of rape in relation to Republic Act No. 7610.

IV

On the charge of acts of lasciviousness in relation to Republic Act No. 7610, Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610 defines lascivious conduct as:

> [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

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[101] *Id*. at 655.

[102] CA *Rollo,* pp. 40-43.

As with the rape case, the parties in the case for acts of lasciviousness also affirmed BBB's minority at the time of the assault and her relationship with Divinagracia.

The Regional Trial Court and Court of Appeals likewise found that there was clear and convincing evidence to hold Divinagracia guilty of committing sexual violence against his daughter BBB. The lower courts also found BBB's testimony to be candid, credible, and competent; thus:

> Such finding of lasciviousness is solely attributable to the testimony of the private complainant BBB whom the court considers credible and competent. BBB categorically stated that the accused (her father) lay down beside her, embraced her and poked his penis to her buttocks. BBB clearly recalled the manner the lascivious acts by demonstrating these in the court. "*He embraced me tightly this way (witness demonstrating by closing her arms in front of her fist), the (sic) after that he slipped his hand from here up to here, touching my body (witness demonstrating by tracing her palm from the left thigh upward towards the left side of her body under her armpit."* This candid description of the molestation is a direct statement that undoubtedly proves the crime committed by the accused with his daughter.[103] (Emphasis in the original, citation omitted)

Compared to his daughter's candid and categorical testimony, Divinagracia's defense of denial must fail. *Imbo v. People*[104] emphasized that the self-serving defense of denial falters against the "positive identification by, and straightforward narration of the victim."[105]

This Court has repeatedly held that the lone yet credible testimony of the offended party is sufficient to establish the guilt of the accused.[106]

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[103] CA *Rollo,* p. 46.

[104] G.R. No. 197712, April 20, 2015 <_HYPERLINK "http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/197712.pdf"_http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/197712.pdf > [Per *J*. Perez, First Division].

[105] *Id*. at 7.

[106] *Ricalde v. People,* 751 Phil. 793, 807 (2015) [Per *J*. Leonen, Second Division]; *Garingarao v. People*, 669 Phil. 512, 522 (2011) [Per *J*. Carpio,

V

Despite upholding the findings of fact and appreciation of the evidence by the lower courts, there is a need to modify the penalties awarded. Section 5(b) of Republic Act No. 7610 provides for the penalty of *reclusion perpetua* if the rape victim is below 12 years old while the penalty of *reclusion temporal* in its medium period is imposed if the victim of lascivious conduct is also below 12 years old:

> Section 5. Child Prostitution and Other Sexual Abuse. —
>
> . . . . . .
>
> (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 victims is under twelve (12) years of age, the perpetrators shall be prosecuted under *Article 335, paragraph 3, for rape* and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, *That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period*[.] (Emphasis supplied)

The Regional Trial Court correctly set the penalty of *reclusion perpetua* for rape. However, since the victim was under twelve (12) years of age at the time of the crime, the imposable penalty for lascivious conduct should have been within the range of 14 years, **8 months, and 1 day** to 17 years and 4 months, or *reclusion temporal* in its medium period, as mandated by Republic Act No. 7610. Instead, the Regional Trial Court imposed the range of 14 years and **4 months** to 17 years and 4 months. Applying the Indeterminate Sentence Law[107] and with the presence of the alternative aggravating circumstance[108] of relationship, the

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Second Division]; *People v. Tagaylo,* 398 Phil. 1123, 1131-1132 (2000) [Per *C.J.* Davide, Jr, First Division].

[107] Act No. 4103 (1933).

[108] Revised REV. PEN. CODE Penal Code, Art. 15 provides:

> Article 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to

maximum term of the sentence to be imposed should be taken from the maximum period of the imposable penalty, that is *reclusion temporal* maximum, which ranges from 17 years, 4 months, and 1 day to 20 years.[109] The minimum term under the Indeterminate Sentence Law shall be within the range of one (1) degree lower than *reclusion temporal*, which is *prision mayor* with a total range of six (6) years and one (1) day to 12 years.[110]

There is also a need to review the lack of civil indemnity and other damages in the decisions of the lower courts. The Regional Trial Court, as affirmed by the Court of Appeals, held that since Divinagracia, as the father of AAA and BBB, stood to benefit from the monetary award, it would not be proper to award civil indemnity:

> The Court shall not award civil indemnity to the private complainant. The accused as the father of the private complainants stands to benefit from the monetary award if adjudicated to his daughters since he is a compulsory heir. The concept of indemnification is not served if the very person made to pay for his crime shall benefit from it.[111]

The lower courts are mistaken.

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the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional it shall be considered as an aggravating circumstance.

[109] REV. PEN. CODE, Art. 76.

[110] REV. PEN. CODE, Art. 76.

[111] CA *Rollo,* p. 48, Regional Trial Court Joint Judgment.

Civil indemnity *ex delicto*, as a form of monetary restitution or compensation to the victim, attaches upon a finding of criminal liability because "[e]very person criminally liable for a felony is also civilly liable."[112]

On the other hand, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong."[113] The award of moral damages is meant to restore the status *quo ante*; thus, it must be commensurate to the suffering and anguish experienced by the victim.[114]

Finally, exemplary or corrective damages are imposed as an example to the public,[115] serving as a deterrent to the commission of similar acts. Exemplary damages are also awarded "as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances."[116]

In view of the depravity of the acts committed by Divinagracia against his minor daughters, this Court imposes the following monetary awards, in accordance with jurisprudence:

For rape against AAA, Divinagracia is directed to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.[117]

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[112] REV. PEN. CODE, Art. 100.

[113] *Bagumbayan Corp. v. Intermediate Appellate Court*, 217 Phil. 421, 425-426 (1984) [Per *J.* Aquino, Second Division].

[114] *Lambert v. Heirs of Castillon,* 492 Phil. 384, 395, *citing* CESAR SANGCO, *TORTS & DAMAGES* 986 (1994 ed.) [Per *J.* Ynares-Santiago, First Division].

[115] CIVIL CODE, Art. 2229 provides:

Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated, or compensatory damages.

[116] CIVIL CODE, Art. 2230 provides:

Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[117] *People v. Jugueta,* G.R. No. 202124, April 5, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf > [Per *J.* Peralta, *En Banc*].

For acts of lasciviousness against BBB, this Court adopts the ruling in *People v. Santos*[118] and directs Divinagracia to pay BBB ₱20,000.00 as civil indemnity and ₱30,000.00 as moral damages. However, in light of the heinous nature of the crime committed, exemplary damages are increased from ₱2,000.00 to ₱20,000.00.

In addition, interest at the legal rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.[119]

WHEREFORE, the Court of Appeals Decision in CA-G.R. CEB CR-H.C. No. 01134 dated July 30, 2012 is **AFFIRMED with MODIFICATION**. Accused-appellant Julito Divinagracia, Sr. is sentenced to suffer the penalty of a) *reclusion perpetua* for the crime of rape in relation to Republic Act No. 7610; and b) the indeterminate penalty of 12 years of *prision mayor,* as minimum, to 20 years of *reclusion temporal,* as maximum, for the crime of acts of lasciviousness in relation to Republic Act No. 7610. Furthermore, he is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. He is also ordered to pay BBB ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱20,000.00 as exemplary damages. All the awarded damages shall earn the legal interest rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

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

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[118] 753 Phil. 637, 652 (2015) [Per *J*. Carpio, Second Division].

[119] *Ricalde v. People,* 751 Phil. 793, 816 (2015) [Per *J*. Leonen, Second Division].

FIRST DIVISION

[G.R. No. 208000*. July 26, 2017]

VIRGEL DAVE JAPOS, *petitioner, vs.* **FIRST AGRARIAN REFORM MULTI-PURPOSE COOPERATIVE (FARMCOOP) and/or CRISLINO BAGARES,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; WHEN UNAUTHORIZED ABSENCES CONSIDERED AS SUFFICIENT GROUND FOR DISMISSAL OF AN EMPLOYEE.—** The evidence shows that prior to his June 22-28, 2005 absences, petitioner already incurred several unauthorized absences for 2005, specifically on January 26, February 28, and May 24, 2005, for which written warnings were issued against him. While FARMCOOP opted not to penalize petitioner with suspension for the February 28 and May 24 absences, as mandated under the AWOL and AWOP Rules of FARMCOOP's Personnel Policies and Procedures, this does not take away the fact that these prior absences are nonetheless infractions – three in all, to be exact. This being the case, petitioner's June 22-28, 2005 absences become significant because if it is found to be unauthorized and thus inexcusable; it would constitute a fourth infraction which merits the penalty of dismissal under the AWOL Rule, as well as an infraction that merits dismissal under the AWOP Rule, for being an unauthorized absence of at least six consecutive days.

2. **REMEDIAL LAW; EVIDENCE; A BROAD AND SWEEPING MEDICAL CERTIFICATE CANNOT BE ACCEPTED AS PROOF OF ILLNESS BECAUSE IT LOWERS THE STANDARDS REQUIRED FOR THE PRESENTATION OF PROOF IN COURTS AND IN ADMINISTRATIVE BODIES.—** One may argue that in the interest of justice and in order to uphold the rights of labor, this Court must simply accept the medical certificate as proof that indeed, petitioner

* Formerly UDK 14762.

became ill and required rest and treatment during the questioned period. But this cannot be done without lowering the standards required for the presentation of proof in courts of justice and even in administrative bodies such as the labor tribunals. We cannot dignify the July 7, 2005 Medical Certificate simply because it is too broad and sweeping that it borders on prevarication and forgery; it goes against the basic common sense, logic, experience, and precision required and expected of every trained physician who, apart from saving human lives on a daily basis, must issue such important document with full realization that they are to be utilized in key proceedings. To put it more bluntly, evidence, to be believed, must be credible in itself. "We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside judicial cognizance."

APPEARANCES OF COUNSEL

Rey P. Raagas for petitioner.
Eleazar S. Boycillo for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* (With Supplemental Allegations In Support Of The Application To Litigate As An Indigent)[1] assails the July 29, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 03319-MIN which reversed and set aside the August 27, 2009 and October 15, 2009 Resolutions[3] of the National

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[1] *Rollo*, pp. 11-26.

[2] *Id*. at 28-45; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles.

[3] CA *rollo*, pp. 18-22, 37-38; penned by Commissioner Proculo T. Sarmen and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Dominador B. Medroso, Jr.

Labor Relations Commission (NLRC) in NLRC Case No. MAC-09-010462-08, and the CA's subsequent September 18, 2012 Resolution[4] denying herein petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Respondent First Agrarian Reform Multi-Purpose Cooperative (FARMCOOP) is a registered domestic cooperative doing business in Kisolon, Sumilao, Bukidnon as a banana contract grower for DOLE Philippines, Inc. Respondent Crislino Bagares is FARMCOOP's chairman/ executive officer.

Petitioner Virgel Dave Japos was employed by FARMCOOP in 2001 as gardener. Under FARMCOOP's Personnel Policies and Procedures,[6] it is provided that:

> 11. Absences
>
> In order not to disrupt the operations due to absences, prior authorization or permission from the immediate superior must be secured. A Personnel Leave Authority (PLA) form must be properly filled up/[sic]approved to be submitted to the Personnel Section. The immediate superior shall have the discretion to allow or [disapprove] leave applications depending on the work/activity schedules at the particular time. However, leave of absence for any personal reason may be granted up to a maximum of 20 days only for every year, subject to our disciplinary action policies.
>
> x x x x x x x x x
>
> 14. Attendance and Punctuality
>
> The Cooperative expects all its members and non-members to be in their work place regularly and at the time designated in the schedule.

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[4] *Rollo*, pp. 47-48; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco.

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

[6] CA *rollo*, pp. 56-60.

Note: AWOL[7] *RULE*

An employee/worker is subject to disciplinary action if he/she incures [sic] the following COMMULATIVE [sic] ABSENCES:

x x x x x x x x x

1st Offense - Written Warning

2nd Offense - 1 to 7 days suspension (Notice shall be prepared by Personnel)

3rd Offense - 8 to 15 days suspension (Notice shall be prepared by Personnel)

4th Offense - DISMISSAL

x x x x x x x x x

I. ATTENDANCE

1. UNAUTHORIZED LEAVE OF ABSENCE

An employee who wants to be absent from work must seek previous approval from his/her supervisor by applying for leave using the prescribed [form] for application for leave.

An employee/worker is subject to discharge if he/she incurs six (6) or more absences without permission within one employment year.

FIRST INFRACTION - suspension 1 to 7 days

SECOND INFRACTION - suspension 8 to 15 days

THIRD INFRACTION - dismissal

Note: AWOP[8] *RULE*

An employee is subject to disciplinary action if he/she incurs the following CONSECUTIVE ABSENCES:

x x x x x x x x x

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[7] Absent Without Official Leave.

[8] Absent Without Permission.

First three (3) days - Written Warning

4th day - 1 to 7 days suspension (Notice shall be prepared by Personnel)

5th day - 8 to 15 days suspension (Notice shall be prepared by Personnel)

6th day - DISMISSAL[9]

During his stint with FARMCOOP, petitioner incurred the following absences:[10]

1. May 2-15, 2003 – which is covered by a Medical Certificate dated May 16, 2003;
2. December 18-27, 2003 – for which no doctor's certificate was submitted;
3. January 26, 2005 – absence without permission, for which petitioner was issued a Written Warning dated January 28, 2005;
4. February 28, 2005 – absence without permission, for which petitioner was issued a 2nd Written Warning dated March 2, 2005;
5. May 24, 2005 – absence without permission, for which petitioner was issued a Last Warning dated June 9, 2005; and
6. June 22-28, 2005 – absence without permission, but which is supposedly covered by a Medical Certificate[11] issued on July 7, 2005 by a certain Dr. Carolyn R. Cruz (Dr. Cruz), Medical Officer IV of the Philhealth Center, certifying that petitioner was diagnosed and given treatment for respiratory tract infection, although the

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[9] CA *rollo*, pp. 57-60.

[10] *Id*. at 6, 25.

[11] *Id*. at 35.

document did not indicate the period during which petitioner was ill, diagnosed, or had undergone treatment.

With regard to his June 22-28, 2005 absences, petitioner received on June 28, 2005 an inter-office memorandum[12] giving him until July 4, 2005 to explain the same in writing. On June 30, 2005, he personally submitted his signed written explanation[13] of even date, which states, in part:

SIR, MADAM,

SORRY, I WAS NOT ABLE TO REPORT ON JUNE 22, 2005 UNTIL NOW BECAUSE I'M SUFFERING ENFLUENZA [sic]. I'M SORRY IF I DIDN'T REPORT TO THE OFFICE FOR FILLING [sic] LEAVE.

HOPING FOR YOUR KIND CONSIDERATION OF THIS MATTER.[14]

On July 5, 2005, petitioner reported back to work, but he was not admitted by FARMCOOP as he did not present a medical certificate. It was only on July 7, 2005 that petitioner was able to secure Dr. Cruz's Medical Certificate and submit the same to his employer. Also, on July 5, 2005, FARMCOOP issued a Notice of Termination[15] informing petitioner that effective July 6, 2005, his employment would be terminated.

On July 8, 2005, petitioner submitted a Personnel Leave Authority Application Form[16] of even date, which was not acted upon by FARMCOOP as petitioner was already considered dismissed as of July 6, 2005. In said application, petitioner sought approval of his leave/absence from June 22 to July 7, 2005.

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[12] *Id*. at 54.

[13] *Id*. at 55.

[14] *Id*.

[15] *Id*. at 61.

[16] *Id*. at 34.

Ruling of the Labor Arbiter

On February 6, 2008, petitioner filed a complaint against respondents before the Labor Arbiter for illegal dismissal, separation pay, underpayment of salaries, and other monetary claims, which was docketed as NLRC Case No. RAB 10-02-00116-2008. He claimed that his dismissal was effected without due process and, thus, illegal.

On July 21, 2008, the Labor Arbiter issued a Decision[17] finding that petitioner was legally terminated for the unauthorized June 22-28, 2005 absences. He ruled that petitioner was dismissed for cause; that petitioner's past infractions, his unauthorized January 26, February 28, and May 24, 2005 absences for which written warnings were issued against him, were justifiably considered by FARMCOOP in arriving at the decision to dismiss petitioner; that procedural due process was observed by respondents; and that petitioner failed to prove that he is entitled to monetary claims, except for wage differential. Thus, the Labor Arbiter ruled:

> WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering the respondent FCI-FARM Coop., Inc. [sic] to pay the complainant in the sum of ₱8,739.00 representing wage differential plus 10% of the total award in the sum of ₱873.90 representing attorney's fees.
>
> SO ORDERED.[18]

Ruling of the National Labor Relations Commission

Petitioner appealed before the NLRC which overturned the Labor Arbiter. In its August 27, 2009 Resolution in NLRC Case No. MAC-09-010462-08, it ruled as follows:

> The complainant being able to present a Personnel Leave Authority and a Medical Certificate for his absences on June 22 to July 5, 2005, his termination from employment cannot be said to be justified. While the Labor Arbiter is correct in citing and we quote:

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[17] *Id*. at 23-26; penned by Labor Arbiter Leon P. Murillo.

[18] *Id*. at 26.

> 'Generally, absences, once authorized or with prior approval of the employer, irrespective of length thereof, may not be invoked as ground for termination of employment. Consequently, dismissal of an employee due to his prolonged absence with leave by reason of illness duly established by the presentation of a medical certificate, is not justified x x x. however [sic], unauthorized absences or those incurred without official leave, constitute gross and habitual neglect in the performance of work x x x.'

We cannot sustain his conclusion that '*complainant was dismissed for a valid cause and after observance of due process*.' The Labor Arbiter should have followed the doctrine laid down in the case of *Oriental Mindoro Electric Cooperative, Inc. v. NLRC* and not that of *Cando v. NLRC* considering that a Personnel Leave Authority and a Medical Certificate was [sic] submitted by the complainant. The prolonged absence of complainant cannot be construed as abandonment of work when said absences was [sic] due to a justifiable reason.

The fact that, in complainant's July 7, 2005 medical certificate, he was diagnosed to have "*acute respiratory tract infection*" while in his letter of explanation dated June 30, 2005, complainant mentioned "*influenza*" should not militate against him. Complainant is not a medical practitioner as to be in a position to know how to diagnose his illness. The date of medical certificate, July 7, 2005, is likewise of no serious concern since it merely refers to the date when said medical certificate was executed and not to the date complainant was ill.

In fine, we find the complainant's dismissal illegal.

WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and VACATED, except as regards the award of wage differentials, and a new one is entered declaring the dismissal of complainant as ILLEGAL. Consequently, respondent is hereby ordered to forthwith reinstate complainant to his former or equivalent position without loss of seniority rights and other privileges and to pay his full backwages, inclusive of allowances and to his other benefits or its [sic] monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The respondent is likewise ordered to pay complainant's attorney's fees equivalent to ten (10%) percent of the total awards herein granted.

The Regional Arbitration Branch is hereby directed to cause the computation of the awards granted in this Resolution.

The award of wage differentials granted in the appealed decision stays.

SO ORDERED.[19] (Citations omitted)

Respondents moved to reconsider,[20] but the NLRC stood its ground.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[21] filed with the CA and docketed as CA-G.R. SP No. 03319-MIN, respondents sought to reverse the above dispositions of the NLRC and reinstate the Labor Arbiter's July 21, 2008 Decision, arguing that the NLRC committed grave abuse of discretion in ruling that petitioner was illegally dismissed and was entitled to his money claims; that the NLRC wrongly appreciated the evidence and the facts; that the medical certificate submitted by petitioner, which stated that petitioner was diagnosed and treated for respiratory tract infection, could not be given credence because it conflicted with petitioner's own claim that he was sick with influenza; that petitioner's supposed illness was an obvious fabrication to cover up for his unauthorized absences; that the medical certificate was of doubtful veracity; and that overall, petitioner's case was not covered by substantial evidence.

Petitioner submitted his Comment,[22] wherein he argued that the NLRC committed no error; that it would be absurd under FARMCOOP's rules and policies to require an employee to submit a Personnel Leave Authority prior to contracting illness

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[19] *Id*. at 19-21.

[20] *Id*. at 28-33.

[21] *Id*. at 2-17.

[22] *Id*. at 101-108.

when it could not be known or planned precisely when he might get sick; that his past infractions could not be used to justify the penalty of dismissal since he was penalized therefor with mere warnings, thus, the penalty for the latest infraction should have been mere suspension only and not dismissal; and that the penalty of dismissal was not commensurate to his infraction, which did not involve moral turpitude nor gross misconduct.

On July 29, 2011, the CA issued the assailed Decision containing the following pronouncement:

> We find the dismissal of private respondent Japos valid.
>
> For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.
>
> In the case at bench, records indubitably show that Japos incurred several absences without authority or permission from his immediate supervisor even before he was terminated from service in violation of FARMCoop's policy. Records likewise show that FARMCoop was quite lenient and considerate to Japos as he was not penalized for his previous unauthorized absences despite its policy providing for the suspension and dismissal of its employee in case of infraction thereto. In fact, before he was terminated and despite his unauthorized absences he was only served with written warnings instead of immediate suspension. FARMCoop's policy further provides that if an employee incurs six (6) or more absences without permission within one (1) employment year, the employee could be validly dismissed from employment. In the year 2005, and prior to his dismissal, he already incurred three (3) unauthorized absences where he was served with three (3) written warnings with a warning that should he incur further unauthorized absences, the same would be dealt with seriously. Nonetheless, despite said warning, he was again absent for more than six (6) consecutive days from June 22, 2005 until he reported back to work on July 5, 2005 allegedly for being sick with influenza without any medical certificate to substantiate the same. It was only on July 7, 2005 when he submitted a medical certificate dated on even date certifying that he was examined and found to have acute respiratory tract infection.
>
> It should be emphasized however, that the said medical certificate did not indicate the period within which he was examined by the physician and the period he was to rest due to his illness. It fails to

refer to the specific period of his absences. It should likewise be emphasized that in the absence of evidence indicating that he was indeed sick before the date stated in the medical certificate, his alleged sickness/illness ought not be considered as an excuse for his excessive absences without leave. In the case of *Filflex Industrial & Manufacturing Corp. vs. NLRC*, the Supreme Court ruled that if the medical certificate fails to refer to the specific period of the employee's absence, then such absences are not supported by competent proof and hence, unjustified.

Corollarily, under Article 282(b) of the Labor Code, gross and habitual neglect of duty by the employee of his duties is a just cause for the termination of the latter's employment. Settled is the rule that an employee's habitual absenteeism without leave, which violated company rules and regulation, is sufficient to justify termination from the service. In the case of *R.B. Michael Press vs. Galit*, it was ruled that habitual tardiness and/or absenteeism is a form of neglect of duty as the same exhibit the employee's deportment towards work and is therefore inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occurred frequently and repeatedly within an extensive period of time. In the instant case, Japos failed to refute and controvert the fact of his habitual absenteeism. Instead, he admitted his absences though he tried to justify the same by belatedly submitting a medical certificate. Unfortunately, said medical certificate did not help his case.

Moreover, it should be noted that Japos' previous infractions, past and present absences considered, can be used collectively by petitioner as a ground for his dismissal. As held in a case, '[P]revious infractions may be used as justification for an employee's dismissal from work in connection with a subsequent similar offense.'

Furthermore, in the case of *Valiao vs. Court of Appeals*, the Supreme Court ratiocinated that:

x x x x x x x x x

> x x x Petitioner's repeated acts of absences without leave and his frequent tardiness reflect his indifferent attitude to and lack of motivation in his work. More importantly, his repeated and habitual infractions, committed despite several warnings, constitute gross misconduct unexpected from an employee of petitioner's stature. This Court has held that habitual absenteeism

without leave constitute gross negligence and is sufficient to justify termination of an employee.'

Thus, private respondent Japos was validly dismissed for a cause.

Anent the requirement of due process, we find that Japos was afforded the same. Law and jurisprudence require an employer to furnish the employee two written notices before termination of his employment may be ordered. The first notice must inform him of the particular acts or omissions for which his dismissal is sought; the second, of the employer's decision to dismiss the employee after he has been given the opportunity to be heard and defend himself.

In the case at bench, records show that the first notice requirement was complied with by FARMCoop when prior to his termination, an inter-office memorandum was sent to him asking him to explain in writing why he was absent. It should be noted however that this notice was sent to Japos after he was already warned three (3) times in writing that a similar offense in the future would be dealt with severely. On July 30, 2005 he submitted his written explanation but FARMCoop found it implausible and without basis as he failed to substantiate his allegation that he was sick.

Corollarily, the second notice requirement was again complied with when FARMCoop sent another notice to Japos informing him of his termination. Consequently, private respondent and his father sent a letter to FARMCoop's BOD questioning private respondent's termination. In a letter dated August 8, 2005 the BOD explained to Japos why he was terminated. Hence, we hold that such notices sent to Japos and the opportunity to thereafter assailed [sic] his termination before the FARMCoop's BOD satisfy the due process requirement.

It should be stressed that the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held. Even if no hearing or conference was conducted, the requirement of due process had been met since private respondent was accorded a chance to explain his side of the controversy.

Finally, notice and hearing in termination cases does [sic] not connote full adversarial proceedings as elucidated in numerous cases decide [sic] by the Supreme Court. In a case, it was held that due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling

complained of. A formal or trial-type hearing is not at all times and in all instances essential, as the due process requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing.

Thus, in this case, private respondent Japos was given ample opportunity to be heard, and his dismissal was based on valid grounds.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Resolutions dated August 27, 2009 and October 15, 2009 of the National Labor Relations Commission are hereby REVERSED and SET ASIDE. The Decision dated July 21, 2008 of the Labor Arbiter is REINSTATED.

SO ORDERED.[23] (Citations and emphases omitted)

Petitioner filed his Motion for Reconsideration, which was denied by the CA in its September 18, 2012 Resolution. Hence, the instant Petition.

In a July 15, 2013 Resolution,[24] this Court granted petitioner's application to litigate as an indigent. And in June 15, 2015 Resolution,[25] the Court resolved to give due course to the Petition.

Issues

Petitioner claims that:

FIRST

THE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING AND SETTING ASIDE THE RESOLUTIONS OF THE NATIONAL LABOR RELATIONS COMMISSION AS THE DISMISSAL OF THE PETITIONER WAS ILLEGAL FOR FAILURE OF THE RESPONDENT TO ESTABLISH JUST CAUSE.

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[23] *Rollo*, pp. 38-44.

[24] *Id*. at 71-72.

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

SECOND

GRANTING, *ARGUENDO*, THAT THE PETITIONER WAS LIABLE IN SOME RESPECT, THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE APPLICATION OF THE PENALTY OF DISMISSAL AS A LESS GRAVE PENALTY WOULD HAVE BEEN MORE APPROPRIATE UNDER THE CIRCUMSTANCES.[26]

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and the NLRC dispositions be reinstated instead, petitioner maintains in his Petition and Reply[27] that the CA should not have disregarded Dr. Cruz's July 7, 2005 Medical Certificate; that the CA's reliance on *Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission*[28] is misplaced because the declaration therein, to the effect that if the medical certificate fails to refer to the specific period of the employee's absence, then such absence is not supported by competent proof, is mere *obiter dicta*, and thus not persuasive; that throughout the proceedings, respondents did not dispute the fact that he was ill during the period covering June 22-28, 2005; that there is no valid cause to fire him, as he was able to prove his illness through the documentary evidence he submitted; and that even assuming that he was liable for his absences, the dismissal was not the proper penalty, but rather suspension instead.

Respondent's Arguments

In their joint Comment,[29] respondents maintain that the Petition raises factual issues which are not the proper subject of a current remedy sought; that, as correctly held by the CA, the medical certificate in issue is not credible evidence that may be considered to justify petitioner's June 22-28, 2005 absences; and that

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[26] *Id*. at 15-16.

[27] *Id*. at 87-91.

[28] 349 Phil. 913 (1998).

[29] *Rollo*, pp. 76-80.

petitioner's plea for a lesser penalty is unavailing, considering that in the past, he was treated with considerable leniency, yet in spite of this, he continues to flout the cooperative's policies and regulations.

Our Ruling

The Court denies the Petition.

First off, it must be noted that there is no issue relative to the observance of procedural due process; while it has been raised during the proceedings below, it was not made an issue in the present Petition. Petitioner merely questions the propriety of his dismissal on the ground of excessive unauthorized absences; he argues that his June 22-28, 2005 absences are excusable as they are justified by his illness, which in turn was duly proved by substantial evidence. On the other hand, respondents contend that petitioner's illness is fabricated, as is the documentary evidence presented to support it.

The evidence shows that prior to his June 22-28, 2005 absences, petitioner already incurred several unauthorized absences for 2005, specifically on January 26, February 28, and May 24, 2005, for which written warnings were issued against him. While FARMCOOP opted not to penalize petitioner with suspension for the February 28 and May 24 absences, as mandated under the AWOL and AWOP Rules of FARMCOOP's Personnel Policies and Procedures, this does not take away the fact that these prior absences are nonetheless infractions – three in all, to be exact. This being the case, petitioner's June 22-28, 2005 absences become significant because if it is found to be unauthorized and thus inexcusable; it would constitute a fourth infraction which merits the penalty of dismissal under the AWOL Rule, as well as an infraction that merits dismissal under the AWOP Rule, for being an unauthorized absence of at least six consecutive days.

The Court agrees with the CA's pronouncement that Dr. Cruz's July 7, 2005 Medical Certificate does not constitute reliable proof of petitioner's claimed illness during the period June 22-28, 2005. The said document states, as follows:

MEDICAL CERTIFICATE

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that I, the undersigned, personally saw and examined Virgilio Japos, 22 y/o, of LF, Impasugong, Bukidnon and I found him to have acute respiratory tract infection. He was given medication.

THIS CERTIFICATION is issued this 7th day of July 2005 at Impasugong, Bukidnon.

(signed)
CAROLYN R. CRUZ, MD
Medical Officer IV[30]

The certificate does not indicate the period during which petitioner was taken ill. It does not show when he consulted with and was diagnosed by Dr. Cruz. And it does not specify when and how petitioner underwent treatment, and for how long. Without these relevant pieces of information, it cannot be reliably concluded that indeed, petitioner was taken ill on June 22-28, 2005. All that can be assumed from a reading of the document is that on July 7, 2005, Dr. Cruz issued a certification that she treated petitioner for a respiratory tract infection. She might have done so in 1995, or maybe even earlier, but not necessarily on June 22-28, 2005. The document is open to interpretation in every manner, in which case this Court cannot be sufficiently convinced that petitioner became ill and was treated specifically on June 22-28, 2005.

One may argue that in the interest of justice and in order to uphold the rights of labor, this Court must simply accept the medical certificate as proof that indeed, petitioner became ill and required rest and treatment during the questioned period. But this cannot be done without lowering the standards required for the presentation of proof in courts of justice and even in administrative bodies such as the labor tribunals. We cannot dignify the July 7, 2005 Medical Certificate simply because it

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[30] CA *rollo*, p. 35.

is too broad and sweeping that it borders on prevarication and forgery; it goes against the basic common sense, logic, experience, and precision required and expected of every trained physician who, apart from saving human lives on a daily basis, must issue such important document with full realization that they are to be utilized in key proceedings. To put it more bluntly, evidence, to be believed, must be credible in itself. "We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside judicial cognizance."[31]

With the finding that Dr. Cruz's certification is of doubtful veracity, petitioner's claim of illness is left with no leg to stand on. Besides, the Court notes that while petitioner claims to have been ill until June 28, 2005, still he reported for work only on July 5, 2005, thus making him absent for several more days. Knowing, by his receipt on June 28, 2005 of an inter-office memorandum giving him until July 4, 2005 to explain his absence since June 22, that he was already on the verge of being fired from work for his unexplained and prolonged absence, he could have made an effort to report back to work on June 29, 2005 if only to show good faith, sincerity, and concern for his employer, if not contrition for not timely informing the latter of his illness so that substitute workers may be obtained in his stead. But he did not. His actions betray an utter lack of concern for his work which, needless to say, is fundamentally inimical to his employer's interest.

The Court thus concludes that petitioner's June 22 to July 5, 2005 absences are unauthorized and inexcusable. Consequently, under FARMCOOP policy, petitioner is deemed to have committed a fourth infraction, which merits the penalty of dismissal under the AWOL Rule, as well as an infraction that merits dismissal under the AWOP Rule, for being an unauthorized absence of at least six consecutive days without prior notice.

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[31] *Castañares v. Court of Appeals*, 181 Phil. 121, 134 (1979).

Next, there is no truth to petitioner's claim that respondents did not dispute his claim of illness. On the contrary, they precisely contend that such claim is a lie, and that the medical certificate submitted to corroborate it was manufactured.

Finally, petitioner's contention that, if at all, he should be penalized only with suspension, considering that he was not punished for his January 26, February 28, and May 24, 2005 unauthorized absences. Quite the contrary, he was penalized with written warnings for these infractions. The fact that he was not suspended is of no moment; FARMCOOP management merely exercised its prerogative to choose which penalty to impose upon him. Respondents' explanation that they took care not to impose severe penalties upon petitioner out of respect for his father, who was a founding member of the cooperative, is well taken. Nonetheless, as elsewhere stated herein, while FARMCOOP opted not to penalize petitioner with suspension for his February 28 (second infraction) and May 24 (third infraction) absences as mandated under the AWOL and AWOP Rules of FARMCOOP's Personnel Policies and Procedures, these prior absences remain to be infractions that may be considered in treating his unauthorized June 22 to July 5, 2005 absences as his fourth infraction.

WHEREFORE, the Petition is **DENIED**. The July 29, 2011 Decision and September 18, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 03319-MIN are **AFFIRMED *in toto***.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 209452. July 26, 2017]

GOTESCO PROPERTIES, INC., *petitioner, vs.* **SOLIDBANK CORPORATION (NOW METROPOLITAN BANK AND TRUST COMPANY**), *respondent.*

SYLLABUS

1. CIVIL LAW; ACT NO. 3135; EXTRAJUDICIAL FORECLOSURE; RESPONDENT HAS THE RIGHT TO FORECLOSE THE SUBJECT PROPERTY; PETITIONER DEFAULTED WHEN IT FAILED TO PAY THE LOAN ACCORDING TO THE TERMS OF THE PROMISSORY NOTE AND WHEN IT REFUSED TO HEED RESPONDENT'S DEMAND FOR ADDITIONAL COLLATERAL.— [R]espondent was within its rights to foreclose the property. x x x Petitioner defaulted in its obligation twice. First, when it failed to pay the loan according to the terms of the promissory note. Second, when it failed to provide the additional collateral demanded by respondent. x x x Under the Civil Code, there is default when a party obliged to deliver something fails to do so. x x x When respondent asked to have the mortgaged properties replaced, it was requiring petitioner to comply with its obligation to sustain the loan's security at an appropriate level. Clearly, petitioner defaulted when it refused to heed respondent's demand for additional collateral, as expressed in the February 9, 2000 letter. This gave respondent enough reason to foreclose the property.

2. ID.; ID.; ID.; REQUIREMENTS FOR VALIDITY OF FORECLOSURE PROCEEDINGS; THE CRUCIAL FACTOR IN DETERMINING WHETHER THERE WAS A VALID PUBLICATION OF THE NOTICE OF SALE IS NOT WHERE THE NEWSPAPER IS PRINTED BUT WHETHER THE NEWSPAPER WAS CIRCULATED IN THE CITY WHERE THE PROPERTY WAS LOCATED.— Section 3 of Act No. 3135 requires that the Notice of Sale be a) physically posted in three (3) public places and b) be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the city where the property is situated. Petitioner claims that since the foreclosed property was located in Pampanga, the publication of the Notice of Sale

in *Remate* was not valid. Petitioner suggests that the Notice of Sale could only be published in a newspaper printed in the city where the property was located. It posits that because *Remate* was printed and published in Manila, not in San Fernando, Pampanga, the publication was defective. Petitioner is mistaken. x x x If notices are only published in newspapers printed in the city where the property is located, even newspapers that are circulated nationwide will be disqualified from announcing auction sales outside their city of publication. This runs contrary to the spirit of the law which is to attain wide enough publicity so all parties interested in acquiring the property can be informed of the upcoming sale. x x x The crucial factor is not where the newspaper is printed but whether the newspaper is being circulated in the city where the property is located. Markedly, what the law requires is the publication of the Notice of Sale in a "newspaper of general circulation[.]"

3. **ID.; ID.; ID.; ID.; THAT THE NOTICE OF SALE WAS POSTED FOUR (4) DAYS LESS THAN WHAT THE LAW REQUIRES IS A SUPERFICIAL DEFECT WHICH CANNOT INVALIDATE THE NOTICE OF SALE.—** [T]he alleged defect in the posting is superficial. The Notice of Sale was posted on August 15, 2000, while the auction sale took place on August 31, 2000. The Notice of Sale was posted for 16 days, only four (4) days less than what the law requires. The object of a Notice of Sale in an extrajudicial foreclosure proceeding is to inform the public of the nature and condition of the property to be sold and the time, place, and terms of the auction sale. Mistakes or omissions that do not impede this objective will not invalidate the Notice of Sale.

4. **ID.; ID.; ID.; RESPONDENT, AS PURCHASER IN A PUBLIC AUCTION SALE, IS ENTITLED TO A WRIT OF POSSESSION AND ISSUANCE THEREOF IS MINISTERIAL SINCE IT IS PETITIONER MORTGAGOR WHICH OCCUPIES THE PROPERTY.—** This Court in *China Banking Corp. v. Spouses Lozada* discussed that when the foreclosed property is in the possession of a third party, the issuance of a writ of possession in favor of the purchaser ceases to be ministerial and may no longer be done ex parte. However, for this exception to apply, the property must be held by the third party adversely to the mortgagor. The Court of Appeals correctly held that this case does not fall under the exception. Since it

is the petitioner, and not a third party, who is occupying the property, the issuance of the Writ of Possession is ministerial.

5. ID.; ID.; ID.; PENDENCY OF THE COMPLAINT FOR ANNULMENT OF THE FORECLOSURE PROCEEDING CANNOT PREVENT THE ISSUANCE OF A WRIT OF POSSESSION.— There is also no merit to petitioner's argument that the Writ of Possession should not be issued while the complaint for the annulment of the foreclosure proceeding is still pending. *Fernandez v. Spouses Espinoza* already ruled that a pending case assailing the validity of the foreclosure proceeding is immaterial: Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.

APPEARANCES OF COUNSEL

De Sagun Law Office for petitioner.

Perez Calima Suratos Maynigo & Roque Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

The requirement for publication of a Notice of Sale in an extrajudicial foreclosure is complied with when the publication is circulated at least in the city where the property is located.

This is a Petition for Review on Certiorari[1] assailing the May 31, 2013 Decision[2] and October 7, 2013 Resolution[3] of the Court

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[1] *Rollo,* pp. 10-39.

[2] *Id*. at 41-62. The Decision, promulgated on May 31, 2013, was penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Franchito N. Diamante of the Special Fourteenth Division, Court of Appeals, Manila.

[3] *Id*. at 64-65. The Resolution, promulgated on October 7, 2013, was penned by Associate Justice Victoria Isabel A. Paredes and concurred in

of Appeals in CA-G.R. CV No. 97748. The Court of Appeals affirmed the Decision of the Regional Trial Court, which dismissed the complaint filed by petitioner Gotesco Properties, Inc. (Gotesco) for the annulment of the foreclosure proceeding. The Court of Appeals also upheld the issuance of a writ of possession for respondent Solidbank Corporation (Solidbank), now Metropolitan Bank and Trust Company (Metrobank).

In 1995, Gotesco obtained from Solidbank a term loan of ₱300 million through its President, Mr. Jose Go (Mr. Go). This loan was covered by three (3) promissory notes. To secure the loan, Gotesco was required to execute a Mortgage Trust Indenture (Indenture) naming Solidbank-Trust Division as Trustee.[4]

The Indenture, dated August 9, 1995, obliged Gotesco to mortgage several parcels of land in favor of Solidbank.[5] One (1) of the lots mortgaged and used as a collateral was a property located in San Fernando, Pampanga, which was covered by Transfer Certificate of Title (TCT) No. 387371-R.[6] A stipulation in the Indenture also irrevocably appointed Solidbank-Trust Division as Gotesco's attorney-in-fact.[7] Under the Indenture, Gotesco also agreed to "at all times maintain the Sound Value of the Collateral."[8]

When the loan was about to mature, Gotesco found it difficult to meet its obligation because of the 1997 Asian Financial Crisis.[9] On January 24, 2000, Gotesco sent a letter to Solidbank proposing to restructure the loan obligation.[10] The loan restructuring

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by Associate Justices Elihu A. Ybañez and Franchito N. Diamante of the Former Special Fourteenth Division, Court of Appeals, Manila.

[4] *Id*. at 42-43.

[5] *Id*. at 43.

[6] *Id*. at 42.

[7] *Id*. at 56.

[8] *Id*. at 52.

[9] *Id*. at 16.

[10] *Id*. at 43.

agreement proposed to extend the payment period to seven (7) years. The suggested period included a two (2)-year grace period.[11]

In its February 9, 2000 letter,[12] Solidbank informed Gotesco of a substantial reduction in the appraised value of its mortgaged properties. Based on an appraisal report submitted to Solidbank, the sound value of the mortgaged properties at that time was at ₱381,245,840.00.[13] Since the necessary collateral to loan ratio was 200%, Solidbank held that there was a deficiency in the collateral, which Gotesco had to address. Solidbank required Gotesco to replace or add to the mortgaged properties.[14]

Gotesco construed the February 9, 2000 letter as Solidbank's implied agreement to the loan restructuring proposal.[15] However, Gotesco found it unnecessary to address the alleged deficiency in the collateral. It insisted that the aggregate sound value of the mortgaged properties had not changed and was still at ₱1,076,905,000.00.[16]

Solidbank sent a demand letter dated June 7, 2000 to Gotesco as the loan became due.[17] Despite having received this demand letter, Gotesco failed to pay the outstanding obligation.[18]

Solidbank then filed a Petition for the Extrajudicial Foreclosure of the lot covered by TCT No. 387371-R through Atty. Wilfrido Mangiliman (Atty. Mangiliman), a notary public.[19]

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[11] *Id*. at 20.

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

[13] *Id*. at 72.

[14] *Id*.

[15] *Id*. at 19.

[16] *Id*. at 74, Certificate of Sound Value of Collateral dated July 28, 1999.

[17] *Id*. at 105, Comment.

[18] *Id*. at 105-106, Comment.

[19] *Id*. at 44.

In the Notice of Sale[20] dated July 24, 2000, the public auction of the land located in Pampanga, covered by TCT No. 387371-R, was announced to be held on August 24, 2000 at 10:00 a.m. However, pursuant to paragraph 5 of A.M. No. 99-10-05-0 dated December 14, 1999,[21] the Notice of Sale indicated that if the minimum requirement of two (2) bidders was not met, the sale was to be postponed and rescheduled on August 31, 2000.[22]

The public auction was held on August 31, 2000[23] and Solidbank was declared the winning bidder.[24]

On February 5, 2001, Gotesco filed a complaint before Branch 42, Regional Trial Court, San Fernando, Pampanga for Annulment of Foreclosure Proceedings, Specific Performance, and Damages against Solidbank, Atty. Mangiliman, and the Register of Deeds of San Fernando, Pampanga.[25]

Gotesco assailed the validity of the foreclosure proceeding claiming that it was premature and without legal basis.[26] According to Gotesco, the jurisdictional requirements prescribed under Act No. 3135 were not complied with. First, Solidbank did not furnish Gotesco copies of the petition for extrajudicial foreclosure, notice of sale, and certificate of sale. Second, the filing fees were not paid. Lastly, even assuming the original

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[20] *Id*. at 75-76.

[21] Adm. Matter No. 99-10-05-0 (2000) provides:

5. No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two, bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

[22] *Rollo,* p. 76.

[23] *Id*. at 44.

[24] *Id*. at 77-79, Certificate of Sale.

[25] *Id*. at 42.

[26] *Id*. at 44.

period for loan payment was not extended, the prerequisites for the foreclosure proceeding provided in the Indenture were not met.[27]

Section 5.02 of the Indenture provided:

5.02. Foreclosure. **If any event of default shall have occurred and be continuing, the Trustee [Solidbank-Trust Division], on written instruction by the Majority Creditors [Solidbank], shall within three (3) Banking Days from receipt of such notice, give written notice to the Company [appellant], copy furnished all Creditors, declaring all obligations secured by this Indenture due and payable and foreclosing the Collateral. Upon such declaration, the [appellant] shall pay to the [Solidbank-Trust Division], within ten (10) days from receipt of such notice,** the amount sufficient to cover costs and expenses of collection, including compensation for the [Solidbank-Trust Division], its agents and attorneys.

In default of such payment, the [Solidbank-Trust Division] may proceed to foreclose this Indenture, judicially or extra-judicially under Act No. 3135, as amended. Thereupon, on demand of the [Solidbank-Trust Division], the appellant shall immediately turn over possession of the Collateral to any party designated as the duly authorized representative of the [Solidbank-Trust Division], free of all charges. (Emphasis supplied.)[28]

In their Answer with Counterclaim, Solidbank alleged that it never entered into a restructuring agreement with Gotesco. Solidbank claimed that it complied with the publication and posting requirements laid down by Act No. 3135. It also asserted that Gotesco's complaint was insufficient because it failed to state a cause of action.[29]

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[27] *Id*.

[28] *Id*. at 53, as quoted in the Decision of the Court of Appeals. The parties did not attach a copy of the Indenture to the petition.

[29] *Id*. at 45.

On October 31, 2001, Solidbank filed an Ex-Parte Petition for the Issuance of a Writ of Possession[30] before Branch 48, Regional Trial Court, San Fernando, Pampanga.[31]

The two (2) cases were consolidated before Branch 42, Regional Trial Court, San Fernando, Pampanga.[32] However, the presiding judge of Branch 42 recused himself after disclosing that he was a depositor in Metrobank, previously Solidbank. The case was re-raffled to Branch 47.[33]

In its May 4, 2011 Decision,[34] Branch 47, Regional Trial Court, San Fernando, Pampanga dismissed Gotesco's complaint for the annulment of the foreclosure proceeding and granted the Writ of Possession in Solidbank's favor:

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[30] Act No. 3135, Sec. 7, as amended by Act 4118, provides:

Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[31] *Rollo*, p. 13.

[32] *Id.* at 95.

[33] *Id.* at 48.

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

WHEREFORE, premises considered, the plaintiff's Complaint in Civil Case No. 12212 is hereby **DISMISSED** for lack of merit.

On the other hand, the Ex-Parte Petition in LRC No. 762 is hereby **GRANTED**. Accordingly, let a writ of possession over the property covered by Transfer Certificate of Title No. 387371-R be issued against Gotesco Properties, Inc., and all persons claiming rights under it.

SO ORDERED.[35] (Emphasis in the original)

Gotesco filed a Motion for Reconsideration, which was denied on September 6, 2011.[36]

Gotesco appealed the rulings before the Court of Appeals. It argued that contrary to the trial court's finding, the restructuring agreement was perfected. The foreclosure was premature because Gotesco was not in default. Solidbank also failed to adhere to the stipulation which required that in the event of default, a notice shall be given to Gotesco. Moreover, Mr. Go allegedly was not authorized to appoint Solidbank as an attorney-in-fact.[37]

In its May 31, 2013 Decision,[38] the Court of Appeals affirmed the decision of the Regional Trial Court. It ruled that there was no perfected restructuring agreement between the parties.[39] It cited Article 1319 of the Civil Code,[40] which requires absolute acceptance of the offer before it can be considered a binding

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[35] *Id*. at 42, as quoted in the Court of Appeals Decision.

[36] *Id*. at 49.

[37] *Id*. at 50-51.

[38] *Id*. at 41-62.

[39] *Id*. at 50.

[40] CIVIL CODE, Art. 1319 provides:

Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

contract.[41] It found that Gotesco failed to prove that Solidbank clearly and unequivocally accepted the proposal for loan restructuring.[42]

The Court of Appeals also declared that Gotesco was in default.[43] It quoted Section 4.03 of the Indenture, which provided:

> The Company *[Gotesco/appellant]* shall at all times maintain the Sound Value of the Collateral at a level equal to that provided for under Sec. 2.01 of this Indenture and, for such purpose, shall make such substitutions, replacements, and additions for or to the Collateral.
>
> If at any time, in the opinion of the Trustee *[Solidbank-Trust Division]* and the Majority Creditors *[Solidbank/appellee]*, the Sound Value of the Collateral is impaired, or there is substantial and imminent danger of such impairment, the *[appellant]* shall, upon demand of *[Solidbank-Trust Division]*, effect the substitution of the Collateral or part thereof with another or others and/or execute additional mortgages on other properties and/or deposit cash with the *[Solidbank-Trust Division]* satisfactory to the *[Solidbank-Trust Division]* and *[Solidbank]*.[44] (Emphasis in the original)

Under the Indenture, Gotesco agreed to provide additional collateral "[i]f at any time, in the opinion of the Trustee and the Majority Creditors, the Sound Value of the Collateral is impaired."[45] Gotesco should have provided the additional security demanded by Solidbank after learning that the value of the properties used as collateral had been reduced significantly. When Gotesco "chose to rely on its opinion, over and above and contrary to the opinion of the Trustee and the Creditor," it defaulted on its obligation.[46] Thus, the Court of Appeals ruled that Gotesco's refusal to address the inadequacy of the collateral was sufficient reason for Solidbank to foreclose the property.

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[41] *Rollo*, p. 51.

[42] *Id*.

[43] *Id*.

[44] *Id*. at 52, as quoted in the Decision of the Court of Appeals.

[45] *Id*.

[46] *Id*.

The Court of Appeals found that the requisites under Section 3 of Act No. 3135 were satisfied.[47] The Notice of Sale was physically posted in the Office of the Clerk of Court, the Registry of Deeds, and the Capitol Grounds.[48] Alongside the posting, the Notice of Sale was published in *Remate* in its issues dated July 29, 2000, August 5, 2000, and August 12, 2000.[49] The Court of Appeals rejected Gotesco's allegation that the publication was invalid for being published in a newspaper not printed in the city where the property was located. According to the Court of Appeals, the fact that *Remate* was published in Metro Manila, not in Pampanga, did not mean that it was not a newspaper of general circulation.[50] It was still a newspaper of general circulation; thus, the publication was valid. The Court of Appeals ruled, "[t]he Notice of Sale, Affidavit of Publication, and Affidavit of Posting sufficiently prove that the jurisdictional requirements regarding publication of the Notice were complied with."[51] There was also documentary evidence proving that contrary to Gotesco's claim, it received a demand letter from Solidbank.[52]

The Court of Appeals also determined that Mr. Go had the authority to agree to the conditions related to securing the loan.[53] It examined the Secretary's Certificate which quoted verbatim the Board Resolution authorizing Mr. Go to enter into the loan agreement:[54]

Resolution No. 95-015

RESOLVED, AS IT HEREBY RESOLVED, that the Corporation [appellant] be as it is hereby authorized, to enter into a Mortgage

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[47] *Id*. at 57.

[48] *Id*. at 58.

[49] *Id*. at 57.

[50] *Id*. at 58.

[51] *Id*. at 57.

[52] *Id*. at 53.

[53] *Id*. at 56.

[54] *Id*. at 55.

Trust Indenture (MTI) arrangement with Solidbank Corporation-Trust Division.

RESOLVED FURTHER, that the [appellant], be as it is hereby authorized to secure a loan in the amount of THREE HUNDRED MILLION only (₱300,000,000.00) PESOS from Solidbank Corporation [appellant] under said Mortgage Trust Indenture on such items, conditions, and stipulations that the [appellant] may think fit for the purpose of the loan and to mortgage the [appellant]'s assets as security and/or collateral for the loan and other credit facilities.

RESOLVED FURTHER, that JOSE C. GO, be, as he is hereby authorized, to negotiate and accept the terms and conditions and to sign, execute and deliver any and all promissory notes, bonds, mortgages and all other documents necessary in the execution of the aforesaid resolutions with the said banks, for and in behalf of the [appellant].[55]

Lastly, since there was no third party with adverse interest that occupied the property, the issuance of the Writ of Possession was ministerial.[56]

The dispositive portion of the Court of Appeals May 31, 2013 Decision provided:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The Decision dated May 4, 2011, and the Order dated September 6, 2011, of the Regional Trial Court, Branch 47, San Fernando, Pampanga in the consolidated cases docketed as Civil Case No. 12212 and LRC No. 726, are hereby **AFFIRMED**. Costs against appellant Gotesco Properties Incorporated.

SO ORDERED.[57] (Emphasis in the original)

Gotesco filed a Motion for Reconsideration but it was denied in the Resolution[58] promulgated on October 7, 2013.

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[55] *Id*. at 55-56.

[56] *Id*. at 61.

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

[58] *Id*. at 64-65.

Hence, this Petition for Review on Certiorari was filed on November 28, 2013.[59]

In this Petition, petitioner Gotesco maintains that the foreclosure proceeding is null and void. It insists that respondent Solidbank agreed to restructure its loan, granting a "payment period of seven (7) years with two (2) years grace period."[60] It continues to argue that respondent impliedly accepted petitioner's proposal when it asked for an increase in the collateral.[61] Respondent reneged on the restructuring agreement when it caused the foreclosure of the property prematurely.

Petitioner claims that it was not notified that it was in default. Under the Indenture, the foreclosure proceeding can only be initiated upon petitioner's failure to pay within 10 days after receipt of the notice of default. Allegedly, respondent did not send any notice. Respondent's failure to prove that it sent a demand letter means the obligation is not yet due and demandable.[62]

Petitioner avers that the mortgage is void because the principal obligation it secured was still inexistent when the Indenture was signed. The mortgage was executed on August 9, 1995. The promissory notes representing the loans were dated August 14, 1995, August 21, 1995, and August 28, 1995. Since the mortgage was only an accessory contract, "it cannot stand alone absent a principal obligation to secure."[63]

Petitioner alleges that Mr. Go was not sanctioned by Gotesco's Board of Directors "to appoint the bank as the attorney-in-fact to conduct an extra-judicial foreclosure."[64] Thus, the subsequent proceedings are void.

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[59] *Id*. at 10-39.

[60] *Id*. at 20.

[61] *Id*. at 19.

[62] *Id*. at 23.

[63] *Id*. at 30-31.

[64] *Id*. at 30.

Moreover, petitioner insists that Section 3 of Act No. 3135 was violated. The law requires that the Notice of Sale be posted for not less than 20 days before the day of the auction sale. According to the Affidavit of Posting by Janet Torres, Atty. Mangiliman's law clerk,[65] the Notice of Sale was posted on August 15, 2000.[66] Since the auction sale was conducted on August 31, 2000, the 20-day period was not followed.[67]

Petitioner further contends that the publication of the Notice of Sale in *Remate* was defective. Petitioner is of the opinion that the Notice of Sale should have been published in newspapers "published, edited and circulated" in the same city or province where the foreclosed property was located.[68] Since the land being sold was situated at San Fernando, Pampanga and *Remate* was printed and published in Manila, petitioner suggests that the publication requirement was violated.[69]

Consequently, since the foreclosure proceeding was void, there was no basis for the issuance of the Writ of Possession. Possession of the property must revert back to petitioner.

Thereafter, respondent filed a Comment[70] and a Supplemental Comment[71] to the Petition. Respondent denies that it agreed to restructure petitioner's loan. It emphasized that petitioner has not shown any concrete proof that respondent accepted the proposal. Moreover, the alleged restructuring agreement was not offered in evidence and cannot be considered by this Court.[72]

In its Comment, respondent explains that it is of no moment that the mortgage agreement was executed before the promissory

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[65] *Id*. at 57-58.

[66] *Id*. at 80.

[67] *Id*. at 24.

[68] *Id*. at 25.

[69] *Id*. at 26.

[70] *Id*. at 91-123.

[71] *Id*. at 124-136.

[72] *Id*. at 99.

notes. Jurisprudence has recognized that a mortgage can secure present and future obligations.[73] In any case, since petitioner is arguing that the obligation was restructured, it is now estopped from questioning the validity of the Indenture.[74]

Respondent argues that petitioner cannot claim that it was not notified of the default. Respondent submitted a return card which indicated that the demand letter dated June 7, 2000 informing Gotesco of its default was received by petitioner.[75] There is also a provision in the promissory note, which states that failure to pay the amounts due makes the obligation immediately due, without need for notice or demand.[76]

Respondent took the position that Mr. Go was clearly authorized by the Board of Directors to sign the Indenture. Since the appointment of Solidbank-Trust Division as an attorney-in-fact was an integral part of the agreement, petitioner was bound by Mr. Go's assent. In any case, this contention was not alleged in the Complaint; hence, it is immaterial.[77]

According to respondent, Section 3 of Act No. 3135 was complied with. *Remate* is a newspaper of general circulation. It is among the newspapers accredited by the Regional Trial Court where a notice of sale can be published.[78] Petitioner also cannot raise for the first time on appeal the allegation that the Notice of Sale was defective for being posted less than 20 days before the auction sale.[79]

Respondent holds that the Writ of Possession was validly issued because its issuance was ministerial.

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[73] *Id*. at 103.

[74] *Id*.

[75] *Id*. at 105.

[76] *Id*. at 103.

[77] *Id*. at 107.

[78] *Id*. at 113.

[79] *Id*. at 111.

A Reply[80] was filed by petitioner on May 20, 2014 in compliance with this Court's March 17, 2014 Resolution.

On August 28, 2015, petitioner filed a Motion for Voluntary Inhibition[81] of the ponente. Petitioner sought the inhibition of Associate Justice Marvic M.V.F. Leonen, former Dean of the College of Law of the University of the Philippines, for his ties with Metrobank Foundation.[82] The ponente allegedly had a working relationship with respondent.[83] First, he was an awardee of the professorial chair of the Metrobank Foundation.[84] Second, he was chosen as a speaker in the Metrobank Professorial Chair and Metrobank's Country's Outstanding Police Officers in Service.[85] Respondent opposed the Motion for Voluntary Inhibition as "none of the grounds for mandatory inhibition exist[s] in the present instance."[86]

In this Court's January 25, 2016 Resolution,[87] the Motion for Inhibition was denied for lack of merit. The Internal Rules of the Supreme Court[88] provide several grounds for inhibition

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[80] *Id*. at 168-186.

[81] *Id*. at 188-193.

[82] *Id*. at 189.

[83] *Id*. Gotesco considers Metropolitan Bank and Trust Company (formerly Solidbank Corporation) and Metrobank Foundation as the same corporation.

[84] *Id*. "[I]n the Metrobank Foundation Professorial Chair Lecture Series, Volume 1, 2004, 2009, it is indicated that [Justice Leonen] had a professorial chair in Constitutional Law while he was Dean of the UP College of Law and the Vice Chair of the Department of Constitutional Law, PHILJA."

[85] *Id*.

[86] *Id*. at 195.

[87] *Id*. at 201.

[88] Adm. Matter No. 10-4-20-SC (2010), Rule 8, Sec. 1 provides:

Section 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

in addition to those stated under Rule 137, Section 1[89] of the Rules of Court. There was no need for the ponente to inhibit since none of the enumerated circumstances was attendant in this case. Justices are not given unfettered discretion to desist from hearing a case.[90] Mere imputation of bias or partiality is not enough; there must be a just and valid cause for inhibition to prosper.[91]

(b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3 (c) of this rule;

(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

[89] RULES OF COURT, Rule 137, Sec. 1 provides:

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

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

[90] *Pagoda Philippines Inc. v. Universal Canning, Inc.*, 509 Phil. 339, 341 (2005) [Per *J.* Panganiban, Third Division].

[91] *Id.*

On March 20, 2017, respondent filed a Motion for Resolution claiming the case is ripe for resolution.[92]

There are three (3) issues to be resolved before this Court:

First, whether the foreclosure was premature;

Second, whether the requirements under Section 3 of Act No. 3135 were complied with; and

Finally, whether the Writ of Possession was properly issued.

I.A

Petitioner defaulted in its obligation. Thus, respondent was within its rights to foreclose the property.

Section 5 of the Indenture provided:

5.01 Events of Default. Each of the following shall constitute an Event of Default under this Indenture:

(a) **the Company shall fail to pay at stated maturity, by acceleration or otherwise to any Creditor any amount due and owing under a Secured Principal Document**;

(b) any event of default under the Secured Principal Documents shall occur;

(c) any representation or warranty or statement made or furnished to this Trustee by or on behalf of the Company in connection with this Indenture shall prove to have been false in any material respect when made or furnished or deemed made;

(d) the Company shall default in the due performance or observance of any provision contained herein and such default continues unremedied for thirty (30) days after notice to the Company by the Trustee; or

(e) **the lien created by this Indenture shall be lost or impaired** or shall cease to be a first and preferred lien upon the Collateral.[93] (Emphasis supplied)

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[92] *Rollo*, p. 202.

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

Petitioner defaulted in its obligation twice. First, when it failed to pay the loan according to the terms of the promissory note. Second, when it failed to provide the additional collateral demanded by respondent.

Petitioner never refuted that it defaulted in its payment of the loan. In its Stipulation of Facts/Admissions and Proposed Marking of Exhibits, petitioner admitted to proposing the loan restructuring because of its inability to meet the loan payments.[94] The loan restructuring agreement would have given Petitioner an additional "payment period of seven (7) years with two (2) years grace period on principal payment."[95]

However, as the Court of Appeals correctly held, that there was no perfected restructuring agreement between the parties. The Civil Code requires absolute acceptance of the offer before it can be considered a binding contract:

> Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
>
> Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

Mendoza v. Court of Appeals[96] tells us that "[o]nly an absolute and unqualified acceptance of a definite offer manifests the consent necessary to perfect a contract."[97]

For a proposal to bind a party, there must be proof that it consented to all the terms on offer.[98] To prove that the original

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[94] *Id*. at 104.

[95] *Id*. at 20.

[96] 412 Phil. 14 (2001) [Per *J*. De Leon, Jr., Second Division].

[97] *Id*. at 28.

[98] *Id*.

period of payment was extended, petitioner must show that respondent unequivocally accepted the offer. In this case, petitioner did not present any shred of evidence which would prove that respondent agreed to restructure the loan. At best, petitioner only alleged that it sent a letter to respondent to ask for a debt restructuring. However, sending a proposal is not enough. There must be proof that respondent expressly accepted the offer. Without an absolute acceptance, there is no concurrence of minds.[99] Thus, this Court cannot bind respondent to stipulations it never consented to.

Petitioner points to respondent's February 9, 2000 letter claiming that if respondent had not agreed to the proposal, it would not have asked for additional collateral.[100]

However, respondent's February 9, 2000 letter showed no indication that it extended the loan's payment period. It did not even mention any restructuring proposal. The demand to address the deficiency in the loan's security cannot be interpreted as an implied agreement to restructure the loan.

Notably, petitioner did not offer the alleged restructuring agreement in evidence. As respondent points out, the theory that the loan was restructured is hinged on the January 24, 2000 letter from petitioner.[101] However, this letter which allegedly proposed the restructuring of petitioner's obligation was not offered in evidence.[102] Under the rules, this Court cannot consider any evidence not formally offered.[103] In *Spouses Ong v. Court of Appeals,*[104]

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[99] *Vda. de Urbano v. Government Service Insurance System*, 419 Phil. 948, 975-976 (2001) [Per *J.* Puno, First Division].

[100] *Rollo*, p. 19.

[101] *Id.* at 99.

[102] *Id.* at 43 and 99.

[103] RULES OF COURT, Rule 132, Sec. 34 provides:

Section 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[104] 361 Phil. 338 (1999) [Per *J.* Panganiban, Third Division].

this Court exonerated a common carrier from liability because the police report finding it liable was not formally offered in evidence. This Court explained:

> A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.[105] (Citation omitted)

Since the loan restructuring which Gotesco proposed was not accepted, there is no question that petitioner defaulted on the payment of its loan.

Petitioner's failure to provide the additional collateral demanded by respondent constituted another Event of Default under the Indenture.

Under the Indenture, petitioner agreed to maintain the value of the collateral at a level at least equal to the required collateral cover. Section 4.03 of the Indenture provided:

> The Company [Gotesco/appellant] shall at all times maintain the Sound Value of the Collateral at a level equal to that provided for under Sec. 2.01 of this Indenture and, for such purpose, shall make such substitutions, replacements, and additions for or to the Collateral.
>
> **If at any time, in the opinion of the Trustee [Solidbank-Trust Division] and the Majority Creditors [Solidbank/appellee], the Sound Value of the Collateral is impaired, or there is substantial and imminent danger of such impairment, [appellant] shall, upon demand of [Solidbank-Trust Division], effect the substitution of the Collateral** or part thereof with another or others and/or execute additional mortgages on other properties and/or deposit cash with

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[105] *Id*. at 350.

the [Solidbank-Trust Division] satisfactory to the [Solidbank-Trust Division] and [Solidbank].[106] (Emphasis supplied)

On February 9, 2000, respondent wrote to petitioner claiming that the appraised value of the mortgaged properties decreased.[107] Respondent then asked petitioner to "address the deficiency in the required collateral."[108] The letter, in part, provided:

> At present, the outstanding secured obligations covered by the [Mortgage Trust Indenture are] ₱300 Million, which MPC is held solely by Solidbank Corporation. The reduction in the collateral values of the properties shall therefore impair the required collateral to loan ratio of 200%.
>
> In this regard, we urge you to address the deficiency in the required collateral cover soonest and make the necessary substitution, replacements and/or additions on the mortgaged properties. Section 4.03 of the [Mortgage Trust Indenture] requires that [Gotesco Properties, Inc.] shall maintain at all times the Sound Value of the mortgaged property at a level at least equal to the required collateral cover.[109]

Petitioner chose not to heed this demand and insisted that the aggregate sound value of the mortgaged properties was still at ₱1,076,905,000.00.[110] It added:

> 42. And even assuming arguendo that the value of the mortgaged properties has vent down, the fact remains that being a real estate property, it could not go down more than 50% of the value thereof. Thus, at best the least valuation of these mortgaged properties would be no less than ₱600 million, which is more than enough to cover the balance of the loan obligations.[111]

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[106] *Rollo*, p. 52, as quoted in the Decision of the Court of Appeals.

[107] *Id*. at 72.

[108] *Id*.

[109] *Id*. The letter did not state what "MPC" was.

[110] *Id*. at 74, Certificate of Sound Value of Collateral dated July 28, 1999.

[111] *Id*. at 19-20.

The determination of whether the collateral is impaired lies on respondent. As the Court of Appeals aptly put, petitioner ignored respondent's demand "to its ruination."[112]

Under the Civil Code,[113] there is default when a party obliged to deliver something fails to do so. In *Social Security System v. Moonwalk Development & Housing Corp.*,[114] this Court enumerated the elements of default:

> In order that the debtor may be in default it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially and extrajudicially. Default generally begins from the moment the creditor demands the performance of the obligation.[115] (Citations omitted)

When respondent asked to have the mortgaged properties replaced, it was requiring petitioner to comply with its obligation to sustain the loan's security at an appropriate level. Clearly,

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[112] *Id*. at 52.

[113] CIVIL CODE, Art. 1169 provides:

> Article 1169. *Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.*
>
> However, the demand by the creditor shall not be necessary in order that delay may exist:
>
> (1) When the obligation or the law expressly so declare; or
>
> (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
>
> (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis supplied)

[114] 293 Phil. 129 (1993) [Per *J*. Campos, Jr., Second Division].

[115] *Id*. at 141.

petitioner defaulted when it refused to heed respondent's demand for additional collateral, as expressed in the February 9, 2000 letter. This gave respondent enough reason to foreclose the property.

I.B

Petitioner argues that the foreclosure should not have been initiated because it was not notified that an event of default occurred. It claims that under the Indenture, it should have been notified that it was in default and that the obligation was due and demandable. After such notice, it should have been given 10 days to settle the debt. Petitioner avers that the foreclosure proceeding could only be initiated upon failure to pay after the lapse of the 10-day period.[116]

Petitioner claims it did not receive any demand letter. Gotesco's first witness, Arturo M. Garcia, testified that Gotesco did not receive any written demand.[117] On the other hand, respondent avers that it sent a demand letter dated June 7, 2000 to petitioner.[118] As proof, respondent submitted a return card which indicated that the letter was accepted by the addressee.

This Court rules for respondent.

Documentary evidence will generally prevail over testimonial evidence.[119] As the Court of Appeals noted, the return card submitted by respondent proves that the demand letter was received by petitioner.[120] This Court is inclined to give more evidentiary weight to documentary evidence as opposed to a testimony which can be easily fabricated.[121] In any case, the

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[116] *Rollo*, p. 21.

[117] *Id*. at 22.

[118] *Id*. at 105.

[119] *Government Service Insurance System v. Court of Appeals*, 293 Phil. 699, 710 (1993) [Per *J*. Melo, Third Division].

[120] *Rollo*, pp. 53 and 105.

[121] *Government Service Insurance System v. Court of Appeals*, 293 Phil. 699, 710 (1993) [Per *J*. Melo, Third Division].

question of whether the letter was received is a factual matter better left to the lower courts. Since the factual findings of appellate courts are conclusive and binding upon this Court when supported by substantial evidence, this Court sees no reason to disturb the findings of the Court of Appeals.[122]

I.C

The contention that Mr. Go did not have the authority to appoint Solidbank-Trust Division as an attorney-in-fact for the purpose of selling the mortgaged property is untenable. As the Court of Appeals correctly pointed out:

> Since Mr. Go was authorized to sign the Indenture, and the provision of appointment of the [respondent] as attorney-in-fact in the event of foreclosure is an integral portion of the terms and conditions of the Indenture, Mr. Go was, therefore, authorized and invested with the power to appoint an attorney-in-fact.[123]

In any case, petitioner is not allowed to bring a new issue on appeal. Since the question regarding Mr. Go's authority was only presented before the Court of Appeals, it deserves scant consideration.

Canada v. All Commodities Marketing Corporation[124] explained that raising a new argument on appeal violates due process:

> As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court ordinarily will not be considered by a reviewing court because they cannot be raised for the first time at that late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present evidence *in contra* to the

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[122] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 10 [Per *J*. Leonen, Second Division].

[123] *Rollo*, p. 56.

[124] 590 Phil. 342 (2008) [Per *J*. Nachura, Third Division].

new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner at this stage to change his theory would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[125] (Citations omitted)

II.A

As to the validity of the foreclosure proceeding, this Court rules in the affirmative.

Section 3 of Act No. 3135 provides:

> Section 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Section 3 of Act No. 3135 requires that the Notice of Sale be a) physically posted in three (3) public places and b) be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the city where the property is situated.

Petitioner claims that since the foreclosed property was located in Pampanga, the publication of the Notice of Sale in *Remate* was not valid. Petitioner suggests that the Notice of Sale could only be published in a newspaper printed in the city where the property was located. It posits that because *Remate* was printed and published in Manila, not in San Fernando, Pampanga, the publication was defective.[126]

Petitioner is mistaken.

Fortune Motors (Phils.), Inc. v. Metropolitan Bank and Trust Co.[127] already considered this argument and ruled that this interpretation is too restricting:

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[125] *Id.* at 347-348.

[126] *Rollo*, pp. 24-28.

[127] 332 Phil. 844 (1996) [Per J. Hermosisima Jr., First Division].

Were the interpretation of the trial court (sic) to be followed, even the leading dailies in the country like the 'Manila Bulletin,' the 'Philippine Daily Inquirer,' or 'The Philippine Star' which all enjoy a wide circulation throughout the country, cannot publish legal notices that would be honored outside the place of their publication. But this is not the interpretation given by the courts. For what is important is that a paper should be in general circulation in the place where the properties to be foreclosed are located in order that publication may serve the purpose for which it was intended.[128]

If notices are only published in newspapers printed in the city where the property is located, even newspapers that are circulated nationwide will be disqualified from announcing auction sales outside their city of publication.[129] This runs contrary to the spirit of the law which is to attain wide enough publicity so all parties interested in acquiring the property can be informed of the upcoming sale.[130] This Court ruled:

We take judicial notice of the fact that newspaper publications have more far-reaching effects than posting on bulletin boards in public places. There is a greater probability that an announcement or notice published in a newspaper of general circulation, which is distributed nationwide, shall have a readership of more people than that posted in a public bulletin board, no matter how strategic its location may be, which caters only to a limited few. Hence, the publication of the notice of sale in the newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirement of the law. By such publication, a reasonably wide publicity had been effected such that those interested might attend the public sale, and the purpose of the law had been thereby subserved.[131]

The crucial factor is not where the newspaper is printed but whether the newspaper is being circulated in the city where

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[128] *Id*. at 850.

[129] *Id*.

[130] *Olizon v. Court of Appeals*, 306 Phil. 162 (1994) [Per *J*. Regalado, Second Division].

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

the property is located. Markedly, what the law requires is the publication of the Notice of Sale in a "newspaper of general circulation," which is defined as:

> To be a newspaper of general circulation, it is enough that "it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it is published at regular intervals" . . . The newspaper need not have the largest circulation so long as it is of general circulation.[132]

Verily, there is clear emphasis on the audience reached by the paper; the place of printing is not even considered.

The Court of Appeals pointed out that *Remate* is an accredited publication by the Regional Trial Court of Pampanga.[133] As argued by respondent:

> 94. It merits judicial notice that the newspaper where the Notice of Sale was published is chosen by raffle among newspaper publications accredited by the Regional Trial Court with territorial jurisdiction over the real property to be foreclosed. It can be safely presumed that the RTC in this regard imposed standards and criteria for these newspapers to qualify for the raffle, among the criteria being that they [are] newspapers of general circulation in the locality. More so in this instance, when it merits judicial notice that the Remate, is one of the most widely circulated tabloids in the country.[134]

II.B

As to the alleged defect with the posting requirement, petitioner argues that the Notice of Sale was posted less than the required 20 days. Respondent points out that this issue was alleged for the first time before this Court and should not be considered.

This Court rules for respondent.

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[132] *Bonnevie v. Court of Appeals*, 210 Phil. 100, 111 (1983) [Per *J.* Guerrero, Second Division].

[133] *Rollo*, p. 58.

[134] *Id*. at 113.

Records show that petitioner only raised this argument in the Petition for Review submitted before this Court. The alleged defect was not raised before the lower courts. Notably, this is not the first time petitioner raised a new issue on appeal. As previously discussed, it raised Mr. Go's alleged lack of authority for the first time before the Court of Appeals. This Court reiterates that this practice cannot stand because raising new issues on appeal violates due process.[135]

In any case, the alleged defect in the posting is superficial. The Notice of Sale was posted on August 15, 2000,[136] while the auction sale took place on August 31, 2000.[137] The Notice of Sale was posted for 16 days, only four (4) days less than what the law requires.

The object of a Notice of Sale in an extrajudicial foreclosure proceeding is to inform the public of the nature and condition of the property to be sold and the time, place, and terms of the auction sale. Mistakes or omissions that do not impede this objective will not invalidate the Notice of Sale.[138] *Olizon v. Court of Appeals*[139] explained:

> The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or

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[135] *Canada v. All Commodities Marketing Corp.,* 590 Phil. 342, 347-348 (2008) [Per *J.* Nachura, Third Division].

[136] *Rollo*, p. 80, Affidavit of Posting.

[137] *Id.* at 44.

[138] *Olizon v. Court of Appeals*, 306 Phil. 162, 172-173 (1994) [Per *J.* Regalado, Second Division].

[139] *Olizon v. Court of Appeals*, 306 Phil. 162 (1994) [Per *J.* Regalado, Second Division].

omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.[140] (Citation omitted)

III

Generally, the purchaser in a public auction sale of a foreclosed property is entitled to a writ of possession during the redemption period. Section 7 of Act No. 3135, as amended by Act No. 4118, provides:

> Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

It is ministerial upon the trial court to issue such writ upon an ex parte petition of the purchaser.[141] However, this rule admits an exception.[142]

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[140] *Id*. at 173.

[141] *Spouses Edralin v. Philippine Veterans Bank*, 660 Phil. 368, 381 (2011) [Per *J*. Del Castillo, First Division].

[142] *China Banking Corp. v. Spouses Lozada*, 579 Phil. 454, 478-480 (2008) [*J*. Chico-Nazario, Third Division].

The last sentence of Rule 39, Section 33 of the Rules of Court is instructive:

> Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied.)

This is in line with this Court's pronouncement in *Saavedra v. Siari Valley Estates, Inc.*[143] that:

> Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.[144]

This Court in *China Banking Corp. v. Spouses Lozada*[145] discussed that when the foreclosed property is in the possession of a third party, the issuance of a writ of possession in favor of the purchaser ceases to be ministerial and may no longer be

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[143] 106 Phil. 432 (1959) [Per *J.* Montemayor, *En Banc*].

[144] *Id.* at 436.

[145] 579 Phil. 454 (2008) [*J.* Chico-Nazario, Third Division].

done ex parte.[146] However, for this exception to apply, the property must be held by the third party adversely to the mortgagor.[147]

The Court of Appeals correctly held that this case does not fall under the exception.[148] Since it is the petitioner, and not a third party, who is occupying the property, the issuance of the Writ of Possession is ministerial.

There is also no merit to petitioner's argument that the Writ of Possession should not be issued while the complaint for the annulment of the foreclosure proceeding is still pending. *Fernandez v. Spouses Espinoza*[149] already ruled that a pending case assailing the validity of the foreclosure proceeding is immaterial:

> Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.[150] (Citation omitted)

As the winning bidder, respondent is entitled to the Writ of Possession.

WHEREFORE, the Petition for Review on Certiorari is hereby **DENIED**. The assailed Decision of the Court of Appeals dated May 31, 2013 and Resolution dated October 7, 2013 in CA-G.R. CV No. 97748 are **AFFIRMED**.

SO ORDERED.

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

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[146] *Id.* at 473-474.

[147] *Id.*

[148] *Rollo*, p. 61.

[149] 574 Phil. 292 (2008) [Per *J.* Chico-Nazario, Third Division].

[150] *Id.* at 307.

SECOND DIVISION

[G.R. No. 210615. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABENIR BRUSOLA *y* BARAGWA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); PARRICIDE; ELEMENTS THEREOF SUFFICIENTLY PROVED.— The trial court appreciated the evidence presented by the parties, considered the credibility of their respective witnesses, and found that all the elements of the crime of parricide were sufficiently proved by the prosecution. There was no dispute as to the relationship between the accused-appellant and the victim. As for the act of killing, the trial court held: With respect to the killing by the accused of his wife, their daughter Joanne clearly testified that she suddenly saw her father hit the head of her mother with a small mallet. Joanne's straightforward and candid narration of the incident is regarded as positive and credible evidence, sufficient to convict the accused.

2. ID.; ID.; ID.; THE PROPER PENALTY IS *RECLUSION PERPETUA*; CONSIDERING THAT THE PENALTY FOR PARRICIDE CONSISTS OF TWO (2) INDIVISIBLE PENALTIES, RULE 63 OF THE RPC IS APPLICABLE.— [T]he trial court properly sentenced accused-appellant Abenir to the penalty of *reclusion perpetua.* As appreciated by the Court of Appeals, where there are mitigating circumstances in a parricide case, the proper penalty to be imposed is *reclusion perpetua*. x x x Accused-appellant Abenir cited *People v. Genosa* to support the imposition of a lower penalty in light of the mitigating circumstance. x x x However, there is no basis to apply Article 64 to the crime of parricide. x x x Considering that the penalty for parricide consists of two (2) indivisible penalties—*reclusion perpetua* to death—Rule 63, and not Rule 64, is applicable. Thus, the penalty of *reclusion perpetua* was properly imposed.

3. ID.; ID.; ID.; CIVIL LIABILITY.— In line with current jurisprudence, the civil indemnity and the moral damages

awarded to the victim's children are increased to ₱75,000.00 each and ₱75,000.00 as exemplary damages is added.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

There is never any justification for a husband to hit his wife with a maso (mallet).

This resolves the appeal[1] of the Court of Appeals' July 17, 2013 Decision,[2] affirming the February 4, 2010 Decision[3] of Branch 206, Regional Trial Court, Muntinlupa City, which found Abenir Brusola (Abenir) guilty beyond reasonable doubt of parricide under Article 246 of the Revised Penal Code. The trial court imposed the penalty of *reclusion perpetua* and ordered him to pay the children of the deceased the amount of ₱50,000.00 as indemnity and ₱50,000.00 as moral damages.[4]

In the Information dated July 14, 2006, accused-appellant Abenir was charged with the killing of his wife, Delia Brusola (Delia), as follows:

That on or about the 12th day of July 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the

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[1] The appeal was filed under RULES OF COURT, Rule 124, Sec. 13(c).

[2] *Rollo,* pp. 2-11. The Decision, docketed as CA-G.R. CR-HC No. 04419, was penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante of the Fifteenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 15-27. The Decision, docketed as Criminal Case No. 06-650, was penned by Judge Patria A. Manalastas-De Leon of Branch 206, Regional Trial Court, Muntinlupa City.

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

above-named accused, being the husband of complainant DELIA BRUSOLA y RAMILO, now deceased, with intent to kill and with the use of ball hammer (maso), did then and there willfully, unlawfully and feloniously hit his said wife, DELIA BRUSOLA y RAMILO with the said ball hammer on her head, thereby causing fatal injury to the latter which directly caused her death.

Contrary to Law.[5]

On August 1, 2006, accused-appellant Abenir was arraigned and pleaded not guilty. After pre-trial, trial on the merits ensued.[6]

The prosecution's version of the events was as follows:

Abenir and Delia's children, Joanne, Abegail, and Kristofer,[7] testified that they, together with their parents and other sister Jessica, were at home on July 12, 2006, at around 6:45 p.m. Their house was a one (1)-storey building and had an open sala, a kitchen, and one (1) bedroom. Kristofer was asleep in the bedroom. Joanne was eating with her back turned to her father, who was preparing for work. Jessica, Abegail, and Delia were watching the television, with Delia seated on the floor near the toilet. Joanne would occasionally glance at her father and noticed that he seemed restless. Suddenly, Joanne saw Abenir hit Delia on the head with a maso. A second blow hit the cement wall. Joanne yelled, "Tay!" and tried to pacify Abenir, asking why he did it. Abenir said he saw a man in the bathroom with Delia. Joanne looked in the bathroom but saw no one. Kristofer was awoken. When he emerged from the bedroom, he saw his father still holding the maso while his sisters Joanne and Abigail were attending to Delia, who was on the floor and had blood on her head. Kristofer held Abenir. Delia was rushed to the hospital by their neighbors. Joanne lost consciousness but arose when their neighbors massaged her head. Abenir was brought to the police station. The next day, their neighbor Joy Tabarno informed the Brusola siblings

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[5] *Id*. at 15.

[6] *Id*.

[7] *Id*. at 16-20.

that Delia had passed away.[8] Dr. Joseph Palmero, a medico-legal officer of the Philippine National Police Crime Laboratory in Camp Crame, testified on the cause of Delia's death.[9]

The defense's version of the events, as testified by Abenir, is as follows:

Abenir worked in Saudi Arabia as a mason, a steel man, and a pipe fitter from 1986 until he returned in 1992, when his sister informed him that Delia had a paramour. He and his family lived in Muntinlupa City while he worked for the Makati Development Corporation until 2001, when he moved them to Batangas where Delia's family could take care of them, considering that he was often at work. Sometime in September 2002, at around 2:00 a.m., he was on his way to their house in Batangas when he saw his brother-in-law on the road. When his brother-in-law saw him, he ran inside Abenir's house and re-emerged with a shirtless man. When Abenir went inside, he asked Delia why she was still awake and who the shirtless man was. Delia just nagged him so he slept as he was very tired. The following day, he went to the store, and some men mocked him. Abenir later asked Delia about the shirtless man again. Delia responded by throwing a glass at him. Thus, Abenir went back to Alabang in 2006 to avoid mockery and a fight with his brother-in-law.[10]

On the night of July 12, 2006, Abenir came home at around 7:00 p.m. or 8:00 p.m. Two (2) of his children were asleep and one (1) was watching the television. While Abenir was preparing things, Delia went outside. She appeared to be waiting for somebody. After taking a bath, she fixed her face. When Abenir asked if Delia was going somewhere, she said it was none of his business. Abenir went to the bathroom for his personal effects. While inside, he heard people talking outside and looked out through a crack in the plywood wall. He saw

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[8] *Rollo,* p. 4.

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

[10] *Id*. at 5-6.

a man and a woman kiss and identified the woman as Delia, who told the man, "Huwag muna ngayon, nandiyan pa siya." The man embraced her, and groped her breast and private parts. Abenir picked up the maso, went outside, and approached them, who were surprised to see him. Abenir attacked the man who used Delia as a shield and pushed her toward Abenir, causing them to stumble on the ground. Delia went inside while Abenir chased the man. After a failed pursuit, he returned to the house where Joanne hugged him and inquired what happened. Abenir answered that Delia was having an affair. He noticed that Kristofer was carrying Delia whose head was bleeding. He instructed his children to take her to the hospital. He informed Joanne that he would surrender and asked his children to call the barangay officials and the police. He voluntarily went with the officers to the police station where he learned that Delia was hit on the head. He asserted that he planned to attack the man whom he saw was with his wife but accidentally hit Delia instead.[11]

In the Decision[12] dated February 4, 2010, the trial court found Abenir guilty beyond reasonable doubt of the crime charged. The dispositive portion read:

> WHEREFORE, the Court finds accused Abenir Brusola y Baragwa GUILTY beyond reasonable doubt of the crime of parricide defined and penalized under Article 246 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of *reclusion perpetua*. The accused is likewise ordered to pay the children of the deceased, Delia Brusola y Ramilo, the amount of ₱50,000.00 as indemnity and ₱50,000.00 as moral damages.
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> In the service of his sentence, the accused shall be credited with the period of his preventive imprisonment.
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> SO ORDERED.[13]

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[11] *Id*. at 6.

[12] CA *rollo*, pp. 15-27.

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

Abenir appealed the trial court Decision to the Court of Appeals.[14] He argued that there was inconsistency between the testimonies of Joanne and Abegail.[15] Moreover, Joanne, the prosecution's lone eyewitness to the attack, purportedly had ill motive against him since he had opposed her plans of early marriage.[16] Further, in imposing the penalty of *reclusion perpetua*, the trial court did not consider the mitigating circumstances of passion, obfuscation, and voluntary surrender.[17]

The Court of Appeals found no merit in Abenir's arguments. Thus, in the Decision[18] dated July 17, 2013, the Court of Appeals affirmed the trial court's findings:

> WHEREFORE, the appeal is DISMISSED. The Decision, dated February 4, 2010, of the Regional Trial Court of Muntinlupa City, Branch 206, in Criminal Case No. 06-650, is AFFIRMED in toto.
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> SO ORDERED.[19]

Abenir filed a Notice of Appeal. In compliance with its Resolution[20] dated August 23, 2013 which gave due course to accused-appellant Abenir's notice of appeal, the Court of Appeals elevated the records of this case to this Court. In the Resolution[21] dated March 10, 2014, this Court directed both the Office of the Solicitor General and the Public Attorney's Office to file their respective supplemental briefs. Both parties filed their respective manifestations that they would not be filing supplemental briefs.[22]

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[14] *Id*. at 34-45.

[15] *Id*. at 41.

[16] *Id*.

[17] *Id*. at 43.

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

[19] *Id*. at 11.

[20] *Id*. at 1.

[21] *Id*. at 17.

[22] *Id*. at 20-22, OSG Manifestation submitted on May 22, 2014; *rollo*, pp. 23-25, PAO Manifestation submitted on May 30, 2014.

After considering the parties' arguments and the records of this case, this Court resolves to dismiss accused-appellant Abenir's appeal for failing to show reversible error in the assailed decision.

Article 246 of the Revised Penal Code provides:

> Article 246. Parricide. – Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

The trial court appreciated the evidence presented by the parties, considered the credibility of their respective witnesses, and found that all the elements of the crime of parricide were sufficiently proved by the prosecution. There was no dispute as to the relationship between the accused-appellant and the victim.[23] As for the act of killing, the trial court held:

> With respect to the killing by the accused of his wife, their daughter Joanne clearly testified that she suddenly saw her father hit the head of her mother with a small mallet. Joanne's straightforward and candid narration of the incident is regarded as positive and credible evidence, sufficient to convict the accused. Well settled is the rule that it is unnatural for a relative, in this case the accused's own child, who is interested in vindicating the crime, to accuse somebody else other than the real culprit. For her to do so is to let the guilty go free. Where there is nothing to indicate that witnesses were actuated by improper motives on the witness stand, their positive declarations made under solemn oath deserve full faith and credence.[24] (Citations omitted)

Thus, this Court quotes with approval the Court of Appeals' Decision:

> It is hornbook doctrine that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect. Having seen and heard the witnesses and observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence. The reason for this is that trial courts have the unique opportunity to observe the witnesses

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[23] CA *rollo*, p. 24.

[24] *Id.* at 24-25.

first hand and note their demeanor, conduct, and attitude under grilling examination. Thus, the trial court's evaluation shall be binding on the appellate court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied. There is no reason to deviate from the rule.

The alleged inconsistency in the testimonies of Joanne and Abigail does not affect the credibility of either witness. What Abigail [and] Joanne were actually doing at the precise moment that appellant struck his wife with a maso is absolutely insignificant and unsubstantial to merit consideration . . . Inconsistencies that refer only to minor details do not weaken the credibility of witnesses but are rather signs that the witnesses were not rehearsed.

What is important is that the prosecution witnesses were consistent on the principal occurrence and the identity of the accused. Thus, Joanne narrated in a direct and forthright manner how she saw appellant hit her mother with a maso on the head and her testimony is supported by the physical evidence of the injury sustained by the victim. While Abigail and Kristofer did not actually see appellant in the act of hitting their mother, nevertheless, they saw appellant holding the murder weapon and their mother fallen on the floor with a bloodied head immediately after the criminal act was committed . . .

The alleged ill motive of Joanne is hardly worthy of consideration and belief. Joanne and her siblings had lost their mother and they also stood to lose their father to prison, leaving them virtual orphans. Assuming that appellant had previously disapproved of Joanne's early marriage, such would not have been a sufficient motive for her to wrongly accuse her own father of a heinous crime . . . [25] (Citations omitted)

Moreover, the trial court properly sentenced accused-appellant Abenir to the penalty of *reclusion perpetua.* As appreciated by the Court of Appeals, where there are mitigating circumstances in a parricide case, the proper penalty to be imposed is *reclusion perpetua*.[26] In *People v. Sales*,[27] this Court explained:

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[25] *Rollo,* pp. 8-9.

[26] See *People v. Arnante*, 439 Phil. 754 (2002) [Per *J*. Vitug, First Division], *People v. Joyno*, 364 Phil. 305 (1999) [Per *J*. Gonzaga-Reyes, *En Banc*].

[27] 674 Phil. 150 (2011) [Per *J*. Del Castillo, First Division].

As regards the penalty, parricide is punishable by *reclusion perpetua* to death . . . the presence of only one mitigating circumstance, which is, voluntary surrender, with no aggravating circumstance, is sufficient for the imposition of *reclusion perpetua* as the proper prison term. Article 63 of the Revised Penal Code provides in part as follows:

> Art. 63. *Rules for the application of indivisible penalties.* —
>
> . . . .
>
> In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:
>
> . . . .
>
> 3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
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> . . . .

The crime of parricide is punishable by the indivisible penalties of *reclusion perpetua* to death. With one mitigating circumstance, which is voluntary surrender, and no aggravating circumstance, the imposition of the lesser penalty of *reclusion perpetua* and not the penalty of death on appellant was thus proper.[28] (Citation omitted)

Accused-appellant Abenir cited *People v. Genosa*[29] to support the imposition of a lower penalty in light of the mitigating circumstance.[30] True, this Court in *Genosa* applied Article 64 of the Revised Penal Code, instead of Article 63, to determine the penalty for parricide:

> The penalty for parricide imposed by Article 246 of the Revised Penal Code is *reclusion perpetua* to death. Since two mitigating circumstances and no aggravating circumstance have been found to have attended the commission of the offense, the penalty shall be lowered by one (1) degree, pursuant to Article 64 of paragraph 5 of the same Code. The penalty of *reclusion temporal* in its medium

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[28] *Id*. at 166.

[29] 464 Phil. 680 (2004) [Per *J*. Panganiban, *En Banc*].

[30] CA *rollo*, pp. 76-77, Brief for the Accused-appellant.

period is imposable, considering that two mitigating circumstances are to be taken into account in reducing the penalty by one degree, and no other modifying circumstances were shown to have attended the commission of the offense. Under the Indeterminate Sentence Law, the minimum of the penalty shall be within the range of that which is next lower in degree — *prision mayor* — and the maximum shall be within the range of the medium period of *reclusion temporal*.

Considering all the circumstances of the instant case, we deem it just and proper to impose the penalty of *prision mayor* in its minimum period, or six (6) years and one (1) day in prison as minimum; to *reclusion temporal* in its medium period, or 14 years 8 months and 1 day as maximum. Noting that appellant has already served the minimum period, she may now apply for and be released from detention on parole.[31] (Citations omitted)

However, there is no basis to apply Article 64 to the crime of parricide. Articles 63 and 64 of the Revised Penal Code provide:

Article 63. *Rules for the Application of Indivisible Penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

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[31] *People v. Genosa,* 464 Phil. 680, 746-747 (2004)[Per *J*. Panganiban, *En Banc*].

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Article 64. *Rules for the Application of Penalties Which Contain Three Periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

Considering that the penalty for parricide consists of two (2) indivisible penalties—*reclusion perpetua* to death—Rule 63, and not Rule 64, is applicable. Thus, the penalty of *reclusion perpetua* was properly imposed.

In line with current jurisprudence,[32] the civil indemnity and the moral damages awarded to the victim's children are increased to ₱75,000.00 each and ₱75,000.00 as exemplary damages is added.

The promise of forever is not an authority for the other to own one's spouse. If anything, it is an obligation to love and cherish despite his or her imperfections. To be driven to anger, rage, or murder due to jealousy is not a manifestation of this sacred understanding. One who professes love should act better than this. The accused-appellant was never entitled to hurt, maim, or kill his spouse, no matter the reasons. He committed a crime. He must suffer its consequences.

WHEREFORE, this Court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals in its July 17, 2013 Decision in CA-G.R. CR-HC No. 04419. Accused-appellant Abenir Brusola y Baragwa is **GUILTY** beyond reasonable doubt of parricide under Article 246 of the Revised Penal Code, as amended, and is sentenced to *reclusion perpetua.* The assailed decision is **AFFIRMED with MODIFICATION** in that the heirs of the victim are entitled to ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.

SO ORDERED.

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

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[32] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, <http://sc. judiciary. gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

SECOND DIVISION

[G.R. No. 212098. July 26, 2017]

JULIO C. ESPERE, *petitioner, vs.* **NFD INTERNATIONAL MANNING AGENTS, INC./TARGET SHIP MANAGEMENT PTE LTD./CYNTHIA SANCHEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC, NOT A CASE OF; A PETITION FOR *CERTIORARI* WAS NOT RENDERED MOOT AND ACADEMIC BY THE SATISFACTION OF THE JUDGMENT AWARD IN COMPLIANCE WITH THE WRIT OF EXECUTION ISSUED BY THE LABOR ARBITER.— The petition for *certiorari* filed by respondents with the CA was not rendered moot and academic by their satisfaction of the judgment award in compliance with the writ of execution issued by the LA. x x x Respondents' payment of the judgment award, without prejudice, required no obligations whatsoever on the part of petitioner. The satisfaction of the judgment award may not be considered as an amicable settlement between the parties as it was simply made in strict compliance with or wholly by virtue of satisfying a duly issued writ of execution. Thus, the equitable ruling in *Career Philippines*, may not be made to apply in the present case, otherwise, it would be unfair to respondents because it would prevent them from availing of the remedies available to them under the Rules of Court, such as the petition for *certiorari* they filed with the CA.

2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY COMPENSATION; FINDINGS OF COMPANY-DESIGNATED DOCTORS THAT PETITIONER'S HYPERTENSION IS NOT WORK-RELATED GIVEN MORE WEIGHT AND CREDIT.— [T]he various medical certificates and reports by the company-designated physicians were issued in a span of five (5) months of closely monitoring petitioner's medical condition and progress, and after careful analysis of the results of the diagnostic tests and procedures administered to petitioner while in consultation with his

cardiologist. Hence, the Court finds no error in the ruling of the CA that the extensive medical attention that the company doctors gave to petitioner enabled them to acquire a more accurate diagnosis of petitioner's medical condition and fitness for work resumption compared to petitioner's chosen physician who was not privy to his case from the beginning and appears to have examined him only once.

3. **ID.; ID.; ID.; ELEMENTS THAT MUST BE ESTABLISHED FOR DISABILITY TO BE COMPENSABLE.—** For disability to be compensable under the above POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

4. **ID.; ID.; ID.; EMPLOYEE CANNOT RELY ON THE PRESUMPTION THAT HIS ILLNESS IS WORK-RELATED, HE MUST BE ABLE TO PROVE THAT HIS WORK CONDITIONS CAUSED OR INCREASED THE RISK OF CONTRACTING HIS ILLNESS; FAILURE OF THE EMPLOYEE TO PRESENT SUBSTANTIAL EVIDENCE WILL RESULT IN THE DENIAL OF HIS CLAIM.—** [W]hile the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated. Thus, the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. In this case, however, petitioner relied on the presumption that his illness is work-related but he was unable to present substantial evidence to show that his work conditions caused or, at the least, increased the risk of contracting his illness. Neither was he able to prove that his illness was pre-existing and that it was aggravated by the nature of his employment. Thus, the LA and the CA correctly ruled that he is not entitled to any disability compensation.

5. ID.; ID.; ID.; RESTITUTION OF THE AMOUNT PAID BY EMPLOYER BY VIRTUE OF THE WRIT OF EXECUTION ISSUED BY THE LABOR ARBITER, ORDERED.— [I]n view of respondents' prior satisfaction of the writ of execution issued by the LA while the case was pending with the CA, coupled with petitioner's admission that he "had already received the full judgment award of this case," the latter, having been proven not entitled to such an award, should, thus, return the same to respondents. This is in consonance with Section 18, Rule XI of the 2011 NLRC Rules of Procedure, as amended by En Banc Resolution Nos. 11-12, Series of 2012 and 05-14, Series of 2014[.]

APPEARANCES OF COUNSEL

R.C. Carrera & Associates for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated November 13, 2013 and April 3, 2014, respectively, in CA-G.R. SP No. 130210. The questioned CA Decision annulled and set aside the February 28, 2013 Decision and March 27, 2013 Resolution of the National Labor Relations Commission (*NLRC*) which reversed the November 5, 2012 Decision of the Labor Arbiter (*LA*). The Decision of the LA, in turn, dismissed herein petitioner's complaint for recovery of permanent total disability compensation as well as attorney's fees and damages.

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[1] Penned by Associate Justice Marlene B. Gonzales-Sison, with the concurrence of Associate Justices Amy C. Lazaro-Javier and Edwin D. Sorongon, Annex "A" to Petition; *rollo*, pp. 45-57.

[2] Annex "B" to Petition, *id*. at 58-60.

The pertinent factual and procedural antecedents of the case are as follow:

On June 21, 2011, petitioner Julio C. Espere was hired as a Bosun by respondent NFD International Manning Agents, Inc. (*NFD*) for and in behalf of its foreign principal Target Ship Management Pte Ltd. on board the vessel *M.V. Kalpana Prem*, for a period of nine (9) months, with a basic monthly salary of US$730.00.[3] Prior to his employment and embarkation, petitioner underwent a Pre-Employment Medical Examination where he was pronounced "Fit For Sea Duty."[4]

Around five (5) months into his deployment, petitioner complained that he was feeling dizzy, had body malaise and chills. He was then referred to a clinic in Vancouver, Canada, where the physician who examined him found that he was suffering from "uncontrolled hypertension", "malaise NYD", and "psychosomatic illness". He was also declared unfit for duty and was repatriated back to the Philippines.[5]

Upon his return, petitioner was examined at the Marine Medical Services of the Metropolitan Medical Center by the company-designated physicians. In the case report prepared by Dr. Frances Hao-Quan (*Dr. Hao-Quan*), Asst. Medical Coordinator, which was noted by Dr. Roberto D. Lim (*Dr. Lim*), Medical Coordinator, of Marine Medical Services, dated December 23, 2011, it was stated that petitioner was suffering from hypertension. He was given medication for his condition and advised to come back for re-evaluation on December 26, 2011.[6]

On the said date, petitioner came back as directed. In the follow-up report[7] of Dr. Hao-Quan, which was also noted by

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[3] CA *rollo*, p. 84.

[4] *Id.* at 130-135.

[5] *Rollo*, p. 47; *id.* at 85.

[6] CA *rollo*, pp. 86-87.

[7] *Id.* at 88.

Dr. Lim, she noted that petitioner is already under the care of a cardiologist. She, likewise stated that petitioner's blood pressure is elevated and that the laboratory tests done on the petitioner "showed normal fasting blood sugar, creatinine, cholesterol, triglyceride, HDL, LDL, VLDL, SGPT and potassium." Further, petitioner was advised to continue his medication and to come back on January 5, 2012 for his re-evaluation.

In the next follow-up report[8] prepared by Dr. Hao-Quan and noted by Dr. Lim, dated January 6, 2012, it was stated that petitioner still had an elevated blood pressure. Petitioner was given additional anti-hypertensive medication and the dose of his present anti-hypertensive medication was adjusted for better blood pressure control. Petitioner was also directed to return for another evaluation.

Thereafter, petitioner religiously went back for check-up and re-evaluation on January 20, 2012,[9] January 27, 2012,[10] February 10, 2012,[11] February 15, 2012,[12] February 29, 2012,[13] March 28, 2012,[14] April 3, 2012,[15] April 17, 2012,[16] April 24, 2012,[17] and May 8, 2012.[18] In all these follow-up evaluations, petitioner was continually diagnosed to be suffering from hypertension and was given the appropriate medications to address his medical condition. Moreover, during the time he was undergoing treatment, petitioner received sickness allowance which

[8] *Id.* at 89.

[9] *Id*. at 90.

[10] *Id*. at 91.

[11] *Id.* at 92.

[12] *Id*. at 93.

[13] *Id*. at 95.

[14] *Id*. at 96.

[15] *Id*. at 97.

[16] *Id*. at 98.

[17] *Id*. at 99.

[18] *Id*. at 101.

amounted to Two Thousand Eight Hundred Eighty-Seven US dollars and Three Cents (US$2,887.03) from respondent.[19]

Meanwhile, on February 16, 2012, the Marine Medical Services of the Metropolitan Medical Center issued a report stating that the cause of petitioner's hypertension was not work-related and that the cause of his hypertension is multifactorial in origin, which includes genetic predisposition, poor lifestyle, high salt intake, smoking, diabetes mellitus, age, and increased sympathetic activity.[20] Moreover, petitioner's hypertension can be triggered by stress and emotional outburst.[21] In a subsequent report dated April 24, 2012, one of the company doctors stated that petitioner's hypertension "is not a contraindication to resume work as long as patient will be compliant with taking his anti-hypertensive medications and we are able to achieve adequate blood pressure control."[22]

On May 7, 2012, not satisfied with the findings of the company-designated physicians, petitioner consulted Dr. Manuel C. Jacinto, Jr. (*Dr. Jacinto*), who specializes in Orthopedic Surgery and Traumatology/Disease of Bones and Joints, of the Sta. Teresita General Hospital. After examining petitioner, Dr. Jacinto issued a Medical Certificate[23] stating that petitioner suffered from "uncontrolled essential hypertension." Dr. Jacinto also concluded that petitioner's illness started from work and his condition did not improve despite treatment. Dr. Jacinto marked petitioner's condition as "work-related/work-aggravated."[24]

Eventually, on May 16, 2012, petitioner filed a Complaint[25] against respondents claiming disability benefits for permanent

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[19] *Id*. at 103-107.

[20] *Id*. at 94.

[21] *Id.*

[22] *Id*. at 100.

[23] *Id.* at 140.

[24] *Id*.

[25] *Id*. at 63-64. Respondent Cynthia Sanchez was impleaded in her capacity as President of respondent NFD.

disability and damages. After receiving the parties' position papers, the LA, on November 5, 2012, rendered a Decision[26] dismissing the complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint and other claims for lack of merit.
>
> SO ORDERED.[27]

The LA held that petitioner failed to prove by substantial evidence that his hypertension was work-related. The LA also did not give much weight to the findings of Dr. Jacinto because there was no showing that he conducted a thorough medical evaluation of the petitioner.[28]

Aggrieved, petitioner sought recourse before the NLRC. On February 28, 2013, the NLRC 3rd Division rendered a Decision[29] in favor of the petitioner, which reversed and set aside the decision of the LA, *viz.*:

> WHEREFORE, the appeal is hereby GRANTED. The decision of the Labor Arbiter dismissing the complaint is REVERSED and SET ASIDE, and a new one entered granting:
>
> a) The claim for disability benefits assessed at Grade 1 disability;
>
> b) Ordering respondent to pay the sum of US$60,000.00 as disability benefits at the rate of exchange at the time of payment; and
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> c) 10% of the money awards as attorney's fees.
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> SO ORDERED.[30]

The NLRC held that the nature of petitioner's stressful work on board the vessel was a factor in the aggravation of his

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[26] CA *rollo*, pp. 51-60.

[27] *Id*. at 60.

[28] *Id*. at 57-59.

[29] *Id*. at 38-49.

[30] *Id.* at 49.

hypertension. Also, since 120 days had lapsed without petitioner having gone back to his former trade as a seaman, he is entitled to permanent total disability equivalent to Grade 1 rating.[31]

Respondents filed a motion for reconsideration, but it was denied in the NLRC Resolution[32] dated March 27, 2013. Respondents then filed a petition for *certiorari* before the CA assailing the decision and resolution of the NLRC.

During the pendency of the petition before the CA, the LA, on July 30, 2013, issued a Writ of Execution. In compliance with the writ, respondents deposited the judgment award before the NLRC Cashier.[33]

On November 13, 2013, the CA rendered a Decision[34] granting the petition. The CA annulled and set aside the decision of the NLRC and dismissed petitioner's complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is **GRANTED**. The **DECISION** of the NLRC in NLRC LAC (OFW-M) 01-000124-13 is hereby **ANNULLED** and **SET ASIDE**, and the DECISION of the Labor Arbiter dismissing the Complaint filed by Julio C. Espere is hereby **REINSTATED**.
>
> **SO ORDERED.**[35]

Ruling in favor of respondents, the CA held that petitioner failed to establish by adequate proof that his hypertension was work-related. It also opined that according to the Standard Employment Contract approved by the Philippine Overseas Employment Agency (*POEA-SEC*), only essential hypertension is listed as an occupational disease and petitioner's hypertension was never classified to be essential. Unconvinced by the findings

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

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

[33] *Rollo,* p. 70.

[34] *Id*. at 46-57.

[35] *Id*. at 56. (Emphasis in the original)

of Dr. Jacinto, the CA found the findings of the company physicians more credible, thus, denying petitioner's claim for disability benefits.

Petitioner filed a Motion for Reconsideration, but it was denied in the CA Resolution[36] dated April 3, 2014.

Hence, the present petition assigning the following errors:

I

THAT THE HONORABLE COURT OF APPEALS HAS COMMITTED CLEAR AND PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION IN REVERSING THE JUDICIOUS FINDING OF FACTS AND CONCLUSION OF THE HONORABLE PUBLIC RESPONDENT (sic) NLRC.

II

THAT THE HONORABLE COURT OF APPEALS HAS COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT SWALLOWED HOOK, LINE AND SINKER THE BASELESS AND SPECULATIVE ASSERTION OF THE COMPANY-DESIGNATED PHYSICIAN ALLEGING THAT [PETITIONER'S] ILLNESS OF *HYPERTENSION* IS ALLEGEDLY NOT WORK-RELATED OR WORK-AGGRAVATED, ALTHOUGH [PETITIONER] WAS EMPLOYED BY [RESPONDENTS] CONSISTENTLY AND CONTINUOUSLY WITHOUT INTERRUPTION STARTING IN 1989 AND THAT PRIOR TO HIS DEPLOYMENT HE WAS FOUND TO BE FIT FOR WORK.

III

THAT THE HONORABLE COURT OF APPEALS HAS COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DID NOT UPHELD (sic) THE MAXIMUM CURE PERIOD OF A MEDICALLY-REPATRIATED SEAFARER PROVIDED FOR UNDER THE POEA STANDARD EMPLOYMENT CONTRACT WHICH IS FOR A PERIOD NOT EXCEEDING 120 DAYS AND THEREFORE THE CONTENTION OF THIS HONORABLE COURT THAT THE 240 DAYS SHALL BE NECESSARY IS CERTAINLY VIOLATIVE OF THE PROVISIONS

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

OF THE POEA STANDARD EMPLOYMENT CONTRACT WHICH IS THE LAW BETWEEN [PETITIONER] AND [RESPONDENTS].

IV

THAT THE HONORABLE COURT OF APPEALS HAS COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DID NOT DISMISS THE PETITION OF RESPONDENTS ALTHOUGH IT IS ALREADY CONSIDERED MOOT AND ACADEMIC CONSIDERING THAT THE JUDGMENT AWARD OF THIS CASE WAS ALREADY FULLY SETTLED BY RESPONDENTS BEFORE THE HONORABLE LABOR ARBITER A QUO.[37]

Petitioner mainly argues that the CA erred in giving much weight and credence to the findings of the company-designated physicians that his illness is not work-related and in totally disregarding the medical assessment of Dr. Jacinto, his appointed doctor. Petitioner, likewise, contends that he is already entitled to full disability compensation in accordance with the POEA-SEC, because he was not declared fit to work upon the lapse of 120 days from his sign-off from the vessel *M.V. Kalpana Prem* for medical treatment.

Petitioner also posits that the matters raised by respondents with the CA are factual matters which fall within the primary jurisdiction of the NLRC and which are not proper subjects of inquiry by the appellate court in a petition for *certiorari*. Petitioner argues that the CA should have accorded not only respect but even finality to the factual findings and conclusions of the NLRC. Petitioner also contends that the CA should have dismissed the petition for being moot and academic based on his allegation that respondents already paid and settled the monetary award while the petition was pending before the CA.

The petition is bereft of merit.

Before delving into the main issues raised, the Court shall first dispose of the procedural matters brought up by petitioner.

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

First, petitioner contends that what was raised by respondents in their petition filed with the CA "are purely factual matters and concerns that were already judiciously resolved by the x x x NLRC [and] [c]onsidering that the [CA] is not a trial court and it is not a trier of facts and only exercising an appellate jurisdiction over the x x x NLRC then factual matters and concerns are not certainly within the ambit of judicial inquiry in the petition considering that there was no palpable error or grave abuse of discretion committed by the x x x NLRC in rendering its assailed decision.[38]

The Court is not persuaded.

It is a long-settled rule that the proper mode for judicial review of decisions of the NLRC is a petition for *certiorari* under Rule 65 of the Rules of Court.[39]

As to the propriety of reviewing the factual findings of the NLRC in a *certiorari* petition, this Court's ruling in *Univac Development, Inc. v. Soriano*[40] is instructive. Thus, this Court has held that:

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x x x in a special civil action for *certiorari*, the issues are confined to errors of jurisdiction or grave abuse of discretion. In exercising the expanded judicial review over labor cases, the Court of Appeals can grant the petition if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy which necessarily includes looking into the evidence presented by the parties. **In other words, the CA is empowered to evaluate the materiality and significance of the evidence which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record.** The CA can grant a petition when the factual findings complained of are not

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[38] See *rollo,* p. 12.

[39] *One Shipping Corp., et al. v. Penafiel*, 751 Phil. 204, 213 (2015), citing *St. Martin Funeral Home v. NLRC*, 356 Phil. 811 (1998).

[40] 711 Phil. 516 (2013).

supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; **when the findings of the NLRC contradict those of the LA**; and when necessary to arrive at a just decision of the case. Thus, contrary to the contention of petitioner, **the CA can review the finding of facts of the NLRC and the evidence of the parties to determine whether the NLRC gravely abused its discretion x x x.**[41]

Second, petitioner asserts that the CA "has committed palpable error and grave abuse of discretion when it did not dismiss the petition of respondents under Rule 65, although the petition is already rendered moot and academic considering that respondents had already fully settled the judgment award of this case at the level of the Honorable Labor Arbiter *a quo* during the time that this case is under pre-execution proceedings."[42]

The Court does not agree.

The petition for *certiorari* filed by respondents with the CA was not rendered moot and academic by their satisfaction of the judgment award in compliance with the writ of execution issued by the LA. The case of *Career Philippines Shipmanagement, Inc. v. Madjus,*[43] cited by petitioner, finds no application in the present case. In the said case, while the petitioner employer had the luxury of having other remedies available to it such as its petition for *certiorari* pending before the CA and an eventual appeal to this Court, the respondent seafarer, in consideration of the satisfaction of judgment made by his employer, was made to execute an affidavit where he undertook that he will no longer pursue other claims after receiving payment arising from his employer's satisfaction of the judgment award. For equitable considerations, this Court held that the LA and the CA could not be faulted for interpreting the employer's "conditional settlement" to be tantamount to an amicable settlement of the

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[41] *Univac Development, Inc. v. Soriano, supra,* at 525. (Emphasis supplied)

[42] See *rollo*, p. 39.

[43] 650 Phil. 157 (2010).

case resulting in the mootness of the petition for *certiorari* filed by the employer before the CA.[44]

In the instant case, however, the records at hand show that no form of settlement was executed between the parties. Respondents' payment of the judgment award, without prejudice, required no obligations whatsoever on the part of petitioner. The satisfaction of the judgment award may not be considered as an amicable settlement between the parties as it was simply made in strict compliance with or wholly by virtue of satisfying a duly issued writ of execution. Thus, the equitable ruling in *Career Philippines*, may not be made to apply in the present case, otherwise, it would be unfair to respondents because it would prevent them from availing of the remedies available to them under the Rules of Court, such as the petition for *certiorari* they filed with the CA.

Having disposed of the procedural matters, the Court will now proceed to address the substantive issues in the instant petition.

The merits of the present case should be resolved taking into consideration the parties' contract as well as the prevailing law and rules at the time that petitioner was employed. In this regard, it settled that while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated with every seafarer's contract.[45] In the instant case, since petitioner's employment contract was executed on June 21, 2011 and was approved by the POEA on June 23, 2011, it is governed by the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships,[46] which was amended in 2010, pertinent portions of which read as follows:

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[44] *Career Philippines Shipmanagement, Inc. v. Magjus, supra*, at 165.

[45] *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the late Godofredo Repiso*, G.R. No. 190534, February 10, 2016, 783 SCRA 516, 538.

[46] See POEA Memorandum Circular No. 10, Series of 2010, dated October 26, 2010.

SECTION 20. COMPENSATION AND BENEFITS

A. 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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable 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 to be 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. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

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. In the course of the treatment, the seafarer shall also report regularly to the company-

designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

The Court will, thus, proceed to discuss the first substantive issue which relates to the findings of petitioner's appointed doctor *vis-a-vis* that of the company-designated physicians.

As discussed above, the opinion of petitioner's physician, that his hypertension is essential and work-related, is diametrically opposed to the evaluation made by the company doctors which found that petitioner's hypertension is not work-related. The question then is, whose assessment or finding should prevail?

In *Andrada v. Agemar Manning Agency, Inc., et al.,*[47] this Court held that:

> Jurisprudence is replete with pronouncements that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. It is his findings and evaluations which should form the basis of the seafarer's disability claim. His assessment, however, is not automatically final, binding or conclusive on the claimant, the labor tribunal or the courts, as its inherent merits would still have to be weighed and duly considered. The seafarer may dispute such assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice. In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seaman may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them.[48]

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[47] 698 Phil. 170 (2012).

[48] *Andrada v. Agemar Manning Agency, Inc., et al., supra*, at 182. (Citations omitted)

In the present case, there is no evidence to show that the parties jointly sought the opinion of a third physician in the determination and assessment of petitioner's disability or the absence of it. Hence, the credibility of the findings of their respective doctors was properly evaluated by the labor tribunals (*LA and NLRC*) as well as the CA on the basis of their inherent merits.

After a review of the records at hand, the Court finds that there is no cogent reason to overturn the factual findings of the LA and the CA which accorded more weight to the findings of the company-designated doctors as against the assessment of petitioner's private physician, Dr. Jacinto.

The Court agrees with the conclusion of the CA that, unlike the evaluation made by the company physicians, there is no evidence to prove that Dr. Jacinto's findings were reached based on an extensive or comprehensive examination of petitioner. In the Medical Certificate[49] he issued, Dr. Jacinto diagnosed petitioner as suffering from "Uncontrolled Essential Hypertension, Hypertensive Cardiomyopathy and Malaise," that his condition did not improve "despite management and medications" and, by reason of which, he is "physically unfit to go back to work." However, as found by the LA and the CA, aside from the above Medical Certificate, petitioner failed to present competent evidence to prove that he was thoroughly examined by Dr. Jacinto. No proof was shown that laboratory or diagnostic tests or procedures were taken. In fact, Dr. Jacinto did not specify the medications he prescribed and the type of medical management he made to treat petitioner's condition. Dr. Jacinto did not even explain nor justify his conclusions that petitioner's hypertension started at work, is essential and work-related and that, by reason of such illness, petitioner is no longer fit to work. Dr. Jacinto also indicated therein that petitioner "was under [his] service during the period from May 2012 to present."[50]

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[49] CA *rollo*, p. 140.

[50] *Id*.

However, a cursory reading of the said Medical Certificate would show that the same was issued on May 7, 2012. This only proves that, at the time the said Medical Certificate was issued, petitioner was under the care of Dr. Jacinto for not more than one week, without any indication as to the number of instances petitioner consulted him during that short period of time.

In contrast, the various medical certificates and reports by the company-designated physicians were issued in a span of five (5) months of closely monitoring petitioner's medical condition and progress, and after careful analysis of the results of the diagnostic tests and procedures administered to petitioner while in consultation with his cardiologist. Hence, the Court finds no error in the ruling of the CA that the extensive medical attention that the company doctors gave to petitioner enabled them to acquire a more accurate diagnosis of petitioner's medical condition and fitness for work resumption compared to petitioner's chosen physician who was not privy to his case from the beginning and appears to have examined him only once. In this regard, it bears to reiterate this Court's ruling in *Monana v. MEC Global Shipmanagement and Manning Corporation, et al.,*[51] which highlights jurisprudence that have given more weight to the assessment of the doctors who closely monitored and actually treated the seafarer, to wit:

> In *Philman Marine v. Cabanban*, this court gave more credence to the company-designated physician's assessment since "records show that the medical certifications issued by Armando's chosen physician were not supported by such laboratory tests and/or procedures that would sufficiently controvert the "normal" results of those administered to Armando at the St. Luke's Medical Center. . . [while] the medical certificate of the petitioners' designated physician was issued after three months of closely monitoring Armando's medical condition and progress, and after careful analysis of the results of the diagnostic tests and procedures administered to Armando while in consultation with Dr. Crisostomo, a cardiologist." Philman discussed as follows:

[51] 746 Phil. 736 (2014).

In several cases, we held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability. In *Coastal Safeway Marine Services, Inc. v. Esguerra*, the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Ruben D. Andrada v. Agemar Manning Agency, Inc., et al.*, the Court accorded greater weight to the assessments of the company designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report . . . [outlining] the alleged findings and medical history . . . obtained after . . . [one examination]." (Emphasis supplied)

In the recent case of *Dalusong v. Eagle Clarc Shipping Philippines*, Inc., we ruled that "the findings of the company-designated doctor, who, with his team of specialists . . . periodically treated petitioner for months and monitored his condition, deserve greater evidentiary weight than the single medical report of petitioner's doctor, who appeared to have examined petitioner only once."[52]

In the second substantive issue, petitioner insists that in order to be compensable, the worker is only burdened to prove the probability, and not absolute certainty, that the nature of his employment had caused or contributed, even to a small degree, in the development or aggravation of his illness and the deterioration of his health. Petitioner asserts that, since he was found to be fit for work prior to his deployment, the only conclusion that can be reached is that his employment with respondent is the primary cause of his hypertension. Petitioner also claims that under the prevailing POEA-SEC all other illnesses suffered by the seafarer on board the vessel, which are not listed as occupational diseases, are presumed work-related.

The Court is not persuaded.

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[52] *Monana v. MEC Global Shipmanagement and Manning Corporation, et al., supra*, at 751-752. (Citations omitted)

For disability to be compensable under the above POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[53]

In other words, while the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated.[54] Thus, the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease.[55]

In this case, however, petitioner relied on the presumption that his illness is work-related but he was unable to present substantial evidence to show that his work conditions caused or, at the least, increased the risk of contracting his illness. Neither was he able to prove that his illness was pre-existing and that it was aggravated by the nature of his employment. Thus, the LA and the CA correctly ruled that he is not entitled to any disability compensation.

As to petitioner's argument that, since he was found fit for work in his Pre-Employment Medical Examination[56] (*PEME*) prior to his deployment, there can be no other conclusion than that his

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[53] *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016, 785 SCRA 89, 98; *Doehle-Philman Manning Agency, Inc. v. Haro*, G.R. No. 206522, April 18, 2016.

[54] *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292, 311.

[55] *Id.* at 313.

[56] See CA *rollo*, pp. 130-135.

employment with respondents was the primary cause of his illness, this Court has ruled that the PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical conditions with which the seafarer is suffering and for which he may be presently taking medication.[57] The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant.[58] The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[59]

On the basis of the foregoing discussions, since petitioner's illness has not been proven to be work-related or work-aggravated, this Court need not delve on petitioner's remaining assignment of errors.

Finally, in view of respondents' prior satisfaction of the writ of execution issued by the LA while the case was pending with the CA, coupled with petitioner's admission that he "had already received the full judgment award of this case,"[60] the latter, having been proven not entitled to such an award, should, thus, return the same to respondents. This is in consonance with Section 18, Rule XI of the 2011 NLRC Rules of Procedure, as amended by En Banc Resolution Nos. 11-12, Series of 2012 and 05-14, Series of 2014, which provides:

RESTITUTION. – Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court with finality and restitution is so ordered, the Labor Arbiter shall, on motion, issue such order of restitution of the executed award, except reinstatement wages paid pending appeal.

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[57] *Status Maritime Corporation, et al. v. Spouses Delalamon*, 740 Phil. 175, 194 (2014); *Magsaysay Maritime Corp., et al. v. NLRC, et al.,* 630 Phil. 352, 367 (2010).

[58] *Id*.

[59] *Id.*

[60] See Petition, *rollo*, p. 39.

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated November 13, 2013 and April 3, 2014, respectively, in CA-G.R. SP No. 130210, are **AFFIRMED**. Petitioner Julio C. Espere is hereby **DIRECTED TO RESTITUTE** to respondents the full amount which he received by reason of the Writ of Execution issued by the Labor Arbiter, dated July 30, 2013.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 214300. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **MANUEL ESCOBAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; CONCEPT; BAIL AS A MATTER OF RIGHT OR JUDICIAL DISCRETION, EXPLAINED.— Bail is the security given for the temporary release of a person who has been arrested and detained but "whose guilt has *not* yet been proven" in court beyond reasonable doubt. The right to bail is cognate to the fundamental right to be presumed innocent. x x x Bail may be a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, *reclusion perpetua* or life imprisonment" before conviction by the Regional Trial Court. However, if the accused is charged with an offense the penalty of which is death, *reclusion perpetua*, or life imprisonment—"regardless of the stage of the

criminal prosecution"—*and* when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court.

2. ID.; CIVIL PROCEDURE; *RES JUDICATA*; CONCEPT.— In its literal meaning, *res judicata* refers to "a matter adjudged." This doctrine bars the re-litigation of the same claim between the parties, also known as claim preclusion or bar by former judgment. It likewise bars the re-litigation of the same issue on a different claim between the same parties, also known as issue preclusion or conclusiveness of judgement. It "exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquillity."

3. ID.; ID.; ID.; RESPONDENT'S SECOND BAIL PETITION IS NOT BARRED BY *RES JUDICATA* AS THIS DOCTRINE IS NOT RECOGNIZED IN CRIMINAL PROCEEDINGS.— Escobar's Second Bail Petition is not barred by *res judicata* as this doctrine is not recognized in criminal proceedings. Expressly applicable in civil cases, *res judicata* settles with finality the dispute between the parties or their successors-in-interest. *Trinidad v. Marcelo* declares that *res judicata*, as found in Rule 39 of the Rules of Civil Procedure, is a principle in civil law and "has no bearing on criminal proceedings." x x x An interlocutory order denying an application for bail, in this case being criminal in nature, does not give rise to *res judicata*. As in *Trinidad*, even if we are to expand the argument of the prosecution in this case to contemplate "*res judicata* in prison grey" or double jeopardy, the same will still not apply. Double jeopardy requires that the accused has been convicted or acquitted or that the case against him or her has been dismissed or terminated without his express consent. Here, while there was an initial ruling on Escobar's First Bail Petition, Escobar has not been convicted, acquitted, or has had his case dismissed or terminated.

4. ID.; ID.; ID.; ELEMENTS OF *RES JUDICATA;* FINAL JUDGMENT AND INTERLOCUTORY ORDER, DISTINGUISHED; *RES JUDICATA* APPLIES ONLY WHEN THERE IS FINAL JUDGMENT ON THE MERITS OF A CASE.— *Res judicata* requires the concurrence of the following elements: 1. The judgment sought to bar the new action must be *final*; 2. The decision must have been rendered

by a court having jurisdiction over the parties and the subject matter; 3. The disposition of the case must be a *judgment on the merits*; and 4. There must be between the first and second actions, identity of parties, of subject matter, and of causes of action. In deciding on a matter before it, a court issues either a final judgment or an interlocutory order. A final judgment "leaves nothing else to be done" because the period to appeal has expired or the highest tribunal has already ruled on the case. In contrast, an order is considered interlocutory if, between the beginning and the termination of a case, the court decides on a point or matter that is not yet a final judgment on the entire controversy. An interlocutory order "settles only some incidental, subsidiary or collateral matter arising in an action"; in other words, something else still needs to be done in the primary case—the rendition of the final judgment. *Res judicata* applies only when there is a final judgment on the merits of a case; it cannot be availed of in an interlocutory order even if this order is not appealed.

5. ID.; CRIMINAL PROCEDURE; BAIL; AN ACCUSED MAY FILE A SECOND PETITION FOR BAIL IF THERE IS NEW DEVELOPMENT WHICH WARRANTS A DIFFERENT REVIEW.— Appellate courts may correct "errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality." Thus, an accused may file a second petition for bail, particularly if there are sudden developments or a "new matter or fact which warrants a *different view*." Rolando's release on bail is a new development in Escobar's case. The Court of Appeals has pointed out that the other alleged co-conspirators are already out on bail: Rolando, in particular, was granted bail because Cubillas' testimony against him was weak. "[Escobar] and [Rolando] participated in the same way, but [Escobar]'s bail was denied." Escobar's fundamental rights and liberty are being deprived in the meantime. x x x The same evidence used by the trial court to grant bail to Rolando was not used similarly in Escobar's favor. x x x In light of the circumstances after the denial of Escobar's First Bail Petition, his Second Bail Petition should have been given due course.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Kapunan Garcia and Castillo for respondent.

D E C I S I O N

LEONEN, *J.*:

This Rule 45 Petition assails the Court of Appeals Decision to grant the accused's second petition for bail. *Res judicata* applies only in a final judgment in a civil case,[1] not in an interlocutory order in a criminal case.[2] An order disposing a petition for bail is interlocutory.[3] This order does not attain finality when a new matter warrants a second look on the application for bail.

Respondent Manuel Escobar (Escobar) filed a petition for bail (First Bail Petition), which was denied by the Regional Trial Court in the Order[4] dated October 6, 2008 and by the Court of Appeals in the Decision[5] dated March 8, 2011. A subsequent development in the accused's case[6] compelled him to file a second petition for bail (Second Bail Petition). On

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[1] *Trinidad v. Office of the Ombudsman*, 564 Phil. 382, 389 (2007) [Per *J.* Carpio-Morales, *En Banc*]; *Alvarez v. People of the Philippines*, 668 Phil. 216, 253 (2011) [Per *J.* Villarama, Jr., First Division].

[2] *Macahilig v. Magalit*, 398 Phil. 802, 817-18 (2000) [Per *J.* Panganiban, Third Division].

[3] *Pobre v. Court of Appeals*, 501 Phil. 360, 369 (2005) [Per *J.* Austria-Martinez, Second Division].

[4] *Rollo*, p. 38, as cited in the Court of Appeals Decision dated March 24, 2014. Copies of the Regional Trial Court Order and the First Petition for Bail are not attached to the records.

[5] *Id.* at 51-61. The Decision, docketed as CA-G.R. SP No. 107641, was penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr. of the Eighth Division of the Court of Appeals, Manila.

[6] *Id.* at 137, Comment.

April 26, 2012, the Regional Trial Court denied[7] this on the ground of *res judicata*. In the Decision[8] dated March 24, 2014, the Court of Appeals overturned the Regional Trial Court Order and granted the Second Bail Petition.

Escobar was suspected of conspiring in the kidnap for ransom of Mary Grace Cheng-Rosagas (Mary Grace), daughter of Filipino-Chinese businessman Robert G. Cheng (Robert), and two (2) other victims.[9] Robert was the owner of Uratex Foam, Philippines,[10] a manufacturing company of foams and mattresses.[11]

On June 18, 2001 at 7:40 a.m., Mary Grace, her bodyguard Valentin B. Torres (Torres), and her driver Dionisio F. Burca (Burca) were passing by the front of Malcolm Hall, University of the Philippines, Diliman, Quezon City when a vehicle blocked their way.[12] Another group of suspects helped as lookouts.[13]

Clad in police uniform, four (4) armed men forced Mary Grace, Burca, and Torres inside the vehicle.[14] The incident happened in broad daylight.

Alleged group leader Rolando Villaver (Villaver) and some of the suspects then travelled and detained Mary Grace, Burca,

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[7] *Id*. at 40, as cited in the Court of Appeals Decision dated March 24, 2014. A copy of the Regional Trial Court Order dated April 26, 2012 is not attached to the records.

[8] *Id*. at 36-46. The Decision, docketed as CA-G.R. SP No. 128189, was penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting of the Eighth Division of the Court of Appeals, Manila.

[9] *Id*. at 12.

[10] *Id*.

[11] *See* <https://www.uratex.com.ph/>

[12] *Rollo*, p. 36.

[13] Cecille Suerte Felipe, *15 charged for Cheng Kidnap,* PHILIPPINE STAR, August 10, 2001 <http://www.philstar.com/metro/129492/15-charged-cheng-kidnap> (last visited July 17, 2017).

[14] *Rollo*, pp. 36 and 38.

and Torres in an undisclosed location in Batangas.[15] Afterwards, the group headed to Club Solvento, a resort[16] in Calamba, Laguna owned by Escobar,[17] who personally served them food.[18]

Some of the accused[19] stayed in Club Solvento to rest or sleep while the others, namely, Villaver, Cesar Olimpiada, a certain Cholo, and Biboy Lugnasin, left to negotiate the price for the victims' release.[20] Cheng paid the ransom of ₱15,000,000.00.[21]

At 7:00 p.m. on the same day, Villaver's group returned to Club Solvento,[22] followed by co-accused brothers Rolando and Harold Fajardo (the Fajardo brothers), who were alleged advisers of Villaver.[23] The group then locked themselves in a room where Villaver partitioned the ransom money.[24] Cancio Cubillas (Cubillas), the group's driver,[25] confessed to have received a total of ₱1,250,000.00 for the kidnapping operation.[26]

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[15] *Id.*

[16] Included in the list of private pools and resorts in Calamba, Laguna is a "Club Solviento," not a "Club Solvento" (see http://www.lagunatravelguide.com/index.php?page=directory-of-private-pools-and-resorts-in-laguna). Club Solviento is also in the Yellow Pages directory of resorts in Calamba, Laguna (http://www.yellow-pages.ph/search/hot-springs/laguna/page-1). The records do not state whether Club Solvento is the same as Club Solviento. The only information available is that it is a place where guests may dine and sleep.

[17] *Rollo*, pp. 37, 51.

[18] *Id.* at 51.

[19] *Id.* at 52. Those who stayed in Club Solvento were Jun Jun Villaver, Ning Ning Villaver, Danny Velasquez, Mike Celebre, Alan Celebre, and Cancio Cubillas.

[20] *Id.* at 57.

[21] *Id.* at 12.

[22] *Id.* at 37-38.

[23] *Id.*

[24] *Id.* at 37.

[25] *Id.* at 24.

[26] *Id.* at 37.

At 10:30 p.m. on the same day, Mary Grace, Burca, and Torres were finally released.[27] They were freed somewhere in Alaminos, Laguna, more than 12 hours since they were abducted.[28]

Cubillas became a state witness.[29] On June 3, 2002, he executed an extrajudicial confession and implicated respondent Escobar as an adviser for Villaver.[30] Cubillas believed that Escobar was involved after he saw Escobar talk to Villaver while they were in Club Solvento.[31] In his extrajudicial confession, Cubillas also claimed that Escobar received a portion of the ransom money from Villaver.[32]

On February 17, 2004, an Amended Information was filed before the Regional Trial Court charging Escobar as a co-conspirator[33] in the kidnapping for ransom.[34] The charging portion stated:

> That on or about June 18, 2001 at around 7:40 in the morning, at Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another and grouping themselves together, with others not present during the actual kidnapping but performing some other peculiarly contributory roles, did, then and there, by force and intimidation, with the use of long firearms and clad in police uniform,

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[27] *Id*. at 12.

[28] *Id*.

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

[30] *Id*.

[31] *Id*. at 38.

[32] *Id*. at 37.

[33] *Id*. at 38. The other co-accused were Rolando Villaver *y* Libores, Edgardo Decipulo *y* Didal, Eugene Radam, Florente Concepcion *y* Navelgas, Joven Arcado *y* Patag, Nicomedes Gerilla *y* Dela Cruz, Cancio Cubillas *y* Ignacio, Jun Jun Villaver, Ning Ning Villaver, Vicente Lugnasen, Danny Velasquez, Cesar Olimpiada, Chris Opulencia, Abner Opulencia, Apolonio Opulencia, Rolly Fajardo, Harold Fajardo, Allan Celebre, Idoy Trota, Lito Mercado, and three (3) John Does.

[34] *Id*. at 38.

willfully, unlawfully and feloniously take, carry away and thereafter detain at some undisclosed place, after having blocked their car in front of Malcolm Hall, Osmena Avenue, UP Campus, Diliman, Quezon City, MARY GRACE CHENG-ROSAGAS, her driver DIONISIO F. BURCA and her bodyguard VALENTIN B. TORRES, against their will and consent thereby depriving them of their liberty for more than twelve (12) hours for the purpose of extorting ransom for their release in the amount of FIFTEEN MILLION PESOS (₱15,000,000.00), and which amount was in fact paid by Mary Grace's father, Mr. Robert Cheng, owner of Uratex Foam, Philippines, and have the same delivered at E. Rodriguez Compound, Calamba, Laguna thereby resulting to the release of the kidnap victims somewhere in Alaminos, Laguna at about 10:30 p.m. of the same day all to the damage and prejudice of the three (3) victims and their families in such amount as may be awarded to them and their families under the provisions of the Civil Code.

CONTRARY TO LAW.[35]

Escobar was arrested on February 14, 2008.[36]

On June 3, 2008, Escobar filed the First Bail Petition before the Regional Trial Court.[37] During the hearing on Escobar's bail application, Cubillas testified that Escobar and the Fajardo brothers were Villaver's advisers.[38]

In the Order dated October 6, 2008, the Regional Trial Court denied[39] Escobar's First Bail Petition. The dispositive portion read:

The Petition for Bail filed by accused Manny Escobar is denied for lack of merit considering that state witness Cancio Cubillas positively identified said accused as the owner of Club Solvento located in Calamba, Laguna; that he was the one who served food to the group of Rolando Villaver, Jun Jun Villaver, Ning Ning Villaver,

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

[36] *Id*. at 72.

[37] *Id*. at 38.

[38] *Id*.

[39] *Id*. at 51.

Danny Velasquez, Cholo, Cesar Olimpiada, Mike, Alan Celebre, Biboy Lugnasin and witness himself, Cancio Cubillas; that it was also in said Club Solvento where Cancio Cubillas, Jun Jun Villaver, Ning Ning Villaver, Danny Velasquez, Mike and Alan Celebre rested and slept after Rolando Villaver, Cholo, Biboy Lugnasin and Cesar Olimpiada left to negotiate for the ransom of kidnap victim Mary Grace Cheng Rosagas, and that on the night of June 18, 2001, Cubillas saw accused Rolando Villaver gave part of the ransom money to him.

SO ORDERED.[40]

Escobar appealed before the Court of Appeals.[41] On March 8, 2011, the Court of Appeals affirmed[42] the denial of the First Bail Petition. It recognized that Cubillas' extrajudicial confession was generally incompetent evidence against his co-accused and was admissible against himself only[43] for being hearsay and for violating the *res inter alios acta* rule.[44] Nevertheless, the Court of Appeals invoked an exception to this rule and held that the Regional Trial Court "did not rely solely on the extrajudicial confession of Cubillas"; rather, the trial court also relied on Cubillas' testimony during the bail hearing.[45]

Escobar moved to reconsider the Court of Appeals March 8, 2011 Decision.[46]

Pending the proceedings on Escobar's case, the police arrested one (1) of the co-accused Fajardo brothers, Rolando Fajardo (Rolando),[47] who applied for bail before the Regional Trial Court.[48] As in Escobar's bail hearing, the prosecution relied

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

[41] *Id*. at 38-39.

[42] *Id*. at 51-61.

[43] *Id*. at 58.

[44] *Id*.

[45] *Id*. at 59.

[46] *Id*. at 39.

[47] *Id*. at 137.

[48] *Id*. at 39.

solely on Cubillas' statements to establish the strength of Fajardo's guilt.[49] In an Order dated September 13, 2011, the Regional Trial Court denied Rolando's petition for bail.[50]

However, in an Order dated October 14, 2011, the Regional Trial Court reversed its previous order and granted Rolando's bail application.[51] The Regional Trial Court stated:

> To summarize, the evidence for the prosecution does *not* establish that accused Rolando Fajardo participated during the actual abduction of Rosagas, Burca and Torres or that during the actual abduction, accused Rolando Fajardo gave advice or instruction to the other accused herein. The evidence for the prosecution likewise does not establish that accused Rolando Fajardo acted as adviser to accused Rolando Villaver and his group in connection with the kidnapping of the victims herein. *There is no testimony as to what advice or instructions were made by accused Rolando Fajardo in connection with the kidnapping of the victims herein. There is thus a paucity of evidence establishing the participation of accused Rolando Fajardo in the kidnapping of Rosagas, Burca and Torres.*[52] (Emphasis supplied)

The reversal came about after the trial court considered that, according to Cubillas, "[Rolando] was not present before, during and after the kidnapping."[53] There was paucity of evidence on Rolando's alleged participation.[54]

Meanwhile, on October 27, 2011, the Court of Appeals denied Escobar's motion for reconsideration.[55] He no longer appealed before this Court.[56]

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[49] *Id*. at 137.

[50] *Id*.

[51] *Id*. at 39.

[52] *Id*., *See footnote* 10.

[53] *Id*. at 137.

[54] *Id*. at 39-40.

[55] *Id*. at 39, *See footnote* 8.

[56] *Id*. at 62-63. The judgment became final and executory on June 19, 2012.

By January 2012, only Escobar was left in detention pending the final judgment on the merits of the case as all the other accused who had active participation in the kidnapping had been granted bail.[57] Escobar saw Rolando's release on bail as a new "development which warrant[ed] a different view" on his own bail application.[58]

Thus, on January 27, 2012, Escobar filed another petition for bail (Second Bail Petition) before the Regional Trial Court.[59] He noted that Cubillas could not explain how either Rolando or Escobar advised Villaver and that both Rolando and Escobar were absent before, during, and after the kidnapping.[60] Hence, if Rolando's petition for bail was granted based on the unreliability of Cubillas' testimony, Escobar reasoned that the trial court should likewise grant him provisional release.[61]

On April 26, 2012, the Regional Trial Court denied[62] Escobar's Second Bail Petition on the ground of *res judicata*,[63] reasoning thus: "[i]n deference to the Decision of the Court of Appeals which has already attained finality, accused's Petition for Bail which is actually a second petition for bail[,] must be necessarily denied."[64]

Escobar moved for reconsideration but this was denied by the Regional Trial Court.[65] On January 14, 2013, he appealed before the Court of Appeals via Rule 65, arguing that the trial

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[57] *Id*. at 39-40.

[58] *Id*. at 39.

[59] *Id*., *See footnote* 11.

[60] *Id*. at 39-40. *See footnote* 10.

[61] *Id*. at 40.

[62] *Id*. at 64. The Order was penned by Acting Presiding Judge/Pairing Judge Charito B. Gonzales of Branch 81, Regional Trial Court, Quezon City.

[63] *Id*. at 41.

[64] *Id*. at 64.

[65] *Id*. at 40.

court committed grave abuse of discretion in denying his Second Bail Petition.[66]

In the Decision dated March 24, 2014, the Court of Appeals granted[67] the petition for certiorari and ordered the Regional Trial Court to determine the appropriate bail for Escobar's provisional liberty. The dispositive portion read:

> **WHEREFORE**, the petition is **GRANTED**. The April 26, 2012, September 14, 2012, September 17, 2012 and November 6, 2012 Orders are **SET ASIDE**. The trial court is directed to determine the appropriate bail for the provisional liberty of the petitioner, Manuel Escobar, with dispatch.
>
> **SO ORDERED.**[68]

The Court of Appeals denied the prosecution's Motion for Reconsideration.[69] According to the Court of Appeals, Escobar's Second Bail Petition was not barred by *res judicata*, which applies only if the former judgment is a final order or judgment and not an interlocutory order.[70] An order denying a petition for bail is interlocutory in nature.[71]

On April 4, 2014, the Regional Trial Court fixed[72] Escobar's bail at ₱300,000.00. The dispositive portion read:

> In view of the Decision rendered by the Court of Appeals on 24 March 2014, the bail for the provisional liberty of accused Manuel Escobar is hereby fixed at Three Hundred Thousand Pesos (Php300,000.00).

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[66] *Id*. at 65-113.

[67] *Id*. at 36-46.

[68] *Id*. at 45.

[69] *Id*. at 114-118.

[70] *Id*. at 41-44.

[71] *Id*.

[72] *Id*. at 185. The Order was penned by Presiding Judge Madonna C. Echiverri of Branch 81, Regional Trial Court, Quezon City.

SO ORDERED.[73]

In the Resolution dated September 11, 2014, the Court of Appeals denied[74] the prosecution's Motion for Reconsideration.

On November 6, 2014, the prosecution, through the Office of the Solicitor General, filed a Petition for Review[75] via Rule 45 before this Court. In its Petition, the prosecution does not pray for the issuance of a temporary restraining order of the Court of Appeals Decision;[76] rather, in assailing the grant of Escobar's Second Bail Petition, the prosecution avers that the doctrine of *res judicata* must be respected.[77]

On October 19, 2015, Escobar filed his Comment,[78] arguing that *res judicata* did not apply here,[79] that there was no strong evidence of his guilt,[80] and that the Court of Appeals could rectify errors of judgment in the greater interest of justice.[81] According to Escobar:

> 13. Due to this sudden development of the grant of bail to his co-accused, [Rolando], and considering that both [Rolando] and [Escobar]'s alleged participation in the crime are based on the same court-declared unreliable "speculations" of the state witness Cubillas, who even admitted he was lying when questioned during [Escobar]'s own bail hearings, it was in the interest of justice and fairness to re-open the matter of bail with respect to [Escobar] and thereby grant the same. And the Honorable Court of Appeals agreed.[82]

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[73] *Id*.

[74] *Id*. at 47-50-B. The Resolution was penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting of the Former Eighth Division, Court of Appeals, Manila.

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

[76] *Id*. at 28.

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

[78] *Id*. at 133-147.

[79] *Id*. at 134.

[80] *Id*. at 138.

[81] *Id*. at 137.

[82] *Id*.

This Court's program to decongest holding jails led City Jail Warden Randel H. Latoza (City Jail Warden Latoza) to review Escobar's case.[83] In his manifestation dated August 18, 2016, City Jail Warden Latoza informed this Court that there was no temporary restraining order against the Regional Trial Court April 4, 2014 Order, which fixed Escobar's provisional liberty at ₱300,000.00. He also acknowledged the Court of Appeals March 24, 2014 Decision granting Escobar the right to bail.[84] He mentioned that Escobar had posted the ₱300,000.00 bail, as ordered by the trial court.[85] Thus, he moved to allow Escobar's provisional release on bail.[86]

City Jail Warden Latoza alleged that Escobar had paid the necessary surety bond[87] and attached a copy of Traveller's Insurance Surety Corporation's surety bond undertaking to his manifestation.[88] However, the attached surety bond undertaking was neither notarized nor approved by the Regional Trial Court judge.[89]

In a Letter dated May 15, 2017, the Commission on Human Rights wrote to Associate Justice Antonio T. Carpio to ask for the speedy resolution of the case as Escobar was already 78 years old.[90]

For resolution are the following issues:

First, whether Manuel Escobar's second petition for bail is barred by *res judicata*; and

Finally, whether respondent should be granted bail.

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[83] *Id*. at 180.

[84] *Id*. at 180-183.

[85] *Id*. at 183.

[86] *Id*.

[87] *Id*.

[88] *Id.* at 186.

[89] *Id*.

[90] *Id*. at 213.

I

Bail is the security given for the temporary release of a person who has been arrested and detained but "whose guilt has *not* yet been proven" in court beyond reasonable doubt.[91] The right to bail is cognate to the fundamental right to be presumed innocent. In *People v. Fitzgerald*:[92]

> The right to bail emanates from the [accused's constitutional] right to be presumed innocent. It is accorded to a person in the custody of the law who may, by reason of the presumption of innocence he [or she] enjoys, be allowed provisional liberty upon filing of a security to guarantee his [or her] appearance before any court, as required under specified conditions.[93] (Citations omitted)

Bail may be a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, *reclusion perpetua* or life imprisonment" before conviction by the Regional Trial Court.[94] However, if the accused is charged with an offense the penalty of which is death, *reclusion perpetua*, or life imprisonment—"regardless of the stage of the criminal prosecution"—*and* when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court.[95]

In this case, the imposable penalty for kidnapping for ransom is death,[96] reduced to *reclusion perpetua*.[97] Escobar's bail is,

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[91] *Leviste v. Court of Appeals*, 629 Phil. 587, 597 (2010) [Per *J.* Corona, Third Division].

[92] 536 Phil. 413 (2006) [Per *J.* Austria-Martinez, First Division].

[93] *Id.* at 424.

[94] RULES OF COURT, Rule 114, Sec. 4.

[95] RULES OF COURT, Rule 114, Sec. 5 in relation to Sec. 7.

[96] REV. PEN. CODE, art. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than five days.

thus, a matter of judicial discretion, provided that the evidence of his guilt is not strong.[98]

Rule 114 of the Revised Rules on Criminal Procedure states:

> Section 4. Bail, a matter of right; exception. – All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment.
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> . . . . . .
>
> Section 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. – No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

The Regional Trial Court denied[99] Escobar's Second Bail Petition on the ground of *res judicata*. The Court of Appeals overturned[100] this and correctly ruled that his Second Bail Petition was not barred by *res judicata*.

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2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense. (As amended by Republic Act Nos. 18 and 1084).

[97] *See* Rep. Act No. 9346, Sec. 2.

[98] *Ocampo v. Bernabe,* 77 Phil. 55, 58(1946) [Per *CJ* Moran, **En Banc**].

[99] *Rollo*, p. 40, as cited in the Court of Appeals Decision dated March 24, 2014. A copy of the Regional Trial Court Order dated April 26, 2012 is not attached to the records.

[100] *Id*. at 36-46.

In its literal meaning, *res judicata* refers to "a matter adjudged."[101] This doctrine bars the re-litigation of the same claim between the parties, also known as claim preclusion or bar by former judgment.[102] It likewise bars the re-litigation of the same issue on a different claim between the same parties, also known as issue preclusion or conclusiveness of judgement.[103] It "exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquillity."[104]

Degayo v. Magbanua-Dinglasan[105] held that "[t]he doctrine of *res judicata* is set forth in Section 47 of Rule 39"[106] of the Revised Rules of Civil Procedure, thus:

> Sec. 47. Effect of Judgments or Final Orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> . . . . . .
>
> (b) [T]he judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
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> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face

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[101] *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015) [Per *J.* Brion, Second Division].

[102] See *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376 (2015) [Per *J.* Brion, Second Division].

[103] See *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376 (2015) [Per *J.* Brion, Second Division].

[104] *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015) [Per *J.* Brion, Second Division].

[105] 757 Phil. 376 (2015) [Per *J.* Brion, Second Division].

[106] *Id.* at 384.

to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Escobar's Second Bail Petition is not barred by *res judicata* as this doctrine is not recognized in criminal proceedings.[107]

Expressly applicable in civil cases, *res judicata* settles with finality the dispute between the parties or their successors-in-interest.[108] *Trinidad v. Marcelo*[109] declares that *res judicata*, as found in Rule 39 of the Rules of Civil Procedure, is a principle in civil law and "has no bearing on criminal proceedings."[110] Rule 124, Section 18 of the Rules of Criminal Procedure states:

Section 18. Application of certain rules in civil procedure to criminal cases. – The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

Indeed, while certain provisions of the Rules of Civil Procedure may be applied in criminal cases,[111] Rule 39 of the Rules of Civil Procedure is excluded from the enumeration under Rule 124 of the Rules of Criminal Procedure. In *Trinidad*:[112]

Petitioner's arguments — that *res judicata* applies since the Office of the Ombudsman twice found no sufficient basis to indict him in similar cases earlier filed against him, and that the *Agan* cases cannot be a supervening event or evidence per se to warrant a reinvestigation on the same set of facts and circumstances — do not lie.

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[107] RULES OF COURT, Rule 124, Sec. 18.

[108] *Res judicata* is found in the Rules of *Civil* Procedure, but not in the Revised Rules of Criminal Procedure.

[109] 564 Phil. 382 (2007) [Per *J*. Carpio-Morales, *En Banc*].

[110] *Id*. at 389.

[111] *See* RULES OF COURT, Rule 124.

[112] 564 Phil. 382 (2007) [Per *J*. Carpio-Morales, *En Banc*].

Res judicata is a doctrine of civil law and thus has no bearing on criminal proceedings.

But even if petitioner's argument[s] were to be expanded to contemplate "*res judicata* in prison grey" or the criminal law concept of double jeopardy, this Court still finds it inapplicable to bar the reinvestigation conducted by the Office of the Ombudsman.[113] (Emphasis supplied, citations omitted).

An interlocutory order denying an application for bail, in this case being criminal in nature, does not give rise to *res judicata*. As in *Trinidad*, even if we are to expand the argument of the prosecution in this case to contemplate "*res judicata* in prison grey" or double jeopardy, the same will still not apply.[114] Double jeopardy requires that the accused has been convicted or acquitted or that the case against him or her has been dismissed or terminated without his express consent.[115] Here, while there

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[113] *Id*. at 389.

[114] 564 Phil. 382 (2007) [Per *J*. Carpio-Morales, *En Banc*].

[115] RULES OF COURT, Rule 117, Sec. 7 provides:

Section 7. Former conviction or acquittal; double jeopardy. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or

(c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in Section 1(f) of Rule 116.

was an initial ruling on Escobar's First Bail Petition, Escobar has not been convicted, acquitted, or has had his case dismissed or terminated.

Even assuming that this case allows for *res judicata* as applied in civil cases, Escobar's Second Bail Petition cannot be barred as there is no final judgment on the merits.

Res judicata requires the concurrence of the following elements:

1. The judgment sought to bar the new action must be *final*;
2. The decision must have been rendered by a court having jurisdiction over the parties and the subject matter;
3. The disposition of the case must be a *judgment on the merits*; and
4. There must be between the first and second actions, identity of parties, of subject matter, and of causes of action.[116]

In deciding on a matter before it, a court issues either a final judgment or an interlocutory order. A final judgment "leaves nothing else to be done" because the period to appeal has expired or the highest tribunal has already ruled on the case.[117] In contrast, an order is considered interlocutory if, between the beginning and the termination of a case, the court decides on a point or matter that is not yet a final judgment on the entire controversy.[118]

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense.

[116] *Mallion v. Alcantara*, 536 Phil. 1049, 1055–1056 (2006) [Per *J*. Azcuna, Second Division].

[117] *Macahilig v. Magalit*, 398 Phil. 802, 817-818 (2000) [Per *J*. Panganiban, Third Division].

[118] *Pobre v. Court of Appeals*, 501 Phil. 360, 369 (2005) [Per *J*. Austria-Martinez, Second Division].

An interlocutory order "settles only some incidental, subsidiary or collateral matter arising in an action";[119] in other words, something else still needs to be done in the primary case—the rendition of the final judgment.[120] *Res judicata* applies only when there is a final judgment on the merits of a case; it cannot be availed of in an interlocutory order even if this order is not appealed.[121] In *Macahilig v. Heirs of Magalit:*[122]

> Citing Section 49 of Rule 39, Rules of Court, petitioner insists that the September 17, 1997 [interlocutory] Order of the trial court in Civil Case No. 3517 bars it from rehearing questions on the ownership of Lot 4417. She insists that said Order has become final and executory, *because Dr. Magalit did not appeal it.*
>
> We disagree. *Final*, in the phrase *judgments or final orders* found in Section 49 of Rule 39, has two accepted interpretations. In the first sense, it is an order that one can no longer appeal because the period to do so has expired, or because the order has been affirmed by the highest possible tribunal involved. The second sense connotes that it is an order that *leaves nothing else to be done*, as distinguished from one that is interlocutory. The phrase refers to a *final determination* as opposed to a judgment or an order that settles only some incidental, subsidiary or collateral matter arising in an action; for example, an order postponing a trial, denying a motion to dismiss or allowing intervention. *Orders that give rise to res judicata and conclusiveness of judgment apply only to those falling under the second category.*
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> . . . . . .
>
> For example, an Order overruling a motion to dismiss does not give rise to *res adjudicata* [sic] that will bar a subsequent action, because *such order is merely interlocutory and is subject to amendments until the rendition of the final judgment.*[123] (Emphasis supplied, citations omitted)

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[119] *Macahilig v. Magalit*, 398 Phil. 802, 817-818 (2000) [Per *J*. Panganiban, Third Division].

[120] *Id*.

[121] *Macahilig v. Magalit*, 398 Phil. 802, 817-818 (2000) [Per *J*. Panganiban, Third Division].

[122] 398 Phil. 802 (2000) [Per *J*. Panganiban, Third Division].

[123] *Id*. at 817-818.

A decision denying a petition for bail settles only a collateral matter[124]—whether accused is entitled to provisional liberty—and is not a final judgment on accused's guilt or innocence. Unlike in a full-blown trial, a hearing for bail is summary in nature: it deliberately "avoid[s] unnecessary thoroughness" and does not try the merits of the case.[125] Thus:

> ***Summary hearing*** means such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. The course of the inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters avoiding unnecessary thoroughness in the examination and cross-examination of witnesses and reducing to a reasonable minimum the amount of corroboration particularly on details that are not essential to the purpose of the hearing.[126] (Emphasis in the original)

Here, the prosecution itself has acknowledged that "the first order denying bail is an interlocutory order."[127] The merits of the case for kidnapping must still be threshed out in a full-blown proceeding.

Being an interlocutory order, the March 8, 2011 Court of Appeals Decision denying Escobar's First Bail Petition did not have the effect of *res judicata*. The kidnapping case itself has not attained finality. Since *res judicata* has not attached to the March 8, 2011 Court of Appeals Decision, the Regional Trial Court should have taken cognizance of Escobar's Second Bail Petition and weighed the strength of the evidence of guilt against him.

In any case, the Court of Appeals may still reverse its Decision, notwithstanding its denial of the First Bail Petition on March 8, 2011.

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[124] See *Leviste v. Court of Appeals*, 629 Phil. 587, 597 (2010) [Per *J.* Corona, Third Division].

[125] *Santos v. How,* 542 Phil. 22, 30 (2007) [Per *J.* Austria-Martinez, Third Division].

[126] *Id*.

[127] *Rollo*, p. 20.

Rules of procedure should not be interpreted as to disadvantage a party and deprive him or her of fundamental rights and liberties. A judgment or order may be modified where executing it in its present form is impossible or unjust in view of intervening facts or circumstances:[128]

> [W]here facts and circumstances transpire which render [the] execution [of a judgment] impossible or *unjust* and it therefore becomes necessary, "in the interest of justice, to direct its modification in order *to harmonize the disposition with the prevailing circumstances*."[129] (Emphasis supplied, citation omitted)

Appellate courts may correct "errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality."[130] Thus, an accused may file a second petition for bail, particularly if there are sudden developments or a "new matter or fact which warrants a *different view*."[131]

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[128] *Industrial Timber Corp. v. National Labor Relations Commission*, 303 Phil. 621 (1994) [Per *J*. Cruz, First Division].

[129] *Id*. at 625.

[130] *Republic v. Ballocanag,* 593 Phil. 80, 99 (2008) [Per *J.* Nachura, Third Division].

[131] See *People v. Kho,* 409 Phil. 326 (2001) [Per *J*. Kapunan, First Division]. *Kho* involves three (3) petitions for bail filed before the Regional Trial Court. Then Regional Trial Court Judge Lucas Bersamin (now Supreme Court Associate Justice) denied the first bail petition, and then the second bail petition on the ground that there was no new matter or fact that would lead the trial court to reconsider its previous denial of the bail application. Judge Bersamin granted the third bail petition, ruling that the prosecution failed to establish any linkage between the accused and the alleged gunman. The case primarily involved the voluntary inhibition of Judge Bersamin after he granted the third bail application. This Court ordered Judge Bersamin to proceed with the trial of the case as his voluntary inhibition "was not in the exercise of sound discretion[.]" Simply put, this Court found nothing irregular about Judge Bersamin's reversal of his earlier rulings that denied the bail application. At the very least, *Kho* implicitly recognized that a court may validly reverse its previous denials of a bail application.

Rolando's release on bail is a new development in Escobar's case.[132] The Court of Appeals has pointed out that the other alleged co-conspirators are already out on bail: Rolando, in particular, was granted bail because Cubillas' testimony against him was weak.[133] "[Escobar] and [Rolando] participated in the same way, but [Escobar]'s bail was denied."[134] Escobar's fundamental rights and liberty are being deprived in the meantime.

Article III, Section 13 of the 1987 Constitution states:

> Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is *strong*, shall, before conviction, be *bailable* . . . (Emphasis supplied)

The same evidence used by the trial court to grant bail to Rolando was not used similarly in Escobar's favor. As the Court of Appeals found:[135]

> We cannot ignore the allegation of conspiracy and that the other accused were all granted bail except him. Specifically, [Rolando] was granted bail due to the weakness of Cubillas' testimony against him.[136]

In light of the circumstances after the denial of Escobar's First Bail Petition, his Second Bail Petition should have been given due course. It should not be denied on the technical ground of *res judicata*.

II

The Court of Appeals already approved Escobar's bail petition. Meanwhile, City Jail Warden Latoza has informed this Court of the absence of any temporary restraining order against the

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[132] *Rollo*, pp. 39-40.

[133] *Id.* at 42.

[134] *Id.* at 42-43.

[135] *Id.* at 36-46.

[136] *Id.* at 42.

Court of Appeals Decision granting the Second Bail Petition, as well as the Regional Trial Court Order fixing his bail at ₱300,000.00.[137] Thus, the Court of Appeals March 24, 2014 Decision granting Escobar's provisional liberty can be executed upon the approval of his bail bond, if he has indeed paid the surety bond.

In closing, no part of this Decision should prejudice the submission of additional evidence for the prosecution to prove Escobar's guilt in the main case. "[A] grant of bail does not prevent the trier of facts . . . from making a final assessment of the evidence after full trial on the merits."[138] As the Court of Appeals correctly ruled:

> [T]his determination is only for the purpose of bail[;] it is without prejudice for the prosecution to submit additional evidence to prove [Escobar]'s guilt in the course of the proceedings in the primary case.[139]

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated March 24, 2014 in CA-G.R. SP No. 128189 is **AFFIRMED.**

Escobar may be provisionally released if he indeed has paid the surety bond that must be contained in a public document and approved by the Regional Trial Court judge. Otherwise, he is directed to post bail.

SO ORDERED.

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

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[137] *Id*. at 216.

[138] *People v. Sandiganbayan*, 556 Phil. 596, 611 (2007) [Per *J*. Garcia, *En Banc*].

[139] *Rollo*, p. 45.

FIRST DIVISION

[G.R. No. 215200. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOMERTO NAPOLES *y* BAJAS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DETERMINATION OF THE TRIAL COURT AS AFFIRMED BY THE APPELLATE COURT ACCORDED GREAT RESPECT.—** The oft-repeated rule is that "the determination by the trial court of the credibility of the witnesses when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect and that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors[,] gross misapprehension of facts[,] or speculative, arbitrary and unsupported conclusions can be gathered from such findings." Upon perusal of the records of the case, we see no reason to reverse or modify the findings of the RTC as affirmed by the CA on the credibility of the testimony of the victim "AAA."

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS NECESSARY TO SUSTAIN A CONVICTION FOR RAPE, ESTABLISHED.—** The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation or (b) when the victim is deprived of reason or otherwise unconscious or (c) when the victim is under 12 years of age or demented. It is apparent from the records of this case that appellant had carnal knowledge of "AAA" because his penis penetrated her vagina. That the carnal knowledge was accomplished through force and intimidation was likewise established in view of "AAA's" straightforward testimony that she was threatened with death; furthermore, he used a bolo and knife, as well as physical violence to accomplish his bestial acts. All told, we find no compelling reason to doubt the veracity of and deviate from the findings

of the RTC as affirmed by the CA. We agree that the prosecution, with testimonial and medical evidence, effectively discharged its burden of proving appellant's guilt beyond reasonable doubt.

3. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.— Rape, as defined and penalized under paragraph 1 of Article 226-A in relation to Article 266-B of the Revised Penal Code, as amended, is punishable by *reclusion perpetua*. Consequently, the penalty of *reclusion perpetua* imposed for each count by the RTC and affirmed by the CA is proper. However, the monetary awards must be modified to conform to present jurisprudence. As modified, appellant is ordered to pay "AAA" the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, with interest of 6% *per annum* on all the damages awarded from the date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This is an appeal from the Decision[1] dated March 19, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05565 affirming the Decision[2] dated February 9, 2012 of the Regional Trial Court (RTC) of Labo, Camarines Norte, Branch 64, in Criminal Case Nos. 02-0881, 03-1029 to 03-1033, finding Nomerto Napoles y Bajas (appellant) guilty beyond reasonable doubt of the crime of rape (six counts).

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[1] CA *rollo*, pp. 119-129; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Myra V. Garcia-Fernandez.

[2] Records (Crim. Case No. 02-881), pp. 145-157; penned by Presiding Judge Rolando De Lemios Bobis.

Version of the Prosecution

"AAA" was 19 years old when her stepfather, herein appellant, began raping her in November 2000. Appellant raped "AAA" six times, once every month, from November 2000 to April 2001.

"AAA" recounted her ordeal at the hands of appellant as follows:

Sometime in November 2000, while at home and listening to a radio program, appellant suddenly grabbed her by the arm, covered her mouth and poked her with a knife. She tried to get away but appellant punched her stomach and pushed her to the bed. While "AAA's" hands were tied over her head, appellant started to undress her, placed himself on top of "AAA" and inserted his penis into her vagina.

Sometime in December 2000, while "AAA" was sleeping alone in the bedroom, appellant, armed with a knife, entered the bedroom, covered her mouth, removed her shorts and panty and inserted his penis into her vagina. Appellant told "AAA" not to shout and threatened to kill her and her mother.

Sometime the following month, January 2001, while "AAA" was in the kitchen heating water, she noticed that somebody had closed the door in the living room. Upon checking it out, she saw appellant holding a bolo. After undressing "AAA," appellant removed his shorts, grabbed her and laid her on the floor. Appellant then inserted his penis into her vagina. All the while, appellant pointed his bolo to her and threatened to kill her if she shouted.

Again, sometime in February 2001, after appellant and "AAA's" mother left the house, the former returned and instructed "AAA" to open the kitchen door. Suddenly, appellant held "AAA's" neck and told her she would be killed if she would not give in. Appellant pinned "AAA" to the wall (*pinasandal po ako sa dinding*) and undressed her. After appellant removed his short pants, he inserted his penis into her vagina.

Her ordeal was repeated in March 2001. While "AAA" was cleaning their house, appellant suddenly grabbed her. He removed "AAA's" short pants and panty and after undressing himself, he inserted his penis into her vagina. Appellant threatened to kill her siblings if others would learn of what happened.

During the last incident sometime in April 2001, while "AAA" had just finished washing the dishes, appellant suddenly pulled "AAA" telling her, "*sige gumalaw ka at humiyaw ka at papatayin kita.*" He pinned "AAA" against the wall and undressed her. Appellant also removed his short pants; while standing, he spread "AAA's" legs and inserted his penis into her vagina.

Dr. Virginia B. Mazo, the PNP Medico-Legal Officer of Labo, Camarines Norte, examined "AAA" and issued a medico-legal examination report.[3] She testified, *inter alia*, that there is no evident sign of extragenital physical injury at the time of examination but was positive of signs of pregnancy; that the victim had successive penetrations because of the old healed lacerations of hymen due to constant use or possible sexual intercourses; that the victim's uterus is compatible to a 38-week age of gestation, thus she was already pregnant at the time of examination and that the victim was impregnated during the rape incidents.

As a result of her stepfather's molestation, "AAA" became pregnant and delivered a baby girl on November 11, 2001.

Accordingly, appellant was charged with six counts of rape before the Regional Trial Court of Labo, Camarines Norte, Branch 64.

Version of the Defense

In his defense, appellant denied having raped "AAA" during the months of November and December 2000. He proffered that he was either away from home or that family members were at home. However he admitted having sexual intercourse

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[3] Exhibit "A", *id.* at 9.

with "AAA" sometime in January, February, March and April 2001 but claimed that the same were consensual.

Ruling of the Regional Trial Court

On February 9, 2012, the RTC rendered its Decision finding appellant guilty beyond reasonable doubt of six counts of rape and sentencing him for each count to suffer the penalty of *reclusion perpetua*. He was also ordered to pay "AAA" the amounts of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages for each offense.

Ruling of the Court of Appeals

On appeal, the CA affirmed the RTC Decision. Thus:

> WHEREFORE, premises considered, the instant Appeal is DENIED. The assailed Decision of the Regional Trial Court of Labo, Camarines Norte, Branch 64 dated 9 February 2012 in Criminal Cases Nos. 02-0881, 03-1029 up to 03-1033 is hereby AFFIRMED in toto.
>
> SO ORDERED.[4]

Undeterred, appellant is now before this Court *via* the present appeal to gain a reversal of his conviction based on the lone assigned error that:

> The trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crimes charged.[5]

Our Ruling

The appeal lacks merit.

Essentially, the arguments of appellant, as premised in his Appellant Brief, boil down to the issue of credibility. The oft-repeated rule is that "the determination by the trial court of the credibility of the witnesses when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect and that findings of the trial courts which

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[4] CA *rollo*, p. 128.

[5] *Id*. at 33.

are factual in nature and which involve credibility are accorded respect when no glaring errors[,] gross misapprehension of facts[,] or speculative, arbitrary and unsupported conclusions can be gathered from such findings."[6]

Upon perusal of the records of the case, we see no reason to reverse or modify the findings of the RTC as affirmed by the CA on the credibility of the testimony of the victim "AAA."

In his bid for acquittal, appellant contends that from the testimony of "AAA," there was no showing that she defended her honor and dignity with utmost courage and determination. He avers that "AAA's" silence and lack of showing of any outrage place her story in grievous doubt.

Appellant's arguments deserve scant consideration. The Court has declared repeatedly that "failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not an element of rape."[7] Moreover, a rape victim is oftentimes controlled by fear rather than reason. The use of a knife and bolo and the threat of death posed by appellant constituted sufficient force and intimidation to cow "AAA" into submission. Furthermore, appellant, who is "AAA's" stepfather, undoubtedly exerted a strong moral influence over "AAA," which may even substitute for actual physical violence and intimidation.

Appellant further maintains that he and "AAA" have a romantic relationship. He proffers the "sweetheart theory" as a defense. In *People v. Bayrante*[8] the Court "has decreed that even if the alleged romantic relationship were true, this fact does not necessarily negate rape for a man cannot demand sexual gratification from a fiancée and worse, employ violence upon her on the pretext of love because love is not a license for lust."

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[6] *People v. Amarillo*, 692 Phil. 698, 711 (2012).

[7] *People v. Rubio*, 683 Phil. 714, 726 (2012).

[8] 687 Phil. 416, 435 (2012).

In light of appellant's positive identification by "AAA" that he raped her on the alleged dates which assertion was corroborated by Dr. Virginia B. Mazo's Medical findings, the denial of appellant must fail.

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation or (b) when the victim is deprived of reason or otherwise unconscious or (c) when the victim is under 12 years of age or demented.[9] It is apparent from the records of this case that appellant had carnal knowledge of "AAA" because his penis penetrated her vagina. That the carnal knowledge was accomplished through force and intimidation was likewise established in view of "AAA's" straightforward testimony that she was threatened with death; furthermore, he used a bolo and knife, as well as physical violence to accomplish his bestial acts.

All told, we find no compelling reason to doubt the veracity of and deviate from the findings of the RTC as affirmed by the CA. We agree that the prosecution, with testimonial and medical evidence, effectively discharged its burden of proving appellant's guilt beyond reasonable doubt.

The Penalty and Civil Liability

Rape, as defined and penalized under paragraph 1 of Article 226-A in relation to Article 266-B of the Revised Penal Code, as amended, is punishable by *reclusion perpetua*. Consequently, the penalty of *reclusion perpetua* imposed for each count by the RTC and affirmed by the CA is proper.

However, the monetary awards must be modified to conform to present jurisprudence.[10] As modified, appellant is ordered to pay "AAA" the amounts of ₱75,000.00 as civil indemnity;

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[9] *People v. Delabajan*, 685 Phil. 236, 241 (2012).

[10] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 383.

₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, with interest of 6% *per annum* on all the damages awarded from the date of finality of this Resolution until fully paid.

WHEREFORE, the assailed March 19, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05565 finding appellant Nomerto Napoles *y* Bajas **GUILTY** beyond reasonable doubt of six counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count is **AFFIRMED with MODIFICATIONS** in that appellant is ordered to pay the amount of ₱75,000.00 as civil indemnity for each count; the award of moral damages and exemplary damages are increased to ₱75,000.00 respectively for each count, and interest at the rate of 6% *per annum* is imposed on all damages awarded from date of finality of this Resolution until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 219501. July 26, 2017]

POLICE DIRECTOR GENERAL ALAN LA MADRID PURISIMA, *petitioner, vs.* **HON. CONCHITA CARPIO MORALES, in her official capacity as the OMBUDSMAN OF THE REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC, NOT A CASE OF; THE PETITION QUESTIONING THE

PROPRIETY OF PETITIONER'S PREVENTIVE SUSPENSION IS NOT RENDERED MOOT DESPITE THE LAPSE OF THE PERIOD OF HIS PREVENTIVE SUSPENSION SINCE SOME PRACTICAL VALUE OR USE IN RESOLVING THE PETITION STILL REMAINS.— In *Ombudsman v. Capulong* (*Capulong*), the Court ruled that a case questioning the validity of a preventive suspension order is not mooted by the supervening lifting of the same: x x x **It does not preclude the courts from passing upon the validity of a preventive suspension order**, x x x[.] As held in *Capulong*, the Court, in the exercise of its expanded judicial power, may not be precluded from passing upon the order's validity so as to determine whether or not grave abuse of discretion attended the issuance of the same. The result of a finding of a grave abuse of discretion means that the issuance is null and void from its very inception, and thus, bars the same from producing any legal effects. Indeed, "[n]o legal rights can emanate from a resolution that is null and void." As such, a public officer improperly placed under preventive suspension should be restored to his original position, and accordingly, should have earned his salaries as if he was not preventively suspended for the pertinent period. x x x In this case, since the propriety or impropriety of Purisima's preventive suspension would essentially determine his entitlement to back salaries during the six-month period therefor, the Court holds that despite the lapse of the period of his preventive suspension, there remains some practical value or use in resolving his petition assailing the Ombudsman's December 3, 2014 Order. Thus, by the same logic in *Capulong*, this case cannot be considered as moot and academic so as to obviate the Court from resolving its merits.

2. POLITICAL LAW; CONSTITUTIONAL LAW; OMBUDSMAN ACT OF 1989 (RA 6770); THE OMBUDSMAN IS AUTHORIZED TO ISSUE A PREVENTIVE SUSPENSION ORDER; CONDITIONS AND CIRCUMSTANCES FOR A VALID ISSUANCE THEREOF.— The Ombudsman is explicitly authorized to issue a preventive suspension order under Section 24 of RA 6770 when two (2) conditions are met. These are: (***a***) the evidence of guilt is strong based on the Ombudsman's judgment; and (***b***) any of the three (3) circumstances are present – (1) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charges would warrant removal

from service; or (3) the respondent's continued stay in office may prejudice the case filed against him.

3. ID.; ID.; ID.; THE OMBUDSMAN SHOULD BE GIVEN AMPLE DISCRETION TO DETERMINE THE STRENGTH OF THE EVIDENCE PRESENTED; REASONS.— [C]ase law states that the strength of the evidence is left to the determination of the Ombudsman by taking into account the evidence before her; hence, the deliberate use of the words "*in his judgment.*" x x x The Court's deference to the Ombudsman's judgment regarding this condition not only stems from its policy of non-interference with the Ombudsman's exercise of her prosecutorial and investigatory powers; it is also a conscious recognition of the preliminary nature and purpose of a preventive suspension order. x x x Being a preventive measure essentially meant to ensure the proper course of a still ongoing investigation, the Ombudsman should thus be given ample discretion to determine the strength of the preliminary evidence presented before her and thereafter, decide whether or not to issue such order against a particular respondent.

4. ID.; ID.; ID.; SINCE BOTH CONDITIONS FOR THE ISSUANCE OF PREVENTIVE SUSPENSION ORDER ARE PRESENT, THE OMBUDSMAN ACTED WITHIN HER POWERS WHEN SHE ISSUED THE ASSAILED ORDER.— [T]he Ombudsman found that the evidence of guilt against Purisima was strong enough to place him under preventive suspension. Said finding cannot be said to be tainted with grave abuse of discretion as it was based on supporting documentary evidence, none of which were questioned to be inadmissible. x x x Since both conditions for the issuance of a preventive suspension order against Purisima are present in this case, the Court therefore holds that the Ombudsman acted within her powers when she issued the assailed December 3, 2014 Order. In consequence, Purisima is not entitled to back salaries during the period of his preventive suspension.

5. ID.; ID.; ID.; ISSUANCE OF PREVENTIVE SUSPENSION ORDER PRIOR TO THE FILING OF PETITIONER'S COUNTER-AFFIDAVIT DOES NOT VIOLATE HIS RIGHT TO DUE PROCESS; NEITHER DOES IT AMOUNT TO PREJUDGMENT OF THE MERITS OF THE CASE NOR A DEMONSTRATION OF PUBLIC OFFICIAL'S

GUILT.— [T]he Court clarifies that – contrary to Purisima's stance – the Ombudsman did not violate his right to due process nor did she prejudge the case when she issued the preventive suspension order before he was able to file his counter-affidavit for the second complaint. *Lastimosa v. Ombudsman* already settles that the Ombudsman may issue a preventive suspension order prior to the filing of an answer or counter-affidavit, considering that the same is but a preventive measure: Prior notice and hearing is not required, such suspension not being a penalty but only a preliminary step in an administrative investigation. x x x Ultimately, it should be borne in mind that the issuance of a preventive suspension order does not amount to a prejudgment of the merits of the case. Neither is it a demonstration of a public official's guilt as such pronouncement can be done only after trial on the merits.

APPEARANCES OF COUNSEL

Ponciano Dexter Hector S. Corpus 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 former Police Director General Alan La Madrid Purisima (Purisima), assailing the Decision[2] dated July 29, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 138296 and CA-G.R. SP No. 138722, which affirmed the Order[3] dated December 3, 2014 issued by respondent Conchita Carpio Morales, in her capacity as the Ombudsman, preventively

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[1] *Rollo*, pp. 8-35.

[2] *Id*. at 41-54. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

[3] *Id*. at 315-323.

suspending Purisima during the pendency of the consolidated cases against him before the Office of the Ombudsman.

The Facts

In 2011,[4] the Philippine National Police (PNP) entered into a Memorandum of Agreement[5] (MOA) with WER FAST[6] Documentary Agency, Inc. (WER FAST) without going through any public bidding. Under the MOA, the PNP undertook to allow WER FAST to provide courier services to deliver firearm licenses to gun owners.[7] In turn, WER FAST agreed to donate equipment for an online application system for the renewal of firearm licenses.[8] PCSupt. Napoleon R. Estilles (Estilles), then Chief of the Firearms and Explosives Office (FEO) under the Civil Security Group (CSG), signed the MOA on behalf of the PNP. Based on the records, the incumbent PNP Chief approved the signing of the MOA on August 24, 2011.[9]

Subsequently, the PNP's Legal Service (LS) was instructed to review the signed MOA *vis-a-vis* a proposed revised MOA, noting that the signed MOA had not been implemented. In a Memorandum[10] dated August 7, 2012, the LS opined that the

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[4] The CA cited "May 2011" based on the date on the MOA (*id*. at 63). The records show, however, that WER FAST submitted a proposed MOA to the PNP on May 25, 2011 (*id*. at 131), but the signing of the MOA occurred later that year, *i.e*., after August 24, 2011 (see *id*. at 136). The MOA was notarized on September 13, 2011 (*id*. at 64).

[5] *Id*. at 128-130.

[6] "WERFAST" or "Werfast" in some parts of the records.

[7] *Rollo*, p. 11.

[8] The MOA clearly indicated that it is "under the context of accreditation and does not entitle [WER FAST] to exclusivity" and is valid for a period of five (5) years. See *id*. at 128-129.

[9] *Id*. at 136. Notably, WER FAST's Articles of Incorporation (see Amended Articles of Incorporation; *id*. at 257-262) indicate that it was not authorized to engage as a courier service, but only as a consultant providing assistance in documentation and registration. See *id*. at 43, 257, and 318.

[10] "Subject: Online Renewal of Individual Firearms License & Courier Service (MOA Between FEO and WER FAST)"; *id*. at 135-137.

FEO should first formulate rules for accreditation, by which to evaluate any company offering courier services, including WER FAST. It further suggested that the rules should include the qualifications of the company to be accredited, the required scope of courier services, the creation of an accreditation committee, provisions on strict confidentiality, disclaimer, and grounds to terminate accreditation.[11]

Consequently, on November 19, 2012, the FEO Courier Services Accreditation Board (Accreditation Board) was constituted.[12] In an undated memorandum[13] entitled "Policy on Accreditation of FEO Courier Service" (Accreditation Policy), then CSG Director Police Director Gil Calaguio Meneses (Meneses) laid down the criteria and procedure for the accreditation of courier service providers, as follows:

5. QUALIFICATIONS/CRITERIA FOR ACCREDITATION

A Courier Service provided may be accredited under the following conditions:

5.1 Applicant must be a local entity with appropriate business permits and is **duly registered with the Securities and Exchange Commission (SEC)**[;]

5.2 It has completed and submitted all its reportorial requirements to the [SEC];

5.3 It has updated permits from [the local government unit (LGU)] where its main office is located[;]

5.4 It has **paid all its income taxes for the year**, as duly certified by the Bureau of Internal Revenue (BIR);

5.5 It must have **secured clearances from Directorate for Intelligence** (DI)[;]

5.6 It must have an **extensive network all over the Philippines**; and

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[11] *Id*. at 137.

[12] Letter Orders Number 545, "Subject: FEO Courier Services Accreditation Board"; *id*. at 138.

[13] *Id*. at 141-144.

5.7 The application shall be made in the name of the company represented by its President or any of its key directors as duly authorized in a board resolution for that purpose.[14] (Emphases supplied)

On December 18, 2012, Purisima was appointed as PNP Chief.[15] Thereafter, or on February 12, 2013, Meneses issued a Memorandum[16] addressed to Purisima (Meneses Memo), stating that the CSG has accredited WER FAST as the courier service to deliver the approved firearms license cards to gun owners, and more importantly, recommended that the delivery of license cards via courier be made mandatory:

7. In compliance [with] the policy guidance of the then TACDS, now the Chief, PNP, to implement the delivery of the approved firearms license cards to the addresses supplied by the applicants, **this office has accredited WER FAST Documentation Agency for the purpose, after complying with all the documentary requirements stipulated in the FEO Policy on Accreditation.**

RECOMMENDATION

8. **Recommend that the delivery of firearms licenses cards of gun owners to their registered addresses**, whether newly purchased firearms or renewed firearm licenses **be made mandatory**, to give force and effect to this new intervention to monitor and control firearms in the hands of gun owners.

9. **Approval of para 8 above**.[17] (Emphases supplied)

Purisima approved this memorandum on February 17, 2013.[18] It was only more than a month after the Meneses Memo was issued, or on April 1, 2013, that the Accreditation Board

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[14] *Id*. at 142. See also *id*. at 118.

[15] See *id*. at 11.

[16] "Subject: Courier Service in the Renewal of Firearm Licenses (Wer Fast Documentation Agency/WER FAST)"; *id*. at 139-140.

[17] *Id*. at 140.

[18] See *id*. at 139.

issued Resolution Number 2013-027,[19] accrediting WER FAST as a courier services provider to all FEO clients relative to the licensing of firearms (FEO Resolution).

The Proceedings Before the Ombudsman

In 2014, two (2) complaints were filed before the Office of the Ombudsman against Purisima, WER FAST, and other PNP officials relative to the PNP's directive for gun owners to avail of the courier delivery of firearm licenses *via* WER FAST. The first complaint[20] filed by a private complainant charged Purisima, Estilles, and WER FAST of violating Republic Act (RA) Nos. 6713,[21] 3019,[22] 7080,[23] and 9184.[24] He alleged, among others, that: the MOA was not procured through competitive bidding; it was executed before WER FAST obtained its SEC certificate of registration; WER FAST is not authorized by the Department

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[19] Entitled "In the Matter of Determining the Merit of the Request for Accreditation of the WER FAST Documentation Agency (WERFASTDA) for the Consideration of the FEO Accreditation Board that will Accommodate the Courier Service Provider for Messengerial Service of the PNP in the Licensing of Firearms"; *id*. at 145-146.

[20] The first complaint was filed by Glenn Gerard C. Ricafranca on April 16, 2014 (*id*. at 65-70) and was docketed as OMB-P-14-0259 and OMB-P-A-14-0333 (see *id*. at 72).

[21] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," otherwise known as the "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES," approved on February 20, 1989.

[22] Known as the "ANTI-GRAFT AND CORRUPT PRACTICES ACT" (August 17, 1960).

[23] Entitled "An Act Defining and Penalizing the Crime of Plunder," approved on July 12, 1991.

[24] Entitled "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes," otherwise known as the "Government Procurement Reform Act," approved on January 10, 2003.

of Transportation and Communication (DOTC) to deliver mails/parcels to the public; Purisima has close personal ties with WER FAST's incorporator and high ranking officer; Purisima made mandatory the use of courier service for license delivery in favor of WER FAST; and WER FAST was inefficient in delivering the license cards.[25] He later filed a Manifestation and Motion[26] with attached Joint-Affidavit[27] executed by several PNP officials positively identifying Purisima as the one who directed FEO-CSG to accommodate WER FAST as the sole courier delivery service of the firearms license cards.[28] Purisima filed his Counter-Affidavit[29] on July 25, 2014.

On October 9, 2014, the second complaint[30] was filed by the Fact-Finding Investigation Bureau (FFIB) - Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) against several PNP officers involved in the MOA's execution and WER FAST's accreditation as a courier service provider. Attached to the complaint were certifications from various government agencies attesting that WER FAST failed to meet the qualifications for accreditation under the Accreditation Policy.[31]As regards Purisima, FFIB-MOLEO prayed that he be administratively charged for gross negligence and/or gross neglect of duty, with a prayer for preventive

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[25] *Rollo*, pp. 66-69.

[26] Dated July 23, 2014. *Id*. at 74-76.

[27] Dated April 24, 2014. *Id*. at 77-78.

[28] The officials stressed that Purisima was infuriated due to the non-cooperation of some CSG satellite offices in the delivery of license cards, and was heard saying "*[k]ilala ko 'yang si Mario Juan at di pa ako sikat ay siya lang ang nakakaalala at dumadalaw sa akin. Ayusin 'nyo ang* delivery." *Id*. at 77.

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

[30] *Id*. at 115-125. The second complaint was docketed as OMB-P-C-14-0536 and OMB-P-A-14-0659. (*Id*. at 101). Other PNP officials involved in the execution of the MOA and the eventual accreditation of WER FAST as PNP's courier service provider were also charged criminally and administratively in the same complaint (see *id*. at 115).

[31] See discussion; *id*. at 318.

suspension. It alleged that Purisima is administratively liable "for approving the recommendation of Meneses without verifying or checking the records and capability of [WER FAST]."[32]

Purisima requested[33] for additional time to file his counter-affidavit and was granted an inextendible period of ten (10) days from receipt of the Order[34] dated December 1, 2014.

On December 3, 2014, without waiting for Purisima's counter-affidavit, the Ombudsman issued the assailed Order,[35]which preventively suspended Purisima and other PNP officers, for six (6) months without pay.[36]

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[32] *Id*. at 124. The relevant portion of the complaint pertaining to Purisima reads:

ADMINISTRATIVE LIABILITY OF PURISIMA

42. Meneses issued a memorandum to Purisima stating that [WER FAST] has complied [with all] the requirements stipulated in the FEO Policy on Accreditation. He recommended that the delivery of firearm licenses to their registered addresses be made mandatory. Purisima approved this Memorandum of Meneses. This recommendation paved the way by which [WER FAST] was able to deliver all the firearms license cards issued to the applicants. Purisima is guilty of Gross Negligence or [Gross Neglect] of Duty **for approving the recommendation of Meneses without verifying or checking the records and capability of** [**WER FAST**]. (Emphasis supplied)

[33] See Manifestation and Motion dated November 28, 2014; *id*. at 312-313.

[34] *Id*. at 314. Issued by Assistant Special Prosecutor II Chair Maria Janina J. Hidalgo.

[35] *Id.* at 315-323.

[36] *Id*. at 320. The *fallo* of the Order reads:

WHEREFORE, in accordance with Section 24 of R.A. No. 6770 and Section 9, Rule III of Administrative Order No. 07, as amended, the following respondents from the PNP-PDG Alan La Madrid Purisima, PDIR Gil C. Meneses, PDIR Napoleon Estilles, PCSUPT Raul D. Petrasanta, PSSUPT Allan A. Parreño, PSSUPT Eduardo P. Acierto, PSSUPT Melchor V. Reyes, PSSUPT Lenbell J. Fabia, PSUPT Sonia C. Calixto, PCINSP Nelson L. Bautista, PSINSP Ford G. Tuazon, and CINSP Ricardo S. Zapata – are hereby **PREVENTIVELY SUSPENDED** without pay during the pendency

Purisima and another PNP official[37] filed their respective petitions for *certiorari* before the CA, docketed as CA-G.R. SP No. 138296 and CA-G.R. SP No. 138722,[38] which were consolidated in a Resolution dated January 30, 2015.[39] While these consolidated cases were pending before the CA, Purisima resigned as PNP Chief[40] and the preventive suspension period had lapsed.[41]

The CA Ruling

In a Decision[42] dated July 29, 2015, the CA dismissed the petitions and affirmed the Ombudsman's assailed Order. On the procedural aspect, the CA held that the petitions are moot in view of the lapse of the six-month period of preventive suspension. In particular, the CA noted that Purisima received the Order on December 4, 2014. Counting from this date, his period of preventive suspension lapsed on June 4, 2015. Nevertheless, the CA proceeded to discuss the merits of the case.[43]

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of this case until its termination, but not to exceed the total period of six (6) months.

The Honorable MANUEL A. ROXAS II, Secretary, Department of Interior and Local Government, is hereby furnished a copy of this Order for its immediate implementation.

SO ORDERED.

[37] PSSUPT Allan A. Parreño was the petitioner in the other petition docketed as CA-G.R. SP No. 138722. (*Id*. at 41).

[38] *Id*.

[39] See *id*. at 44.

[40] See *id*. at 9.

[41] *Id*. at 46.

[42] *Id*. at 41-54.

[43] See *id*. at 46-47.

On the merits, the CA held that the Ombudsman is authorized under Section 24 of RA 6770[44] to preventively suspend without pay any public officer or employee during the pendency of an investigation. It added that the power to issue preventive suspension order is undoubtedly a part of the Ombudsman's investigatory and disciplinary authority.[45]

The CA further held that the Ombudsman did not gravely abuse her discretion in preventively suspending Purisima for irregularly accrediting WER FAST as courier service provider, noting that the two (2) requisites[46] for the validity of a preventive suspension order were present.[47] *First*, the Ombudsman made a prior determination that the evidence was strong based on the documents submitted to them and the following circumstances: (*a*) BIR certificate; (*b*) Director of Intelligence certificate; and (*c*) Department of Science and Technology (DOST) certificate.[48] Particularly, WER FAST was accredited despite non-payment of taxes for the years 2011 to 2013 as shown by the BIR certification. The Director of Intelligence likewise issued a certification that it has not given clearances to WER FAST. Additionally, WER FAST's business permits for the years 2011 to 2012 indicated "consultancy" as its business, while its Articles of Incorporation stated that the corporation's primary purpose is to act as a business consultant, engage in providing assistance in documentation and registration. The DOST Postal Regulation Committee also issued a certification that it has not accredited WER FAST as a courier service provider. Notably, WER FAST had no proven track record in courier

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[44] Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," otherwise known as "THE OMBUDSMAN ACT OF 1989," approved on November 17, 1989.

[45] *Rollo*, p. 50.

[46] See The Ombudsman Rules of Procedure, Administrative Order No. 7, Rule III, Section 9.

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

[48] See *id*. at 50-52.

service. It even engaged the services of LBC Express, Inc. precisely because the former lacked the capacity to deliver firearms licenses. Furthermore, it was not compliant with the DOTC's paid-up capital requirement of ₱500,000.00 to be accredited to operate as a courier service in two or more administrative regions in the country. To highlight, WER FAST was accredited by PNP nationwide despite having a paid-up capital of only ₱65,000.00.[49] *Second*, the charge filed against Purisima was Gross Negligence and/or Gross Neglect of Duty, which if proven true, would constitute a ground for his removal from public office.[50] Thus, the CA concluded that the concurrence of the foregoing elements rendered the preventive suspension order valid.

Aggrieved, Purisima filed the present petition.

The Issues Before the Court

The issues before the Court are: (*a*) whether or not the petition has been rendered moot and academic; and, (*b*) if in the negative, whether or not the CA correctly held that the Ombudsman did not gravely abuse her discretion in preventively suspending Purisima.

The Court's Ruling

The petition is denied.

I.

In *Ombudsman v. Capulong*[51] (*Capulong*), the Court ruled that a case questioning the validity of a preventive suspension order is not mooted by the supervening lifting of the same:

> In the instant case, the subsequent lifting of the preventive suspension order against Capulong does not render the petition moot and academic. **It does not preclude the courts from passing upon the validity of a preventive suspension order**, it being a manifestation

[49] *Id*. at 51.

[50] See *id*. at 52-53.

[51] G.R. No. 201643, March 12, 2014, 719 SCRA 209, 218.

of its constitutionally mandated power and authority to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

As held in *Capulong*, the Court, in the exercise of its expanded judicial power, may not be precluded from passing upon the order's validity so as to determine whether or not grave abuse of discretion attended the issuance of the same. The result of a finding of a grave abuse of discretion means that the issuance is null and void from its very inception, and thus, bars the same from producing any legal effects. Indeed, "[n]o legal rights can emanate from a resolution that is null and void."[52] As such, a public officer improperly placed under preventive suspension should be restored to his original position, and accordingly, should have earned his salaries as if he was not preventively suspended for the pertinent period.

"A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use."[53] In *Osmeña v. Social Security System of the Phils.*,[54] the Court explained the consequence of a finding of mootness:

In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.[55]

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[52] *Quiambao v. People*, G.R. No. 185267, September 17, 2014, 735 SCRA 345, 357, citing *Paulin v. Gimenez*, G.R. No. 103323, January 21, 1993, 217 SCRA 386, 393.

[53] *Osmeña III v. Social Security System of the Phils.*, 559 Phil. 723, 735 (2007).

[54] *Id*.

[55] *Id*. at 735.

In this case, since the propriety or impropriety of Purisima's preventive suspension would essentially determine his entitlement to back salaries during the six-month period therefor, the Court holds that despite the lapse of the period of his preventive suspension, there remains some practical value or use in resolving his petition assailing the Ombudsman's December 3, 2014 Order. Thus, by the same logic in *Capulong*, this case cannot be considered as moot and academic so as to obviate the Court from resolving its merits.

II.

The Ombudsman is explicitly authorized to issue a preventive suspension order under Section 24 of RA 6770 when two (2) conditions are met. These are: (***a***) the evidence of guilt is strong based on the Ombudsman's judgment; and (***b***) any of the three (3) circumstances are present – (1) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charges would warrant removal from service; or (3) the respondent's continued stay in office may prejudice the case filed against him. Section 24 reads:

> Section 24. *Preventive Suspension*. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, **if in his judgment the evidence of guilt is strong**, and **(a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.**
>
> x x x x x x x x x (Emphases and underscoring supplied)

In this case, the Court need not belabor on the presence of the second condition, considering that (*a*) one of the charges against Purisima is gross neglect of duty; and (*b*) the criminal and administrative charges (*i.e.*, violations of RAs 6713, 3019, 7080, and 9184, as well as gross neglect of duty) against Purisima, if proven, would indeed warrant his removal from office. Since

Section 24 uses the disjunctive "or",[56] then the presence of any of the three (3) stated situations would be sufficient to comply with this condition.

As regards the first condition, case law states that the strength of the evidence is left to the determination of the Ombudsman by taking into account the evidence before her; hence, the deliberate use of the words "*in his judgment.*" In *Yasay, Jr. v. Desierto*:[57]

> The rule is that whether the evidence of guilt is strong, as required in Section 24 of R.A. No. 6770, is left to the determination of the Ombudsman by taking into account the evidence before him. **In the very words of Section 24, the Ombudsman may preventively suspend a public official pending investigation if "in his judgment" the evidence presented before him tends to show that the official's guilt is strong and if the further requisites enumerated in Section 24 are present**. The Court cannot substitute its own judgment for that of the Ombudsman on this matter, absent clear showing of grave abuse of discretion.[58] (Emphasis and underscoring supplied)

The Court's deference to the Ombudsman's judgment regarding this condition not only stems from its policy of non-interference with the Ombudsman's exercise of her prosecutorial and investigatory powers;[59] it is also a conscious recognition of the preliminary nature and purpose of a preventive suspension order. It is well-established that:[60]

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[56] "In its elementary sense, 'or' as used in a statute is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When 'or' is used, the various members of the enumeration are to be taken separately." (*Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206.)

[57] 360 Phil. 680 (1998).

[58] *Id*. at 697.

[59] See *Layus M.D. v. Sandiganbayan*, 377 Phil. 1067 (1999). See also *Dimayuga v. Ombudsman*, 528 Phil. 42, 48 (2006), citing *Kara-an v. Ombudsman*, 476 Phil. 536, 548 (2004): This policy is based not only on the Court's respect for the constitutionally-granted powers of the Ombudsman, but on practicality as well. Otherwise, courts will be extremely swamped with cases compelling them to review the Ombudsman's exercise of her discretion.

[60] *Quimbo v. Gervacio*, 503 Phil. 886, 891 (2005).

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. (Emphasis and underscoring supplied)

Being a preventive measure essentially meant to ensure the proper course of a still ongoing investigation, the Ombudsman should thus be given ample discretion to determine the strength of the preliminary evidence presented before her and thereafter, decide whether or not to issue such order against a particular respondent. In *Buenaseda v. Flavier*,[61] this Court explained:

Under the Constitution, the Ombudsman is expressly authorized to recommend to the appropriate official the discipline or prosecution of erring public officials or employees. **In order to make an intelligent determination whether to recommend such actions, the Ombudsman has to conduct an investigation. In turn, in order for him to conduct such investigation in an expeditious and efficient manner, he may need to suspend the respondent**.

The need for the preventive suspension may arise from several causes, among them, the danger of tampering or destruction of evidence in the possession of respondent; the intimidation of witnesses, etc. The Ombudsman should be given the discretion to decide when the persons facing administrative charges should be preventively suspended.[62] (Emphasis and underscoring supplied)

However, as in any governmental power, the Ombudsman's authority to preventively suspend is not unlimited. When a complaint is virtually bereft of any supporting evidence or the evidence so cited is, on its face, clearly inadmissible, then no deference ought to be accorded. Under these instances, the

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[61] G.R. No. 106719, September 21, 1993, 226 SCRA 645.

[62] *Id*. at 652.

Ombudsman may be said to have gravely abused her discretion in finding that the first condition was met.

In the present case, the Ombudsman found that the evidence of guilt against Purisima was strong enough to place him under preventive suspension. Said finding cannot be said to be tainted with grave abuse of discretion as it was based on supporting documentary evidence,[63] none of which were questioned to be inadmissible. For one, the Ombudsman considered the PNP officials' Joint Affidavit,[64] expressing that Purisima exerted pressure and coercion over his subordinates to coordinate with WER FAST in relation to the courier delivery service. The Ombudsman also cited several circumstances sourced from the documentary evidence that should have prodded Purisima to verify WER FAST's credentials and capability to provide courier services for the delivery of firearms licenses before he insisted on the implementation of the MOA. These circumstances are: (*a*) the absence of a public bidding before the MOA was executed; (*b*) the absence of accreditation from the Accreditation Board when Purisima approved the Meneses Memo; (*c*) the Meneses Memo failed to mention the resolution supposedly accrediting WER FAST; (*d)* the Accreditation Board accredited WER FAST despite the latter's lack of proof of compliance with the Accreditation Policy; (*e*) WER FAST had no proven track record in courier services and lacked the capacity to deliver the firearms licenses; (*f*) WER FAST failed to obtain the DOTC's accreditation for authority to operate courier services; and (*g*) WER FAST's failure to donate the equipment for the online system as stated in the MOA, among others.[65]

Since both conditions for the issuance of a preventive suspension order against Purisima are present in this case, the Court therefore holds that the Ombudsman acted within her powers when she issued the assailed December 3, 2014 Order. In consequence, Purisima is not entitled to back salaries during the period of his preventive suspension.

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[63] *Rollo,* pp. 316-319.

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

[65] *Id.* at 358-360.

As a final point, the Court clarifies that – contrary to Purisima's stance – the Ombudsman did not violate his right to due process nor did she prejudge the case when she issued the preventive suspension order before he was able to file his counter-affidavit for the second complaint.[66]

Lastimosa v. Ombudsman[67] already settles that the Ombudsman may issue a preventive suspension order prior to the filing of an answer or counter-affidavit, considering that the same is but a preventive measure:

> Prior notice and hearing is not required, such suspension not being a penalty but only a preliminary step in an administrative investigation. As held in *Nera v. Garcia* [(106 Phil. 1031, 1034 [1960])]:
>
> > In connection with the suspension of petitioner **before he could file his answer to the administrative complaint**, suffice it to say that the **suspension was not a punishment or penalty** for the acts of dishonesty and misconduct in office, **but only as a preventive measure**. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence.
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> x x x x x x x x x
>
> As held in *Buenaseda v. Flavier* [(G.R. No. 106719, September 21, 1993, 226 SCRA 645, 655)], however, whether the evidence of guilt is strong is left to the determination of the Ombudsman by taking into account the evidence before him. A preliminary hearing as in bail petitions in cases involving capital offenses is not required. In rejecting a similar argument as that made by petitioner in this case, this Court said in that case:

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[66] *Id*. at 28-33.

[67] 313 Phil. 358, 375 (1995).

> The import of the *Nera* decision is that the disciplining authority is given the discretion to decide when the evidence of guilt is strong. This fact is bolstered by Section 24 of R.A. No. 6770, which expressly left such determination of guilt to the "judgment" of the Ombudsman on the basis of the administrative complaint. x x x[68] (Emphases and underscoring supplied)

Ultimately, it should be borne in mind that the issuance of a preventive suspension order does not amount to a prejudgment of the merits of the case.[69] Neither is it a demonstration of a public official's guilt as such pronouncement can be done only after trial on the merits.[70]

WHEREFORE, the petition is **DENIED**. The Decision dated July 29, 2015 of the Court of Appeals in CA-G.R. SP No. 138296 and CA-G.R. SP No. 138722 is hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 219649. July 26, 2017]

AL DELA CRUZ, *petitioner, vs.* **CAPT. RENATO OCTAVIANO and WILMA OCTAVIANO,** *respondents.*

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[68] *Id*. at 375-377.

[69] See *Yasay, Jr. v. Desierto*, *supra* note 57, at 698.

[70] See *Id*.

SYLLABUS

1. **REMEDIAL LAW; RULE 45 PETITION; FACTUAL ISSUES ARE NOT THE PROPER SUBJECTS THEREOF; EXCEPTIONS; CONFLICTING FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS NECESSITATES THE EXAMINATION OF THE EVIDENCE OF THE PARTIES.—** A close reading of the present petition would show that the issues raised are factual in nature. This Court has recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (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 CA 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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Inasmuch as the RTC and the CA arrived at conflicting findings of fact on who was the negligent party, the Court holds that an examination of the evidence of the parties needs to be undertaken to properly determine the issue.

2. **ID.; EVIDENCE; BURDEN OF PROOF; THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH HIS CASE BY PREPONDERANCE OF EVIDENCE; THE BURDEN OF PROOF IS ON THE PARTY WHO WOULD BE DEFEATED IF NO EVIDENCE IS PRESENTED ON EITHER SIDE.—** This Court must then ascertain whose evidence was preponderant, for Section 1, Rule 133 of the Rules of Court mandates that in civil cases, like this one, the party having the burden of proof must establish his case by a

preponderance of evidence. Burden of proof is 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. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. Generally, the party who denies has no burden to prove. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the Rules of Court, but it may rest on the defendant if he admits expressly or impliedly the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability.

3. CIVIL LAW; DAMAGES; CRIMINAL NEGLIGENCE; WHETHER OR NOT PETITIONER WAS DRUNK IS INCONSEQUENTIAL AND WILL NOT ERASE THE FACT THAT HIS NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE COLLISION; PROXIMATE CAUSE, DEFINED.— As to the denial of petitioner that he was drunk at the time of the accident, whether or not he was in a state of inebriation is inconsequential given the above findings. His being sober does not and will not erase the fact that he was still negligent and that the proximate cause of the collision was due to his said negligence. Proximate cause is "that which, in natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred." As such, petitioner is wrong when he claims that the proximate cause of the accident was the fault of the tricycle driver.

4. ID.; ID.; ID.; CONTRIBUTORY NEGLIGENCE, EXPLAINED; VIOLATION OF A MUNICIPAL ORDINANCE LIMITING THE NUMBER OF PASSENGERS FOR EACH TRICYCLE IS NOT SUFFICIENT IN ITSELF TO IMPUTE CONTRIBUTORY NEGLIGENCE ON THE PART OF THE INJURED PARTY.— Neither is it correct to impute contributory negligence on the part of the tricycle driver and respondent Renato when the latter had violated a municipal ordinance that limits the number of passengers for each tricycle for hire to three persons including the driver. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below

the standard to which he is required to conform for his own protection. To hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warning or signs of an impending danger to health and body. To prove contributory negligence, it is still necessary to establish a causal link, although not proximate, between the negligence of the party and the succeeding injury. In a legal sense, negligence is contributory only when it contributes proximately to the injury, and not simply a condition for its occurrence. In this case, the causal link between the alleged negligence of the tricycle driver and respondent Renato was not established. This court has appreciated that negligence *per se*, arising from the mere violation of a traffic statute, need not be sufficient in itself in establishing liability for damages.

5. ID.; ID.; ID.; RESPONDENTS ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES; THESE DAMAGES ARE AWARDED IN THE CONCEPT OF GRANTS, NOT PUNITIVE OR CORRECTIVE IN NATURE, TO COMPENSATE THE CLAIMANTS FOR THE INJURY SUFFERED; THE PURPOSE IS TO DETER THE WRONGDOER AND OTHERS LIKE HIM FROM SIMILAR CONDUCT IN THE FUTURE.— This Court further agrees with the CA that the respondents are entitled to the award of moral and exemplary damages. Moral damages, x x x, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219 and Article 2220 of the Civil Code, x x x Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrongdoings, 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. These terms are generally, but not always, used interchangeably. 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.

APPEARANCES OF COUNSEL

Cayton Manzano Peñalosa & Morante for petitioner.
Smith And Smith Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated August 12, 2015, of petitioner Al Dela Cruz that seeks to reverse and set aside the Decision[1] dated January 30, 2014 and Resolution[2] dated June 22, 2015 of the Court of Appeals (*CA*) reversing the Decision dated February 24, 2009 of the Regional Trial Court (*RTC*), Branch 275, Las Piñas City in a civil case for damages.

The facts follow.

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[1] Penned by Associate Justice Rosmari D. Carandang, with the concurrence of Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon; *rollo*, pp. 24-37.

[2] *Id*. at 39-40.

Around 9:00 p.m. on April 1, 1999, respondent Captain Renato Octaviano, a military dentist assigned at the Office of the Chief Dental Service, Armed Forces of the Philippines, Camp Aguinaldo, Quezon City, respondent Wilma Octaviano, Renato's mother and Janet Octaviano, Renato's sister, rode a tricycle driven by Eduardo Y. Padilla. Respondent Wilma and Janet were inside the sidecar of the vehicle, while Renato rode at the back of the tricycle driver. They then proceeded to Naga Road towards the direction of CAA and BF Homes. Renato was asking his mother for a change to complete his ₱10.00 bill when he looked at the road and saw a light from an oncoming car which was going too fast. The car, driven by petitioner, hit the back portion of the tricycle where Renato was riding. The force of the impact caused the tricycle to turn around and land on the pavement near the gutter. Thus, Renato was thrown from the tricycle and landed on the gutter about two meters away. Renato felt severe pain in his lower extremities and went momentarily unconscious and when he regained consciousness, he heard his sister shouting for help. A man came followed by other people. The first man who answered Janet's call for help shouted to another man at a distance saying: "*Ikaw, dalhin mo yung sasakyan mo dito. Ikaw ang nakabangga sa kanila. Dalhin mo sila sa ospital*." They pulled Renato out of the gutter and carried him to the car. Petitioner brought them to his house and alighted thereat for two to three minutes and then he brought the passengers to a clinic. Renato insisted on being brought to a hospital because he realized the severity of his injuries. Thus, Renato, his mother, and Janet were brought to Perpetual Help Medical Center where Renato's leg was amputated from below the knee on that same night. After his treatment at Perpetual Help Medical Center, Renato was brought to the AFP Medical Center at V. Luna General Hospital and stayed there for nine months for rehabilitation. Shortly before his discharge at V. Luna, he suffered bone infection. He was brought to Fort Bonifacio Hospital where he was operated on thrice for bone infection. Thereafter, he was treated at the same hospital for six months. In the year 2000, he had a prosthesics attached to his leg at V. Luna at his own expense. Renato spent a total of ₱623,268.00 for his medical bills and prosthetics.

Thus, Renato and his mother Wilma filed with the RTC a civil case for damages against petitioner and the owner of the vehicle.

Aside from their testimonies, the complainants, herein respondents presented the testimonies of S/Sgt. Joselito Lacuesta (*S/Sgt. Lacuesta*) and Antonio Fernandez.

According to S/Sgt. Lacuesta, he was somewhere along Naga Road around 9:00 p.m. when the incident occurred. He was talking with his three friends when he felt like urinating, so he moved a few paces away from his companions. When he was about to relieve himself, he saw an oncoming vehicle with bright lights and also saw a tricycle which was not moving fast and after the latter passed him by, it collided with the vehicle. He then saw someone fell down near him and when he saw that the car was about to move, he told his companions to stop the car from leaving. Thereafter, he noticed that the person who landed in front of him was already unconscious so he helped him and called one of his companions to carry the injured man to the car. He told the driver of the car "*Isakay mo ito, nabangga mo ito*," and then proceeded to board the injured man in front of the car, while he told the other passengers of the tricycle to board at the back of the car. His companions forcibly took ("*pinilas*") the license plate of the car and he also noticed that the driver of the car was drunk ("*nakainom*"). After the car left, he and his companions stayed in the area wherein a policeman later arrived and towed the tricycle.

Witness Antonio Fernandez, one of S/Sgt. Lacuesta's companions, corroborated the latter's testimony.

Petitioner, on the other hand, testified that on April 1, 1999, he borrowed the car of Dr. Isagani Cirilo, a Honda Civic registered under the name of the latter, to bring his mother to church. Thus, he then brought his mother to the Jehovah's Witness church in Greenview which was about 20 to 25 minute drive from their house in Naga Road, Pulanlupa. Around 6:25 p.m., he went home directly from the church and waited for the call of his mother. Thereafter, he left the house around 8:30 p.m.

and went to pick up fish food that he previously ordered before fetching his mother. When he was along Naga Road, he noticed a tricycle from a distance of about 100 to 120 meters away and was going the opposite direction. He also noticed an Elf van parked along the road on the opposite side. He flashed his low beam and high beam light to signal the tricycle. The tricycle then slowed down and stopped a bit, hence, he also slowed down. Suddenly, the tricycle picked up speed from its stop position and the two vehicles collided. He then stopped his car a few meters away from the collision site and made a u-turn to confront the driver of the tricycle. He also noticed that there were already about a dozen people around the site of the collision. He saw a man sitting on the gutter and proceeded to move the car towards the former and asked him and his companions to help board the injured man and the latter's co-passengers of the tricycle in the car he was driving. Thereafter, he drove them to Perpetual Help Hospital where the man was treated for his injuries.

The testimony of Imelda Cirilo, the wife of the owner of the car, was also presented. She testified, among others, that on the night of the accident, petitioner borrowed their car to bring the latter's mother to the church and that upon learning of the incident, she went to Perpetual Help Hospital and signed on the Admission Slip so that respondent Renato could be operated on without the former admitting any liability. She also testified that she offered to help the victims, but the latter refused and that she admitted that she did not give any financial assistance for the hospital bills nor for medicines.

Renato Martinez, a traffic enforcer, was also presented and testified that he received a call through radio about an incident along Naga Road, Pulanlupa, Las Piñas City around 8:30 p.m. so he proceeded to the area and arrived there around 9:00 p.m. When he arrived at the scene, nobody was there and that the vehicles involved in the collision were no longer there. At the scene of the accident, he saw splinters of glass on the road but there was no blood and he also saw an Elf van parked along the street fronting CAA. He then proceeded to Perpetual Help

Hospital after he received a call on his radio that the people involved in the accident were already at the said hospital. At the hospital, he was able to talk with petitioner. Thereafter, he called up his base and informed the base that the driver of the Honda Civic was at the hospital. Later on, Sgt. Soriano, the investigator-on-duty arrived at the hospital and instructed Sgt. Martinez to accompany petitioner to the headquarters because some relatives of respondents were asking that petitioner be brought to Fort Bonifacio. Thus, Sgt. Martinez and petitioner boarded the Honda Civic involved in the accident and proceeded to the headquarters.

The RTC, in its Decision dated February 24, 2009, dismissed the claim of respondents. According to the RTC, petitioner's version of the incident was more believable because it was corroborated by Sgt. Martinez who testified that he saw an Elf van parked along the street. The RTC also ruled that petitioner did everything that was expected of a cautious driver. The court further ruled that the owner of the Honda Civic, Isagani Cirilo could not be held liable because petitioner was a family friend who merely borrowed the car and not his driver nor his employee. It was also ruled that the liability rests on the tricycle driver who drove without license and petitioner's contributory negligence in riding at the back of the driver in violation of Municipal Ordinance No. 35-88 that limits the passengers of a tricycle to three persons including the driver.

Respondents appealed the RTC decision to the CA.

In its Decision dated January 30, 2014, the CA reversed the RTC's decision. According to the CA, petitioner was negligent as shown in the police report. It also found that petitioner was positive for alcoholic breath, thus, he violated Republic Act (*R.A.*) No. 4136 that prohibits any person from driving a motor vehicle while under the influence of alcohol or narcotic drug. It also ruled that the owner of the vehicle is equally responsible and liable for the accident and the resulting injuries that the victims sustained. As such, the CA disposed of the case as follows:

WHEREFORE, in view of the foregoing, the decision appealed from is hereby REVERSED and SET ASIDE. Defendants are held solidarily liable to plaintiffs and ordered to pay the plaintiffs in the following manner:

1. pay plaintiff Wilma Octaviano the following: medical expenses, ₱1,500.00, hospital expenses, ₱1,450.00 and transportation expenses, ₱6,000.00;

2. pay plaintiff Renato Octaviano the following: hospital expenses, ₱369,354.00, medical expenses, ₱60,462.23, loss of income, ₱90,000.00;

3. pay [plaintiff] Wilma Octaviano ₱50,000.00 as and by way of moral damages;

4. pay plaintiff Renato Octaviano ₱100,000.00 as and by way of moral damages;

5. pay plaintiffs ₱20,000.00 each as and by way of exemplary damages; and

6. pay plaintiffs ₱100,000.00 as attorney's fees.

SO ORDERED.[3]

Thus, the present petition after the CA denied petitioner's motion for reconsideration.

Petitioner relies upon the following grounds:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE PETITIONER WAS NEGLIGENT WHILE DRIVING HIS CAR.

II

THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE NOT SUPPORTED BY THE EVIDENCE ADDUCED.

III

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER THAT THE PROXIMATE CAUSE OF THE INCIDENT

[3] *Id*. at 36.

WAS THE FAULT OR GROSS NEGLIGENCE OF THE TRICYCLE DRIVER.

IV

THE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN FACTS NOT DISPUTED BY THE PARTIES AND WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.[4]

Petitioner insists that he was not negligent and that the driver of the tricycle was the one at fault. He also argues that the investigation report relied upon by the CA should not have been used in determining what actually transpired because the traffic investigator was not presented as a witness and petitioner was not able to confront or cross-examine him regarding the report. Petitioner further denies that he was drunk when the incident happened and that the CA erred in appreciating the mere opinions of the witnesses that he appeared drunk at that time.

In their Comment, respondents contend that the issues raised by petitioner are factual in nature and are not the proper subjects of a petition for review under Rule 45. They also contend that the CA did not err in their finding that petitioner was negligent at the time of the incident.

A close reading of the present petition would show that the issues raised are factual in nature. This Court has recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (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 CA 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

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

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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[5] Inasmuch as the RTC and the CA arrived at conflicting findings of fact on who was the negligent party, the Court holds that an examination of the evidence of the parties needs to be undertaken to properly determine the issue.[6]

The concept of negligence has been thoroughly discussed by this Court in *Romulo Abrogar, et al. v. Cosmos Bottling Company, et al.*,[7] thus:

> Negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[8] Under Article 1173 of the Civil Code, it consists of the "omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place."[9] The Civil Code makes liability for

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[5] *Philippine Shell Petroleum Corporation v. Gobonseng, Jr.*, 528 Phil. 724, 735 (2006); *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998); *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168-1169 (1997); *Reyes v. Court of Appeals*, 328 Phil. 171, 180 (1996); *Floro v. Llenado*, 314 Phil. 715, 727-728 (1995); *Remalante v. Tibe*, 241 Phil. 930, 935-936 (1988).

[6] *BJDC Construction v. Lanuzo, et al.*, 730 Phil. 240-251 (2014), citing *Sealoader Shipping Corporation v. Grand Cement Manufacturing Corporation, et al.,* 653 Phil. 155, 180 (2010).

[7] G.R. No. 164749, March 15, 2017.

[8] *Philippine National Railways Corp., et al. v. Vizcara, et al.*, 682 Phil. 343, 352 (2012), citing *Layugan v. Intermediate Appellate Court*, 249 Phil. 363, 373 (1988).

[9] Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the

negligence clear under Article 2176,[10] and Article 20.[11]

To determine the existence of negligence, the following time-honored test has been set in *Picart v. Smith*:[12]

> The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.
>
> The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence, they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight

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place. When negligence shows bad faith, the provision of Articles 1171 and 2201, paragraph 2, shall apply.

[10] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called *quasi-delict* and is governed by the provisions of this Chapter.

[11] Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

[12] 37 Phil. 809 (1918).

> of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[13]

x x x x x x x x x

In order for liability from negligence to arise, there must be not only proof of damage and negligence, but also proof that the damage was the consequence of the negligence. The Court has said in *Vda. de Gregorio v. Go Chong Bing*:[14]

> x x x Negligence as a source of obligation both under the civil law and in American cases was carefully considered and it was held:
>
> > We agree with counsel for appellant that under the Civil Code, as under the generally accepted doctrine in the United States, the plaintiff in an action such as that under consideration, in order to establish his right to a recovery, must establish by competent evidence:
> >
> > (1) Damages to the plaintiff.
> >
> > (2) Negligence by act or omission of which defendant personally or some person for whose acts it must respond, was guilty.
> >
> > (3) The connection of cause and effect between the negligence and the damage."

In this case, the RTC found no reason to conclude that petitioner was negligent. The CA, however, found the contrary. This Court must then ascertain whose evidence was preponderant, for Section 1,[15] Rule 133 of the Rules of Court mandates that

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[13] *Id*. at 813.

[14] 102 Phil. 556 (1957).

[15] Section 1. Preponderance of evidence, how determined. – In civil cases, the party having burden of proof must establish his case by a

in civil cases, like this one, the party having the burden of proof must establish his case by a preponderance of evidence. Burden of proof is 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.[16] It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[17] Generally, the party who denies has no burden to prove.[18] In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[19] The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the Rules of Court, but it may rest on the defendant if he admits expressly or impliedly the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability.[20]

By preponderance of evidence, according to *Raymundo v. Lunaria*:[21]

x x x is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and

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preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[16] *BJDC Construction v. Lanuzo, et al., supra* note 3, at 252, citing *People v. Macagaling*, 307 Phil. 316, 338 (1994).

[17] *Id.*, citing *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1000; *Coronel v. Court of Appeals*, 331 Phil. 294, 318-319 (1996).

[18] *Id.*, citing *Martin v. Court of Appeals*, 282 Phil. 610, 615 (1992).

[19] *Id.*, citing *Pacific Banking Corporation Employees Organization v. Court of Appeals*, 351 Phil. 438, 447 (1998).

[20] *Sambar v. Levi Strauss & Co.,* 428 Phil. 425, 433 (2006).

[21] 590 Phil. 546, 552-553 (2008).

value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

In addition, according to *United Airlines, Inc. v. Court of Appeals,*[22] the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.

After reviewing the records of the case, this Court affirms the findings of the CA. In ruling that petitioner was negligent, the CA correctly appreciated the pieces of evidence presented by the respondents, thus:

> First, with regard to the damage or injury, there is no question that the plaintiffs suffered damage due to the incident on April 1, 1999. Plaintiff Renato Octaviano's right leg was crushed by the impact of the Honda Civic driven by defendant Dela Cruz against the tricycle where the Octavianos were riding and as a result thereof, Renato's right leg was amputated. Plaintiff Wilma Octaviano suffered traumatic injuries/hematoma on different parts of her body as borne by the evidence submitted to the trial court. The damages or injuries were duly proved by preponderant evidence.
>
> Second, with regard to the wrongful act or omission imputable to the negligence of defendant Al Dela Cruz, We hold that the trial court missed the glaring fact that defendant Dela Cruz was guilty of negligence.
>
> The police report prepared by the traffic investigator SPO2 Vicente Soriano detailed what happened on the night of April 1, 1999, to wit:
>
> x x x x x x x x x
>
> On the Spot Investigation conducted by the undersigned, showed that Vehicle 2 while moving ahead and upon arriving in front of said motor shop, Vehicle 2 avoided hitting another tricycle which vehicle (Tricycle) was standing while waiting for a would-be passenger. Said Veh-2 driver swerved the car

[22] 409 Phil. 88, 100 (2001).

to the left and it was at this instance when said Veh-1 was sideswiped by said Veh-2.

x x x x x x x x x

Weather Condition: Fair

Road condition: Concrete and Dry

Driver's Condition: Veh-1, Normal; Veh-2 Positive for Alcoholic Breath (AB)"

For a clearer understanding of the said police report, Vehicle-1 referred to by Soriano is the tricycle where plaintiffs were riding, and Vehicle-2 is the Honda Civic driven by Dela Cruz.

Was the statement in the police report that Al Dela Cruz was positive for alcoholic breath substantiated/corroborated?

Yes. Two witnesses testified that Dela Cruz appeared to be drunk on that fateful night. Joey Lacuesta and Antonio Fernandez were there on the spot when the incident happened. They were the first ones to assist the victim Renato Octaviano who was slumped unconscious in the gutter. Lacuesta was the one who boarded the injured Renato into the front seat of the car and he noticed that the driver was drunk:

Q: You said that you placed the injured person in front of the Honda Civic, the driver was there in the car, what, if anything did you notice about the condition of the driver of the car?

A: *Nakainom*, I noticed that because when I boarded the injured person into the front passenger seat, I noticed that he is drunk.

Antonio Fernandez heard his friend Aries Sy shout at the driver of the car to stop when it appeared to by continuously moving. Fernandez also noted that the driver appeared to be drunk, thus:

Q: Now you said that the driver of the car was drunk. Did you say that when you testified?

A: Yes, sir. *Lasing yung driver.*

Q: What made you think that this driver of the car was drunk?

A: Because of his actions and he was also mad.

Q: Because he was mad, then you thought that he was drunk. x x x?

A: No, Sir. You can see or you can observe the actions of a person if he is drunk.

x x x x x x x x x

More importantly, the law prohibits drunk driving. Republic Act No. 4136, Chapter IV, Article V, Section 53 known as Land Transportation and Traffic Code provides that no person shall drive a motor vehicle while under the influence of liquor or narcotic drug. It is established by plaintiff's evidence that defendant Dela Cruz drove the Honda Civic while under the influence of alcohol thus proving his negligence.

With regard to the third requisite, that there be a direct relation of cause and effect between the damage or injury and the fault or negligence is clearly present in the case at bar. Had defendant Dela Cruz exercised caution, his Honda Civic would not have collided with the tricycle and plaintiff's leg would not be crushed necessitating its amputation. The cause of the injury or damage to the plaintiff's leg is the negligent act of defendant Dela Cruz.

The last requisite is that there be no pre-existing contractual relation between the parties. It is undeniable that defendant and plaintiffs had no prior contractual relation, that they were strangers to each other before the incident happened. Thus, the four requisites that must concur under Article 2176 are clearly established in the present case. Plaintiffs are entitled to claim damages.[23]

Petitioner argues that the CA erred in relying on the police report without petitioner having the chance to cross-examine the police officer who prepared the same. Be that as it may, the contents of the said police report are corroborated by the testimonies of the other witnesses presented before the court. The said contents of the police report are more believable than the version of petitioner of what transpired. As correctly observed by the CA:

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[23] *Rollo*, pp. 31-34. (Citations omitted)

Dela Cruz narrated in his testimony that he saw a parked Elf van on the opposite road and the tricycle also on the opposite road going to the opposite direction. He claims that he flashed his low beam and high beam to warn the tricycle, the tricycle stopped momentarily and then picked up speed "*umarangkada*" and that was why the two vehicles collided. However, he admitted that the point of impact of the two vehicles was "*lagpas lang konti*" from the front of the parked Elf. He could not stop. He did not know what to do. He slowed down. He did not stop but continued driving. If it were true that as far as about 100-120 meters away he already saw the parked Elf van and the tricycle, he could have slowed down or stopped to give way to the tricycle to avoid collision. In fact, if the collision point was right ahead of the front of the parked Elf van, it means that the tricycle was already past the parked Elf and it was Dela Cruz who forced his way into the two-way road. More evident is that the tricycle was hit at the back portion meaning it was already turning after passing the parked Elf. Had Dela Cruz slowed down or stopped a short while to let the tricycle pass clear of the van, then the incident would not have happened. The reasonable foresight required of a cautious driver was not exercised by defendant Dela Cruz.[24]

As to the denial of petitioner that he was drunk at the time of the accident, whether or not he was in a state of inebriation is inconsequential given the above findings. His being sober does not and will not erase the fact that he was still negligent and that the proximate cause of the collision was due to his said negligence. Proximate cause is "that which, in natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred."[25] As such, petitioner is wrong when he claims that the proximate cause of the accident was the fault of the tricycle driver.

Neither is it correct to impute contributory negligence on the part of the tricycle driver and respondent Renato when the latter had violated a municipal ordinance that limits the number

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[24] *Id.* at 33-34.

[25] II Bouvier's Law Dictionary and Concise Encyclopedia, Third Edition (1914), citing *Butcher v. R. Co.*, 37 W.Va. 180, 16 S.E. 457, 18 L.R.A. 519; *Lutz v. R. Co.,* 6 N.M. 496, 30 Pac. 912, 16 L.R.A. 819.

of passengers for each tricycle for hire to three persons including the driver. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.[26] To hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warning or signs of an impending danger to health and body.[27] To prove contributory negligence, it is still necessary to establish a causal link, although not proximate, between the negligence of the party and the succeeding injury. In a legal sense, negligence is contributory only when it contributes proximately to the injury, and not simply a condition for its occurrence.[28] In this case, the causal link between the alleged negligence of the tricycle driver and respondent Renato was not established. This court has appreciated that negligence *per se*, arising from the mere violation of a traffic statute, need not be sufficient in itself in establishing liability for damages.[29] Also, noteworthy is the ruling of the CA as to the matter, thus:

> The trial court absolved defendants of liability because of the failure of the plaintiffs to present the tricycle driver and thus concluding that plaintiffs suppressed evidence adverse to them. This is error on the part of the trial court. The non-presentation of the tricycle driver as a witness does not affect the claim of the plaintiffs-appellants against herein defendants-appellees. Even granting that the tricycle driver was presented in court and was proved negligent, his negligence cannot cancel out the negligence of defendant Dela Cruz, because their liabilities arose from different sources. The obligation or liability of the tricycle driver arose out of the contract of carriage between him and petitioners whereas defendant Dela Cruz is liable under Article 2176 of the Civil Code or under quasi-delicts. There is ample evidence

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[26] *Valenzuela v. Court of Appeals*, 323 Phil. 374, 388 (1996).

[27] *Estacion v. Bernardo*, 518 Phil. 388, 401-402 (2006); *Añonuevo v. Court of Appeals*, 483 Phil. 756, 773 (2004).

[28] *Id.* at 769-769.

[29] *Id.* at 768-769.

to show that defendant Dela Cruz was negligent within the purview of Article 2176 of the Civil Code, hence, he cannot escape liability.[30]

This Court further agrees with the CA that the respondents are entitled to the award of moral and exemplary damages. Moral damages, x x x, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219[31] and Article 2220[32] of the

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[30] *Rollo*, pp. 35-36. (Citation omitted)

[31] Art. 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.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[32] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Civil Code, x x x[33] Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrongdoings, 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. These terms are generally, but not always, used interchangeably. 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,[34] 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[35] – 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.[36]

In awarding the above, the CA correctly ruled that:

It is extant in the records that defendants did not overturn or disprove the plaintiffs' claim for actual damages such as the hospital bills/ expenses which were duly supported by documentary evidence (receipts). It was also duly proven that defendant Al Dela Cruz acted with gross disregard for the suffering of his victims when he refused

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[33] *Del Mundo v. Court of Appeals*, 310 Phil. 367, 376-377 (1995).

[34] *People v. Dalisay,* 620 Phil. 831, 844 (2009), citing *People v. Catubig*, 416 Phil. 102, 119 (2001), citing *American Cent. Corp. v. Stevens Van Lines, Inc.*, 103 Mich App 507, 303 NW2d 234; *Morris v. Duncan,* 126 Ga 467, 54 SE 1045; *Faircloth v. Greiner*, 174 Ga app 845, 332 SE 2d 905; §731, 22 Am Jur 2d, p. 784; *American Surety Co. v. Gold,* 375 F 2d 523, 20 ALR 3d 335; *Erwin v. Michigan,* 188 Ark 658, 67SW2d592.

[35] §762, 22 Am Jur 2d pp. 817-818.

[36] §733. 22 Am Jur 2d, p. 785; Symposium: Punitive Damages, 56 So Cal LR 1, November 1982.

to board them in his car and only did so when forced by the bystanders who assisted the victims, when he drove to his house first before driving to a clinic then to [the] hospital when it was obvious that Renato Octaviano's wound was severe and needed immediate professional attention. These insensitivity of defendant caused suffering to the plaintiffs that must be compensated.[37]

As to the award of attorney's fees, Article 2208 of the New Civil Code provides the following:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

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[37] *Rollo*, p. 36.

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In this case, since exemplary damages are awarded, the award of attorney's fees is necessary.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated August 12, 2015, of petitioner Al Dela Cruz is **DENIED** for lack of merit. Consequently, the Decision dated January 30, 2014 and Resolution dated June 22, 2015 of the Court of Appeals in CA-G.R. CV No. 93399 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 220458. July 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSARIO BALADJAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) IN RELATION TO PRESIDENTIAL DECREE NO. (PD) 1689; SYNDICATED *ESTAFA*; ELEMENTS, OBTAIN IN CASE AT BAR.— Synthesizing the two provisions of law, the elements of Syndicated *Estafa*, therefore, are as follows: (a) *Estafa* or other forms of swindling, as defined in Articles 315 and 316 of the RPC, is committed; (b) the *Estafa* or swindling is committed by a syndicate of five (5) or more persons; and (c)

the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*," or farmers' associations, or of funds solicited by corporations/associations from the general public. x x x Clearly, all the elements of Syndicated *Estafa* obtain in this case, considering that: (a) more than five (5) persons are involved in Multitel's grand fraudulent scheme, including Baladjay and her co-accused - who employed deceit, false pretenses and representations to the private complainants regarding a supposed lucrative investment opportunity with Multitel in order to solicit money from them; (b) the said false pretenses and representations were made prior to or simultaneous with the commission of fraud; (c) relying on the false promises and misrepresentations thus employed, private complainants invested their hard-earned money in Multitel; and (d) Baladjay and her co-accused defrauded the private complainants, obviously to the latter's prejudice.

2. **ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.—** [T]he crime of *Estafa* under Article 315 (2)(a) of the RPC was committed by accused-appellant together with her counselors, numbering more than five (5), qualifying the crime to Syndicated *Estafa* in accordance with PD 1689. Thus, the imposition of the penalty of life imprisonment should be upheld, as well as the order to pay the actual damages suffered by each of the private complainants. In addition thereto, the Court imposes interest on the monetary penalty at the rate of six percent (6%) per annum from the time of the demand, which shall be deemed as made on the same day the Information was filed against accused-appellant, until the amounts are fully paid. As regards the award of moral damages, the CA was correct in reducing the same to a fair, just and reasonable amount of One Hundred Thousand Pesos (Php100,000.00) for each of the private complainants. The Court also imposes an interest at the rate of six percent (6%) per annum on the moral damages assessed from finality of this ruling until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

"*...the only people who get rich from "get rich quick" books are those who write them.*"

-Richard M. Nixon

Nature of the Case

Before this Court is an appeal from the November 13, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 06308 finding the accused-appellant, Rosario Baladjay (Baladjay), guilty beyond reasonable doubt of the crime of Syndicated *Estafa* defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC) in relation to Section 1 of Presidential Decree No. (PD) 1689.[2]

The Facts

In an *Information* dated August 6, 2003, accused-appellant Baladjay and her co-accused were indicted with the crime of Syndicated *Estafa.* The accusatory portion of the *Information* reads:

> The undersigned Prosecutor accuses ROSARIO BALADJAY, SATURNINO BALADJAY, LITO NATIVIDAD, RANDY RUBIO, TESS VILLEGAS, OLIVE MARASIGAN, LORNA PANGAN, CARMEN CHAN, STELLA ILAGAN and JOHN MUNOZ of the crime of SYNDICATED ESTAFA under Article 315, par. 2(a) of the Revised Penal Code in relation to [PD] 1689, committed as follows:
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> That on or about and sometime during the months covering the period from May 2001 to October 2002, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being officers, employees, and/or agents of

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[1] *Rollo*, pp. 2-44. Penned by Associate Justice Marie Amy Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Leoncia Real-Dimagiba, Special 14th Division.

[2] Entitled "INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA" (April 6, 1980).

Multinational Telecom Investors Corporation (Multitel), an association operating on funds solicited from the public, conspiring or confederating with and mutually helping one another, and confederating as a syndicate, did then and there, willfully, unlawfully and feloniously defraud complainants JOSE SAMALA, HENRY CHUA CO, ROLANDO T. CUSTODIO, KATHERINE T. HEBRON AND STELLA P. LEE by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud to the effect that they have the business, property and power to solicit and accept investments and deposits from the general public and capacity to pay the complainants guaranteed monthly interest on investment from 5% to 6% and lucrative commissions, and by means of other deceits of similar import, induced and succeeded in inducing the complainants to invest, deposit, give and deliver as in fact the latter gave the accused the total amount of [Php]7,810,000.00 as investment or deposit, accused knowing fully well that said pretenses and representations are fraudulent scheme to enable them to obtain said amount, and thereafter, having in their possession said amount, with intent to gain and to defraud, misappropriated and converted the same to their own personal benefits to the damage and prejudice of said complainants in the aforementioned amount.

CONTRARY TO LAW.[3]

Upon motion of the public prosecutor, the charge against Carmen Chan was dismissed for lack of probable cause; while the other accused, aside from Baladjay, remained at large. On arraignment, Baladjay pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued.

The prosecution presented Rolando T. Custodio (Rolando), Estella Pozon Lee (Estella), Henry M. Chua Co (Henry), and Yolanda Baladjay (Yolanda) to testify against accused-appellant Baladjay.

When Rolando took to the stand, he narrated that sometime in February 2001, his neighbor told him about Multitel, a company which allegedly pays its investors an interest income of at least five percent (5%) per month. Enticed with the prospective returns, Rolando invested the amount of

[3] CA *rollo*, pp. 12-13.

Php100,000.00 in Multitel and received monthly interest payments, as promised.[4]

Thereafter, Rolando met Gladina Baligad (Gladina), a counselor of Multitel, who explained to him that the company was engaged in the telecommunications business. Convinced of Gladina's representations regarding Multitel's legitimacy and her assurances as to its profitability, Rolando increased his investment in the company to Php2,000,000.00. Gladina then made a more attractive offer, promising an increased monthly earning of eight to twelve percent (8%-12%) of the investments, luring Rolando to invest a total of Php3,200,000.00 in Multitel. A receipt was issued for every placement that Rolando made, together with checks personally signed by Baladjay, representing his principal investment.[5]

However, sometime in October 2002, when he had yet to receive his interest income for the month, Rolando learned that Baladjay was under investigation. Knowledge of this prompted him to call Gladina, who assured him that Multitel would still be able to deliver on its promised returns. Nevertheless, despite Gladina's assurance, Multitel defaulted. Rolando then conducted his own investigation on the matter and found out that Multitel was not issued a secondary license by the Securities and Exchange Commission (SEC) to deal in securities and solicit investments from the general public. In fact, per an SEC Advisory, the company and its conduits were not duly registered and had no juridical personality and authority to engage in any activity, let alone investment-taking.[6]

Rolando exerted all effort to recover his investments after his discovery. He even attended the meetings conducted by Multitel, the last one of which was held on November 5, 2002. During the final meeting, Baladjay's co-accused Randy Rubio, Olive Marasigan, and Tess Villegas, all officers of Multitel,

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[4] TSN, August 25, 2005, pp. 12-13.

[5] *Id.* at 15-26.

[6] *Id.* at 31-35.

met with the investors and repeatedly assured the latter that Multitel was a legitimate company and that it was merely organizing its books so as to meet the monthly withdrawals. Multitel, however, was unable to deliver on the promised returns, prompting Rolando to file a criminal complaint.[7]

In her account of the events, Estella claimed that she was advised by Carmencita Chan (Carmencita), a Multitel counselor, to invest in the company through the One Heart Multi-Purpose Cooperative (One Heart).[8] As Carmencita explained to her, One Heart was an agent of Multitel, which could receive investments in the latter's behalf. Carmencita also informed Estella in one of their meetings at One Heart's office at the Enterprise Building in Makati City that Multitel is a local subsidiary of a New York-based telecommunications company.[9]

Carmencita later introduced Estella and her husband to accused Manolito Natividad (Manolito), who confirmed the information about Multitel. With the promised yield of six percent (6%) monthly interest, Estella's total investment with Multitel amounted to Php3,280,000.00 and US$7,520.00. Estella initially received the promised interest yields. However, in October 2002, no interest income was deposited to Estella's account. This impelled Estella to call Carmencita, who told her that she had to wait before she could get her income for the month.[10]

Subsequently, Estella constantly called and followed up with Carmencita and even Multitel's advertised hotline only to be repeatedly told that she would be informed of the status of her investments. However, no information ever reached her, and her investments were never returned by Multitel.[11]

In his testimony, Henry claimed that he knew the accused Baladjay, Saturnino Baladjay, Randy Rubio, Lito Natividad,

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[7] *Id*. at 36-38.

[8] TSN, November 10, 2005, p. 4.

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

[10] *Id*. at 6-13.

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

and Tess Villegas. According to him, he was also persuaded by Gladina to invest in Multitel because of the promise of a five percent (5%) monthly interest income. His total investments amounted to Php1,050,000.00, for which he received interest payment only once.[12] When the guaranteed return never arrived, Henry called Gladina who relayed to him that Baladjay was having difficulty with respect to the Multitel funds. Henry then became suspicious, prompting him to consult with the SEC where he was informed that Multitel is a scam, and that a Cease and Desist Order had already been issued against it for soliciting funds from the public without a valid license.[13]

Henry then confronted Gladina, only to be redirected to Baladjay's then counsel. He then attempted to settle with Baladjay, but the latter can no longer be contacted. And in his last-ditch effort to recover his investment, he attended the investors meeting organized by Multitel counselors, including Randy Rubio, Olive Marasigan, and Tess Villegas, among others.[14]

Lastly, Yolanda testified that her and Baladjay's husbands are brothers.[15] Baladjay offered her a job as a Multitel counselor, promising her commissions equivalent to seven percent (7%) of the capital infused by the investors that she would convince. Accepting the offer, Yolanda ushered in clients to Baladjay's office at the Enterprise Building in Ayala, Makati City until 2001. Thereafter, Yolanda and the other Multitel counselors were assigned to different groups or cooperatives, which Baladjay herself had established. According to her, the investments were placed in the cooperatives, which, in turn, placed them in Multitel.[16]

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[12] TSN, March 7, 2007, pp. 5-9.

[13] *Id*. at 12-15.

[14] *Id*. at 24-25.

[15] TSN, September 20, 2007, p. 12.

[16] *Id*. at 18-25.

By September 2002, Multitel started to have problems with the SEC. Consequently, the investors demanded from Yolanda that she return their money placements. However, she could not address their demands as she could no longer contact Baladjay, who, by then, was already nowhere to be found.[17]

For its part, the defense presented accused-appellant Baladjay as its sole witness. Baladjay, in her testimony, denied knowing, meeting, or transacting with the private complainants. She insisted on her innocence and decried the allegations that she took the private complainants' money in the aggregate amount of Php7,810,000.00.[18]

Baladjay added that while she is the President and Chairman of the Board of Multitel International Holdings, Inc. (MIHI), it is a company totally distinct and separate from Multinational Telecom Investors Corporation or Multitel. She claimed that her company, which was registered with the SEC, was only engaged in the selling of cell phones and did not solicit any investment from the public. However, Baladjay admitted that she was also known as the president of Multitel.[19]

The Ruling of the RTC

On December 3, 2012, the Regional Trial Court (RTC), Makati City, Branch 58, rendered judgment in Criminal Case No. 03-3261 finding Baladjay guilty of Syndicated *Estafa*, disposing as follows:

WHEREFORE, premises considered, JUDGMENT is hereby rendered as follows:

1. Convicting the accused Rosario Baladjay of the crime of syndicated estafa and is hereby ordered to suffer life imprisonment.

By way of civil liability

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[17] *Id*. at 28-31.

[18] TSN, April 5, 2010, pp. 5-6.

[19] *Id*. at 7-17.

2. To pay Dr. Rolando T. Custodio the sum of Php3,200,000.00 as actual damages and Php500,000.00 as moral damages;

3. To pay Estella Ponce Lee the sum of Php3,280,000.00 and US$ 7,520.00 the rate to be computed from the time of its investment and Php500,000.00 as moral damages;

4. To pay Henry M. Chua Co the sum of Php1,050,000.00 and Php500,000.00 as moral damages;

Considering that the Court has yet to acquire jurisdiction over the other accused, let alias warrants of arrest be issued against them.

SO ORDERED.

An Amended Decision[20] was later issued on April 26, 2013 to correct the middle name of one of the private complainants, Estella Pozon Lee.

Baladjay interposed an appeal from the above-quoted RTC ruling, arguing that the trial court gravely erred in convicting her when her guilt has not been proven beyond reasonable doubt.[21]

The Ruling of the CA

In its November 13, 2014 Decision, the CA affirmed the guilty verdict meted by the RTC, but with modification with respect to the amount of moral damages awarded. The CA held that all the elements of *Estafa* under Article 315 (2) (a) of the RPC are present in the instant case, and that the crime was committed by Baladjay together with her counselors numbering more than five (5), thus, qualifying the felony to Syndicated *Estafa* in accordance with PD 1689. The dispositive portion of the CA Decision states:

ACCORDINGLY, the appeal is DENIED and the Decision dated December 3, 2012, AFFIRMED WITH MODIFICATION, reducing the award of moral damages to Php100,000.00 for each of the private complainant.

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[20] CA *rollo*, pp. 32-44. Penned by Presiding Judge Eugene C. Paras.

[21] *Id.* at 55-69.

SO ORDERED.[22]

Aggrieved, accused-appellant Baladjay elevated the case before Us, raising the same arguments she had at the CA.

The Issue

The sole issue in this case is whether or not the appellate court gravely erred in affirming the accused-appellant's conviction for Syndicated *Estafa*.

The Court's Ruling

We find no merit in the instant appeal.

All the elements of Syndicated Estafa are present in the instant case

Accused-appellant and her eight (8) co-accused were charged with Syndicated *Estafa*, in relation to Article 315 (2)(a) of the RPC, viz:

> **Art. 315.** *Swindling (estafa).* – Any person who shall defraud another by any means mentioned herein below shall be punished by:
>
> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions; or by means of other similar deceits.
>
> x x x x x x x x x

Jurisprudence elucidates that the elements of *Estafa* by means of deceit under this provision are as follows: (a) that there must be a false pretense or fraudulent representation as to the offender's power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense

[22] *Rollo*, p. 44.

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.[23]

In relation to the foregoing, Section 1 of PD 1689 qualifies the offense of *Estafa* if it is committed by a syndicate, viz:

> Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*," or farmers' associations, or funds solicited by corporations/associations from the general public.

Synthesizing the two provisions of law, the elements of Syndicated *Estafa*, therefore, are as follows: (a) *Estafa* or other forms of swindling, as defined in Articles 315 and 316 of the RPC, is committed; (b) the *Estafa* or swindling is committed by a syndicate of five (5) or more persons; and (c) the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*," or farmers' associations, or of funds solicited by corporations/associations from the general public.[24]

The special law is typically invoked by those who fall prey to the too-good-to-be-true promises of a Ponzi scheme, wherein the purported investment program offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors. The history of such a stratagem

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[23] *People v. Tibayan*, G.R. Nos. 209655-60, January 14, 2015, 746 SCRA 259, 268.

[24] *Galvez v. CA*, G.R. Nos. 187919, 187979, and 188030, February 20, 2013, 691 SCRA 455, 467.

has been discussed in the landmark ruling of *People v. Balasa (Balasa)*:

> x x x Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves. x x x
>
> However, the Ponzi scheme works only as long as there is an ever-increasing number of new investors joining the scheme. To pay off the 50% bonds Ponzi had to come up with a one-and-a-half times increase with each round. To pay 100% profit he had to double the number of investors at each stage, and this is the reason why a Ponzi scheme is a scheme and not an investment strategy. The progression it depends upon is unsustainable. The pattern of increase in the number of participants in the system explains how it is able to succeed in the short run and, at the same time, why it must fail in the long run. This game is difficult to sustain over a long period of time because to continue paying the promised profits to early investors, the operator needs an ever larger pool of later investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, these schemes only last weeks, or months at most.[25]

In *Balasa*, Panata Foundation of the Philippines, Inc. sent out brochures soliciting deposits from the public, assuring would-be depositors that their money would either be doubled after 21 days or tripled after 30 days. Under its alleged investment program, a depositor hands his investment to a clerk who, in turn would give it to the teller. In exchange, the depositors would receive filled-up printed forms called "slots," which bear resemblance to bank checks and were already signed beforehand by the president of the foundation. The amounts received by

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[25] G.R. Nos. 106357 and 108601-02, September 3, 1998, 295 SCRA 49, 77-78.

the foundation were deposited in various banks under the names of its president and/or secretary.[26]

The foundation started with a few depositors, most of whom only invested small amounts to see whether the foundation would make good on its promise. As word got around that the foundation was able to fulfill its obligations, more depositors were attracted by the promised returns. Blinded by the prospect of gaining substantial profits for nothing more than a minuscule investment, these investors were lured to reinvest their earnings, if not to invest more.[27]

The operations initially proceeded smoothly. However, on November 29, 1989, the foundation closed down. Depositors then began to demand for the reimbursement of their deposits, but the foundation was unable to deliver. Consequently, sixty-four informations, all charging the offense of Syndicated *Estafa* were filed against the officers and trustees of the foundation.[28] The cashier and the disbursing officer of the foundation were eventually found guilty beyond reasonable doubt of the offense charged. They were sentenced to suffer the penalty of life imprisonment, and were ordered to restitute to complainants the amounts defrauded.

Parallelisms can be drawn between *Balasa* and *People v. Menil*.[29] In the said case, the spouses Menil were the proprietors of a business operating under the name ABM Appliance and Upholstery. Through ushers and sales executives, they began soliciting investments from the general public in Surigao City and its neighboring towns, assuring would-be investors that their money would be multiplied tenfold after fifteen (15) calendar days.[30]

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[26] *Id*. at 60-62.

[27] *Id*. at 62.

[28] *Id*. at 62-63.

[29] G.R. Nos. 115054-66, September 12, 2000, 340 SCRA 125.

[30] *Id*. at 127.

Instead of the "slots" that were given to the investors in *Balasa,* the spouses Menil issued "coupons" as proofs of investment. And just as in *Balasa*, the initial amounts involved were small, and so the spouses Menil were able to pay the returns on the investments as they fell due. However, the amounts invested and the number of depositors gradually increased until it reached a point wherein the daily investments amounting to millions of pesos were pouring in and payments of the returns were delayed.[31] On September 19, 1989, the spouses stopped releasing payments altogether, prompting the investors to charge them with large-scale swindling.[32]

More recently, in *People v. Tibayan*,[33] the Court has convicted two incorporators of the Tibayan Group Investment Company, Inc. (TGICI) of multiple counts of Syndicated *Estafa* and sentencing them to suffer life imprisonment for each count. As in the other fraudulent investment schemes, the private complainants in that case were enticed to invest in TGICI due to the offer of high interest rates, as well as the assurance that they will recover their investments. After parting with their monies, the private complainants received a Certificate of Share and post-dated checks, representing the amount of the principal investment and the corresponding monthly interest earnings. The checks, however, were dishonoured upon encashment, and the TGICI office closed down without private complainants having been paid. The investors were then constrained to file

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[31] *Id*. at 127-128.

[32] The spouses Menil could not be charged and convicted with syndicated estafa since there was no showing that at least five (5) persons perpetrated the fraudulent investment scheme. Said the Court: "While the prosecution proved that a non-stock corporation with eleven (11) incorporators, including accused-appellant and his wife, was involved in the illegal scheme, there was no showing that these incorporators collaborated, confederated, and mutually helped one another in directing the corporations activities. In fact, the evidence for the prosecution shows that it was only accused-appellant and his wife who had knowledge of and who perpetrated the illegal scheme"; *id*. at 148.

[33] *Supra* note 23.

criminal complaints against the incorporators and directors of TGICI.

The gravamen of the offenses charged in all the aforementioned cases is the employment of fraud or deceit to the damage or prejudice of another. As defined in *Balasa*:

> Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[34]

In the case at bar, it can be observed that Multitel engaged in a *modus operandi* that does not deviate far from those practiced in the above-cited cases. The similarity of the pattern is uncanny. Here, using Multitel as their conduit, Baladjay and her more than five (5) counselors employed deceit and falsely pretended to have the authority to solicit investments from the general public when, in truth, they did not have such authority. The deception continued when Baladjay's counselors actively solicited investments from the public, promising very high interest returns starting at five percent (5%) per month. Convinced of Baladjay's and her counselors' promise of lucrative income, the private complainants were then enticed to invest in Multitel. However, unknown to them, the promised high-yielding venture was unsustainable, as Multitel was not really engaged in any legitimate business. Eventually, Baladjay and her cohorts ran away with the private complainants' money causing them damage and prejudice.

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[34] *People v. Balasa*, *supra* note 25, at 71-72.

Clearly, all the elements of Syndicated *Estafa* obtain in this case, considering that: (a) more than five (5) persons are involved in Multitel's grand fraudulent scheme, including Baladjay and her co-accused - who employed deceit, false pretenses and representations to the private complainants regarding a supposed lucrative investment opportunity with Multitel in order to solicit money from them; (b) the said false pretenses and representations were made prior to or simultaneous with the commission of fraud; (c) relying on the false promises and misrepresentations thus employed, private complainants invested their hard-earned money in Multitel; and (d) Baladjay and her co-accused defrauded the private complainants, obviously to the latter's prejudice.

Baladjay's connection with Multitel has been clearly established

Baladjay contends, however, that the prosecution failed to prove her connection with Multitel, which is supposedly an entity distinct from the company she actually owns.

We are not convinced.

Multitel was sufficiently proven to be owned by and linked to Baladjay. The positive and straightforward testimony of her own sister-in-law, Yolanda, shows not only Baladjay's direct connection with Multitel, but also her active participation in soliciting and convincing prospective investors to place their investments in Multitel, viz:

ATTY. FERMO

Q: Why did you agree to become a counselor of Ms. Baladjay and recruit investors, Ms. Witness?

A: Because I will earn something from the persons that I will be recruiting, ma'am.

Q: You mentioned that you will earn, why, how much will you earn if you will be able to recruit investors of Multitel?

A: She'll give me seven percent (7%) and then to the person they will be given four percent (4%).

x x x x x x x x x

Q: Were you able to recruit or persuade others to invest at Multitel, Madam witness?
A: Yes, ma'am and the persons whom I recruited, I brought them to her residence and she personally talked to them.
Q: When you brought these persons to her house, did they immediately invest?
A: Yes, ma'am they invested immediately because she is very articulate.
Q: After these investors made their investment, when will you receive the three percent (3%) commission?
A: Every month ma'am, I will receive the commission and the investors will also receive their monthly interest.
Q: Do you know what are the proofs to show that people invested in Multitel, Madam witness?
A: She issued us post dated checks for the principal and the monthly interest was given in cash and we have to sign in the paper.

x x x x x x x x x

Q: For how long have you been a counselor of Multitel, Madam witness?
A: I started with her ma'am and it was already at Multitel Office in Ayala.
Q: When was that?
A: In the year 2000 ma'am.
Q: Year 2000 when she had an office at Ayala?
A: Yes, ma'am.
Q: What building is that Madam witness?
A: At Enterprise Building Ma'am.
Q: For how long were you able to bring investors at her office at Enterprise Building?
A: Until 2001, ma'am.
Q: So, why, what happened after 2001?
A: Because we already have our own group or cooperative.
Q: What do you mean, that you became part of the cooperative?
A: Because there were plenty of investors, ma'am and her office can no longer accommodate us.
Q: So, who established this cooperative, Madam witness?
A: She established the cooperative Ma'am and we have our own chairman.

Q: How many cooperatives were established, if you know, madam witness?
A: 16 Cooperatives, ma'am but I can only remember three names Telecon, Star Enterprise, One Heart.
Q: And what is the name of your cooperative?
A: Star Enterprise, ma'am.[35]

Further, Baladjay's claim that she has not transacted with the private complainants, or has never known the supposed Multitel counselors to whom the victims of Multitel's fraudulent scheme delivered their money, cannot prevail over the evidence on record. Baladjay cannot feign innocence by hiding behind her so-called "counselors" because not only did they positively identify her, **she also signed the checks issued in favor of the investors**.

The RTC and the CA both found that the witnesses presented in the instant case were credible, having given their respective testimonies in a straightforward manner, corroborated by documentary evidence. Accordingly, the totality of the testimonies of the witnesses, documentary evidence on record, and findings of the SEC all point to Baladjay as the perpetrator of a grand scheme to defraud investors of their investments in her company, Multitel.[36]

Based on the foregoing, the CA correctly affirmed Baladjay's guilt.

Notably, the crime of *Estafa* under Article 315 (2)(a) of the RPC was committed by accused-appellant together with her counselors, numbering more than five (5), qualifying the crime to Syndicated *Estafa* in accordance with PD 1689. Thus, the imposition of the penalty of life imprisonment should be upheld, as well as the order to pay the actual damages suffered by each of the private complainants. In addition thereto, the Court imposes interest on the monetary penalty at the rate of six percent (6%) per annum from the time of the demand, which shall be deemed

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[35] TSN, *Supra* note 15, at 18-24.

[36] *Rollo*, p. 42.

as made on the same day the Information was filed against accused-appellant, until the amounts are fully paid.[37]

As regards the award of moral damages, the CA was correct in reducing the same to a fair, just and reasonable amount[38] of One Hundred Thousand Pesos (Php100,000.00) for each of the private complainants. The Court also imposes an interest at the rate of six percent (6%) per annum on the moral damages assessed from finality of this ruling until full payment.[39]

IN VIEW OF THE FOREGOING, the Court **ADOPTS** the findings and conclusions of law in the Decision dated November 13, 2014 of the Court of Appeals in CA-G.R. CR HC No. 06308 and **AFFIRMS** said Decision **WITH MODIFICATION** that (1) accused-appellant is assessed and shall pay an interest at the rate of six percent (6%) per annum on the amount of actual damages suffered by each of the private complainants, reckoned from the filing of Information on August 27, 2003 until fully paid, and (2) an interest at the rate of six percent (6%) per annum on the amount of moral damages awarded to each of the private complainants from the finality of the Court's Decision until full payment.

As thus modified, the judgment of the Regional Trial Court of Makati City, Branch 58, promulgated on December 3, 2012, as amended on April 26, 2013, shall read as follows:

WHEREFORE, premises considered, **JUDGMENT** is hereby rendered as follows:

1. Convicting the accused Rosario Baladjay of the crime of Syndicated *Estafa* and ordering her to suffer the penalty of life imprisonment.

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[37] *People v. Gallemit,* G.R. No. 197539, June 2, 2014, 724 SCRA 359, 387.

[38] *Coca Cola Bottlers, Phils., Inc. v. Roque*, G.R. No. 118985, June 14, 1999, 308 SCRA 215.

[39] *People v. Sevillano*, G.R. No. 200800, February 9, 2015; *People v. Delfin*, G.R. No. 201572, July 9, 2014, 729 SCRA 617; *People v. Consorte*, G.R. No. 194068, July 9, 2014, 729 SCRA 528; *People v. De Los Santos*, G.R. No. 207818, July 23, 2014, 731 SCRA 52.

By way of civil liability

2. To pay Dr. Rolando T. Custodio the sum of Php3,200,000.00 as actual damages;

3. To pay Estella Pozon Lee the sum of Php3,280,000.00 and US$7,520.00 the rate to be computed from the time of its investment;

4. To pay Henry M. Chua Co the sum of Php1,050,000.00;

The afore-stated amounts shall be paid with legal interest at the rate of six percent (6%) per annum from August 27, 2003 until fully paid.

By way of moral damages

5. To pay Dr. Rolando T. Custodio, Estella Pozon Lee, and Henry M. Chua Co the amount of One Hundred Thousand Pesos (Php100,000.00) each, with interest at the rate of six percent (6%) per annum from the finality of the Court's Decision until fully paid.

Considering that the Court has yet to acquire jurisdiction over the other accused, let alias warrants of arrest be issued against them.

SO ORDERED.

Bersamin, Perlas-Bernabe,[*] *Tijam,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 220835. July 26, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SYSTEMS TECHNOLOGY INSTITUTE, INC.,** *respondent.*

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[*] Additional Member per raffle dated October 19, 2015.

SYLLABUS

1. **TAXATION; ASSESSMENT AND COLLECTION OF INTERNAL REVENUE TAXES; PRESCRIBES IN THREE (3) YEARS COUNTED FROM THE LAST DAY PRESCRIBED BY LAW FOR THE FILING OF THE RETURN OR THE DAY THE RETURN WAS FILED, WHICHEVER COMES LATER.—** Section 203 of the NIRC of 1997, as amended, limits the CIR's period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Thus, assessments issued after the expiration of such period are no longer valid and effective. In *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue*, the Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes: that is, to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.

2. **ID.; ID.; ID.; WHERE WAIVERS OF THE STATUTE OF LIMITATION WERE DEFECTIVE, THE PERIODS TO ASSESS AND COLLECT INTERNAL REVENUE TAXES WERE NOT EXTENDED AND THE ASSESSMENTS MADE BEYOND THE THREE-YEAR PRESCRIPTIVE PERIOD ARE VOID.—** [T]he BIR issued RMO 20-90 and RDAO 05-01, outlining the procedures for the proper execution of a valid waiver, *viz.*: x x x 2. **The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.** x x x 5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.** x x x These requirements are mandatory and must strictly be followed. x x x

[C]onsidering the foregoing defects in the waivers executed by STI, the periods for the CIR to assess or collect the alleged deficiency income tax, deficiency EWT and deficiency VAT were not extended. The assessments subject of this case, which were issued by the BIR beyond the three-year prescriptive, are therefore considered void and of no legal effect.

3. ID.; ID.; ID.; RULING IN *RCBC* IS NOT APPLICABLE IN CASE AT BAR; MERE REDUCTION OF THE AMOUNT OF ASSESSMENT BECAUSE OF THE REQUEST FOR REINVESTIGATION CANNOT BAR RESPONDENT FROM RAISING THE DEFENSE OF PRESCRIPTION; THE BUREAU OF INTERNAL REVENUE CANNOT HIDE BEHIND THE DOCTRINE OF ESTOPPEL TO COVER ITS FAILURE TO COMPLY WITH THE REQUIREMENTS OF A VALID WAIVER.— As correctly stated by the CTA, *RCBC* is not on all fours with the instant case. The estoppel upheld in the said case arose from the taxpayer's *act of payment* and not on the reduction in the amount of the assessed taxes. The Court explained that *RCBC*'s partial payment of the revised assessments effectively belied its insistence that the waivers are invalid and the assessments were issued beyond the prescriptive period. Here, as no such payment was made by STI, mere reduction of the amount of the assessment because of a request for reinvestigation should not bar it from raising the defense of prescription. At this juncture, the Court deems it important to reiterate its ruling in *Commissioner of Internal Revenue v. Kudos Metal Corporation*, that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself had issued. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot simply shift the blame to the taxpayer.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador Llanillo & Bernardo 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[2] dated March 24, 2015 and Resolution[3] dated September 2, 2015 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1050. The CTA *En Banc* affirmed the Decision dated April 17, 2013 and the Resolution dated July 17, 2013 of the CTA Second Division, which granted the petition for review filed by respondent Systems Technology Institute, Inc. (STI) and cancelled the assessments against STI for deficiency income tax, deficiency expanded withholding tax (EWT), and deficiency value-added tax (VAT) for fiscal year ending March 31, 2003.[4]

Facts

The facts of this case, as presented by the CTA *En Banc*, are as follows:

STI filed its Amended Annual Income Tax Return for fiscal year 2003 on August 15, 2003; its Quarterly VAT Returns on July 23, 2002, October 25, 2002, January 24, 2003, and May 23, 2003; and its Bureau of Internal Revenue (BIR) Form 1601E for EWT from May 10, 2002 to April 15, 2003.[5]

On May 30, 2006, STI's Amiel C. Sangalang signed a Waiver of the Defense of Prescription Under the Statute of Limitations

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[1] *Rollo,* pp. 44-59.

[2] *Id*. at 68-88. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring.

[3] *Id*. at 90-99.

[4] *Id*. at 70, 87.

[5] *Id*. at 69.

of the National Internal Revenue Code (NIRC), with the proviso that the assessment and collection of taxes of fiscal year 2003 shall come "no later than December 31, 2006."[6] On June 2, 2006, the waiver was accepted by Virgilio R. Cembrano, Large Taxpayers District Officer of Makati and was notarized on even date.[7]

On December 12, 2006, another waiver was executed extending the period to assess and collect the assessed taxes to March 31, 2007.[8] It was also signed by Sangalang and accepted by Cembrano and notarized on the same date.[9] A third waiver was executed by the same signatories extending further the period to June 30, 2007.[10]

On June 28, 2007, STI received a Formal Assessment Notice from the CIR, assessing STI for deficiency income tax, VAT and EWT for fiscal year 2003, in the aggregate amount of ₱161,835,737.98.[11]

On July 25, 2007, STI filed a request for reconsideration/ reinvestigation dated July 23, 2007.[12]

On September 11, 2009, STI received from the CIR the Final Decision on Disputed Assessment (FDDA) dated August 17, 2009 finding STI liable for deficiency income tax, VAT and EWT in the lesser amount of ₱124,257,764.20.[13]

On October 12, 2009, STI appealed the FDDA by filing a petition for review with the CTA.[14] The case was docketed as

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[6] *Id*.

[7] *Id*.

[8] *Id*.

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

[10] *Id*. at 70.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

CTA Case No. 7984 and was heard by the CTA Second Division.[15]

On April 17, 2013, the CTA Second Division promulgated its Decision denying the assessment on the ground of prescription, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the assessments against petitioner for deficiency income tax, deficiency expanded withholding tax, and deficiency value-added tax for fiscal year ending March 31, 2003 are hereby **CANCELLED** and **SET ASIDE** on the ground of prescription.[16]

The CTA Division found the waivers executed by STI defective for failing to strictly comply with the requirements provided by Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001. Consequently, the periods for the CIR to assess or collect internal revenue taxes were never extended; and the subject assessment for deficiency income tax, VAT and EWT against STI, which the CIR issued beyond the three-year prescriptive period provided by law, was already barred by prescription.[17]

On May 9, 2013, the CIR filed a motion for reconsideration, but this was denied by the CTA Division in its Resolution dated July 17, 2013.[18]

Undaunted, the CIR appealed to the CTA *En Banc*.[19]

In the assailed Decision,[20] the CTA *En Banc* denied the CIR's petition for lack of merit. The CTA *En Banc* affirmed the Decision

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[15] *Id*.

[16] *Id*.

[17] See *id*. at 81, 86, 143-144, 148 and 152.

[18] *Id*. at 71.

[19] See *id*. at 68, 71.

[20] *Id*. at 68-88.

and Resolution of the CTA Division, reiterating that the requirements for the execution of a waiver must be strictly complied with; otherwise, the waiver will be rendered defective and the period to assess or collect taxes will not be extended. It further held that the execution of a waiver did not bar STI from questioning the validity thereof or invoking the defense of prescription.[21]

On September 2, 2015, the CTA *En Banc* issued the assailed Resolution[22] denying the CIR's motion for reconsideration for lack of merit.

Hence, the instant petition raising the following issue:

WHETHER OR NOT PRESCRIPTION HAD SET IN AGAINST THE ASSESSMENTS FOR DEFICIENCY INCOME TAX, DEFICIENCY VAT AND DEFICIENCY EXPANDED WITHHOLDING TAX.[23]

The CIR asserts that prescription had not set in on the subject assessments because the waivers executed by the parties are valid.[24] It also claims that STI's active participation in the administrative investigation by filing a request for reinvestigation, which resulted in a reduced assessment, amounts to estoppel that prescription can no longer be invoked.[25] To support its contention, the CIR cites the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,*[26] where the Court considered the taxpayer's partial payment of the revised assessment as an implied admission of the validity of the waivers.[27]

For its part, STI contends that the requisites under RMO No. 20-90 are mandatory and no less than this Court has affirmed

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[21] *Id.* at 80-87.

[22] *Id.* at 90-99.

[23] *Id.* at 49.

[24] *Id.*

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

[26] 672 Phil. 514 (2011).

[27] *Rollo*, pp. 54-55.

that the failure to comply therewith results in the nullity of the waiver and consequently, the assessments.[28] Tested against these requisites and settled jurisprudence, the subject waivers are defective and invalid and, thus, did not extend the period to assess.[29]

STI further claims, that contrary to the CIR's insistence, it is not estopped from invoking the defense of prescription because: (1) STI did not admit the validity or correctness of the deficiency assessments; (2) it did not receive or accept any benefit from the execution of the waivers since it continued to dispute the assessment; and (3) STI did not, in any way, lead the CIR to believe that the waivers were valid.[30]

Finally, STI avers that the doctrine in *RCBC* does not apply to this case because the estoppel upheld in said case arose from the act of payment, which is not obtaining in the instant case.[31]

The Court's Ruling

The petition lacks merit.

The Waivers of Statute of Limitations, being defective and invalid, did not extend the CIR's period to issue the subject assessments. Thus, the right of the government to assess or collect the alleged deficiency taxes is already barred by prescription.

Section 203 of the NIRC of 1997, as amended, limits the CIR's period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed,

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[28] *Id*. at 150.

[29] *Id*.

[30] *Id*. at 154.

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

whichever comes later.[32] Thus, assessments issued after the expiration of such period are no longer valid and effective.[33]

In *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue,*[34] the Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes: that is, to safeguard the interests of taxpayers from unreasonable investigation.[35] Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.[36]

In this regard, the CTA Division found that the last day for the CIR to issue an assessment on STI's income tax for fiscal year ending March 31, 2003 was on **August 15, 2006**; while the latest date for the CIR to assess STI of EWT for the fiscal year ending March 31, 2003 was on **April 17, 2006**; and the latest date for the CIR to assess STI of deficiency VAT for the four quarters of the same fiscal year was on **May 25, 2006**.[37] Clearly, on the basis of these dates, the final assessment notice dated June 16, 2007,[38] assessing STI for deficiency income tax, VAT and EWT for fiscal year 2003, in the aggregate amount of ₱161,835,737.98, which STI received on June 28, 2007, [39] was issued beyond the three-year prescriptive period.

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[32] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, 634 Phil. 314, 322 (2010).

[33] *Id*.

[34] 746 Phil. 607 (2014).

[35] *Id.* at 631, citing *Commissioner of Internal Revenue v. FMF Development Corporation*, 579 Phil. 174, 183 (2008).

[36] *Id*. at 632.

[37] *Rollo*, p. 147.

[38] *Id*. at 143, 154.

[39] *Id*. at 70.

However, the CIR maintains that prescription had not set in because the parties validly executed a waiver of statute of limitations under Section 222(b) of the NIRC, as amended. Said provision reads:

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

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(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

x x x x x x x x x

To implement the foregoing provisions, the BIR issued RMO 20-90 and RDAO 05-01, outlining the procedures for the proper execution of a valid waiver, *viz.*:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _____ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. **The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized**.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the**

period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[40]

These requirements are mandatory and must strictly be followed. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[41] the Court declared the waiver invalid because: (1) it did not specify the date within which the BIR may assess and collect revenue taxes, such that the waiver became unlimited in time; (2) it was signed only by a revenue district officer, and not the CIR; (3) there was no date of acceptance; and (4) the taxpayer was not furnished a copy of the waiver.[42]

In *Commissioner of Internal Revenue v. FMF Development Corporation,*[43] the waiver was found defective and thus did not validly extend the original three-year prescriptive period because: (1) it was not proven that the taxpayer was furnished a copy of the waiver; (2) it was signed only by a revenue district officer, and not the CIR as mandated by law; and (3) it did not contain the date of acceptance by the CIR, which is necessary

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[40] *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*, 749 Phil. 280, 290 (2014), citing *Commissioner of Internal Revenue v. Kudos Metal Corporation*, *supra* note 32, at 325-326, further citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 231 (2004). Emphasis supplied.

[41] 488 Phil. 218 (2004).

[42] *Id*. at 232-234, cited in *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),* G.R. No. 212825, December 7, 2015, 776 SCRA 343, 356.

[43] 579 Phil. 174 (2008).

to determine whether the waiver was validly accepted before the expiration of the original three-year period.[44]

In another case,[45] the waivers executed by the taxpayer's accountant were found defective for the following reasons: (1) the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.[46]

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.,*[47] the Court nullified the waivers because the following requisites were absent: (1) conformity of either the CIR or a duly authorized representative; (2) date of acceptance showing that both parties had agreed on the waiver before the expiration of the prescriptive period; and (3) proof that the taxpayer was furnished a copy of the waiver.[48]

The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank,*[49] because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.[50]

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[44] *Id*. at 185, cited in *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.), supra* note 42.

[45] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, *supra* note 32.

[46] *Id*. at 326.

[47] 749 Phil. 280 (2014).

[48] *Id*. at 288.

[49] G.R. No. 192173, July 29, 2015, 764 SCRA 174.

[50] *Id*. at 187-188.

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

1. At the time when the first waiver took effect, on June 2, 2006, the period for the CIR to assess STI for deficiency EWT and deficiency VAT for fiscal year ending March 31, 2003, had already prescribed. To recall, the CIR only had until April 17, 2006 (for EWT) and May 25, 2006 (for VAT), to issue the subject assessments.

2. STI's signatory to the three waivers had no notarized written authority from the corporation's board of directors. It bears to emphasize that RDAO No. 05-01 mandates the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same; and in case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The waiver should not be accepted by the concerned BIR office and official unless notarized.[51]

3. Similar to *Standard Chartered Bank,* the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date.[52] Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity.

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[51] *Rollo*, p. 65.

[52] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, *supra* note 41, at 233.

Verily, considering the foregoing defects in the waivers executed by STI, the periods for the CIR to assess or collect the alleged deficiency income tax, deficiency EWT and deficiency VAT were not extended. The assessments subject of this case, which were issued by the BIR beyond the three-year prescriptive, are therefore considered void and of no legal effect. Hence, the CTA committed no reversible error in cancelling and setting aside the subject assessments on the ground of prescription.

STI is not estopped from invoking the defense of prescription.

As regards the CIR's reliance on the case of *RCBC* and its insistence that STI's request for reinvestigation, which resulted in a reduced assessment, bars STI from raising the defense of prescription, the Court finds the same bereft of merit.

As correctly stated by the CTA, *RCBC* is not on all fours with the instant case. The estoppel upheld in the said case arose from the taxpayer's *act of payment* and not on the reduction in the amount of the assessed taxes. The Court explained that *RCBC*'s partial payment of the revised assessments effectively belied its insistence that the waivers are invalid and the assessments were issued beyond the prescriptive period. Here, as no such payment was made by STI, mere reduction of the amount of the assessment because of a request for reinvestigation should not bar it from raising the defense of prescription.

At this juncture, the Court deems it important to reiterate its ruling in *Commissioner of Internal Revenue v. Kudos Metal Corporation,*[53] that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01,

[53] *Supra* note 32.

which the BIR itself had issued. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot simply shift the blame to the taxpayer.[54]

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED**. The Decision dated March 24, 2015 and the Resolution dated September 2, 2015 of the Court of Tax Appeals *En Banc* in CTA EB No. 1050 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224102. July 26, 2017]

RYAN MARIANO *y* GARCIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; ELEMENTS THAT MUST CONCUR FOR A DEFENSE OF A STRANGER TO PROSPER; THE STATE OF MIND OF THE ACCUSED DURING AN ALLEGED ACT OF DEFENSE OF A STRANGER MUST BE CONSIDERED IN DETERMINING WHETHER HIS MEANS OF REPELLING AN AGGRESSOR WERE REASONABLE.— To properly invoke the justifying

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[54] *Id.* at 328-329.

circumstance of defense of a stranger, it must be shown that there was unlawful aggression on the part of the victim, that the means employed to repel the victim were reasonably necessary, and that the accused was not induced by revenge, resentment, or other evil motive. x x x It is significant that Natividad did not deny attacking Pamela or Pia, as he could not remember these acts. An attack showing the aggressor's intention is enough to consider that unlawful aggression was committed. Thus, the attack on Pamela should have been considered as unlawful aggression for purposes of invoking the justifying circumstance of defense of a stranger. The Court of Appeals opined that the means employed by petitioner to repel Natividad were not reasonable, stressing that Natividad was drunk and staggering at the time of the altercation. This cannot be countenanced. The state of mind of the accused during the alleged act of self-defense or defense of a stranger must be considered in determining whether a person's means of repelling an aggressor were reasonable.

2. ID.; ID.; ID.; ID.; WHERE ALL THE ELEMENTS TO INVOKE THE JUSTIFYING CIRCUMSTANCE OF DEFENSE OF A STRANGER WERE PRESENT, ACCUSED SHOULD BE EXONERATED.— [A]lthough the offended party was drunk, and therefore, was not able to land his blows, his attacks were incessant. He had already attacked three (3) other persons—two (2) minors as well as petitioner's common-law wife—and was still belligerent. While it may be true that Pamela, Pia, and Yuki had already gone inside the house at the time of the stabbing, it then appeared to the petitioner that there was no other reasonable means to protect his family except to commit the acts alleged. It is unreasonable for courts to demand conduct that could only have been discovered with hindsight and absent the stress caused by the threats that the petitioner actually faced. Finally, petitioner was not induced by revenge, resentment, or other evil motive. The victim himself, Natividad, testified that he had no issues with petitioner before the incident. Thus, all the elements to invoke the justifying circumstance of defense of a stranger were present in this case. Considering that petitioner was justified in stabbing Natividad under Article 11, paragraph 3 of the Revised Penal Code, he should be exonerated of the crime charged.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The state of mind of the accused during an alleged act of self-defense, defense of a relative, or defense of a stranger must be considered in determining whether his or her means of repelling an aggressor were reasonable.

This is a Petition for Review assailing the Decision[1] dated August 28, 2015 in the case docketed as CA-G.R. CR. No. 35590, which affirmed the Decision of Branch 114, Regional Trial Court, Pasay City. The Regional Trial Court found petitioner Ryan Mariano (Mariano) guilty beyond reasonable doubt of the crime of frustrated homicide under Article 249 of the Revised Penal Code.[2]

Petitioner Mariano was charged with Frustrated Homicide in an Information dated July 23, 2010, which read:

> That on or about the 22nd day of July 2010, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Ryan Mariano y Garcia, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Frederick Natividad y San Juan, on the vital part of his body with a kitchen knife, thereby inflicting upon him serious physical injuries, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason or causes due to the

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[1] *Rollo,* pp. 38-52. The Decision was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the 4th Division, Court of Appeals, Manila.

[2] *Id*. at 71-87.

timely medical assistance rendered to said complainant, at Manila Adventist Hospital which prevented the latter's death.

CONTRARY TO LAW.[3] (Citation omitted)

During arraignment, petitioner pleaded not guilty to the offense charged and trial ensued.[4]

The prosecution's version of the events is as follows:

On July 22, 2010, at around 9:45 p.m., Frederick Natividad (Natividad) saw Yuki Rivera (Yuki) along Vergel Street.[5] Yuki punched Natividad's head thinking that Natividad would tell Yuki's aunt that he was selling marijuana.[6] Natividad went to Yuki's house to report the punching.[7] At Yuki's house, Natividad met petitioner Mariano and his common-law wife, Pamela Rivera (Pamela). Later, Mariano stabbed Natividad twice, once in the buttocks and once on the right side of his body.[8] A certain Antonio San Juan (San Juan), who was in his canteen, heard the noise outside. Upon checking, San Juan saw that Natividad had been stabbed. He asked barangay tanod Benneth Santos to take Natividad to the hospital. San Juan noticed Mariano holding a kitchen knife. Mariano voluntarily surrendered the kitchen knife to San Juan, who then arrested and surrendered him and the kitchen knife to the police authorities.[9]

Dr. Archie B. La Madrid was the surgeon who operated on Natividad and issued the Medical Certificate certifying his "penetrating wound at the right lobe of the liver caused by a sharp object. There was profuse bleeding from the liver." The

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[3] *Id*. at 39.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 72.

[7] *Id*. at 40.

[8] *Id*.

[9] *Id*.

wound in the abdomen punctured the liver, and Natividad would have died without the timely medical intervention.[10]

The prosecution presented evidence to prove that Natividad incurred the amount of ₱428,375.51 in medical bills.[11]

On the other hand, the defense's version of the events is as follows:

On July 22, 2010, at around 8:30 p.m., Mariano was in his mother's house. He then went to Pamela's house, where he saw Natividad and Yuki arguing because Yuki refused to buy marijuana for Natividad. Natividad went berserk, slapped Yuki, and kicked Pamela's daughter, Pia Rivera (Pia). Mariano went inside to tell his mother-in-law and Pamela that Natividad was hurting Yuki and Pia.[12]

Pamela confronted Natividad, who then punched Pamela on the face and shoulder. Mariano pushed Natividad to the ground. Natividad stood back up and got a piece of wood and kept hitting Mariano. Petitioner Mariano evaded Natividad's blows because Natividad was drunk and staggering. Mariano picked up a knife and stabbed Natividad on his buttocks. Due to Natividad's continuous hitting, Mariano stabbed Natividad again, this time on the right side of his body. [13]

Thus, Mariano claimed that he acted in self-defense and in defense of a relative.[14]

Pamela testified that Mariano informed her and her mother that Natividad was hurting Yuki and Pia. When she went outside to confront Natividad, he punched her face and shoulder. Upon seeing this, Mariano pushed Natividad to the ground. Pamela, Pia, and Yuki went inside the house while Mariano stayed outside. Later, they learned that Mariano had stabbed Natividad.[15]

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[10] *Id*.

[11] *Id*.

[12] *Id*. at 41.

[13] *Id*.

[14] *Id*. at 82.

[15] *Id*. at 41.

Pia and Yuki corroborated Pamela's testimony. None of them witnessed the stabbing incident because they were already inside the house when it occurred.[16]

The trial court found Mariano guilty of frustrated homicide:

> WHEREFORE, premises considered, the Court finds accused RYAN MARIANO y GARCIA GUILTY beyond reasonable doubt of the offense charged of Frustrated Homicide defined and penalized under Article 249 of the Revised Penal Code, as amended, and hereby sentences him to suffer the imprisonment of six (6) years and one (1) day to twelve (12) years of Prision Mayor and to pay complainant Frederick Natividad the amount of Php428,375.00 as compensatory damages.
>
> SO ORDERED.[17] (Emphasis in the original)

The trial court held that Mariano failed to establish his defense with clear and convincing evidence[18] and concluded that Natividad was not an unlawful aggressor. The trial court found some conflict in Mariano's and Pia's testimonies, which put into question whether Mariano sensed an imminent threat from Natividad:

> In this case, there is a divergence in the testimonies of defense witnesses as to whether victim/complainant Frederick Natividad really attack [sic] accused Ryan Mariano with a piece of wood (2 x 2). Consider the following testimony of the accused during his direct examination:
>
> Q: What did you do Mr. Witness when you witnessed Frederick Natividad boxing your wife?
> A: I approached him and pushed him, sir.
> Q: What happened to Frederick Natividad after you pushed him?
> A: He fell to the ground, sir.
> Q: And what happened next after Frederick Natividad fell on the ground?

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[16] *Id.* at 42.

[17] *Id.* at 87.

[18] *Id.* at 83.

A: He fell and when he was able to rise up, he was able to pick up a piece of wood, sir "parang dos por dos".
Q: Can you describe the width of this piece of wood picked up by Frederick Natividad?
A: Two inches by two inches (2" x 2"), sir.
Q: What did Frederick Natividad do after picking up the piece of wood?
A: He hit me with the same, sir.
Q: Where?
A: On the head, sir.
Q: Was he able to hit you on your head Mr. Witness?
A: No sir.
Q: Why Mr. Witness?
A: I was able to parry the blow, sir.

(TSN, Prado, pp. 12-13, July 5, 2011)

Upon the other hand, defense witness Pia Marie Leaño, during her direct testimony, unequivocally testified as follows:

Q: What happened to you when you were kicked by Frederick Natividad?
A: My stepfather saw me when I was kicked by Sonny.
Q: Who are you referring to as your stepfather?
A: Ryan Mariano.
Q: Where was Ryan Mariano in all those times that Frederick Natividad banged and kicked the gate and threw mono blocks?
A: He was about to get out of the room.
Q: What did Ryan Mariano do after he saw you being kicked by Mr. Natividad?
A: He tried to defend me.
Q: What exactly did he do Madam Witness?
A: He was able to pick up a piece of wood and tried to hit Sonny with the same.
Q: What kind of wood Madam Witness?
A: Small wood only.
Q: Was he able to hit Frederick Natividad with that wood?
A: No.
Q: What happened next when Ryan tried to hit Frederick Natividad with that piece of wood?
A: I went back to my room because my head was starting to bleed.
(TSN, Tapel, pp. 16-17, January 24, 2012)

With this conflict of who really got hold of a piece of wood and tried to hit who; emerges the question of whether the accused sensed an imminent threat to his life. Accused's contention therefore that there was an imminent threat of bodily harm coming from victim/complainant Frederick Natividad upon his person is at best illusory . . .

The span of time between the first and second stabbing and the nature of wounds suffered by victim Frederick Natividad negate any claim of self-defense or defense of a relative or stranger. Consider the following testimony of accused Ryan Mariano during his re-cross examination by the prosecution:

> Q: After stabbing Frederick Natividad outside the compound for the first time, you are saying that 15 minutes more elapsed before you stabbed him for the second time, is that what you are saying?
> A: Yes sir.
> Q: And you testified that in 15 minutes interval, there was still a pagkakagulo?
> A: Yes sir.
>
> . . . . . .
>
> Q: Despite of the fact that you stabbed him already at the buttock, he stayed in that place for 15 minutes?
> A: Yes sir, he did not stop and the more he ran amuck.
> Q: And despite the fact that you stabbed him at the buttock, he did not retaliate against you, is that what you are saying?
> A: Because he was being pacified by Benet, sir.
> (TSN, Arangonn, pp. 17-19, August 24, 2011)

The Court notes that Frederick Natividad's second wound was fatal as it affected the vital organ of his body specifically his liver. Had it not been for the timely and medical assistance rendered, the victim, Frederick Natividad, would have died. Had accused merely defended himself from the victim/complainant's unlawful aggression, one (1) stab to the buttock to immobilize him would have been enough. There was no reason for accused Ryan Mariano to stab the victim a second time on the abdomen area even aiming at his vital organs. It bears stressing that the nature of the second stab wound inflicted by the accused is an indication which disprove[s] a plea for self-defense or defense of a relative or defense of a stranger because it

demonstrate[s] a determined effort to kill the victim and not just defend one's self. In the case at bar, Frederick Natividad's wounds serve to tell us that accused was induced by revenge, resentment or other motive and that he was bent on killing the victim.[19]

Thus, in the absence of any unlawful aggression on the part of Natividad, the trial court ruled that there was no reasonable means employed by Mariano. Even with unlawful aggression, the means used by Mariano were unreasonable.[20] Natividad was drunk and staggering, which made it easy for Mariano to evade Natividad's continuous attempts to hit him. Mariano could have simply shoved Natividad outside the property and secured the gate, but instead, he chose to stab him twice. The nature and number of the stab wounds clearly show his intent to kill.[21]

On appeal, the Court of Appeals affirmed the ruling of the trial court in its Decision dated August 28, 2015.[22]

The Court of Appeals held that since Mariano claimed that he acted in self-defense, defense of a relative, and defense of a stranger when he stabbed Natividad, the burden of evidence shifted to him, to prove that all the essential elements of self-defense were present.[23] It found these elements, particularly unlawful aggression, to be absent:[24]

In this case, the element of unlawful aggression is patently absent. The records of the case shows [sic] that there is no actual or imminent danger on the person of the Accused when he stabbed the Complainant. Accused admitted that he was able to evade each hit by the Complainant because the latter was drunk and staggering at the time of the alleged unlawful aggression. The absence of unlawful aggression was even corroborated by the physical evidence that should clearly defeat the

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[19] *Id*. at 83-86.

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

[21] *Id*. at 48.

[22] *Id*. at 51.

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

[24] *Id*. at 45.

claim of unlawful aggression on the part of the Complainant because it was only the latter who was wounded in the assault. It was also testified by the Accused's own witnesses, i.e. Pamela Rivera, that the Complainant was merely shouting, to wit:

"Q: What happened after you went out?
A: We just saw Sonny being pacified by Benneth.
Q: Why is Sonny being pacified by Benneth, what was Sonny doing then?
Court: Put it on record verbatim.
A: "Nagwawala po"
Q: What exactly was he doing when you said "nagwawala po["]?
A: She (sic) was shouting sir.
Q: Aside from shouting, what else was she (sic) doing, if any?
A: No more sir, he was just prevented by Benneth from entering the gate sir."

Clearly, mere shouting cannot be considered, by any standard, as an unlawful aggression. To reiterate, unlawful aggression must be actual or imminent threat. It must not consist in a mere threatening attitude, nor must it be merely imaginary, but it must be offensive and positively strong.

The claim of Accused that he only acted in defense of relative and of stranger at the time he stabbed the Complainant was also belied by the testimonies of his own witnesses. As testified, the witnesses were all inside the house at the time the Accused stabbed the Complainant. Further, the defense witnesses admitted that there was no unlawful aggression on the part of Complainant when the Accused stabbed the former. Hence, there was no longer any imminent danger on the lives of his relatives as they are all in the safety of their home. Therefore, the reason for stabbing the Complainant in defense of Accused's relatives is legally unavailing.[25] (Citations omitted)

The Court of Appeals stressed that unlawful aggression is not merely an imaginary or threatening attitude, but must be offensive and positively strong.[26] When asked to describe

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[25] *Id.* at 45-47.

[26] *Id.* at 46.

Natividad's acts, Pamela testified that he was shouting, which the Court of Appeals held could not be considered as unlawful aggression by any standard.[27] Mariano's witnesses testified that they were all inside the house at the time he stabbed Natividad.[28] Thus, there was no imminent danger on their lives for purposes of defense of a relative or a stranger.

The Court of Appeals also found that Mariano did not employ reasonable means to repel Natividad, who was too drunk to pose a real risk:

> The second element of the justifying circumstance of self-defense, i.e., reasonable means employed to prevent or repel the alleged aggression, could not have been present in the absence of any unlawful aggression on the part of the Complainant. However, even granting that there was unlawful aggression on the part of Complainant, the means employed by Accused to repel the attack was not reasonable. To note, Complainant was drunk and staggering. No matter how many times Complainant attempted to hit Accused, the latter was able to easily evade the blows of Complainant due to the condition of the latter at that time. Accused could have simply pushed the Complainant outside the premises and locked the gate and/or the door of their house. But Accused chose to stab the Complainant not only once but twice and on a vital part of Complainant's body. Clearly, the nature and the number of the stab wounds shows [sic] a clear intent to kill the Complainant, not merely to repel the attack of Complainant.[29] (Citation omitted)

However, the Court of Appeals modified the penalty, considering the absence of mitigating or aggravating circumstances. Thus, the dispositive portion of its Decision states:

> WHEREFORE, the Decision dated December 3, 2012 of the Regional Trial Court, Branch 114 of Pasay City in Criminal Case No. R-PSY-10-02334-CR is AFFIRMED with MODIFICATIONS. Accused RYAN MARIANO y GARCIA is found GUILTY beyond reasonable doubt of the crime of Frustrated Homicide and is hereby

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[27] *Id.*

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

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

sentenced to suffer the penalty of imprisonment of 2 years and 4 months of *prision correccional* as minimum to 8 years and 1 day of *prision mayor* as maximum. Accused is ordered to pay to Complainant Frederick Natividad the amount of Php30,000.00 as moral damages in addition to the amount of Php428,375.00 as actual damages. Accused is further ordered to pay Complainant interest on the damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[30]

Thus, petitioner Mariano filed this petition.

Petitioner insists that the elements of self defense were present. Unlawful aggression on the part of Natividad was present.[31] The records established that Natividad attacked Pia, Yuki, and Pamela.[32] Pia and Yuki were both minors.[33] Petitioner only intervened when Natividad started attacking Pamela.[34]

Petitioner reiterates that the means employed were reasonable.[35] Reasonable necessity is not absolute necessity. A person who is assaulted cannot be expected to have the tranquility of mind to make calculated comparisons on the reasonableness of his reaction to the assault.[36] In this case, petitioner cannot be expected to have acted in a different manner than to stab Natividad, who had repeatedly struck him with a piece of wood and had earlier punched Pamela and hit Pia's forehead with a steel gate.[37] Natividad's actions instilled overwhelming fear in petitioner Mariano, who became frantic.[38]

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[30] *Id.* at 51.

[31] *Id.* at 24.

[32] *Id.* at 25.

[33] *Id.*

[34] *Id.*

[35] *Id.* at 26.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 27.

Petitioner argues that there was lack of sufficient provocation on his part.[39]

Thus, petitioner prays to be acquitted or, in the alternative, to be held liable for less serious physical injuries only and that his sentence be reduced accordingly.

The Office of the Solicitor General argues that unlawful aggression is not present in this case, considering that there was no actual, sudden, and unexpected danger on petitioner or his companions.[40] Likewise, the means employed by petitioner to repel Natividad were not reasonably necessary, considering that Natividad was drunk and staggering at the time of the altercation.[41] The Office of the Solicitor General insists that the Court of Appeals and the trial court's factual findings are binding on this Court, considering that no exceptional circumstances exist here to review these findings.[42]

This Court grants the petition.

At the very least, petitioner acted in defense of a stranger. Article 11(1) and (3) of the Revised Penal Code provide:

> Article 11. Justifying circumstances. – The following do not incur any criminal liability:
>
> 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:
>
> *First*. Unlawful aggression;
>
> *Second*. Reasonable necessity of the means employed to prevent or repel it;
>
> *Third*. Lack of sufficient provocation on the part of the person defending himself.
>
> . . . . . .

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[39] *Id*. at 28.

[40] *Id*. at 135.

[41] *Id*. at 135-136.

[42] *Id*. at 136-137.

> 3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

To properly invoke the justifying circumstance of defense of a stranger, it must be shown that there was unlawful aggression on the part of the victim, that the means employed to repel the victim were reasonably necessary, and that the accused was not induced by revenge, resentment, or other evil motive.

The Court of Appeals rejected petitioner's defense on the ground that there was no unlawful aggression[43] and the means employed to prevent or repel Natividad were not reasonable. However, a reading of the assailed Decision reveals that the Court of Appeals accepted that it did not reject as false petitioner's factual allegations or evidence to prove the allegations presented before the trial court. The Court of Appeals only differed as to whether the facts, as alleged by petitioner, were sufficient to comprise unlawful aggression. In fact, the Court of Appeals' conclusion—that no unlawful aggression was present—relied on the testimony of one (1) of petitioner's witnesses, Pamela. It summarized Pamela's testimony:

> Pamela, testified that on the night of July 22, 2010, while she was watching TV, the Accused informed her and her mother that the Complainant was hurting Yuki and Pia. When she went outside the house to confront the Complainant, the latter punched her on her face and on her shoulder. The Accused seeing what happened, pushed Complainant to the ground. After Accused pushed the Complainant to the ground, they all went inside of the house, except the Accused. Thereafter, they learned that the Accused stabbed the Complainant.[44]

In concluding there was no unlawful aggression, the Court of Appeals relied on Pamela's testimony that she and her companions, except for petitioner, went inside the house after

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[43] *Id.* at 45.

[44] *Id.* at 41.

petitioner pushed Natividad to the ground. However, the Court of Appeals ignored Pamela's testimony that Natividad punched her face and shoulder, which was corroborated by the testimony of Pamela's daughter, Pia. As summarized by the trial court, Pia testified:

> [T]hat on July 22, 2010 at around 8:00 P.M., she was in front of their gate standing by together with her friends; that Sonny tried to request Yuki to buy marijuana; that Yuki, her cousin refused; that Frederick Natividad got mad at Yuki for refusing to buy marijuana; that Frederick Natividad slapped Yuki Rivera two or three times while they were in front of the gate; that she was beside Yuki Rivera when Frederick slapped him; that Yuki went to their house and tried to lock the gate; that she also locked the gate; that "si Sonny po ay kinalampag at tinatadyakan ang gate"; that the steel gate hit her "pumutok po ang noo ko"; that Sonny threw three (3) mono block chairs to Yuki; that all the chairs hit her at her back; that Yuki tried to throw the mono blocks but Sonny kicked her on her right leg thinking that she was Yuki; that her stepfather, Ryan Mariano, saw her being kicked by Sonny, so, Ryan Mariano tried to defend her; that Ryan Mariano was able to pick up a piece of wood and tried to hit Sonny with the same; that she went back to her room because her head was starting to bleed; that she stayed less than 15 minutes in her room then went outside of the house and saw Sonny boxing her mother Pamela Rivera on her arm; that her mother cried; that her mother and Ryan were lived-in partners; that Frederick Natividad boxed Ryan Mariano on his chest; that Ryan Mariano was just trying to defend himself and her mom; that she stayed inside their house until the trouble was finished; that she filed a complaint against Frederick Natividad at the police station; that she secured a medical certificate as regards to her injuries as the basis to the child abuse case which she filed against Frederick Natividad.
>
> On cross-examination, same witness testified; that she did not see when accused Ryan Mariano stabbed Frederick Natividad because she was then in her room; that she likewise do not know where was Yuki Rivera and Pamela Rivera when Ryan Mariano stabbed Frederick Natividad.[45]

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[45] *Id*. at 80-81.

It is significant that Natividad did not deny attacking Pamela or Pia, as he could not remember these acts.[46]

An attack showing the aggressor's intention is enough to consider that unlawful aggression was committed.[47] Thus, the attack on Pamela should have been considered as unlawful aggression for purposes of invoking the justifying circumstance of defense of a stranger.

The Court of Appeals opined that the means employed by petitioner to repel Natividad were not reasonable, stressing that Natividad was drunk and staggering at the time of the altercation.[48] This cannot be countenanced.

The state of mind of the accused during the alleged act of self-defense or defense of a stranger must be considered in determining whether a person's means of repelling an aggressor were reasonable. In *Jayme v. Repe,*[49] this Court explained:

> Consequently, we rule that petitioner employed reasonable means to repel the sudden unprovoked attack of which he was the victim.
>
> "Reasonable necessity does not mean absolute necessity. It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons which can easily be made in the calmness of the home. It is not the indispensable need but the rational necessity which the law requires. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The defendant may be given the benefit of any reasonable doubt as to whether he employed rational means to repel the aggression."
>
> "The rule of reasonable necessity is not ironclad in its application; it depends upon the circumstances of the particular case. One who is assaulted does not have the time nor sufficient tranquility of mind to think, calculate and choose the weapon to be used.

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[46] *Id*. at 73.

[47] *U.S. v. Guy-Sayco,* 13 Phil. 292, 295-296 (1909) [Per *J*. Torres, *En Banc*].

[48] *Rollo,* p. 48.

[49] 372 Phil. 796 (1999) [Per *J*. Pardo, First Division].

> The reason is obvious, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and to hold the actor irresponsible in law for the consequences."[50] (Citations omitted)

In *United States v. Paras,*[51] where an accused was knocked to the ground by an unlawful aggressor who then kicked him, and thus, the accused fired several shots at the aggressor in self-defense, this Court held:

> From the facts proven in these proceedings it is inferred that the three requisites named in No. 4 of article 8 of the Penal Code are present in the homicide, inasmuch as without previous provocation on the part of the accused Paras, he was suddenly and violently assaulted, being struck in the face, the blows causing blood to flow, and as a result of the aggression he was laid flat on the ground, where he was kicked; given the rapidity with which the act was carried out and the imminence of the danger, it is impossible to affirm that being already prostrate on the ground the assault of which he was the victim would have ceased. It is reasonable to believe that the accused, when he defended himself by shooting his assailant, did not exceed his rights in his defense or employ unnecessary means to repel an attack already commenced in a cruel and violent manner or to prevent its continuation, because from the suddenness of the attack, the end thereof, without risk to his person, could not be assured. It would not be proper or reasonable to claim that he should have fled or selected a less deadly weapon, because in the emergency in which, without any reason whatever, he was placed, and being attacked by a person larger and stronger than himself, there was nothing more natural than to have made use of the weapon he held, in order to defend himself; anyone, upon being assaulted in a similar manner, would have acted likewise. In the natural order of things, following the instinct of self-preservation, he was compelled to resort to a proper defense; an impossibility [cannot] be demanded of the injured person when it [cannot] be affirmed that he could have done less than he did in defending himself by shooting at his assailant who had maltreated him and knocked him down.

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[50] *Id*. at 803-804.

[51] 9 Phil. 367 (1907) [Per *J.* Torres, First Division].

The reasonable necessity of the means employed in the defense, according to the jurisprudence of courts, does not de[p]end upon the harm done, but rests upon the imminent danger of such injury.[52]

Here, although the offended party was drunk, and therefore, was not able to land his blows, his attacks were incessant. He had already attacked three (3) other persons—two (2) minors as well as petitioner's common-law wife—and was still belligerent. While it may be true that Pamela, Pia, and Yuki had already gone inside the house at the time of the stabbing, it then appeared to the petitioner that there was no other reasonable means to protect his family except to commit the acts alleged. It is unreasonable for courts to demand conduct that could only have been discovered with hindsight and absent the stress caused by the threats that the petitioner actually faced.

Finally, petitioner was not induced by revenge, resentment, or other evil motive. The victim himself, Natividad, testified that he had no issues with petitioner before the incident.[53] Thus, all the elements to invoke the justifying circumstance of defense of a stranger were present in this case.

Considering that petitioner was justified in stabbing Natividad under Article 11, paragraph 3 of the Revised Penal Code, he should be exonerated of the crime charged.

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Decision dated August 28, 2015 in CA-G.R. CR. No. 35590 is **REVERSED** and **SET ASIDE.** Petitioner RYAN MARIANO y GARCIA is **ACQUITTED** of frustrated homicide. Let entry of judgment be issued immediately.

SO ORDERED.

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

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[52] *Id*. at 369-370.

[53] *Rollo,* p. 73.

SECOND DIVISION

[G.R. No. 228296. July 26, 2017]

GRIEG PHILIPPINES, INC., GRIEG SHIPPING GROUP AS, and/or MANUEL F. ORTIZ, *petitioners, vs.* **MICHAEL JOHN M. GONZALES,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY COMPENSATION; ACUTE PROMYELOCYTIC LEUKEMIA WAS WORK-RELATED ILLNESS HAVING BEEN CONTRACTED THROUGH THE USE OF AND CONSTANT EXPOSURE TO HARMFUL CHEMICALS AS PART OF AN ORDINARY SEAMAN'S FUNCTION.— Benzene is a widely used chemical and is mainly used as a "starting material in making other chemicals including plastics, lubricants, rubbers, dyes, detergents, drugs, and pesticides." To substantiate his claim that he contracted acute promyelocytic leukemia, a form of acute myeloid leukemia, due to his job, Gonzales has provided his functions as an Ordinary Seaman aboard Star Florida. Among others, his tasks included removing rust accumulations and refinishing affected areas of the ship with chemicals and paint to retard the oxidation process. This meant that he was frequently exposed to harmful chemicals and cleaning aids which may have contained benzene. Furthermore, Star Florida transported chemicals, which could have also contributed to Gonzales' leukemia. Gonzales likewise has presented the results of his molecular Cytogenetic Report, which showed that his leukemia was not genetic in nature[.] x x x When it comes to compensability of illnesses, it is not necessary that the nature of the employment is the sole reason for the seafarer's illness. x x x Gonzales was able to satisfy the conditions under Section 32-A and establish a reasonable linkage between his job as an Ordinary Seaman and his leukemia. He has submitted his official job description, which involved constant exposure to chemicals. It is also not disputed that he contracted leukemia only while he was onboard Star Florida since he was certified to be fit for sea duty prior to boarding and his leukemia was not genetic in nature.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Tolentino & Bautista Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

For a disability claim to prosper, a seaman only needs to show that his work and contracted illness have a reasonable linkage that must lead a rational mind to conclude that the seaman's occupation may have contributed or aggravated the disease.

This is a Petition for Review[1] filed by Grieg Philippines, Inc., Grieg Shipping Group AS (Grieg) and/or Manuel F. Ortiz[2] after the Court of Appeals July 25, 2016 Decision[3] upheld the disability benefits awarded by the National Labor Relations Commission and by the Labor Arbiter to Michael John M. Gonzales (Gonzales), a seaman who was diagnosed with acute promyelocytic leukemia while onboard a cargo vessel.

The facts as borne by the records are as follows:

Gonzales was first hired by Grieg, a shipping agent, sometime in 2010. On April 20, 2013, Gonzales was deployed to the general cargo vessel Star Florida after he was re-hired for a nine (9)-month contract.[4] This was his third contract with Grieg.[5]

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[1] *Rollo,* pp. 3-34.

[2] *Id*. at 6. Manuel F. Ortiz is impleaded as an officer of Grieg. However, upon filing of this Petition, he is not connected with the agency anymore.

[3] *Id*. at 36-45. The Decision, docketed as CA-G.R. SP No. 142121, was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan of the Thirteenth Division, Court of Appeals, Manila.

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

[5] *Id*. at 41.

Gonzales' employment contract was covered by the Associated Marine Officers' and Seaman's Union of the Philippines Collective Bargaining Agreement. Before being deployed, Gonzales underwent Pre-Employment Medical Examination and was certified to be fit for sea duty.[6]

In August 2013, while aboard Star Florida, Gonzales was advised to take paracetamol and to rest after he experienced "shortness of breath, pain in his left leg, fatigue, fever and headaches."[7] A week later, Gonzales sought medical attention in South Korea after he experienced the same symptoms. With his medical tests showing normal results, he was given medications and sent back to work in Star Florida.[8]

The following month, his past symptoms returned with the added symptom of black tarry stools. Gonzales was confined in a hospital in Indonesia where he was initially diagnosed with "pancytopenia suspect aplastic anemia." Gonzales was declared unfit for sea duty and was repatriated. He disembarked on October 8, 2013.[9]

Gonzales was admitted at the Metropolitan Medical Center after his medical repatriation. The company physicians diagnosed him with acute promyelocytic leukemia. They opined that Gonzales' leukemia was not work-related; although, for humanitarian reasons, Grieg continued to pay for his treatment.[10]

Grieg claimed that Gonzales suddenly stopped consulting the company physicians. Gonzales denied this, countering that he informed Grieg that he would be unable to attend the scheduled appointment on April 28, 2014 because he was still raising money to travel from his hometown to Manila.[11]

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[6] *Id*. at 37.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

Gonzales claimed that his request to reschedule his appointment was granted, and thus, was surprised with the notification that Grieg had discontinued his treatment.[12]

Gonzales sought a second opinion from an independent physician, Dr. Emmanuel Trinidad, who certified that his leukemia was work-related.[13]

On July 15, 2014, after his disability claims were refused, Gonzales filed a complaint against Grieg before the Labor Arbiter.[14]

On November 28, 2014, the Labor Arbiter found that Gonzales' leukemia was work-related and that it had permanently incapacitated him to work as a seafarer.[15] The dispositive portion of the Labor Arbiter's Decision read:

> **WHEREFORE,** premises considered, judgment is hereby rendered ORDERING the respondents to pay jointly and severally herein complainant the amount of US$90,000.00 representing his permanent total disability compensation under the CBA, US$2,262.00 as sickness allowance and attorney's fees equivalent to ten percent (10%) of the total monetary award or in their peso equivalent at the prevailing exchange rate on the actual date of payment.
>
> All other claims are dismissed for lack of factual or legal basis.
>
> **SO ORDERED.**[16]

Grieg appealed the Labor Arbiter's Decision before the National Labor Relations Commission. On May 25, 2015, the National Labor Relations Commission affirmed the Labor Arbiter's ruling. It also denied Grieg's motion for reconsideration.[17]

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[12] *Id*.

[13] *Id*. at 38.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

Grieg raised the following issues in its Petition for Certiorari before the Court of Appeals:

> Whether the Public Respondent Commission committed grave abuse of discretion when it relied upon the mere allegations of the private respondent that his condition is work-related[;]
>
> Whether the Public Respondent Commission committed grave abuse of discretion when it disregarded the Supreme Court rulings with respect to disputable presumption of work-relation[;]
>
> Whether the Public Respondent Commission committed grave abuse of discretion when it awarded attorney's fees despite the absence of any evidence showing bad faith or malice on the part of the petitioners.[18]

The Court of Appeals upheld the findings of the National Labor Relations Commission and denied Grieg's Petition.[19]

The Court of Appeals ruled that with the inclusion of leukemia among the occupational diseases in Section 32-A of the Philippine Overseas Employment Administration-Standard Employment Contract, the burden of proving that it was work-related was no longer with the employee. Instead, the employer must prove otherwise—that Gonzales' leukemia was not work-related. The Court of Appeals opined that Grieg failed in this regard.[20]

The Court of Appeals asserted that even if it was assumed that leukemia was not an occupational disease, Section 20-A, paragraph 4 of the Philippine Overseas Employment Administration-Standard Employment Contract made a disputable presumption favoring seafarers. Section 20-A, paragraph 4 holds that all illnesses not listed as an occupational disease in Section 32-A are deemed work-related.[21]

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[18] *Id*. at 38-39.

[19] *Id*. at 44.

[20] *Id*. at 41.

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

The Court of Appeals upheld the findings of the National Labor Relations Commission that Gonzales was entitled to the sickness allowance under the Collective Bargaining Agreement and the permanent disability benefits of US$90,000.00.[22] The *fallo* of the Court of Appeals Decision read:

> **WHEREFORE,** the instant Petition is **DENIED** for lack of merit.
>
> The Decision promulgated on May 25, 2015 and Resolution promulgated on July 8, 2015 of the National Labor Relations Commission in *NLRC LAC No. OFW-(M)-04-000329-15* are hereby **AFFIRMED.**
>
> SO ORDERED.[23]

In its Petition for Review on Certiorari,[24] Grieg claims that Gonzales failed to prove the relation between his illness and his former position as an Ordinary Seaman.[25]

Grieg asserts that a claimant cannot merely rely on the disputable presumption that the illness is work-related and wait for the opposing party to dispute it. This disputable presumption must still adhere with the four (4) requirements in the Philippine Overseas Employment Administration Contract.[26] Furthermore, Grieg maintains that Gonzales' medical abandonment contradicts his claim of disability benefits.[27] Finally, Grieg posits that Gonzales is not entitled to attorney's fees since bad faith or malice was not sufficiently proven.[28]

In his Comment,[29] Gonzales claims that he contracted acute promyelocytic leukemia due to his use of and constant exposure

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

[23] *Id*. at 44.

[24] *Id*. at 3-34.

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

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

[27] *Id*. at 17-20.

[28] *Id*. at 20-25.

[29] *Id*. at 92-119.

to harmful chemicals and cleaning aids as part of his work function as an Ordinary Seaman.[30]

Gonzales insists that when it comes to employees' compensation cases, the yardstick is probability and not certainty. He contends that to establish work relation, only reasonable linkage between the contracted illness and the working condition should be proven.[31]

The question brought for this Court's resolution is whether the National Labor Relations Commission committed grave abuse of discretion in awarding Gonzales' claim for disability benefits and attorney's fees.

The petition must fail.

The 2000 Philippine Overseas Employment Administration-Standard Employment Contract defines work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[32]

The relevant portions of Section 32-A are as follows:

Section 32-A. Occupational Diseases. —

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

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[30] *Id*. at 101.

[31] *Id*. at 107-108.

[32] POEA Memorandum Circ. No. 10 (2010).

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

OCCUPATIONAL DISEASE	NATURE OF EMPLOYMENT
. . .	. . .
16. Acute myeloid leukemia	Secondary to prolonged benzene exposure

Benzene is a widely used chemical and is mainly used as a "starting material in making other chemicals, including plastics, lubricants, rubbers, dyes, detergents, drugs, and pesticides."[33]

To substantiate his claim that he contracted acute promyelocytic leukemia, a form of acute myeloid leukemia,[34] due to his job, Gonzales has provided his functions as an Ordinary Seaman aboard Star Florida. Among others, his tasks included removing rust accumulations and refinishing affected areas of the ship with chemicals and paint to retard the oxidation process. This meant that he was frequently exposed to harmful chemicals and cleaning aids which may have contained benzene.[35] Furthermore, Star Florida transported chemicals, which could have also contributed to Gonzales' leukemia.[36]

Gonzales likewise has presented the results of his Molecular Cytogenetic Report, which showed that his leukemia was not genetic in nature:

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[33] *Benzene and Cancer Risk*, AMERICAN CANCER SOCIETY, <https://www.cancer.org/cancer/cancer-causes/benzene.html> (Last accessed on July 13, 2017).

[34] *Acute promyelocytic leukemia*, GENETICS HOME REFERENCE, <https://ghr.nlm.nih.gov/condition/acute-promyelocytic-leukemia> (Last accessed on July 13, 2017).

[35] *Rollo,* p. 101.

[36] *Id.* at 41.

Cytogenetic Finding:
No. of cells screened and analyzed: 25
Karyotype: 46, XY

Remarks:
No apparent chromosome abnormality[37]

When it comes to compensability of illnesses, it is not necessary that the nature of the employment is the sole reason for the seafarer's illness. *Magsaysay Maritime Services v. Laurel*[38] reiterated the rule on compensability of illnesses:

> Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[39] (Citation omitted)

Gonzales was able to satisfy the conditions under Section 32-A and establish a reasonable linkage between his job as an Ordinary Seaman and his leukemia. He has submitted his official job description,[40] which involved constant exposure to chemicals. It is also not disputed that he contracted leukemia only while he was onboard Star Florida since he was certified to be fit for sea duty prior to boarding and his leukemia was not genetic in nature.

Both labor tribunals found sufficient evidence to support Gonzales' claim of work-related illness. The Court of Appeals pointed out that Grieg failed to dispute this claim:

> [Grieg] did not present the official job description and duties of the position of an ordinary seaman, to show that Gonzales was never exposed to paints and cleaning agents that contain the highly toxic

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

[38] 707 Phil. 210 (2013) [Per *J*. Mendoza, Third Division].

[39] *Id*. at 225.

[40] *Rollo,* pp. 93-94.

compound benzene. Petitioners did not submit the cargo manifest on dates material to this case to prove that the ship's load does not include harmful chemicals.

Note that even if we are to disregard the opinion of Gonzales' own physician, this Court rules that petitioners miserably failed to dispute the medical finding that Gonzales' leukemia is not hereditary, as his tests reveal no apparent chromosome abnormality. This undeniable circumstance, taken together with Gonzales' testimony, plus the fact that he was declared fit for sea duty prior to boarding the vessel for two (2) consecutive employment contracts with the same company, all the more bolster the conclusion that the conditions set forth in Section 32-A regarding the work-relatedness of his leukemia are present in this case.[41] (Citations omitted)

As we have stated in *Monana v. MEC Global Shipmanagement and Manning Corporation*:[42]

A petition for review is limited to questions of law. This court does not "re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field." This court has held that "factual findings of the NLRC, when affirmed by the Court of Appeals, are generally conclusive on this court."[43] (Citations omitted)

This Court sees no reason to depart from the findings of the Labor Arbiter and the National Labor Relations Commission, which were affirmed by the Court of Appeals.

WHEREFORE, premises considered, the petition for review is **DENIED** for lack of merit.

SO ORDERED.

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

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[41] *Id*. at 41.

[42] 746 Phil. 736 (2014) [Per *J*. Leonen, Second Division].

[43] *Id*. at 749.

SECOND DIVISION

[G.R. No. 228412. July 26, 2017]

ALASKA MILK CORPORATION and the ESTATE OF WILFRED UYTENGSU, *petitioners, vs.* **ERNESTO L. PONCE,** *respondent.*

[G.R. No. 228439. July 26, 2017]

ERNESTO L. PONCE, *petitioner, vs.* **ALASKA MILK CORPORATION, ROYAL FRIESLAND CAMPINA (RFC), as Successors-In-Interest and Solidary Debtors with the Estate of WILFRED UYTENGSU, ALASKA MILK WORKERS UNION and FREDDIE BAUTISTA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; GROSS AND HABITUAL NEGLECT OF DUTIES AS A GROUND FOR DISMISSAL OF AN EMPLOYEE, EXPLAINED; PETITIONERS FAILED TO ESTABLISH SUCH GROUND BY SUBSTANTIAL EVIDENCE.— Under Article 297 (b) [formerly Article 282 (b)] of the Labor Code, an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual. Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. After a thorough examination of the records, the Court agrees with the findings of the LA and the CA that Ponce's termination from employment based on gross and habitual neglect of duties is unwarranted. x x x [R]ecords show that AMC proffered nothing beyond bare allegations to prove that failure to implement the projects/improvements was occasioned by gross neglect on the part of Ponce.

2. ID.; ID.; ID.; REQUIREMENTS THAT MUST BE COMPLIED WITH IN ORDER FOR LOSS OF TRUST AND CONFIDENCE TO BE A VALID GROUND FOR DISMISSAL.— Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 297 (c) [formerly Article 282 (c)] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

3. ID.; ID.; ID.; ID.; TWO CLASSES OF POSITIONS OF TRUST, EXPLAINED.— There are two classes of positions of trust: (1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and (2) fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are, thus, classified as occupying positions of trust and confidence. As regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.

4. ID.; ID.; ID.; ID.; ACT OF SOLICITING OFFICIAL RECEIPTS IN EXCHANGE FOR CASH REBATE TO BE USED BY EMPLOYEE TO REIMBURSE EXPENSES HE DID NOT INCUR CONSTITUTES FRAUDULENT REPRESENTATION SUFFICIENT TO JUSTIFY EMPLOYEE'S DISMISSAL ON THE GROUND OF LOSS

OF TRUST AND CONFIDENCE.— It is undisputed that Ponce held the position of Director for Engineering Services and that he was in charge of managing AMC's Engineering Department. Hence, he belongs to the first class of employees who occupy a position of trust and confidence. x x x [T]he act of soliciting receipts from colleagues constitutes dishonesty, inimical to AMC's interests, for the simple reason that Ponce would be collecting receipted allowance from expenses he did not actually incur. It has long been settled that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests. This is all the more true in the case of supervisors or personnel occupying positions of responsibility. x x x The solicitation involved therein was not a simple and perfunctory act of asking receipts from colleagues. The wordings of the R/A e-mail convey a well-calculated methodology. The "rules" constitute a mechanism by which AMC will be misled to reimburse items of expense that did not actually come out of Ponce's pocket. Moreover, the solicitation was accompanied by an offer of a 5% cash rebate on the value of the receipts. The scheme envisioned in the R/A e-mail is already alarming by itself, but the fact that such was the brainwork of a director like Ponce all the more makes it disconcerting, as the situation would involve profiteering perpetrated by a person entrusted with the management of a department in the company. x x x [W]hether Ponce was actually able to gather and submit receipts to AMC for reimbursement is immaterial. The sending of the R/A e-mail already discloses a dishonest motive unbecoming of a director for engineering services, and the existence of that e-mail in the records is sufficient basis to justify Ponce's dismissal on the ground of loss of trust and confidence.

5. **ID.; ID.; ID.; ID.; ID.; CLEAN RECORD FOR TWO YEARS CANNOT SERVE AS JUSTIFICATION TO MITIGATE THE PENALTY OF DISMISSAL.—** [T]he lack of previous record for two (2) years of service cannot serve as justification to lessen the severity of the penalty. There is really no premium for a clean record of almost two (2) years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.

APPEARANCES OF COUNSEL

Esguerra & Blanco for Alaska Milk Corporation, The Estate of Wilfred Uytengsu, and Royal Friesland Campina.

Bisquera-Balagtas Law Center for Ernesto L. Ponce.

Dolleton Cerdena Law Offices for Alaska Milk Workers Union.

D E C I S I O N

MENDOZA, *J.*:

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the May 4, 2016 Decision[1] and the November 7, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 132932, which reversed and set aside the July 29, 2013 Decision[3] and September 30, 2013 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. 05-001544-13, a case for illegal dismissal.

The Antecedents

On April 1, 2008, Alaska Milk Corporation *(AMC)* hired Ernesto L. Ponce *(Ponce),* a licensed mechanical engineer, as Manager for Engineering Services of its Milk Powder Plant (*MPP)* and Ultra High Temperature Plant *(UHT)* with a monthly compensation of ₱120,000.00. On May 1, 2009, he was promoted as Director for Engineering Services with a monthly salary of ₱200,000.00. He held the position until his termination from employment on February 25, 2010.

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[1] Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justice Japar B. Dimaampao and Associate Justice Franchito N. Diamante, concurring; *rollo* (G.R. No. 228412, Vol. I), pp. 47-71.

[2] *Id*. at 73-76.

[3] Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora, concurring; *id*. at 489-522.

[4] *Rollo* (G.R. No. 228412, Vol. II), pp. 563-564.

Version of Ponce

Ponce contends that the crux of the case emanated from his investigation of the surge in AMC's overtime costs for the years 2006 to 2008, even though the production of milk commodities did not substantially increase throughout those years. AMC's erstwhile Chairman of the Board, Wilfredo Uytengsu, Sr. *(Uytengsu, Sr.),* was alarmed about the ₱34.1 million overtime costs. Thus, he verbally directed Ponce to investigate the matter. On May 4, 2009, Ponce submitted his report on the excessive overtime costs, *viz*:

1. The mischief behind the spiralling overtime costs was Alaska Milk Workers Union's uncontrolled grant of personal loans to employees with usurious interest charges.
2. Some of AMC's HR and payroll managers financed the union's lending business.
3. AMC's payroll system automatically deducted from the workers' payslips the loan collection in favor of the union.
4. With the usurious rates charged on the loan and automatic deduction from the wages, the workers were left with minimal take home pay.
5. The Production Management and Human Resource Departments, in conspiracy with the union, directed unnecessary overtime work in order to encourage the workers to obtain more loans.
6. The unnecessary overtime work directed by the managers of AMC and union officers caused the remarkable increase in overtime cost.[5]

To correct the reported anomalous lending scheme perpetrated by the Alaska Milk Workers Union *(AMWU)* and some of AMC's corporate managers, Ponce recommended placing a limit on the salary deductions from the workers' wages, which would be implemented through a gradual and prudent phase-in period of six months to one year. Uytengsu, Sr., however, did not

[5] *Rollo* (G.R. No. 228412, Vol. I), p. 316.

heed Ponce's suggestion and, instead, abruptly ordered AMC's Human Resources and Operation Management Department to stop the automatic deduction of loan payments to AMWU.

Consequently, AMWU and the AMC corporate managers involved in the lending scheme suffered in their cash collections. Thereafter, AMWU issued death threats to AMC's management, including Ponce and some other managers. The death threats, however, did not deter Uytengsu, Sr. from curtailing the automatic payroll deduction. As such, AMWU petitioned for Ponce's dismissal from employment and threatened to stage a concerted action against AMC, to which Uytengsu, Sr. yielded. Thus, he issued the First Performance Evaluation Memorandum,[6] dated February 16, 2010, directing Ponce to explain why he should not be dismissed for gross and habitual negligence and other analogous causes.

Version of AMC and Uytengsu, Sr.

For their part, AMC and Uytengsu, Sr. averred that sometime in April 2009, AMC's President and Chief Executive Officer, Wilfred Steven Uytengsu, Jr. *(Uytengsu, Jr.)*, witnessed Ponce's abrasive behavior and was constrained to remind him to be courteous to his colleagues. On January 21, 2010, Uytengsu, Sr. sent an e-mail to Ponce calling his attention to his failure to provide updates on several engineering works and problems involving his areas of concern. Not long after, in February 2010, Uytengsu, Sr. received a copy of an e-mail that Ponce sent to 12 of his colleagues in connection with his "Receipted Allowance" (*R/A*) for business-related expenses. In the said e-mail *(R/A e-mail)*, Ponce solicited official receipts from his colleagues in exchange for a five percent (5%) rebate on the value of the receipts submitted to him. The R/A e-mail reads:

> Dear Neighbors and Friends,
>
> Do you want to earn extra from your own expenses? Here is my deal; I need your OFFICIAL RECEIPTS of only the following:

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[6] *Rollo* (G.R. No. 228412, Vol. II), pp. 673-675.

1) Any reputable Restaurants, Fast Food, Catering, or Food Chain (Please Turo-turo, Fish-ball Stalls, and Karenderia is Not Included);

2) Gasoline, Liquified Petroleum Gas (LPG), or Diesel Fuel, and Lubricants of any type of SUV, Vans, Motorcycles, or Cars; and

3) Repair and Maintenance Expenses of your Suv, Van, Motorcycles, or Cars from a reputable Shop (House Maintenance is NOT ALLOWED).

I will give you an Instant Rebate equivalent to Five Percent (5%) of your submitted official receipts. Here are the rules:

1) You have to ask for a BIR Registered OFFICIAL RECEIPTS from the Cashier or Manager (Receipts form [sic] Office Supply Stores are not acceptable);

2) The Official Receipts must specifically indicate "Alaska Milk Corporation" or Alaska MC (AMC or "Customer" is not acceptable);

3) The Reciepts [sic] must be dated from the 26th of the previous month to the 18th of the current month (Receipts dated from the 19th to the 255th is not acceptable);

4) Write your name at the back with your signature so I can trace the receipts if questioned;

5) Deadline of submission for each month or Cut-off date is on the 18th of the month, and to be submitted to my Wife at the Staff-Housing so you will get your Instant Rebate (I will not accept submissions in my office since I do not carry Cash);

6) Strictly NO TEMPERING [sic] OF RECEIPTS;

7) This is a First Person agreement and your immediate family (Reciepts [sic] from Friend, Distant Relatives, and Kumpares are not acceptable); and

8) Your transactions or receipts must be verifiable and traceable, thus the Food Chain, Restaurant, Fuel Station, and Repair Shop must be reputable.

I think this is all for now. Please gather your receipt starting today, and again cut-off date and submission is on the 18th of each month.

For now, I am not setting any limit per receipt [sic] but transactions less than Php10,000 will be appreciated. Thank you.

Estoy Ponce
3B Alaska Staff Housing, Magsaysay Road
San Antonio, San Pedro, Laguna.[7]

On February 16, 2010, Uytengsu, Sr. issued the First Performance Evaluation Memorandum, directing Ponce to explain why his services should not be terminated for gross and habitual neglect of duties and other analogous causes under Article 282 of the Labor Code.

After finding Ponce's explanation unsatisfactory, AMC issued the Second Performance Evaluation Memorandum[8] and terminated Ponce's employment effective February 25, 2010. His dismissal was premised on the following grounds:

1) Failure to provide updates on ongoing and planned engineering works in the plant and inform/obtain approval of Uytengsu before implementing engineering works;

2) E-mailed his twelve colleagues requesting for official receipts in exchange for a five percent rebate to be used in liquidating his receipted allowance/fraudulently submitting official receipts of expenses which he did not incur;

3) Disrespectful manner towards the AMC's President and CEO who called Ponce's attention regarding his violation of AMC's company policy;

4) Continued abrasive attitude towards his fellow officers and specially to his subordinates and other rank-and-file workers of AMC, whom Ponce allegedly subjected to unjust treatment and abusive language resulting in death threats being hurdled against Ponce and the filing of several complaints against AMC by its employees, a fact allegedly admitted by Ponce during the mandatory conference on October 8, 2010; and

5) Repeated failure to cause the implementation of several engineering projects/improvements on various buildings, such

[7] *Id*. at 669-670.

[8] *Id*. at 680.

> as (i) to install the required PVC pipes below the company's Godan packaging line; (ii) to install water tight metal door at the company's high compressor room; (iii) to implement increase in floor area of the UHT-1 mezzanine floor; (iv) approving the purchase of overpriced stainless steel sheets; and (v) providing incorrect information to AMC's marketing department on the exact dimensions of its billboard installations.[9]

On April 14, 2010, Ponce filed a complaint for illegal dismissal with prayer for reinstatement, payment of backwages and damages against AMC, the estate of Uytengsu, Sr., AMWU, and its president Ferdinand Bautista.[10]

The LA Ruling

In a Decision,[11] dated January 30, 2013, the LA ruled that Ponce was illegally dismissed. In resolving the issue on gross and habitual neglect of duties, it opined that the instances cited by AMC were hardly gross enough to warrant dismissal. The LA held that fault could not rest upon Ponce's shoulders alone, considering that satisfactory completion of the tasks was subject to an interplay of factors beyond his control and responsibility. It added that while delay in the completion of assigned task was unacceptable, the same could not be equated with negligence.

Anent Ponce's act of soliciting receipts for his R/A, the LA noted that AMC did not issue any warning or admonition against him during the period covering May 5, 2009, the day after Ponce sent the R/A e-mail, up to February 15, 2010, the day before the First Performance Evaluation was issued. It pointed out that AMC never claimed, much less proved, that Ponce had presented for reimbursement representation expenses covered by an official receipt belonging to any one of his co-employees. Hence, the

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[9] *Rollo* (G.R. No. 228412, Vol. I), p. 52.

[10] AMWU and Ferdinand Bautista were dropped as respondents per Resolution of the LA, dated August 24, 2012; *rollo* (G.R. No. 228412, Vol. I), pp. 163-175.

[11] Penned by Labor Arbiter Michaela A. Lontoc, *rollo* (G.R. No. 228412, Vol. I), pp. 312-343.

LA concluded that AMC condoned Ponce's act because it was unbelievable for AMC to have taken more than nine (9) months before it informed Ponce that solicitation of receipts was a violation of company rules. The dispositive portion reads:

> **WHEREFORE**, the complaint for illegal dismissal is **GRANTED** and respondent Alaska Milk Corporation is directed to reinstate complainant to his former position as Director for Engineering Services or any position equivalent thereto, without loss of seniority rights and other privileges and to pay him backwages, inclusive of allowances and other benefits or their monetary equivalent from 11 August 2010 up to his actual reinstatement which as of this date amounts to ₱5,926,000.00.
>
> In the event appeal is interposed from this decision by either of the parties, respondent corporation is, nevertheless directed to comply with the order for complainant's immediate reinstatement even pending appeal. In such a case, respondent corporation is directed to notify complainant and this Office within ten (10) days from receipt hereof, of the manner how it shall reinstate complainant to work, either physically or in the payroll at its option, without loss of seniority rights in either case.
>
> Respondent corporation is further directed to pay complainant attorney's fee in the amount of ₱300,000.00. All other claims are **DENIED** for failure of complainant to substantiate the same and for lack of merit.
>
> **SO DECIDED**.[12]

Aggrieved, AMC elevated an appeal before the NLRC.

The NLRC Ruling

In a Decision, dated July 29, 2013, the NLRC *reversed* and *set aside* the LA's ruling. It ruled that the act of soliciting official receipts in exchange for a 5% rebate was an act of dishonesty inimical to the interest of AMC, as Ponce would be collecting receipted allowance from expenses which he did not actually incur. The NLRC rejected the LA's theory that AMC condoned the act because it did not warn or admonish Ponce

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[12] *Id*. at 342-343.

prior to the issuance of the First Performance Evaluation Memorandum. It pointed out that Ponce's R/A e-mail came to the knowledge of Uytengsu, Sr. only in February 2010. The NLRC opined that Ponce's explanation on the R/A e-mail issue was an admission which required no proof. Accordingly, it ruled that there was sufficient evidence to sustain Ponce's dismissal on the ground of loss of trust and confidence.

Further, the NLRC did not sustain Ponce's claim that his dismissal was effected to appease the union and forestall a threat of concerted action. It observed that Ponce submitted his report concerning the overtime costs on May 4, 2009, but such report preceded the June 24, 2009 Memorandum wherein Uytengsu, Sr. allegedly ordered him to investigate the matter. Thus, the NLRC concluded that the June 24, 2009 Memorandum was not really an order for Ponce to investigate. The *fallo* reads:

> **WHEREFORE**, the decision appealed from is **REVERSED** and **SET ASIDE** and a new one entered **DISMISSING** the complaint for lack of merit.
>
> **SO ORDERED**.[13]

Unconvinced, Ponce filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed decision, dated May 4, 2016, the CA *reversed* and *set aside* the NLRC ruling. It held that no substantial evidence was presented to prove the cause of Ponce's dismissal.

The CA opined that Ponce's dismissal on the ground of loss of trust and confidence was a mere afterthought. It found that the First Performance Evaluation Memorandum did not mention Ponce's acts which resulted in AMC's loss of trust and confidence; and that there was neither any explanation nor discussion of his alleged sensitive and delicate position requiring AMC's utmost trust. Moreover, the appellate court noted that

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[13] *Id*. at 522.

it was only in the Second Performance Evaluation Memorandum (termination letter) that AMC invoked loss of trust and confidence as a ground for dismissal.

The CA further held that the penalty of dismissal was too harsh. It observed that AMC failed to issue any warning during the period after the sending of the R/A e-mail up to the day prior to the issuance of the First Performance Evaluation Memorandum. Also, the CA noted that Ponce had no previous disciplinary record in his almost two (2) years of service; and that his promotion attested to his competence and diligence in the performance of his duties. The decretal portion reads:

> **WHEREFORE,** premises considered, the *Petition for Certiorari under Rule 65 of the Rules of Court* is **GRANTED**.
>
> The July 29, 2013 *Decision* of the National Labor Relations Commission in ***NLRC LAC NO. 05-001544-13*** is hereby **REVERSED** and **SET ASIDE**. The *January 30, 2013 Decision* of the Labor Arbiter in ***NLRC RAB IV-04-00701-10-L*** is hereby **REINSTATED**.
>
> **SO ORDERED**.[14]

AMC and Uytengsu, Sr. moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated November 7, 2016.

Hence these petitions.

G.R. No. 228412

AMC and Uytengsu, Sr. argue that the ordinary standards in imposing disciplinary penalties to rank and file employees are not applicable to Ponce who is a managerial employee; that the mere existence of a basis for believing that the managerial employee has breached the trust and confidence of his employer is sufficient for his dismissal; that soliciting receipts for payment of expenses which Ponce himself did not incur constitutes a valid and just cause for AMC's loss of trust and confidence; and that the First Performance Evaluation Memorandum

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[14] *Id*. at 71.

categorically enumerated Ponce's infractions which caused AMC's loss of trust and confidence in him.

On the issue of gross and habitual neglect of duties, AMC and Uytengsu, Sr. emphasize Ponce's admission that he was purposely remiss in his duties and that several AMC employees have filed complaints against him. They point out that the totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee; and that the offenses committed by him should not be taken singly and separately but in their totality.[15]

In his Comment,[16] Ponce claims that the R/A scheme is illegal and a form of tax evasion because it results in the understatement of corporate income tax and unpaid fringe benefits tax. He contends that the R/A is a "poisonous tree" which cannot be the source of any legal right for termination of employment.

Further, Ponce alleges that the R/A was part of his compensation and solicitation of official receipts would allow him to receive the complete balance thereof. He points out that both the LA and the CA noted that he never presented any official receipts from other persons; that loss of trust and confidence was an afterthought as AMC was unable to prove that solicitation of official receipts was against company policy; and that said solicitation was not done intentionally, knowingly and purposely so as to constitute a breach of trust. Ponce also insists that he was dismissed from employment in order to forestall the threat of concerted action.

G.R. No. 228439

Ponce prays that he be awarded: (1) backwages amounting to ₱20,657,500.00, or in the alternative, where his actual reinstatement is no longer feasible, the aggregate amount of ₱97,037,100.00, representing compensation until he reaches the retirement age of 65 years old; (2) actual damages amounting

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[15] *Valiao v. CA,* 479 Phil. 459, 470 (2004).

[16] *Rollo* (G.R. No. 228412, Vol. II), pp. 986-1010.

to ₱1,695,600.00, representing the company car plan which AMC demanded to be returned, withheld Director's Incentive Bonus equivalent to three months salary and miscellaneous expenses; (3) ₱7,000,000.00 as moral damages; (4) ₱18,000.00 as temperate damages; (5) ₱2,400,000.00 as exemplary damages; and (6) attorney's fees of ₱500,000.00.

ISSUE

WHETHER THERE IS JUST CAUSE TO TERMINATE PONCE'S EMPLOYMENT

The Court's Ruling

AMC and Uytengsu, Sr.'s petition for review on certiorari is not defective and does not warrant an outright dismissal

As a rule, the Court does not review questions of fact, but only questions of law in an appeal by certiorari under Rule 45 of the Rules of Court. The rule, however, is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory.[17]

In the case at bench, the factual findings of the LA and the CA differ from those of the NLRC. This divergence of positions constrains the Court to review and evaluate assiduously the evidence on record.

AMC failed to show by substantial evidence that Ponce was guilty of gross and habitual neglect of duties

Under Article 297 (b) [formerly Article 282 (b)] of the Labor Code, an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual.[18] Gross negligence

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[17] *Cavite Apparel, Inc. v. Michelle Marquez*, 703 Phil. 46, 53 (2013).

[18] *St. Lukes Medical Center, Inc. v. Estrelito Notario*, 648 Phil. 285, 297 (2010).

implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[19] Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[20]

After a thorough examination of the records, the Court agrees with the findings of the LA and the CA that Ponce's termination from employment based on gross and habitual neglect of duties is unwarranted.

The LA took pains to demonstrate the cogency of Ponce's explanations relevant to the charge of repeated failure to cause implementation of several engineering projects/improvements. She found that fault cannot rest upon Ponce's shoulders alone, inasmuch as satisfactory completion of the assigned tasks was subject to an interplay of factors beyond his sole control. Her analysis took into account the shared responsibility and collective decision-making involved in the implementation of AMC's projects.[21] On this score, the Court sees no compelling reason to disturb her well-considered conclusions.

Further, aside from enumerating the projects/improvements which Ponce purportedly failed to implement, AMC adduced no other evidence to substantiate its charges. As allegation is not evidence, the rule has always been to the effect that a party alleging a critical fact must support his allegation with substantial evidence which has been construed to mean such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[22] Confronted with Ponce's explanations, records show that AMC proffered nothing beyond bare allegations to prove that failure to implement the projects/improvements was occasioned by gross neglect on the part of Ponce.

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[19] *Acebedo Optical v. NLRC,* 554 Phil. 524, 544 (2007).

[20] *St. Lukes Medical Center, Inc. v. Estrelito Notario*, *supra* note 18.

[21] *Rollo* (G.R. No. 228412, Vol. I), pp. 334-337.

[22] *Tan Brothers Corporation of Basilan City v. Edna R. Escudero*, 713 Phil. 392, 402 (2013).

The fact that Ponce admitted to having been delayed in some of the tasks assigned to him does not establish gross and habitual neglect of duties. As gleaned from the records, this supposed admission refers to the delay in the works required for the installation of water tight metal door and increase in floor area of the UHT-1 mezzanine floor.[23] Anent this issue, Ponce explained that the plans for the works required were approved only in December 2009 after several revisions and modifications; and that upon his promotion, he was laden not only with engineering work assignments but also with non-engineering works, that is, personnel policies.[24]

Tested against the standards provided by law, the Court so holds that the delay which attended the aforesaid works does not evince a thoughtless disregard for AMC's interests. Again, aside from bare allegations, AMC failed to offer evidence showing that the delay was deliberately caused by Ponce so as to constitute gross negligence. It bears emphasis that the LA even noted AMC's admission in the First Performance Evaluation Memorandum that at least four to six concrete columns of the subject projects were already erected.[25] Evidently, these concrete columns stand to disprove culpable refusal on the part of Ponce in fulfilling his duties.

Although the charge of gross and habitual neglect of duties cannot stand, nevertheless, the records point to the existence of a just cause for termination – Loss of Trust and Confidence

The pivotal issue of the controversy lies on the question of whether Ponce may be dismissed from employment on the ground of loss of trust and confidence.

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[23] *Rollo* (G.R. No. 228412, Vol. I), p. 337.

[24] *Id*.

[25] *Id*.

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 297 (c) [formerly Article 282 (c)] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[26]

There are two classes of positions of trust: (1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and (2) fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are, thus, classified as occupying positions of trust and confidence.[27]

As regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[28]

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[26] *Philippine Plaza Holdings, Inc. v. Ma Flora M. Episcope*, 705 Phil. 210, 217 (2013).

[27] *Id*.

[28] *Zenaida D. Mendoza v. HMS Credit Corporation*, 709 Phil. 756, 767 (2013).

It is undisputed that Ponce held the position of Director for Engineering Services and that he was in charge of managing AMC's Engineering Department. Hence, he belongs to the first class of employees who occupy a position of trust and confidence. Having established the nature of employment, focus is now shifted to the more important question: Was there an act that would justify AMC's loss of trust and confidence in Ponce?

AMC and Uytengsu, Sr. argue that the sending of the R/A e-mail soliciting official receipts in exchange for a 5% cash rebate is an act inimical to the company's interests because Ponce will be reimbursed for expenses he did not incur. They consider such act a fraudulent representation sufficient to erode its trust and confidence.

After a judicious scrutiny of Ponce's R/A e-mail and his explanations on the matter, the Court rules that his dismissal from employment is justified.

First, the language of Article 297 (c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. 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.[29] The opening sentence of Ponce's R/A e-mail readily exposes the attendant willfulness in his act. It reads: "*Dear Neighbors and Friends, Do you want to earn extra from your own expenses*?"[30] Going further, the body of the R/A e-mail consists of "rules" that the recipients will have to follow in order to be entitled to a 5% cash rebate on the value of the receipts they will submit.[31] The "rules" were intelligibly crafted with the end view of achieving a purpose, and the inciting tenor of the opening statement evinces premeditation. Thus, it is beyond

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[29] *Philippine Plaza Holdings, Inc. v. Ma Flora M. Episcope*, *supra* note 26.

[30] *Rollo* (G.R. No. 228412, Vol. II), pp. 669-670.

[31] *Id*.

cavil that the R/A e-mail is a product of a conscious design, certainly not one borne out of sheer carelessness or inadvertence.

Second, the act of soliciting receipts from colleagues constitutes dishonesty, inimical to AMC's interests, for the simple reason that Ponce would be collecting receipted allowance from expenses he did not actually incur. It has long been settled that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests. This is all the more true in the case of supervisors or personnel occupying positions of responsibility.[32]

Third, the R/A e-mail betrays a truly sinister purpose which AMC had a right to guard against. The solicitation involved therein was not a simple and perfunctory act of asking receipts from colleagues. The wordings of the R/A e-mail convey a well-calculated methodology. The "rules" constitute a mechanism by which AMC will be misled to reimburse items of expense that did not actually come out of Ponce's pocket. Moreover, the solicitation was accompanied by an offer of a 5% cash rebate on the value of the receipts. The scheme envisioned in the R/A e-mail is already alarming by itself, but the fact that such was the brainwork of a director like Ponce all the more makes it disconcerting, as the situation would involve profiteering perpetrated by a person entrusted with the management of a department in the company.

In the case of *The Coca-Cola Export Corporation v. Gacayan*,[33] it was ruled that willful submission by a senior financial accountant of tampered or altered receipts to support claims for meal reimbursement was an act that justified dismissal from employment, as submission of fraudulent items of expense adversely reflected on the employee's integrity and honesty and is ample basis for petitioner company to lose its trust and confidence. The foregoing pronouncement is applicable to

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[32] *MGG Marine Services, Inc. v. NLRC*, 328 Phil. 1046, 1067 (1996).

[33] *The Coca-Cola Export Corporation v. Clarita P. Gacayan*, 667 Phil. 594 (2011).

Ponce's case, considering that the receipts he sought to utilize belonged to other persons, with AMC indicated as the purchaser thereon. Verily, it does not take much to appreciate that this is an act of alteration or tampering of receipts.

Also, whether Ponce was actually able to gather and submit receipts to AMC for reimbursement is immaterial. The sending of the R/A e-mail already discloses a dishonest motive unbecoming of a director for engineering services, and the existence of that e-mail in the records is sufficient basis to justify Ponce's dismissal on the ground of loss of trust and confidence. Ponce ought to be reminded of his own words. In the R/A e-mail, he stated:

x x x x x x x x x

The Official Receipts must specifically indicate "Alaska Milk Corporation" or Alaska MC (AMC or "Customer" is not acceptable).[34]

The LA committed an error of judgment when it faulted AMC for not presenting official receipts belonging to other individuals. It is sufficient that there was an instruction to indicate "Alaska Milk Corporation" or "Alaska MC" as the purchaser in the receipts.[35] It is unreasonable to expect that AMC will be able to sort out receipts that do not reflect Ponce's personal reimbursements, considering that there is no way to accurately determine ownership of the receipts submitted if AMC had been named as purchaser thereon. Indeed, the sending of the R/A e-mail soliciting receipts was the only act that AMC had to prove.

Finally, the CA erred in ruling that dismissal from employment was too harsh a penalty for Ponce. It considered that Ponce had no previous record in his almost two (2) years of service. Likewise, it ratiocinated that AMC and Uytengsu, Sr.'s claim of loss of confidence in Ponce's person crumbles in view of the latter's promotion on May 1, 2009. The CA's analysis, however, was premised on a misapprehension of facts.

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[34] *Rollo* (G.R. No. 228412, Vol. II), pp. 669-670.

[35] *Id*.

It is undisputed that the R/A e-mail came to the knowledge of Uytengsu, Sr. only in February 2010.[36] Thus, to say that Ponce's promotion on May 1, 2009 negated the existence of loss of trust and confidence is *nonsequitur*, because the act which constituted the basis for dismissal from employment was discovered only in February 2010. From the date of promotion up to the date of discovery, AMC was unaware of the existence of the R/A e-mail. In the same vein, the lack of previous record for two (2) years of service cannot serve as justification to lessen the severity of the penalty. There is really no premium for a clean record of almost two (2) years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.

All told, there is sufficient basis to dismiss Ponce on the ground of loss of trust and confidence. Consequently, the denial of the petition in G.R. No. 228439 and its accompanying prayer for monetary awards follows.

WHEREFORE, the petition in G.R. No. 228412 is **GRANTED**. The May 4, 2016 Decision and the November 7, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 132932 are **VACATED** and **SET ASIDE**. The July 29, 2013 Decision of the National Labor Relations Commission is **REINSTATED** in full. No pronouncement as to costs.

SO ORDERED.

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

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[36] *Rollo* (G.R. No. 228412, Vol. I), p. 511.

THIRD DIVISION

[G.R. No. 230481. July 26, 2017]

HOEGH FLEET SERVICES PHILS., INC., and/or HOEGH FLEET SERVICES AS, *petitioners, vs.* **BERNARDO M. TURALLO,** *respondent.*

[G.R. No. 230500. July 26, 2017]

BERNARDO M. TURALLO, *petitioner, vs.* **HOEGH FLEET SERVICES PHILS., INC., and/or HOEGH FLEET SERVICES AS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY COMPENSATION; SEAFARER IS ENTITLED TO A TOTAL AND PERMANENT DISABILITY COMPENSATION WHEN THE COMPANY-DESIGNATED PHYSICIAN FAILED TO ISSUE A FINAL AND DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR DISABILITY WITHIN THE PRESCRIBED PERIODS.— It cannot be any clearer that the company-designated physician's failure to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods would hold the seafarer's disability total and permanent. The Court does not wish to disturb the factual findings of the Panel and the CA that indeed the company-designated physician failed to issue a final assessment of Turallo's disability grading as this Court is not a trier of facts. Hence, under the contemplation of the law abovementioned, Turallo is considered as totally and permanently disabled. The Panel, as affirmed by the CA, is correct in concluding that the Grade 8 disability grading given, as reflected in the 23 December 2013 correspondence, cannot be considered as a final assessment as the said letter expressly states that it was merely an "interim" assessment. In *Fil-Star Maritime Corporation v. Rosete* and *Tamin v. Magsaysay Maritime Corporation*, We concluded that the company-designated doctor's certification issued within the prescribed periods must be a final and definite assessment of

the seafarer's fitness to work or disability, not merely interim, as in this case. Thus, the award of US$90,000, as the maximum disability compensation stipulated in their Collective Bargaining Agreement (CBA) is warranted.

2. ID.; LABOR CODE; WHILE THE LAW PROVIDES THAT AN ATTORNEY'S FEES EQUIVALENT TO TEN PERCENT (10%) OF THE AMOUNT OF WAGES RECOVERED MAY BE ASSESSED, THE COURT IS NOT TIED TO AWARD SUCH AMOUNT TO THE WINNING PARTY; THE COURT DEEMS IT REASONABLE TO GRANT FIVE PERCENT (5%) OF THE TOTAL MONETARY AWARD AS ATTORNEY'S FEES.— The Court agrees with the CA that attorney's fees should be reduced, not to US$1,000.00, however, but to five percent (5%) of the total monetary award. Article 111 of the Labor Code indeed provides that the culpable party may be assessed attorney's fees equivalent to 10 percent of the amount of wages recovered. It also provides that it shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed 10 percent of the amount of wages recovered. Section 8, Rule VIII, Book III of the Implementing Rules of the Labor Code sustains the same and states that attorney's fees shall not exceed 10 percent of the amount awarded. A closer reading of these provisions, however, would lead us to the conclusion that the 10 percent only serves as the maximum of the award that may be granted. Relevantly, We have ruled in the case of *Taganas v. National Labor Relations Commission* that *Article 111 does not even prevent the NLRC from fixing an amount lower than the ten percent ceiling prescribed by the article when the circumstances warrant it*. With that, the Court is not tied to award 10 percent attorney's fees to the winning party, as what Turallo wishes to imply. Despite this, We deem it more reasonable to grant five percent (5%) of the total monetary award as attorney's fees to Turallo, instead of the US$1,000.00 awarded by the CA.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for Hoegh Fleet Services Phils., Inc.

Romulo P. Valmores for Bernardo M. Turallo.

RESOLUTION

VELASCO, JR., *J.*:

These are consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court, which seek to reverse and set aside the Decision[1] dated November 8, 2016 of the Court of Appeals (CA) and its Resolution[2] dated March 8, 2017 in CA-G.R. SP No. 142979. There, Hoegh Fleet Services Phils., Inc. and/or Hoegh Fleet Services AS (hereinafter referred to as Hoegh Fleet) was ordered to pay Turallo US$90,000.00, US$3,084.54 and US$1,000.00 as disability compensation, sickness allowance and attorney's fees, respectively.[3]

The facts, as found by the CA, are as follows:

> On 9 November 2012, petitioners hired Turallo as a Messman on board vessel "Hoegh Tokyo" for nine (9) months. The employment contract was signed on 27 December 2012, which was also covered by a Collective Bargaining Agreement between the Associated Marine Officers' and Seaman's Union of the Philippines and Hoegh Fleet Services AS, represented by Hoegh Fleet Services Phils., Inc.
>
> Turallo was found "fit for sea duty" in the Pre-Employment Medical Examination (PEME).
>
> On 2 January 2013, Turallo boarded the vessel.
>
> Sometime in September 2013 while on board the vessel, Turallo felt pain on the upper back of his body and chest pain, which was reported to his superiors on 23 September 2013, as evidenced by the "Incident/Accidents Personnel" signed by Turallo's department head and the master of the vessel. On 24 September 2013, Turallo was referred to a doctor by the ship's captain. Said referral also mentioned that Turallo was discharged from the ship on 23 September 2013.

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[1] *Rollo* (G.R. No. 230481), pp. 24-33. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Noel G. Tijam and Eduardo B. Peralta, Jr.

[2] *Id.* at 35-36.

[3] *Id.* at 33.

Upon arrival in Manila, Turallo was referred to the company-designated physician, who in turn referred him to an orthopedic surgeon and cardiologist. He underwent medical and laboratory tests and was advised to return on 27 September 2013 for re-evaluation.

On 27 September 2013, Turallo underwent MRI of the cervical spine and left shoulder and EMG-NCV on 30 September 2013.

On 4 October 2013, after the said tests, the company-designated physician diagnosed Turallo with "Acromioclavicular Joint Arthritis; Bicep Tear and Cuff Tear, Left Shoulder; Cervical Spondylosis Secondary to C4-C5, C5-C6; Disc Protrusion; Rule Out Ischemic Heart Disease" and recommended that he undergo the following procedures: "Dobutamine Stress Echocardiogram Arthroscopic Surgery, Acromioclavicular Joint Debridgment, Subacrominal Decompression Cuff Repair using Double Row 3-4 anchors, Biceps Tenodesis using 1-2 anchors".

In a "private and confidential" correspondence dated 23 December 2013 to Capt. Desabille, head of the crew operations, the company-designated physician reported that Turallo had undergone a C4-C5, C5-C6 Discectomy Fusion with PEEK Prevail on 19 December 2013, and that the specialist opined that the estimated length of treatment after surgery is three (3) months of rehabilitation for strengthening and mobilization exercise. The letter further stated that based on Turallo's condition at that time, if the latter is entitled to disability, the closest interim assessments are Grade 8 (shoulder)- ankylosis of one shoulder and Grade 10 (neck)"- moderate stiffness or 2/3 loss of motion in neck.

In another correspondence of same date addressed to Capt. Desabille, the company-designated physician noted Turallo's condition and stated the treatment and processes that the latter has undergone and further noted that Turallo was in stable condition, he was advised to continue physical therapy on out-patient basis and was prescribed seven (7) different take home medications.

On 10 January 2014, the company-designated physician certified that Turallo was undergoing medical/surgical treatment from 25 September 2013 up to the said date.

Despite Turallo's continuous rehabilitation treatment, pain in his left shoulder persisted, hence, he followed up his pending surgery therefor several times to no avail. This prompted Turallo to seek a second opinion.

On 13 May 2014, Turallo consulted with Dr. Manuel Fidel Magtira, a government physician of the Vizcarra Diagnostic Center who, after x-ray of his left wrist and shoulder joints, found him to be "partially and permanently disabled with separate impediments for the different affected parts of (his) body of Grade 8, Grade 10 and Grade 11, based on the POEA contract" but declared him as "permanently unfit in any capacity for further sea duties".

On 23 May and 2 June 2014, grievance proceedings were held between the parties at the AMOSUP, where the petitioners offered the amount of Thirty Thousand Two Hundred Thirty One US Dollars (US$30,231.00) corresponding to a Grade 8 disability compensation based on the maximum amount of Ninety Thousand US Dollars (US$90,000.00). Turallo, however proposed the settlement amount of Sixty Thousand US Dollars (US$60,000.00). The parties failed to reach an agreement.

Turallo then filed a Notice to Arbitrate with the National Conciliation and Mediation Board. At this point, petitioners increased their offer from Thirty Thousand Two Hundred Thirty One US Dollars (US$30,231.00) to Fifty Thousand US Dollars (US$50,000.00) plus allowances for further medical treatments and expenses. Turallo, however still refused to accept such amount.

Despite efforts to arrive at an agreement, the parties failed to settle their differences, hence, they were directed to submit their pleadings and evidence for the resolution of the issues before the panel of arbitrators.

On 27 May 2015, the Panel rendered its assailed Decision, disposing, thus:

> "WHEREFORE, judgment is hereby rendered ordering [petitioners], jointly and severally, to pay complainant the following amounts:
>
> 1. Disability compensation in the amount of US$90,000.00, to be paid in the equivalent peso amount at the rate prevailing at the time of payment.
>
> 2. Sickness Allowance in the amount of US$3,084.54 to be paid in its peso equivalent as in number 1; and
>
> 3. Attorney's fees equivalent to ten percent (10%) of the total monetary award.

Finally, legal interests shall be imposed on the monetary awards herein granted at the rate of 6% per annum from finality of this judgment until fully paid.

SO ORDERED."

In its 16 September 2015 Resolution, the Panel denied petitioners' motion for reconsideration, thus:

"WHEREFORE, the Decision and Award dated 27 May 2015 stays.

SO ORDERED."[4]

The Ruling of the CA

In assailing the Panel of Arbitrator's decision, Hoegh Fleet argued that the Panel erred in ruling that Turallo is entitled to total and permanent disability benefits, finding that he was not issued a final disability grade. It averred that the final assessment of Grade 8 disability was given by the company-designated physician but was not attached to their Position Paper before the Panel, hence, it was not considered. It also questioned the award of attorney's fees for being unwarranted as there was no showing of an unjustified act or evident bad faith on its part for denying Turallo's claim.

The CA found no cogent reason to reverse the findings of the Panel. It explained that the employment of seafarers and its incidents, including claims for death benefits, are governed by the contracts they sign every time they are hired or rehired. Also, while the seafarers and their employees are governed by their mutual agreements, the Philippine Overseas Employment Agency (POEA) rules and regulations require the POEA-Standard Employment Contract (SEC), which contains the standard terms and conditions of the seafarer's employment in ocean-going vessels, be integrated in every seafarer's contract. Entitlement, thus, to disability benefits by seamen is a matter governed not only by medical findings but by law and contract.

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[4] *Id.* at 24-27.

In saying that the Panel correctly considered Turallo as totally and permanently disabled, it referred to Section 32 of the POEA-SEC which states that a seafarer shall be deemed totally and permanently disabled if the company-designated physician fails to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 to 240 days. The CA was not persuaded with Hoegh Fleet's allegation that its company-designated physician actually issued a final assessment, invoking the document signed by its orthopedic and spinal surgery specialist dated 29 January 2014 as Turallo is still undergoing surgery during this period.

Even assuming that the company-designated physician's disability rating was actually given and considered definitive, the CA ruled that Turallo would still have a cause of action for total and permanent disability compensation as he remained incapacitated to perform his usual sea duties after the lapse of 120 or 240 days, such being the period for the company-designated physician to issue a declaration of his fitness to engage in sea duty.

Finally, with regard to the award of attorney's fees, while the CA did not dispute Turallo's entitlement to the same, it ruled that reducing the amount from ten percent (10%) of the total monetary award to just One Thousand US Dollars (US$1,000.00) would be reasonable.The dispositive portion of the assailed Decision reads:

> WHEREFORE, premises considered, the assailed Decision dated 27 May 2015 and Resolution dated 16 September 2015 of the Panel of Voluntary Arbitrators composed of AVA Orlalyn Suarez-Fetesio, AVA Generoso Mamaril and AVA Jaime Montealegre in Case No. AC-949-RCMB-NCR-MVA-075-06-08-2014 are hereby AFFIRMED with MODIFICATION only as to the award of attorney's fees, herein reduced to One Thousand Dollars (US$1,000.00).
>
> SO ORDERED.[5]

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[5] *Id.* at 33.

The Motion for Reconsideration was denied in a Resolution[6] dated March 8, 2017. From the CA ruling, Hoegh Fleet and Turallo filed separate petitions for review on *certiorari*, which were consolidated by the Court through its April 24, 2016 Resolution.[7]

The Issue

In G.R. No. 230481, Hoegh Fleet questioned Turallo's claim for total and permanent disability benefits. It raised that its company-designated physician issued a final disability assessment of Grade 8 well within the 240-day period. Thus, Turallo's compensation should only be confined to the amount corresponding to the Grade 8 assessment, a partial disability.[8]

Meanwhile in G.R. No. 230500, Turallo questioned the award of US$1,000.00 attorney's fees for being wanting in any factual and legal justification. He furthered that the judgment of the Panel of Voluntary Arbitrators awarding him 10% of the total monetary award should be reinstated as it is in accord with prevailing jurisprudence.[9]

The Ruling of the Court

The petitions are unmeritorious.

The POEA-SEC governs. Under Section 32 thereof, Turallo is entitled to a total and permanent disability compensation

In *Kestrel Shipping Co., Inc. v. Munar*,[10] the Court reads Section 32 of POEA-SEC in harmony with the Labor Code and explained, viz:

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[6] *Rollo* (G.R. No. 230500), p. 176.

[7] *Rollo* (G.R. No. 230481), pp. 75-76.

[8] *Id*. at 14.

[9] *Rollo* (G.R. No. 230500), p. 23.

[10] G.R. No. 198501, January 30, 2013, 689 SCRA 795.

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 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.[11] (emphasis ours)

It cannot be any clearer that the company-designated physician's failure to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods would hold the seafarer's disability total and permanent.

The Court does not wish to disturb the factual findings of the Panel and the CA that indeed the company-designated physician failed to issue a final assessment of Turallo's disability grading as this Court is not a trier of facts.[12] Hence, under the contemplation of the law abovementioned, Turallo is considered as totally and permanently disabled. The Panel, as affirmed by

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[11] *Id.* at 809-810.

[12] *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 458.

the CA, is correct in concluding that the Grade 8 disability grading given, as reflected in the 23 December 2013 correspondence, cannot be considered as a final assessment as the said letter expressly states that it was merely an "interim" assessment. In *Fil-Star Maritime Corporation v. Rosete*[13] and *Tamin v. Magsaysay Maritime Corporation*,[14] We concluded that the company-designated doctor's certification issued within the prescribed periods must be a final and definite assessment of the seafarer's fitness to work or disability, not merely interim, as in this case. Thus, the award of US$90,000, as the maximum disability compensation stipulated in their Collective Bargaining Agreement (CBA)[15] is warranted.

Article111 of the Labor Code fixes the limit on the amount of attorney's fees a party may recover

The Court agrees with the CA that attorney's fees should be reduced, not to US$1,000.00, however, but to five percent (5%) of the total monetary award.

Article 111 of the Labor Code indeed provides that the culpable party may be assessed attorney's fees equivalent to 10 percent of the amount of wages recovered. It also provides that it shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed 10 percent of the amount of wages recovered. Section 8, Rule VIII, Book III of the Implementing Rules of the Labor Code sustains the same and states that attorney's fees shall not exceed 10 percent of the amount awarded.[16] A closer reading of these provisions, however, would lead us to the conclusion that the 10 percent only serves as the

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[13] G.R. No. 192686, November 23, 2011, 661 SCRA 247.

[14] G.R. No. 220608, August 31, 2016.

[15] *Rollo* (G.R. No. 230500), p. 59.

[16] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220.

maximum of the award that may be granted.[17] Relevantly, We have ruled in the case of *Taganas v. National Labor Relations Commission*[18] that *Article 111 does not even prevent the NLRC from fixing an amount lower than the ten percent ceiling prescribed by the article when the circumstances warrant it*. With that, the Court is not tied to award 10 percent attorney's fees to the winning party, as what Turallo wishes to imply.

Despite this, We deem it more reasonable to grant five percent (5%) of the total monetary award as attorney's fees to Turallo, instead of the US$1,000.00 awarded by the CA.

In *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*,[19] the Court discussed that there are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code. This is awarded by the court to the successful party to be paid by the losing party as indemnity for damages sustained by the former in prosecuting, through counsel, his cause in court.[20]

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[17] *Traders Royal Bank Employees Union-Independent v. NLRC*, G.R. No. 120592, March 14, 1997, 269 SCRA 733, 751.

[18] G.R. No. 118746, September 7, 1995, 248 SCRA 133, 138.

[19] G.R. No. 153031, December 14, 2006, 511 SCRA 44, 64-65.

[20] *Rosario, Jr. v. De Guzman*, G.R. No. 191247, July 10, 2013, 701 SCRA 78, 85.

Clearly, Turallo incurred legal expenses after he was forced to file an action to recover his disability benefits. Considering that he was constrained to litigate with counsel in all the stages of this proceeding, and keeping in mind the liberal and compassionate spirit of the Labor Code, where the employees' welfare is the paramount consideration,[21] this Court considers five percent (5%) of the total monetary award as more appropriate and commensurate under the circumstances of this petition.

WHEREFORE, the instant petitions are hereby **DENIED**. The November 8, 2016 Decision and March 8, 2017 Resolution issued by the Court of Appeals are hereby **AFFIRMED WITH MODIFICATION** that the attorney's fees to be awarded to Turallo is increased to five (5) percent of the total monetary award to him.

SO ORDERED.

Peralta,[*] *Bersamin, Jardeleza,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[A.C. No. 11663. July 31, 2017]

NANETTE B. SISON, represented by DELIA B. SARABIA, *complainant, vs.* **ATTY. SHERDALE M. VALDEZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; FAILURE TO DULY UPDATE THE CLIENT ON THE DEVELOPMENT OF

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[21] Article 4, LABOR CODE OF THE PHILIPPINES.

[*] Additional Member per raffle dated April 12, 2017.

THE CASE CONSTITUTES A VIOLATION OF RULE 18.04, CANON 18 OF THE CODE OF PROFESSIONAL RESPONSIBILITY (CPR).— While it was acknowledged that respondent did render some legal services to complainant albeit only in the initiatory stage, it was also established that respondent failed to duly update his client on the developments of the case. As correctly pointed out by the IBP, respondent's lapses constitute a violation of Rule 18.04, Canon 18 of the CPR[.] x x x Once a lawyer takes up the cause of his client, a lawyer is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and devotion. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. In this relation, a lawyer has the duty to apprise his client of the status and developments of the case and all other relevant information.

2. ID.; ID.; FAILURE TO ACCOUNT FOR OR RETURN THE MONEY RECEIVED FROM THE CLIENT AMOUNTS TO GROSS VIOLATION OF RULES 16.01 AND 16.03, CANON 16 OF THE CPR.— The highly fiduciary nature of an attorney-client relationship imposes on a lawyer the duty to account for the money or property collected or received for or from his client. Money entrusted to a lawyer for a specific purpose, such as for the filing and processing of a case, if not utilized, must be returned immediately upon demand. His failure to return gives rise to a presumption that he has appropriated it for his own use, and the conversion of funds entrusted to him constitutes a gross violation of his professional obligation under Canon 16 of the CPR. In this case, respondent failed to account for the money received from complainant when he only acknowledged receipt of ₱165,000.00 for litigation expenses despite admittedly receiving ₱215,000.00. When complainant terminated his legal services, the fact that no case has been filed in court should have prompted him to immediately return to complainant the amounts intended as filing and bond fees, as these were obviously unutilized.

3. ID.; ID.; ID.; PROPER PENALTY IS SUSPENSION FROM THE PRACTICE OF LAW FOR THREE MONTHS.— Anent the penalty, the Court has the plenary power to discipline erring lawyers, and thus, in the exercise of its judicial discretion, may impose a penalty less than the IBP's recommendation if such penalty would achieve the desired end of reforming the errant

lawyer. Considering the surrounding circumstances of this case, such as the short duration of the engagement, respondent's return of the money, his expression of humility and remorse, and the fact that this is his first administrative case, the Court finds the penalty of suspension from the practice of law for a period of three (3) months sufficient and commensurate to respondent's violations.

APPEARANCES OF COUNSEL

Fatima Lipp D. Panontongan for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a Complaint for Permanent Disbarment[1] (disbarment complaint) dated September 13, 2013 filed by complainant Nanette B. Sison (complainant), represented by her mother, Delia B. Sarabia (Sarabia),[2] against respondent Atty. Sherdale M. Valdez (respondent) for violating his professional duties under the Code of Professional Responsibility (CPR).

The Facts

Sometime in September 2012, complainant, an overseas Filipino worker in Australia, engaged respondent's legal services to file an action against Engr. Eddie S. Pua of E.S. Pua Construction (old contractor) and the project manager, Engr. Dario Antonio (project manager), for failing to construct complainant's house in Nuvali, Canlubang, Calamba, Laguna in due time.[3] Although no written agreement was executed between the parties specifying the scope of legal services, respondent received the total amount of ₱215,000.00 from

[1] *Rollo,* pp. 2-18.

[2] See Special Power of Attorney; *id*. at 75-77.

[3] *Id*. at 3.

complainant, through Sarabia, on three (3) separate dates.[4] Respondent acknowledged receipt of the first two (2) installments in a handwritten note, stating that the amount of ₱165,000.00 was for litigation expenses, *i.e.,* attorney's fees, filing fees, bond, and other expenses.[5] The last payment was deposited online to the bank account of respondent's wife, Ma. Analyn M. Valdez.[6]

On January 8, 2013, complainant terminated respondent's legal services *via* e-mail and text messages[7] with a demand to return the amount given, which was not heeded notwithstanding several demands. Hence, complainant, through Sarabia, filed the instant disbarment complaint before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), alleging that despite receipt of her payments: (*a*) respondent failed to render his legal services and update her regarding the status of the case; (*b*) commingled her money with that of respondent's wife; (*c*) misappropriated her money by failing to issue a receipt for the last installment of the payment received; and (*d*) fabricated documents to justify retention of her money.[8]

For his part,[9] respondent claimed that he reported the status of the case to complainant through phone and e-mail.[10] After studying the case, he informed complainant of his evaluation via e-mail.[11] On November 1, 2012, respondent went to his

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[4] Respondent received: (1) ₱50,000.00 on September 28, 2012; (2) ₱115,000.00 on October 4, 2012; and (3) ₱50,000.00 on October 11, 2012. See *id*. at 3-4 and 91.

[5] *Id*. at 78.

[6] See Banco De Oro Cash Deposit Slip under the name of "Anily M. Valdez"; *id*. at 79. See also *id*. at 4.

[7] See *id*. at 60.

[8] See *id*. at 111.

[9] See Answer with Affirmative Defenses dated October 22, 2013; *id*. at 21-30.

[10] See *id*. at 25.

[11] In an e-mail dated October 11, 2012, respondent sent an e-mail to complainant stating that he already studied the case and is ready to file.

hometown in Ilagan, Isabela with one "Atty. Joselyn V. Valeros" to personally serve the demand letter to the old contractor. However, when they went to the house of the old contractor on November 4, 2012, the person present thereat refused to receive the letter.[12] Respondent supposedly spent ₱15,000.00 for his travel to Ilagan, Isabela.[13]

Respondent further averred that he was supposed to personally meet complainant for the first time upon the latter's arrival in the Philippines in the second week of November 2012. During the meeting, he intended to personally report the status of the case, have the pleadings signed, and explain how her payments would be applied. However, no phone call or e-mail was made by complainant to confirm the meeting.[14] Respondent later learned from complainant's new contractor that she did not want to meet with him for fear that he would only ask for more money.[15]

On the same day his legal services were terminated, respondent sent the demand letters to the old contractor and the project manager *via* courier service,[16] allegedly before he found out about the termination.[17] In a letter[18] dated January 10, 2013, respondent, through complainant's sister, Elisea Sison, asked complainant to reconsider the termination and outlined the services he already rendered, as follows: (*a*) he sent a demand letter dated November 4, 2012 to the old contractor; (*b*) he

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(*Id*. at 31.) Complainant replied thanking him for the update. (*Id*. at 32.) On December 15, 2012, complainant sent an e-mail asking for an update and for a copy of the complaint filed. (*Id*. at 33).

[12] *Id*. at 25.

[13] *Id*. at 113.

[14] *Id*. at 25-26 and 112-113.

[15] *Id*. at 26 and 113.

[16] See Receipts of the Courier Transactions dated January 8, 2013; *id*. at 89.

[17] *Id*. at 26.

[18] *Id*. at 80-82.

drafted a complaint for breach of contract and damages with prayer for preliminary attachment; (*c*) he sent a final demand letter dated January 8, 2013 to the old contractor; and (*d*) while waiting for a response, he proceeded to investigate the old contractor's real and personal properties to ascertain what can be the subject of preliminary attachment.[19] Respondent admitted that he opted not to immediately mail the demand letter to the old contractor so that the latter could not dispose of or hide his properties.[20] Alternatively, respondent offered to return the amount of ₱150,000.00 to complainant, explaining that he already studied the case, prepared the complaint, and incurred expenses.[21]However, complainant refused and proceeded to file the present case.

Instead of filing their respective position papers before the IBP-CBD, the parties filed a Joint Manifestation[22] on February 20, 2014, agreeing to settle the matter amicably and acknowledging that the disbarment complaint was filed because of "misapprehension of facts due to pure error in accounting and honest mistakes by respondent."[23] Complainant's counsel acknowledged receipt of ₱200,000.00 representing partial payment of respondent's obligation, while the balance of ₱118,352.00 will be paid subsequently.[24] In turn, complainant undertook not to pursue nor testify against respondent in this administrative case, as well as in the *Estafa* case.[25]

The IBP's Report and Recommendation

In the Report and Recommendation[26] dated June 7, 2014, the IBP-CBD Investigating Commissioner (IC) recommended

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[19] See *id*. at 80-81 and 112.

[20] *Id*. at 25 and 112.

[21] See *id*. at 82 and 113.

[22] Dated February 14, 2014. *Id*. at 101-102.

[23] *Id*. at 101.

[24] *Id*.

[25] *Id*.

[26] *Id*. at 111-120. Submitted by Commissioner Cecilio A.C. Villanueva.

that respondent be reprimanded for violating his obligations under the CPR with a stern warning never to commit the same mistakes again.[27]

At the outset, the IC disapproved the Joint Manifestation, noting that a compromise agreement would not operate to exonerate a lawyer from a disciplinary case. As to respondent's liability, the IC observed that he committed several violations of the CPR during the period of his engagement with complainant from September 2012 up to January 8, 2013. *First*, he failed to inform his client about the status of the case.[28] The IC acknowledged that respondent rendered some legal services to complainant, but only came up with the list of services after his termination, thus, supporting the conclusion that he indeed failed to update his client about the developments of the case.[29] *Second*, he asked for payment of fees from complainant even before he prepared the draft complaint. The IC explained that a prudent lawyer would first wait for the computation of court fees before seeking payment of filing and bond fees.[30] *Third,* respondent failed to issue the proper receipt for the full amount he received from complainant.[31] *Fourth,* respondent commingled the funds of his client with that of his wife when he asked that the ₱50,000.00 be deposited to his wife's bank account.[32]

As to the compensation for legal services, the IC opined that ₱30,000.00 was reasonable based on *quantum meruit*, in view of the limited services respondent rendered during the initiatory stage of the case - *i.e.,* review of the case and drafting of demand letters, complaint, and special power of attorney.[33] However, citing *Nebreja v. Reonal*, [34] the IC declined to recommend

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[27] *Id*. at 120.

[28] *Id*. at 115.

[29] *Id*. at 116.

[30] *Id*. at 117.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 119.

[34] See 730 Phil. 55, 63 (2014).

restitution of the amount received by respondent, noting the Court's alleged policy that the collection of money should be made through an independent action.[35] The IC also refused to grant reimbursement to respondent of the amount of ₱15,000.00 he incurred for his trip to Isabela for his failure to render an accounting of his expenses.[36]

Although respondent was found to have violated his duties to his client, herein complainant, the IC considered his active membership in the IBP-Laguna Chapter from 2007 to 2009 and his continuous service as a law professor in Adamson University since 2009 as mitigating factors to reduce his recommended penalty to reprimand.[37]

In a Resolution[38] dated January 31, 2015, the IBP Board of Governors adopted and approved the IC's Report and Recommendation, but modified the penalty to suspension from the practice of law for a period of six (6) months.

Respondent moved for reconsideration,[39] but was denied in a Resolution[40] 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 the acts complained of.

The Court's Ruling

After a judicious review of the records, the Court concurs with the IBP's finding of administrative liability with some modifications.

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[35] *Rollo*, p. 119.

[36] *Id*.

[37] See *id*. at 119-120.

[38] See Notice of Resolution in Resolution No. XXI-2015-102 issued by National Secretary Nasser A. Marohomsalic; *id*. at 110, including dorsal portion.

[39] Dated October 27, 2015. *Id*. at 121-128.

[40] *Id*. at 140.

Records show that in September 2012, complainant engaged respondent's services to file a money claim, and pursuant to such engagement, complainant paid respondent a total of ₱215,000.00. After a little more than three (3) months, complainant terminated respondent's legal services due to the latter's failure to render legal services. While it was acknowledged that respondent did render some legal services to complainant albeit only in the initiatory stage, it was also established that respondent failed to duly update his client on the developments of the case. As correctly pointed out by the IBP, respondent's lapses constitute a violation of Rule 18.04, Canon 18 of the CPR, which reads:

> CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> 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.

Once a lawyer takes up the cause of his client, a lawyer is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and devotion. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.[41] In this relation, a lawyer has the duty to apprise his client of the status and developments of the case and all other relevant information.[42]

In this case, respondent alleged that he waited for complainant's arrival in the Philippines in November 2012 to personally report on his accomplishments, to have the necessary pleadings signed, and to explain how the money given will be applied. However, the meeting did not push through.

Indeed, respondent cannot justify his non-compliance by shifting the blame to complainant for failing to meet with him, especially so that he failed to inform his client of the pleadings she needed to sign.

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[41] See *Egger v. Duran,* A.C. No. 11323, September 14, 2016.

[42] *Penilla v. Alcid,* 717 Phil. 210, 221 (2013).

The Court likewise finds that respondent violated Rules 16.01 and 16.03, Canon 16 of the CPR, which respectively read:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. x x x.

The highly fiduciary nature of an attorney-client relationship imposes on a lawyer the duty to account for the money or property collected or received for or from his client.[43] Money entrusted to a lawyer for a specific purpose, such as for the filing and processing of a case, if not utilized, must be returned immediately upon demand.[44] His failure to return gives rise to a presumption that he has appropriated it for his own use, and the conversion of funds entrusted to him constitutes a gross violation of his professional obligation under Canon 16 of the CPR.[45]

In this case, respondent failed to account for the money received from complainant when he only acknowledged receipt of ₱165,000.00 for litigation expenses despite admittedly receiving ₱215,000.00. When complainant terminated his legal services, the fact that no case has been filed in court should have prompted him to immediately return to complainant the amounts intended as filing and bond fees, as these were obviously unutilized.

In fact, respondent admitted that, based on his belief, he was entitled to only ₱65,000.00 as compensation for his legal

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[43] *Belleza v. Macasa,* 611 Phil. 179, 190 (2009).

[44] *Del Mundo v. Capistrano,* 685 Phil. 687, 693 (2012).

[45] *Id*.

services.[46] As such, he should have returned the excess amount of ₱150,000.00 out of the ₱215,000.00 he received from complainant. Notably, Rule 16.03 of the CPR allows a lawyer to retain the amount necessary to satisfy his lawful fees and disbursements.[47] Hence, respondent's persistent refusal to return the money to complainant despite several demands renders him administratively liable.

Although the IBP correctly found that respondent is entitled to reasonable compensation for the limited services he rendered, the Court notes that respondent appears to have waived his claim for compensation when he agreed to return the amount of ₱200,000.00 in cash and pay an additional ₱118,352.00 in exchange for complainant's desistance in the *Estafa* and disbarment cases filed against him.[48] Thus, the matter of restitution should no longer be an issue. However, it should be stressed that his administrative liability herein should remain, considering the rule that a disbarment case is not subject to any compromise.[49]

Anent the penalty, the Court has the plenary power to discipline erring lawyers,[50] and thus, in the exercise of its judicial discretion, may impose a penalty less than the IBP's recommendation if such penalty would achieve the desired end of reforming the errant lawyer.[51] Considering the surrounding circumstances of

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[46] *Rollo*, p. 166.

[47] "In case of a disagreement (as to the amount of attorney's fees), or when the client disputes the amount claimed by the lawyer for being unconscionable, the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees; instead, it should behoove the lawyer to file, if he still deems it desirable, the necessary action or the proper motion with the proper court to fix the amount of his attorney's fees." (*J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*, 375 Phil .766, 773 [1999]).

[48] See *rollo,* p. 101.

[49] See *Virtusio v. Virtusio,* 694 Phil. 148, 158 (2012).

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

[51] *Id.*

this case, such as the short duration of the engagement, respondent's return of the money, his expression of humility and remorse, and the fact that this is his first administrative case, the Court finds the penalty of suspension from the practice of law for a period of three (3) months sufficient and commensurate to respondent's violations.

WHEREFORE, respondent Atty. Sherdale M. Valdez is found **GUILTY** of violating Rule 18.04, Canon 18, as well as Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of three (3) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in the personal record of respondent as a member of the Philippine Bar; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for circulation to all courts throughout the country.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191657. July 31, 2017]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **DOMINADOR LAURITO, HERMINIA Z. LAURITO, NIEVES A. LAURITO, NECITAS LAURITO VDA. DE DE LEON, ZENAIDA D. LAURITO, CORNELIA LAURITO VDA. DE MANGA, AGRIPINA T. LAURITO, VITALIANA P. LAURITO, represented by: DOMINADOR LAURITO,** *respondents.*

HEIRS OF RUFINA MANARIN, Namely: CONSUELO M. LOYOLA-BARUGA, ROSY M. LOYOLA-GONZALES, BIENVENIDO L. RIVERA, REYNALDO L. RIVERA, ISABELITA A. LOYOLA, LIWAYWAY A. LOYOLA, LOLITA A. LOYOLA, LEANDRO A. LOYOLA, PERLITO L. LOYOLA, GAVINA L. LOYOLA, ZORAIDA L. PURIFICACION, PERLITA L. DIZON, LUCENA R. LOYOLA, ANITA L. REYES, VISITACION L. ZAMORA, CRISTINA L. CARDONA, NOEL P. LOYOLA, ROMEO P. LOYOLA, JR., FERDINAND P. LOYOLA, EDGARDO A. LOYOLA, DIONISA L. BUENA, SALUD L. MAPALAD, CORAZON L. SAMBILLO, VIDAL A. LOYOLA, and MILAGROS A. LOYOLA, represented by their Attorney-in-Fact ZOSIMO A. LOYOLA, *petitioner-intervenors.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; A REMEDY BY WHICH A THIRD PARTY, NOT ORIGINALLY IMPLEADED IN THE PROCEEDINGS, BECOMES A LITIGANT THEREIN TO PROTECT OR PRESERVE A RIGHT OR INTEREST THAT MAY BE AFFECTED BY THOSE PROCEEDINGS.— Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose

– to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.

2. ID.; ID.; ID.; ID.; MAY BE AVAILED OF ONLY UPON COMPLIANCE WITH ITS REQUIREMENTS; CASE AT BAR.— Nevertheless, the remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelled under Section 1 of Rule 19[.] x x x If only to ensure that delay does not result from the granting of a motion to intervene, the Rules further require that intervention may be allowed only before rendition of judgment by the trial court. x x x Intervenors in this case claim to be the heirs of Rufina who, in turn, was alleged to be the registered owner of a property encompassing the subject land. Apart from this naked allegation, intervenors failed to establish the required legal interest over the subject property to the Court's satisfaction. Their status as supposed heirs was merely perfunctorily alleged. Further, the mother title upon which they anchor their claim pertains to another property covered by another title which was not examined and appreciated by the courts below. Furthermore, the petition-in-intervention was filed only in this petition for review on *certiorari*, well after the RTC rendered its judgment. By itself, such inexcusable delay is a sufficient ground to deny the petition-in-intervention. The reason for imposing such restriction is that the court, before it renders judgment, may still allow the presentation of additional evidence.

3. CIVIL LAW; LAND REGISTRATION; WHERE TWO CERTIFICATES OF TITLE ARE ISSUED TO DIFFERENT PERSONS COVERING THE SAME PARCEL OF LAND, THE EARLIER IN DATE MUST PREVAIL.— The rule is that where two certificates of title are issued to different persons covering the same parcel of land in whole or in part, the earlier in date must prevail as between the original parties and, in case of successive registration where more than one certificate is issued over the land, the person holding title under the prior certificate is entitled to the property as against the person who relies on the second certificate. Otherwise stated, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed

to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from, the person who was the holder of the earliest certificate. Registration as it is herein used should be understood in its juridical aspect, that is, the entry made in a book or public registry of deeds.

4. ID.; ID.; ID.; THE RULE CANNOT BE STRETCHED TO MEAN GIVING PREFERENCE TO THE PARTY WHO WAS MERELY THE FIRST TO SUCCESSFULLY RECONSTITUTE HIS TITLE; CONCEPT AND PURPOSE OF RECONSTITUTION OF TITLE, EXPLAINED.— [T]he above rule cannot be stretched to mean giving preference to the party who was merely the first to successfully reconstitute his title. The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. Reconstitution does not pass upon the ownership of the land covered by the lost or destroyed title. The lost or destroyed document referred to is the one that is in the custody of the RD. When reconstitution is ordered, this document is replaced with a new one, the reconstituted title that basically reproduces the original. After the reconstitution, the owner is issued a duplicate copy of the *reconstituted* title. x x x Reconstitution is not and should not be made synonymous to the issuance of title. When reconstituting, a new title is not thereby issued; rather, the title alleged to have been previously issued but is now lost or destroyed, is merely reproduced to reflect the way it was before. Hence, that the Spouses Laurito administratively reconstituted the original of its title only in 1962 does not detract from the fact that their title was registered as early as 1956.

5. ID.; ID.; ID.; TITLES UPON WHICH PETITIONER BASED ITS TITLES BEAR BADGES OF FRAUD.— [T]he derivative titles over Lot F-3-A upon which NHA bases its claim all appear to have been administratively reconstituted on the same date, *i.e.*, February 16, 1960, which was only over a year before the property was conspicuously acquired by NHA. NHA even claims that one of the derivative titles, TCT No. T-3445, in the name of Corpus, was issued to the latter on August 7, 1961 but that

said title was administratively reconstituted on an even earlier date – February 16, 1960. It is quite puzzling how such administrative reconstitution can take place before the actual issuance of the title it seeks to reconstitute. There was likewise no showing whatsoever how NHA's predecessors- in-interest acquired the subject property. Neither was there any sufficient explanation offered by NHA on how it itself acquired the property. In the ordinary course of things, the owner uses deeds or voluntary instruments for purposes of conveying or otherwise dealing with a registered land. These deeds or voluntary instruments shall be registered in order to take effect as a conveyance or bind the land. Otherwise, such deed or voluntary instrument shall operate only as a contract between the parties and will not bind third persons. In a peculiar departure from this prescribed and usual practice, the course of transfers affecting the subject property even up until the same was acquired by NHA are practically indeterminable. Even NHA is at a loss as to how it acquired the property. Instead, what conspicuously appears is that title over the property was swiftly and successively cancelled, and a new one vigorously issued in favor of another person until it reached NHA.

6. ID.; ID.; ID.; ID.; PETITIONER AS THE SOLE GOVERNMENT AGENCY WHOSE MANDATE IS TO DEVELOP AND UNDERTAKE HOUSING PROJECT IS EXPECTED TO EXERCISE MORE CARE AND PRUDENCE THAN PRIVATE INDIVIDUAL IN ITS DEALINGS, EVEN THOSE INVOLVING REGISTERED LANDS; THE COURT CANNOT REGARD PETITIONER AS A BUYER IN GOOD FAITH.— Well-settled is the rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of his vendor or mortgagor. This requirement applies with greater force to NHA whose mandate as the sole government agency engaged in direct shelter production to develop and undertake housing development or settlement projects is so impressed with public interest, and as such, is expected to exercise more care and prudence than a private individual in its dealings, even those involving registered lands. Thus, along this line, We cannot regard NHA as a buyer in good faith entitled to protection under the law. NHA's title

undoubtedly came from a dubious source exhibiting badges of spuriousness and hence, could not have transferred a better right in favor of NHA. Indeed, the spring cannot rise higher than its source.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Musico Law Office for petitioner-intervenors.
Arman D. Laurito for respondents.
Anarna and Castillo Law Offices for respondent Dominador Laurito.

D E C I S I O N

TIJAM, *J.*:

This Petition for Review[1] under Rule 45 seeks to reverse the Decision[2] dated November 26, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 86484 which affirmed the Decision[3] dated May 27, 2004 of the Regional Trial Court (RTC) of Bacoor, Cavite, Branch 19, in Civil Case No. BCV-2001-95, confirming respondents' ownership over a parcel of land located at Carmona, Cavite.

The Facts

Lying at the core of the instant controversy is a parcel of land identified as Lot F-3 of the subdivision plan Psd-12274 situated in Carmona, Cavite with an area of 224,287 square meters. Petitioner National Housing Authority (NHA) and respondents heirs of the Spouses Domingo Laurito and Victorina Manarin (Spouses Laurito) claim conflicting rights of ownership

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[1] *Rollo*, pp. 10-31.

[2] Penned by Associate Justice Pampio A. Abarintos, concurred in by Associate Justices Juan Q. Enriquez, Jr. and Francisco P. Acosta; *id*. at 33-45.

[3] Penned by Judge Novato T. Cajigal; *id*. at 90-95.

over the subject property based on different transfer certificates of title, registered on likewise varying dates.

Prompted by their discovery that title to the property had been subdivided and later on transferred to NHA, with the latter subdividing and offering the same to the public, respondents sent demand letters dated April 29, 1991,[4] September 9, 1992[5] and November 30, 1992[6] for NHA to recall the subdivision scheme plan it submitted to the Register of Deeds (RD) for registration. When said demands went unheeded, respondents filed the complaint *a quo*[7] for quieting of title, annulment of title and recovery of possession against NHA.

In their Complaint, they alleged that their parents Spouses Laurito, were the registered owners of the subject property and covered by Transfer Certificate of Title (TCT) No. T-9943 registered with the RD for the Province of Cavite on September 7, 1956. The title of the Spouses Laurito was a transfer from TCT No. T-8237.[8]

The Spouses Laurito mortgaged the subject property on September 27, 1956 to the Philippine National Bank (PNB) but was able to redeem the same and thereby secured the release of the mortgage on January 10, 1977.[9] When the RD was gutted by fire in 1959, the Spouses Laurito caused the administrative reconstitution of their title and a replacement title, TCT No. (T-9943) RT-8747 was issued on March 23, 1962. The source of reconstitution was the owner's duplicate certificate of title.[10]

Upon the death of the Spouses Laurito, respondents, as surviving children, continued paying real estate taxes on the property.[11]

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[4] *Id*. at 91.

[5] *Id*. at 62-65.

[6] *Id*. at 75-76.

[7] *Id*. at 50-54.

[8] *Id*. at 57-58.

[9] *Id*. at 67.

[10] *Id*. at 66.

[11] *Id*. at 51.

As aforesaid, during the lifetime of their mother, respondents discovered that the subject property was subdivided into two lots, *i.e.,* Lot F-3-A measuring 136,105 sq m and F-3-B measuring 88,182 sq m, and that NHA was able to register the subdivided lots in its name under TCT Nos. T-3717[12] and T-3741,[13] respectively. Respondents also discovered that NHA had caused the preparation of a subdivision plan PCS-04-00324 and after subdividing the property into several lots, transferred the same to third parties.[14]

NHA initially moved to dismiss the complaint but its motion[15] was denied by the RTC, in its Order[16] dated November 26, 2011. When required to answer, NHA averred that TCT No. T-3717 covering an area of 136,105 sq m and registered under its previous name, People's Homesite and Housing Corporation, was derived from TCT No. 3445[17] registered in the name of Carolina Corpus (Corpus). Corpus, in turn, acquired the property from Petronila Cabreira (Cabreira) under TCT No. 984.[18] Cabreira, in turn, acquired the property from Vicente Santos (Santos) under TCT No. 943.[19] On the other hand, the parcel of land covered by TCT No. T-3741 with an area of 88,182 sq m and likewise registered in the name of People's Homesite and Housing Corporation, was allegedly derived from Spouses Lope Gener under TCT No. 1859.[20] NHA argued that it is not required to look beyond these derivative titles, having acquired the two parcels of land from its registered owners.[21]

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[12] *Id*. at 60.

[13] *Id*. at 61.

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

[15] *Id*. at 77-84.

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

[17] *Id*. at 70.

[18] *Id*. at 69.

[19] *Id*. at 68.

[20] *Id*. at 72.

[21] *Id*. at 87-89.

Upon examination of the documents presented before it, the RTC discovered that the title of the Spouses Laurito was issued by the RD of Cavite on September 7, 1956 and that TCT No. (T-9943) RT-8747 has not been cancelled and was certified to be existing and intact in the registry. The RTC also found that the derivative titles of TCT No. T-8237 upon which NHA based its titles were registered on the following dates: the title of Corpus covering Lot F-3-A was registered on August 7, 1961, the title of Cabreira was registered on February 16, 1961[22] and the title of Santos was registered on February 5, 1961;[23] and the title of Spouses Lope Gener covering Lot F-3-B was registered on August 22, 1960.[24]

The RTC further observed that the certificates of title from which NHA claims to have derived its title over the subject property, have been administratively reconstituted in 1960 and 1961, or at a time when the owner's duplicate certificate of title in the names of the Spouses Laurito was in the possession of PNB as mortgagee. The RTC held that while the same property was covered by different titles, preference should be given to the title of the Spouses Laurito as it was registered earlier in time, or on September 7, 1956, compared to the earliest derivative titles of NHA which were issued on February 5, 1961[25] for Lot F-3-A and on August 22, 1960 for Lot F-3-B. Finally, the RTC noted that while NHA claims to be a buyer in good faith, it nonetheless failed to demonstrate how it acquired the subject property.[26]

In disposal, the RTC held:

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[22] An examination of TCT No. T-984 reveals that the same was issued to Cabreira on February 16, 1960 and not February 16, 1961. *Id*. at 69.

[23] An examination of TCT No. T-943 reveals that the same was issued to Santos on February 5, 1960 and not February 5, 1961. *Id*. at 68.

[24] *Id*. at 92-93.

[25] Should be February 5, 1960. *See* note 23.

[26] *Id*. at 93-94.

WHEREFORE, premises considered, plaintiffs having proven by preponderance of evidence it's [sic] allegations in the Complaint, judgment is hereby rendered in favor of the plaintiffs and against the defendants. This Court hereby affirms and confirms the ownership of the plaintiffs over the parcel of land located at Carmona, Cavite, covered by and embraced in Transfer Certificate of Title No. (T-9943) RT-8747 registered in the name of Domingo Laurito married to Victorina Manarin. Consequently Transfer Certificate of Title Nos. T-3717 and T-3741 in the name of defendant National Housing Authority (formerly People's Homesite and Housing Corporation) are hereby declared null and void together with the derivative and subsequent titles issued therefrom. The Office of the Register of Deeds for the Province of Cavite is ordered to cancel T.C.T. Nos. T-3717 and T-3741 as well as all the subsequent titles emanating from them.

Defendant National Housing Authority is hereby ordered to vacate and remove all the structures and improvements constructed and existing on the parcel of land covered by TCT No. (T-9943) RT-8747 registered in the name of Domingo Laurito married to Victorina Manarin and peacefully surrender and turn-over possession and occupancy of the said parcel of land to the plaintiffs.

However, in the event that it is no longer feasible for defendant NHA to deliver and surrender possession of the property to the plaintiffs, it is hereby ordered in the alternative to pay plaintiffs the value of the property it occupied which is hereto assessed at One Thousand Two Hundred Pesos (Php1,200.00) per square meter with interest thereon at the legal rate from the time demand was first made on April 29, 1991 until the same is fully paid.

The claim for damages by the plaintiffs and the counter-claims of the defendants are hereby DENIED for lack of basis.

SO ORDERED.[27]

From this adverse decision, NHA appealed.

NHA argued that the RTC failed to take into account that the title of the Spouses Laurito, *i.e.,* TCT No. T-9943 (RT-8747), was reconstituted only on March 23, 1962 and as such, was reconstituted later than NHA's derivative titles which were

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

registered on February 5, 1960 (for Lot F-3-A) and on August 22, 1960 (for Lot F-3-B). NHA also emphasized that the Spouses Lope Gener were able to mortgage Lot F-3-B to Union Bank of the Philippines on February 27, 1961 which mortgage was cancelled on September 27, 1961 which shows that the property indeed exists and that it was not burdened by any liens or encumbrances.[28] Penultimately, NHA argued that it is a buyer in good faith since it acquired a property that is duly registered. Finally, NHA questioned the valuation of the property for being mere hearsay.[29]

In discrediting NHA's appeal, the CA held that as between respondents' transfer certificate of title and NHA's derivative titles which were administratively reconstituted, more weight should be given to the former. The CA further held that the reconstitution of the title of the Spouses Laurito on March 23, 1962 does not afford preference in favor of NHA's derivative titles, as the fact remains that the title of the Spouses Laurito was registered earlier in time, *i.e.* on September 7, 1956. As regards the valuation of the property, the CA found no reason to reverse the ruling of the RTC as the same was based on the testimony of one of the respondents heirs engaged in real estate business whose testimony was never refuted by NHA.[30]

The CA thus disposed:

WHEREFORE, IN VIEW OF THE FOREGOING, the appeal is **DISMISSED**. The decision dated May 27, 2004 of the Regional Trial Court at Bacoor, Cavite, Branch 19, in Civil Case No. BCV-2001-95 is hereby **AFFIRMED** *in toto*.

SO ORDERED.[31]

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[28] *Id*. at 108-112.

[29] *Id*. at 118.

[30] *Id*. at 42-44.

[31] *Id*. at 44-45.

Upon subsequent denial of its motion for reconsideration by the CA, in its Resolution[32] dated March 17, 2010, NHA resorted to the filing of the instant petition.

While the present petition was pending final resolution, intervenors filed a motion to file their so called petition-in-intervention wherein they essentially claim to be the heirs of Rufina Manarin (Rufina), the registered owner of TCT No. T-2409 covering a property located in Pasong Saguing, Cabilang Baybay, Carmona, Cavite with an area of 504,287 sq m and registered on May 18, 1956.[33] Intervenors allege that the subject property is but a portion of the property registered in the name of their predecessor-in-interest, Rufina. They also claim that they caused the judicial reconstitution of TCT No. T-2409 when the owner's duplicate certificate of title as well as the original thereof went missing in 1999. The court granted the reconstitution on September 6, 2005. The replacement title TCT No. (T-2409) RT-20604 was subsequently registered on May 4, 2009.[34] Respondent and NHA filed their respective comments on the petition-in-intervention which contained the common argument that the petition-in-intervention ought to be denied as it would only cause undue and inordinate delay in the disposal of the instant case.[35]

The Issues

Confronting the Court are the following issues: (1) should the petition-in-intervention be given due course; and (2) who between the parties has a better right over the subject property.

The Ruling of the Court

The petition-in-intervention filed by intervenors is denied for failure to comply with the requirements of Sections 1 and 2 of Rule 19. NHA's petition for review is likewise denied for

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

[33] *Id*. at 218-221.

[34] *Id*. at 223-228.

[35] *Id*. at 280-295.

lack of reversible error committed by the CA in affirming the decision of the RTC.

Intervention is an ancillary remedy restricted in purpose and in period

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose – to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.[36]

Nevertheless, the remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelled under Section 1 of Rule 19, as follows:

> Sec. 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 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.

If only to ensure that delay does not result from the granting of a motion to intervene, the Rules further require that intervention may be allowed only before rendition of judgment by the trial court. Thus, Section 2 of Rule 19 provides:

> Sec. 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.

Intervenors in this case claim to be the heirs of Rufina who, in turn, was alleged to be the registered owner of a property

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[36] *Hi-Tone Marketing Corporation v. Baikal Realty Corporation,* 480 Phil. 545 (2004).

encompassing the subject land. Apart from this naked allegation, intervenors failed to establish the required legal interest over the subject property to the Court's satisfaction. Their status as supposed heirs was merely perfunctorily alleged. Further, the mother title upon which they anchor their claim pertains to another property covered by another title which was not examined and appreciated by the courts below.

Furthermore, the petition-in-intervention was filed only in this petition for review on *certiorari*, well after the RTC rendered its judgment. By itself, such inexcusable delay is a sufficient ground to deny the petition-in-intervention. The reason for imposing such restriction is that the court, before it renders judgment, may still allow the presentation of additional evidence. As such, the subject matter of the intervention may still be resolved together with all the claims and would not require an overall reassessment of the case.[37] An overall reassessment of the instant case, including their newly introduced evidence, is precisely what the intervenors aim to accomplish which the Court cannot, for obvious reasons, undertake in a petition for review on *certiorari* limited in scope.

The RTC as affirmed by the CA correctly affirmed the title of Spouses Laurito over the subject property and consequently, respondents' right thereto as compulsory heirs

As above intimated, a petition for review on *certiorari* is one that is limited in purpose. Time and again, the Court stresses that petitions for review on *certiorari* shall only raise questions of law, as questions of fact are not reviewable by this Court. The pivotal issue of who has a better right over the disputed property is not only a question of law but one that requires a thorough review of the presented evidence, in view particularly of the respondents' allegation that NHA's titles were derived

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[37] *Ongco v. Dalisay,* G.R. No. 190810, July 18, 2012, *citing* FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM*, Vol. I, 319-320 (9th rev. ed. 2005).

from spurious titles covering inexistent lands. Thus, in the usual course, the instant petition is outrightly dismissible for violating Section 1 of Rule 45.

In any case, the issue as to who, between two holders of a torrens title over the same property, should be preferred is not entirely novel but which has been jurisprudentially settled. There can be no argument that the claimant whose transfer certificate of title was issued earlier in time, absent any anomaly or irregularity in the registration, prevails.

However, before the Court even begins to apply the above rule which the RTC and the CA used to resolve the issue presented in this case, We deem it proper to first place the conflicting claims of the parties in the proper perspective.

The earliest available title over the disputed property, from which both the respondents and the NHA trace their respective titles, is TCT No. T-8237. The said parent title covers a parcel of land identified as Lot F-3, described in plan Psd-12274 and measuring 224,267 sq m and registered in the name of one Rufina.

How TCT No. 8237 became the source of the parties' respective titles is where the conflict begins.

According to the respondents, the Spouses Laurito acquired Lot F-3, for which TCT No. 8237 was cancelled and a new title in favor of the Spouses Laurito was issued on September 7, 1956. On March 23, 1962, the title of the Spouses Laurito was administratively reconstituted as TCT No. (T-9943) RT-8747. The heirs of the Spouses Laurito claim that no transfer or conveyance was thereafter made by them or by their parents concerning the property.

On the other hand, NHA recounts how it supposedly acquired ownership over the property covered by TCT No. T-8237 as follows:

1. Lot F-3 covered by TCT No. T-8237 was subdivided into two: Lot F-3-A and Lot F-3-B. The former was assigned to Rufina while the latter was assigned to Domingo;

2. The RD of Cavite City was gutted by fire in 1959. Thus, on February 5, 1960, TCT No. T-8237 was administratively reconstituted and was replaced by TCT No. (T-8237) RT 3909;

3. On February 5, 1960, or exactly the same date that TCT No. (T-8237) RT 3909 was administratively reconstituted, said title was subdivided into two and the following titles were concurrently issued: TCT No. T-943 (covering Lot F-3-A) and TCT No. 944 (covering Lot F-3-B);

4. TCT No. T-943 covering Lot F-3-A measuring 136,105 sq m was issued in favor of Santos. On its face, TCT No. T-943 shows that it is a transfer from the administratively reconstituted title, TCT No. (T-8237) RT 3909;

5. From Santos, Lot F-3-A was transferred to Cabreira. Thus, TCT No. T-943 was cancelled and a new one, TCT No. T-984 was issued on February 16, 1960, or a mere 11 days after the parent title was administratively reconstituted;

6. From Cabreira, Lot F-3-A was then transferred to Corpus. Thus, TCT No. T-984 was cancelled and a new one, TCT No. T-3445 was issued on August 7, 1961;

7. Barely a month after, Lot F-3-A was transferred to People's Homesite and Housing Corporation, now NHA, and TCT No. T-3717 was issued on September 22, 1961;

8. Lot F-3-B covered by TCT No. 944 was transferred to the Spouses Lope Gener. Thus, TCT No. 944 was cancelled and a new one, TCT No. T-1859 was issued on August 22, 1960; and

9. From the Spouses Lope Gener, Lot F-3-B was transferred to the People's Homesite and Housing Corporation, now NHA, and TCT No. T-3741 was issued on September 29, 1961, or merely seven days after title over Lot F-3-A was issued in favor of NHA.[38]

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

As can be gleaned from these allegations, what the Court confronts is a claim based on a transfer certificate of title possessed by respondents, on one hand, and a claim based on an administratively reconstituted title, on the other. As between the two, We give more weight and preference to the former.

The title of the Spouses Laurito, on its face, shows that it was a transfer from the parent title, TCT No. T-8237. The reconstituted title, TCT No. (T-9943) RT-8747, on its face, likewise shows that the source of the reconstitution was the owner's duplicate certificate of title. On the other hand, it is not clear from the records where the reconstituted TCT No. (T-8237) RT 3909, upon which NHA traces its title, was sourced from. It likewise did not help NHA's cause that the owner's duplicate copy of TCT No. T-8237 as a possible source document for TCT No. (T-8237) RT 3909 was never presented. Worse, it only gives rise to questions of jurisdiction on the part of the RD to issue such reconstituted title.

Instead, what is clear is that as early as September 7, 1956, TCT No. T-8237 had already been cancelled and a new title was issued in favor of the Spouses Laurito. In other words, as early as 1956, there was no such TCT No. T-8237 to reconstruct. Thus, on this point alone, it is evident that the Spouses Laurito's transfer certificate of title prevails over NHA's title which was derived from a dubious administrative reconstitution of TCT No. T- 8237.

Even assuming that TCT No. T-8237 was indeed administratively reconstituted in due course and replaced by TCT No. (T-8237) RT 3909, preference still lies with the title of the Spouses Laurito for having been registered earlier in time.

The rule is that where two certificates of title are issued to different persons covering the same parcel of land in whole or in part, the earlier in date must prevail as between the original parties and, in case of successive registration where more than one certificate is issued over the land, the person holding title under the prior certificate is entitled to the property as against the person who relies on the second certificate.[39]

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[39] *Iglesia ni Cristo v. CFI of Nueva Ecija*, 208 Phil. 441 (1983); *Director of Lands v. CA*, G.R. No. L-45168, January 27, 1981, 102 SCRA 370.

Otherwise stated, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from, the person who was the holder of the earliest certificate.[40] Registration as it is herein used should be understood in its juridical aspect, that is, the entry made in a book or public registry of deeds.[41]

To recall, the title of the Spouses Laurito was registered in 1956 while the earliest derivative titles of NHA were registered in 1960. To be precise, the title of the Spouses Laurito preceded Santos' title and the Spouses Lope Gener's title by four years. Therefore, as between the respective sources of NHA's titles and the title of the Spouses Laurito, that of the latter prevails.

Despite this, NHA insists that its titles over the property should be preferred over the title of the Spouses Laurito because the former's earliest derivative titles, *i.e.*, TCT No. T-943 (for Lot F-3-A) and TCT No. T-1859 (for Lot F-3-B) which were respectively registered on February 5, 1960[42] and August 22, 1960, were already in existence when the title of the Spouses Laurito was administratively reconstituted on March 23, 1962. NHA claims priority because its derivative titles were registered earlier than the registration of the administratively reconstituted title of the Spouses Laurito. In other words, NHA claims preference on the basis of prior date of reconstitution of title.

However, the above rule cannot be stretched to mean giving preference to the party who was merely the first to successfully reconstitute his title.

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[40] *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court*, G.R. No. 67451, September 28, 1987, 154 SCRA 328.

[41] *Po Sun Tun v. Price and Provincial Government of Leyte*, 54 Phil. 192 (1929).

[42] *See* note 23.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.[43] Reconstitution does not pass upon the ownership of the land covered by the lost or destroyed title.[44]

The lost or destroyed document referred to is the one that is in the custody of the RD. When reconstitution is ordered, this document is replaced with a new one, the reconstituted title that basically reproduces the original. After the reconstitution, the owner is issued a duplicate copy of the *reconstituted* title.[45] This procedure is provided under Section 16 of Republic Act (R.A.) No. 26,[46] which states:

> Sec. 16. After the reconstitution of a certificate of title under the provisions of this Act, the register of deeds shall issue the corresponding owner's duplicate and the additional copies of said certificates of title, if any had been previously issued, where such owner's duplicate and/or additional copies have been destroyed or lost. This fact shall be noted on the reconstituted certificate of title.

Reconstitution is not and should not be made synonymous to the issuance of title. When reconstituting, a new title is not thereby issued; rather, the title alleged to have been previously issued but is now lost or destroyed, is merely reproduced to reflect the way it was before. Hence, that the Spouses Laurito

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[43] *Republic v. Tuastumban,* G.R. No. 173210, April 24, 2009, 586 SCRA 600, 614.

[44] *Heirs of De Guzman Tuazon v. Court of Appeals,* G.R. No. 125758, January 20, 2004, 420 SCRA 219, 228.

[45] *Republic of the Philippines v. Vergel De Dios,* G.R. No. 170459, February 9, 2011.

[46] AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED. Approved on September 25, 1946.

administratively reconstituted the original of its title only in 1962 does not detract from the fact that their title was registered as early as 1956.

The titles upon which NHA based its titles bear badges of spuriousness

As earlier observed, at the time TCT No. T-8237 was claimed to have been administratively reconstituted, TCT No. T-8237 was in fact already cancelled and a new title was issued in favor of the Spouses Laurito. As such, the claimed administrative reconstitution of TCT No. T-8237 on February 5, 1960 to TCT No. (T-8237) RT 3909 was not only highly irregular, but void. Indeed, if a reconstituted title is secured through fraud, deceit, misrepresentation, or other machination, the said title cannot be the source of legitimate rights and benefits. Section 11 of R.A. No. 6732[47] provides that "[a] reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof."

What is more, the derivative titles over Lot F-3-A upon which NHA bases its claim all appear to have been administratively reconstituted on the same date, *i.e.*, February 16, 1960, which was only over a year before the property was conspicuously acquired by NHA. NHA even claims that one of the derivative titles, TCT No. T-3445, in the name of Corpus, was issued to the latter on August 7, 1961 but that said title was administratively reconstituted on an even earlier date – February 16, 1960. It is quite puzzling how such administrative reconstitution can take place before the actual issuance of the title it seeks to reconstitute.

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[47] AN ACT ALLOWING ADMINISTRATIVE RECONSTITUTION OF ORIGINAL COPIES OF CERTIFICATES OF TITLES LOST OR DESTROYED DUE TO FIRE, FLOOD AND OTHER *FORCE MAJEURE*, AMENDING FOR THE PURPOSE SECTION ONE HUNDRED TEN OF PRESIDENTIAL DECREE NUMBERED FIFTEEN TWENTY-NINE AND SECTION FIVE OF REPUBLIC ACT NUMBERED TWENTY-SIX. Approved on July 17, 1989.

There was likewise no showing whatsoever how NHA's predecessors-in-interest acquired the subject property. Neither was there any sufficient explanation offered by NHA on how it itself acquired the property. In the ordinary course of things, the owner uses deeds or voluntary instruments for purposes of conveying or otherwise dealing with a registered land. These deeds or voluntary instruments shall be registered in order to take effect as a conveyance or bind the land. Otherwise, such deed or voluntary instrument shall operate only as a contract between the parties and will not bind third persons.[48] In a peculiar departure from this prescribed and usual practice, the course of transfers affecting the subject property even up until the same was acquired by NHA are practically indeterminable. Even NHA is at a loss as to how it acquired the property. Instead, what conspicuously appears is that title over the property was swiftly and successively cancelled, and a new one vigorously issued in favor of another person until it reached NHA.

Despite these red flags, NHA insists that it should not be required to look beyond the titles of the previous owners, the same having been registered under the Torrens System.

Well-settled is the rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of his vendor or

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[48] Section 51 of P.D. No. 1529 provides:

Section 51. *Conveyance and other dealings by registered owner.* An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

mortgagor. This requirement applies with greater force to NHA whose mandate as the sole government agency engaged in direct shelter production[49] to develop and undertake housing development or settlement projects[50] is so impressed with public interest, and as such, is expected to exercise more care and prudence than a private individual in its dealings, even those involving registered lands.

Thus, along this line, We cannot regard NHA as a buyer in good faith entitled to protection under the law. NHA's title undoubtedly came from a dubious source exhibiting badges of spuriousness and hence, could not have transferred a better right in favor of NHA. Indeed, the spring cannot rise higher than its source.

Finally, We find no reason to deviate from the market value of the property as determined by the RTC and confirmed by the CA. Testimony to this effect was offered by respondents' witness and no objection thereto was timely raised by NHA, despite opportunity to do so. NHA cannot now be heard to complain for the first time on appeal.

WHEREFORE, the petition is **DENIED**. The Decision dated November 26, 2009 of the Court of Appeals in CA-G.R. CV No. 86484 which affirmed the Decision dated May 27, 2004 of the Regional Trial Court in Civil Case No. BCV-2001-95: (1) confirming respondents' ownership over the parcel of land located at Carmona, Cavite, covered by and embraced in Transfer Certificate of Title No. (T-9943) RT-8747 registered in the name of Domingo Laurito married to Victorina Manarin; (2) declaring void the Transfer Certificate of Title Nos. T-3717 and T-3741 in the name of petitioner National Housing Authority (formerly People's Homesite and Housing Corporation) and the subsequent titles issued therefrom; (3) ordering the Office of the Register of Deeds for the Province of Cavite to cancel Transfer Certificate of Title Nos. T-3717 and T-3741 as well as all the subsequent

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[49] Executive Order No. 90, December 17, 1986.

[50] Presidential Decree No. 757, July 31, 1975.

titles emanating from them; (4) ordering petitioner National Housing Authority to vacate and remove all the structures and improvements constructed and existing on the parcel of land covered by TCT No. (T-9943) RT-8747 registered in the name of Domingo Laurito married to Victorina Manarin and peacefully surrender and turn over possession and occupancy of the said parcel of land to respondents; and alternatively, in case delivery and surrender of possession of the property is no longer feasible; (5) ordering petitioner National Housing Authority to pay respondents the value of the property it occupied assessed at One Thousand Two Hundred Pesos (Php 1,200) per square meter with interest at the rate of twelve percent (12%) *per annum* from the time of demand or on April 29, 1991 until June 30, 2013 and with interest at the rate of six percent (6%) *per annum* from July 1, 2013 until fully paid; and (6) denying the parties' claims and counter-claims for damages are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 206890. July 31, 2017]

EVIC HUMAN RESOURCE MANAGEMENT INC., FREE BULKERS S.A. AND/OR MA. VICTORIA C. NICOLAS, *petitioners, vs.* **ROGELIO O. PANAHON,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; TERMINATION OF EMPLOYMENT; UNCORROBORATED

CREW BEHAVIOR REPORT MADE BY THE CAPTAIN WAS INADEQUATE TO PROVE JUST CAUSE IN DISMISSING A SEAFARER.— The Court finds the foregoing Crew Behavior Report sorely inadequate in meeting the required quantum of proof to discharge petitioners' burden. For one, the statements contained therein were uncorroborated and self-serving. No other evidence was presented to support the statements of the Captain. In *Skippers United Pacific, Inc. v. NLRC*, the Court did not give weight and credence to the uncorroborated Chief Engineer's Report which purportedly specified the causes for the seafarer's dismissal. x x x [W]hile the report was signed by four (4) crew members, the statements contained therein were, as correctly observed by the CA, based on acts witnessed only by Captain Buton. According to Captain Buton, a crew was injured when respondent failed to observe safety precautions in the mooring and unmooring operations. He also mentioned that an agent informed him that respondent was hard to deal with because of intoxication. Considering however that there were no affidavits submitted of either the injured seaman or the concerned agent to corroborate the Captain's statements, there can be no basis for the Court to conclude that there was truth to Captain Buton's accusations.

2. ID.; ID.; ID.; INCOMPETENCE, INEFFICIENCY AND GROSS NEGLIGENCE TO BE VALID GROUNDS FOR DISMISSAL, EXPLAINED; SINGLE UNVERIFIED INCIDENT OF NEGLIGENCE IS INSUFFICIENT TO WARRANT A FINDING OF JUST CAUSE FOR DISMISSAL.— The Court further finds that there exists no just or valid cause for respondent's dismissal. Incompetence or inefficiency, as a ground for dismissal, is understood to mean the failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. Neglect of duty, on the other hand, must be both gross and habitual. Gross negligence implies a lack of or failure to exercise slight care or diligence, or the total absence of care in the performance of duties, not inadvertently but willfully and intentionally, with conscious indifference insofar as other persons may be affected. Habitual neglect involves repeated failure to perform duties for a certain period of time, depending upon the circumstances, and not mere failure to perform duties in a single or isolated instance. As

again aptly observed by the CA, petitioners failed to show that respondent willfully or deliberately caused the alleged accident during the mooring operations or that respondent repeatedly committed mistakes or repeatedly failed to perform his duties. The single unverified incident on respondent's supposed negligence is surely insufficient to warrant a finding of just cause for termination.

3. **ID.; ID.; ID.; PENALTY OF DISMISSAL FOR THE CHARGE OF INTOXICATION WHILE SEAFARER WAS OFF DUTY WAS UNWARRANTED.—** As regards the charge of intoxication, Section 33(6) of the POEA-SEC provides that drunkenness must be committed while on duty to merit dismissal from employment. Here, respondent was admittedly off duty when he was allegedly caught by the master drinking on board. The penalty of dismissal from employment was therefore unwarranted.

4. **ID.; ID.; ID.; SEAFARER WAS NOT ACCORDED DUE PROCESS IN CASE AT BAR.—** The lack of just or valid cause of respondent's dismissal was further exacerbated by petitioners' failure to afford respondent procedural due process. x x x [T]he records are bereft of any evidence showing that respondent was given a written notice of the charges against him, or that he was given an opportunity to explain or defend himself. Neither is there proof that respondent was furnished with a written notice of the penalty imposed against him and the reasons for its imposition. Indeed, petitioners admit that these required notices were dispensed with because, according to them, there was a clear and existing danger to the safety of the crew or vessel. Unfortunately for petitioners, however, there is, again, no evidence that was presented to prove such was the situation when respondent was terminated.

5. **ID.; ID.; ID.; MONETARY AWARDS TO AN ILLEGALLY DISMISSED SEAFARER.—** [P]etitioners are ordered to pay respondent (1) his placement fee and the deductions made, with interest at 12% per annum, (2) his salaries for the unexpired portion of his employment contract, and (3) attorney's fees of 10% of said award. x x x [T]he Court affirms the grant of attorney's fees of ten percent (10%) of the total award pursuant to Article 111 of the Labor Code.

APPEARANCES OF COUNSEL

Nolasco and Associates Law Offices for petitioners.
Sapalo Velez Bundang & Bulilan for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This petition for review on *certiorari*[1] assails the Decision[2] dated January 31, 2013 and Resolution[3] dated April 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123369, which set aside the September 15, 2011 Decision[4] and November 21, 2011 Resolution[5] of the National Labor Relations Commission (NLRC); declared illegal respondent's dismissal; and ordered petitioners to pay respondent the unexpired portion of his employment contract and attorney's fees of ten percent (10%) of said award.

Facts

Petitioner Evic Human Resources (EVIC), for and in behalf of its foreign principal, petitioner Free Bulkers S.A. (Free Bulkers), hired respondent Rogelio Panahon as Chief Mate on board the vessel of M/V Free Lady for a period of six (6) months with a basic monthly salary of US$1,088.00.[6]

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[1] *Rollo,* pp. 9-26.

[2] *Id*. at 28-46. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring.

[3] *Id*. at 49-50. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Angelita A. Gacutan and Victoria Isabel A. Paredes concurring.

[4] *Id*. at 87-99. Penned by Commissioner Napoleon M. Menese, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora concurring.

[5] *Id*. at 101-102.

[6] *Id*. at 29.

On August 28, 2010, respondent boarded the vessel.[7] On September 24, 2010, respondent was repatriated to the Philippines without completing the contracted period of employment.[8]

On September 28, 2010, respondent filed a Complaint for illegal dismissal with claims for moral and exemplary damages and attorney's fees against EVIC, Free Bulkers and Ma. Victoria Nicolas, the owner and President of EVIC (collectively referred as petitioners).[9]

In his Position Paper,[10] respondent alleged that he has been a professional seafarer for thirty-one (31) years and Chief Mate for twenty-one (21) years. Since his initial deployment, he has diligently performed all his duties and responsibilities and has never been disciplined or dismissed. In August 2010, he boarded M/V Free Lady and during the voyage, the vessel's Captain Edgar A. Buton (Captain Buton) developed a hostile attitude towards him. Respondent averred that on September 7, 2010, he took a sip from the small flask of whisky given to him by one of the stevedores he dealt with and went to bed; but Captain Buton had him awakened and ordered him to make a report on some damages in the railings of the ship caused by the stevedores. When he submitted the report to Captain Buton, the latter allegedly smelled a faint odor of whisky and asked respondent if he had been drinking, to which respondent truthfully replied that he drank a little whisky and was willing to take an alcohol test. Respondent claimed that Captain Buton shrugged off his offer to take an alcohol test; but as soon as he left respondent, Captain Buton made a logbook entry dated September 7, 2010, recommending respondent's immediate replacement.[11]

For their part, petitioners averred that respondent was dismissed for just cause. The Free Lady Crew Behavior

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[7] *Id*.

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

[9] *Id*. at 29, 32.

[10] *Id*. at 113-127.

[11] *Id*. at 114-116.

Report[12] (Crew Behavior Report) dated September 8, 2010 prepared by Captain Buton showed that respondent was grossly negligent as he failed to observe the safety precautions during the mooring and unmooring operations; displayed arrogance towards his co-employees on board; and was caught intoxicated, in violation of the company policies, instructions, and stipulations of the Philippine Overseas Employment Administration (POEA) contract. Thus, fearing that the safety of the vessel and/or crew may be at risk with the continued presence of respondent, petitioners were constrained to ask that respondent be relieved invoking Section 33 of the POEA Standard Employment Contract (POEA-SEC).[13]

The Labor Arbiter's Ruling

In a Decision[14] dated January 31, 2011, the Labor Arbiter (LA) dismissed respondent's complaint for lack of merit. The LA found that petitioners had discharged the burden to prove the existence of just cause for respondent's termination with the submission of the Crew Behavior Report duly attested by three officers reflecting respondent's unjustified failure to perform his duties and adhere to company policy against intoxication.[15] The LA also ruled that the petitioners were justified in not furnishing respondent a notice of dismissal considering that there was a clear and existing danger to the safety of the crew and the vessel.[16]

Aggrieved, respondent appealed to the NLRC.[17]

The NLRC Ruling

On September 15, 2011, the NLRC rendered a Decision,[18] the dispositive portion of which reads:

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[12] *Id*. at 152-153.

[13] Respondents' Position Paper, *id*. at 133-147.

[14] *Id*. at 104-110. Penned by Labor Arbiter Veneranda C. Guerrero.

[15] *Id*. at 108-109.

[16] *Id*. at 110.

[17] *Id*. at 172-191.

[18] *Id*. at 87-99.

WHEREFORE, premises considered, the Decision dated December 21, 2010 is **MODIFIED** to the effect that nominal damages is awarded in complainant's favor in the amount of Fifty Thousand Pesos (₱50,000.00).

SO ORDERED.[19]

While the NLRC affirmed the existence of just cause in terminating respondent's employment,[20] it found petitioners remiss in their duty to afford respondent the requisite notice and hearing prior to his dismissal.[21] According to the NLRC, the issuance of a notice and the observance of a hearing would have been prudent as it was disputable whether respondent posed a clear and imminent danger to the safety of the crew members.[22] Thus, for failure to observe the requirement of due process, petitioners were held liable to indemnify respondent nominal damages.[23]

Both parties filed their respective motions for partial reconsideration, but both were denied by the NLRC in a Resolution dated November 21, 2011.[24]

Unsatisfied, respondent elevated the matter to the CA via petition for certiorari.[25]

The CA Ruling

In its Decision[26] dated January 31, 2013, the CA found that the NLRC gravely abused its discretion in holding that there was just cause for respondent's dismissal from employment as

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

[20] *Id*. at 95.

[21] *Id*. at 98.

[22] *Id*. at 97.

[23] *Id*. at 98.

[24] *Id*. at 101-102.

[25] *Id*. at 51-81.

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

the same is not supported by substantial evidence.[27] According to the CA, the unnotarized Crew Behavior Report, which was the sole basis of the LA and NLRC in holding that respondent was dismissed for just cause cannot be given credence in the absence of any other corroborative evidence.[28] The CA further held that said report, although signed by four (4) other crew members of the vessel, cannot be considered credible because the charges against respondent were based on acts witnessed only by Captain Buton.[29]

The CA also noted that the report cited only one case of incompetence and negligence of respondent;[30] but the rules are explicit that negligence must not only be gross but also habitual to warrant the employee's separation from employment.[31] The CA further held that petitioners failed to show that the failure of respondent to observe safety precautions during the mooring operations was willful and deliberate and that respondent repeatedly committed mistakes or failed to perform his duties.[32]

As regards respondent's alleged intoxication, the CA found the same wanting of proof and insufficient to warrant respondent's dismissal.[33] The CA noted that the Crew Behavior Report indicated that respondent was caught drinking after his duty; Section 33(6), however, requires drunkenness to be committed while on duty to warrant the dismissal of an employee.[34]

Lastly, the CA ruled that the award of attorney's fees of ten percent (10%) of the total award is justified under Article 111 of the Labor Code.[35] However, the CA found no basis for

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[27] *Id*. at 42.

[28] *Id*. at 38.

[29] *Id*. at 39.

[30] *Id*.

[31] *Id*. at 40.

[32] *Id*.

[33] See *id*.

[34] *Id*.

[35] *Id*. at 43.

respondent's claim for moral and exemplary damages as there is absence of clear and convincing proof that his dismissal was attended by fraud or bad faith.[36] Thus the dispositive portion of the CA Decision reads:

> **WHEREFORE**, the petition is granted and public respondent NLRC's Decision dated September 15, 2011 and Resolution dated November 21, 2011 are set aside. Petitioner's dismissal from employment is hereby declared illegal, and private respondents are ordered to pay petitioner the unexpired portion of his employment contract and attorney's fees of 10% of said award.
>
> **SO ORDERED.**[37]

Petitioners filed a Motion for Reconsideration,[38] but the same was denied by the CA in a Resolution[39] dated April 22, 2013.

Hence, the instant petition which raises the following issues:

The Issues

A. Whether the CA erred in ruling that there was no just cause in respondent's dismissal.

B. Whether respondent is entitled to attorney's fees.[40]

The Court's Ruling

The petition lacks merit. The Court affirms the CA Decision with modification only as to the monetary award.

It is a settled rule in labor cases that the employer has the burden of proving that the dismissal of an employee was for a just or authorized cause, and failure to show this would necessarily mean that the dismissal was unjustified and, therefore, illegal.[41] Furthermore, not only must the dismissal be for a cause

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[36] *Id*. at 44.

[37] *Id*. at 45.

[38] *Id*. at 310-316.

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

[40] *Id*. at 16 and 20.

[41] *Skippers United Pacific, Inc. v. NLRC,* 527 Phil. 248, 257 (2006).

provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and to defend one's self.[42] Hence, for dismissal to be valid, the employer must show through substantial evidence – or such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion – that (1) the dismissal was for a just or authorized cause; and (2) the dismissed employee was afforded due process of law.[43]

Petitioners failed to prove just cause.

In justifying respondent's dismissal, the only evidence relied upon by petitioners is the Crew Behavior Report prepared by Captain Buton, which petitioners claim plainly demonstrated respondent's inefficiency, incompetence and gross negligence in the performance of his duties. The Crew Behavior Report states:

x x x **C/O Rogelio O. Panahon** – You know this guy was signed on in Singapore last August 28, 2010 so he just stayed onboard for about 11 days. In eleven days I have a lot of observations and as far as my observations are concerned he could not perform his job safely besides he is too old and I observed his attitude who is very arrogant and according to my third officer and some crew who knew him he is well noted to be a man with great arrogance and he is very negligent. Why he is negligent? He is very negligent because first mooring operation onboard after he signed on one O/S crew injured. The cause of the accident was he failed to observe safety cautions during mooring and unmooring operation. According to the bosun there is no safety forward during mooring and unmooring operation in fact the bosun also hit by the rope and was knocked down. You know, at the time when the O/S injured he was the one operated the winch and he ordered the bosun and the O/S to transfer the rope from the drum to the bitts which was so very tight without slacking a little bit the rope using gear. So, if he is a safety cautious he knows in advance what

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[42] *De la Cruz v. Maersk Filipinas Crewing, Inc.*, 574 Phil. 441, 452 (2008), citing *Pascua v. NLRC (3rd Div.),* 351 Phil. 48, 62-63 (1998).

[43] *INC Shipmanagement, Inc. v. Camporedondo,* 768 Phil. 600, 610-611 (2015).

will be the consequences. You know I was surprised of his expressions after the O/S injured it seems nothing happened.

Secondly, I observed him that he did not obey the company policies and instructions and also the stipulations stated in POEA contract. You know last September 07, 2010 at 2300, I caught him drinking alcohol onboard. On September 07, 2010 while vessel discharging in Vizag when the third officer called him because there was a ship's damage caused by the stevedore when he arrived in the damaged area he started to argue to the foreman and the agent. The agent informed me that they could not deal the chief officer properly because he intoxicated. When I called the Chief Officer in my office together with the agent he came up in my office barefooted. I asked him if he is intoxicated and he confirmed that truly he is intoxicated. You know I did to discuss the company policies all the time when there is new on signers onboard but it seems he did not adhere the company policy so since he did not follow the company policy therefore he is breaching the POEA contract that he is binding for.

So, I recommend him to be repatriated soonest as possible because if this guy will stay onboard the safety of the crew specially those assigned forward will be compromised to avoid problems in the future.

x x x x x x x x x

(Sgd.)

Prepared by: Capt. Edgar A. Buton
Master M.V Free Lady

(Sgd.) (Sgd.)
Testified by: 3/O Joelon C. Grota Bsn Jose C. Rizo

(Sgd.) (Sgd.)
A/B Jeffrey O. Minoza A/B John Carlo Sablas[44]

The Court finds the foregoing Crew Behavior Report sorely inadequate in meeting the required quantum of proof to discharge petitioners' burden. For one, the statements contained therein were uncorroborated and self-serving. No other evidence was presented to support the statements of the Captain. In *Skippers United Pacific, Inc. v. NLRC,*[45] the Court did not give weight

[44] *Rollo,* pp. 152-153.

[45] *Supra* note 41, at 254, 257-258.

and credence to the uncorroborated Chief Engineer's Report which purportedly specified the causes for the seafarer's dismissal. In *Maersk-Filipinas Crewing, Inc. v. Avestruz,*[46] the Court likewise disregarded the uncorroborated and self-serving electronic mails of the ship captain as proof of the seafarer's supposed neglect of duty and perverse and wrongful attitude.[47]

Notably, in this case, while the report was signed by four (4) crew members, the statements contained therein were, as correctly observed by the CA, based on acts witnessed only by Captain Buton. According to Captain Buton, a crew was injured when respondent failed to observe safety precautions in the mooring and unmooring operations. He also mentioned that an agent informed him that respondent was hard to deal with because of intoxication. Considering however that there were no affidavits submitted of either the injured seaman or the concerned agent to corroborate the Captain's statements, there can be no basis for the Court to conclude that there was truth to Captain Buton's accusations.

The Court further finds that there exists no just or valid cause for respondent's dismissal. Incompetence or inefficiency, as a ground for dismissal, is understood to mean the failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results.[48] Neglect of duty, on the other hand, must be both gross and habitual.[49] Gross negligence implies a lack of or failure to exercise slight care or diligence, or the total absence of care in the performance of duties,[50] not inadvertently but willfully and intentionally, with conscious indifference insofar as other persons may be affected.[51] Habitual

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[46] 754 Phil. 307 (2015).

[47] *Id*. at 319.

[48] *Skippers United Pacific, Inc. v. Maguad*, 530 Phil. 367, 388 (2006).

[49] *FLP Enterprises Inc. – Francesco Shoes v. Dela Cruz,* 739 Phil. 763, 770 (2014); *Cavite Apparel, Incorporated v. Marquez,* 703 Phil. 46, 54 (2013).

[50] *INC Shipmanagement, Inc. v. Camporedondo, supra* note 43, at 612.

[51] *Manila Electric Company v. Beltran*, 680 Phil. 417, 427-428 (2012).

neglect involves repeated failure to perform duties for a certain period of time, depending upon the circumstances, and not mere failure to perform duties in a single or isolated instance.[52]

As again aptly observed by the CA, petitioners failed to show that respondent willfully or deliberately caused the alleged accident during the mooring operations or that respondent repeatedly committed mistakes or repeatedly failed to perform his duties.[53] The single unverified incident on respondent's supposed negligence is surely insufficient to warrant a finding of just cause for termination.

As regards the charge of intoxication, Section 33(6) of the POEA-SEC provides that drunkenness must be committed while on duty to merit dismissal from employment. Here, respondent was admittedly off duty when he was allegedly caught by the master drinking on board.[54] The penalty of dismissal from employment was therefore unwarranted.

Respondent was not accorded due process.

The lack of just or valid cause of respondent's dismissal was further exacerbated by petitioners' failure to afford respondent procedural due process. Section 17 of the POEA-SEC provides:

Section 17. DISCIPLINARY PROCEDURES

The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The Master shall furnish the seafarer with a written notice containing the following:

1. Grounds for the charges as listed in Section 31 of this Contract.
2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

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[52] *INC Shipmanagement, Inc. v. Camporedondo, supra* note 43, at 612.

[53] *Rollo,* p. 40.

[54] *Id*.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. An entry on the investigation shall be entered into the ship's logbook.

C. If, after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if doing so will prejudice the safety of the crew or the vessel. This information shall be entered in the ship's logbook. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.[55]

Explaining the foregoing rules, the Court in *Skippers Pacific, Inc. v. Mira*,[56] held:

Note that under Section 17 of what is termed the Standard Format, the **"two – notice rule"** is indicated. An erring seaman is given a written notice of the charge against him and is afforded an opportunity to explain or defend himself. Should sanctions be imposed, then a written notice of penalty and the reasons for it shall be furnished the erring seafarer. **It is only in the exceptional case of clear and existing danger to the safety of the crew or vessel that the required notices are dispensed with;** but just the same, a complete report should be sent to the manning agency, supported by substantial evidence of the findings.[57]

In the case at bar, the records are bereft of any evidence showing that respondent was given a written notice of the charges against him, or that he was given an opportunity to explain or defend himself. Neither is there proof that respondent was furnished with a written notice of the penalty imposed against him and the reasons for its imposition. Indeed, petitioners admit

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[55] *Skippers United Pacific, Inc. v. NLRC*, *supra* note 41, at 260.

[56] 440 Phil. 906 (2002).

[57] *Id.* at 919. Emphasis supplied.

that these required notices were dispensed with because, according to them, there was a clear and existing danger to the safety of the crew or vessel. Unfortunately for petitioners, however, there is, again, no evidence that was presented to prove such was the situation when respondent was terminated.[58]

Respondent's monetary award

In the assailed Decision, the CA, after declaring respondent's dismissal to be illegal, ordered petitioners to pay the unexpired portion of his employment contract and attorney's fees of 10% of the award. The Court finds the necessity to modify the award rendered by the CA to conform with Section 10 of Republic Act (RA) No. 8042,[59] as amended by RA No. 10022,[60] which took effect on March 8, 2010, since respondent was terminated on September 24, 2010. Said provision, as modified by the Court in *Serrano v. Gallant Maritime Services, Inc.*,[61] which held that the clause "or for three months for every year of unexpired term, whichever is less" is unconstitutional, reads:

Section 10. *Money claims.* — x x x

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[58] See *rollo,* pp. 97-98; see also *Maersk-Filipinas Crewing, Inc. v. Avestruz, supra* note 46, at 321-322.

[59] 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, June 7, 1995.

[60] AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES, March 8, 2010.

[61] 601 Phil. 245 (2009).

x x x x x x x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.[62]

Finally, the Court affirms the grant of attorney's fees of ten percent (10%) of the total award pursuant to Article 111 of the Labor Code.[63]

WHEREFORE, the petition is **DENIED**. The Decision dated January 31, 2013 and the Resolution dated April 22, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 123369 are hereby **AFFIRMED with MODIFICATION** in that petitioners are ordered to pay respondent (1) his placement fee and the deductions made, with interest at 12% per annum, (2) his salaries for the unexpired portion of his employment contract, and (3) attorney's fees of 10% of said award.

SO ORDERED.

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

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[62] The Court in *Serrano v. Gallant Maritime Services, Inc.* (*id*. at 306), declared as unconstitutional the clause "or for three months for every year of the unexpired term, whichever is less" provided in the 5th paragraph of Section 10 of RA 8042, for being violative of the equal protection clause of the Constitution. (*Maersk-Filipinas Crewing, Inc. v. Avestruz*, *supra* note 46, at 322).

[63] See *Maersk-Filipinas Crewing, Inc. v. Avestruz*, *id*.; *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 352-354 (2013) and *Skippers United Pacific, Inc. v. Doza*, 681 Phil. 427, 445 (2012).

FIRST DIVISION

[G.R. No. 209555. July 31, 2017]

UNITED POLYRESINS, INC., ERNESTO UY SOON, JR., and/or JULITO UY SOON, *petitioners, vs.* **MARCELINO PINUELA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; WHEN THE GROUND RELIED UPON FOR DISMISSAL OF AN EMPLOYEE WAS VALID ONLY FOR IMPEACHMENT OR RECALL OF UNION OFFICERS AND NOT FOR EXPULSION OR REMOVAL FROM THE UNION, THE DISMISSAL IS ILLEGAL SINCE IT DOES NOT CONSTITUTE JUST CAUSE FOR TERMINATION.— Respondent's expulsion from PORFA is grounded on Article XV, Section 1, paragraphs (e) and (f) of the union's Constitution, which provides: ARTICLE – XV IMPEACHMENT AND RECALL Section 1. Any of the following shall be ground for the impeachment or recall of the union officers. x x x **e. Misappropriation of union funds and property. This is without prejudice to the filing of an appropriate criminal or civil action against the responsible officer/(s) by any interested party; f. Willful violation of any provision of the constitution or rules, regulations, measures, resolution(s) and decision of the union**. x x x However, these provisions refer to impeachment and recall of union officers, and not expulsion from union membership. This is made clear by Section 2(e) of the same Article XV, which provides that "(t)he union officers impeached shall 'IPSO FACTO' to [sic] be considered resigned or ousted from office and shall no longer be elected nor appointed to any position in the union." In short, any officer found guilty of violating these provisions shall simply be removed, impeached or recalled, from office, but not expelled or stripped of union membership. It was therefore error on the part of PORFA and petitioners to terminate respondent's employment based on Article XV, Section 1, paragraphs (e) and (f) of the union's Constitution. Such a ground does not constitute just cause for termination. A review of the PORFA

Constitution itself reveals that the only provision authorizing removal from the union is found in Article X, Section 6, that is, on the ground of failure to pay union dues, special assessments, fines, and other mandatory charges. On the other hand, grounds for disqualification from membership may be found in Article IV, which x x x provisions do not apply in respondent's case. Although he was eventually charged with estafa, a crime involving moral turpitude, still, he has not been convicted of the crime. For this reason, he may not be disqualified as union member. Thus, for what he is charged with, respondent may not be penalized with expulsion from the union, since this is not authorized and provided for under PORFA's Constitution.

2. ID.; ID.; ID.; WHERE THE CONTRIBUTION MADE BY THE EMPLOYER TO THE UNION IS ILLEGAL AS IT CONSTITUTES UNFAIR LABOR PRACTICE, MISAPPROPRIATION OR FAILURE TO RETURN SUCH AMOUNT CANNOT BE USED AS A GROUND TO TERMINATE RESPONDENT'S EMPLOYMENT.— The matter of respondent's alleged failure to return petitioners' ₱300,000.00 which was lent to PORFA is immaterial as well. It may not be used as a ground to terminate respondent's employment; under the Labor Code, such a contribution by petitioners to PORFA is illegal and constitutes unfair labor practice.

APPEARANCES OF COUNSEL

Reyes Reyes & Rivera-Lumibao Law Offices for petitioners.
Patricio L. Boncayao, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the December 11, 2012 Decision[2] and October 10, 2013 Resolution[3] of the

[1] *Rollo*, pp. 30-64.

[2] *Id.* at 66-79; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan.

[3] *Id.* at 88-89.

Court of Appeals (CA) in CA-G.R. SP No. 115402 which set aside the June 11, 2011 Decision[4] of the National Labor Relations Commission (NLRC) in NLRC-LAC Case No. 06-001577-09.

Factual Antecedents

Petitioner United Polyresins, Inc. (UPI) is a registered domestic corporation doing business in San Pedro, Laguna, while petitioners Ernesto Uy Soon, Jr. and Julito Uy Soon are its corporate officers.

Respondent Marcelino Pinuela was employed by UPI in 1987. He became a member of the labor union, Polyresins Rank and File Association (PORFA), and was elected President thereof in May, 2005 and slated to serve until the end of 2007.

The collective bargaining agreement (CBA) then existing between UPI and PORFA provided that:

> Section 3. The Company shall grant to the Union the amount of Three Hundred Thousand Pesos (₱300,000.00) free of interest as the union's capital for establishing a cooperative to meet the needs of its members. Said loan shall fall due and become payable at the same date that this Bargaining Agreement expires, to wit – December 31, 2007. In the event of non-payment, all officers and members will be personally accountable. In case of additional funds, they can make a written request [addressed] to the President of the company.[5]

The CBA likewise contained a union security clause which provided that employees who cease to be PORFA members in good standing by reason of resignation or expulsion shall not be retained in the employ of UPI.

Upon his assumption as union President, respondent wrote the former union President, Geoffrey Cielo (Cielo), to turn over the records, papers, documents and financial statements of the union. Cielo surrendered the union's bank account documents,

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[4] *Id*. at 125-135; penned by Commissioner Numeriano D. Villena and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña.

[5] NLRC Records, p. 12.

among others, which indicated that the union had an available ₱78,723.60 cash balance. Cielo likewise submitted a Financial Report indicating that the union had ₱208,623.60 in cash and ₱159,500.00 in receivables.

Finding that the bank documents and Cielo's report did not match, and Cielo unable to explain the discrepancies, the union's Executive Committee, which was headed by respondent, resolved to hire a certified public accountant to conduct an audit of the union's finances. In a December 1, 2005 report, the accountant concluded that the union's finances, income, and disbursements for the years 2003 and 2004 were not properly documented, recorded, and reported. He recommended that the union officers "take a seminar on basic bookkeeping and accounting;"[6] that the union adopt and/or install the necessary accounting and internal control systems; that the union prepare the proper financial statements; and that the officers take corrective measures in financial management as an integral part of sound management.[7]

Meanwhile, during respondent's term as PORFA President, it appeared that UPI automatically deducted from the respective salaries of PORFA members amounts representing union membership dues and loan payments. These amounts, which totalled ₱2,402,533.43, were then regularly turned over by UPI to PORFA in the form of fifty eight (58) crossed checks, made payable to PORFA.[8] These amounts were then deposited and credited to PORFA's account.[9]

On December 8, 2007, or several days before the ₱300,000.00 loan by UPI to PORFA became due, petitioners, respondent, and the other union officers met to discuss the proposed new CBA. Thereat, petitioners told respondent that until the ₱300,000.00 is returned, the former shall not discuss the proposed

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[6] *Id*. at 61.

[7] *Id*.

[8] *Rollo*, pp. 38-39, 237-252.

[9] *Id*. at 193-195, 366-395.

CBA. Respondent explained that the union did not have the finances and had only ₱78,723.60, which was the original amount turned over by Cielo to respondent when the latter assumed office as union President. Petitioners then told respondent and the other union officers that if the amount is not returned, the same will be deducted from the salaries of the union members.[10]

On January 7, 2008, respondent filed a complaint before the National Conciliation and Mediation Board (NCMB), claiming that petitioners refused to bargain collectively. During the scheduled conferences before the NCMB, petitioners raised the issue of non-payment of the ₱300,000.00 owing to UPI and insisted on its payment; they also threatened to deduct the amount of ₱1,500.00 from the respective salaries of the union members.[11]

Because of the recurring threat of failed CBA negotiations and salary deductions as means of recovering the ₱300,000.00 loaned to the union, union members began to demand the holding of a special election of union officers. They likewise accused respondent and the other union officers of mismanagement, unduly hanging on to their positions, and lack of accountability.[12]

Thus, in March 2008, special elections were held, and a new union President and set of officers were elected.[13]

On March 29, 2008, the union's new set of officers conducted an investigation into the fact that the union had little or no funds remaining in its bank account. Respondent attended the investigation, and admitted that the union had no more funds as they were "utilized in the prosecution of cases during his incumbency."[14] He likewise failed to make a formal turnover of documents to the new President. Respondent was required

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[10] *Id*. at 162-163.

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

[12] *Id*. at 165, 185-187.

[13] *Id*. at 165.

[14] *Id.* at 213. "*Wala na raw pera natira sa banko dahil daw sa mga kasong ipinaglaban nila [nang] sila pa ang namumuno*."

to surrender union documents in his possession on the next scheduled meeting.[15]

On April 8, 2008, another inquiry was held where respondent was present. The investigation centered on respondent's continued failure to account for the union's bank accounts, documents, and deposits made during his incumbency, and his failure to formally turn over union's papers to the new officers. After the meeting, respondent and the new officers proceeded to the bank, where they discovered that the PORFA account had already been closed.[16]

On April 10, 2008, the new set of union officers issued a Resolution[17] expelling respondent from PORFA for being guilty of the following violations:

1. No annual financial statement.
2. No listings or ledger of union member's [sic] emergency loans.
3. Unposted cheques on the Union's passbook collected from union members [sic] monthly dues.
4. Our union checking account at Security Bank were [sic] Zero balance/closed account.
5. No receipts/cash disbursement presented for the union operational [sic] expenses.
6. Unable to return the ₱300,000.00 lent by the management free of interest. (Art. XXVII, Section 3 of our CBA).
7. Unable to explain and present documents to support where the agency fees and union dues collected from legitimate union members were used.[18]

The officers held that these violations constituted an infringement of the union's Constitution, particularly Article XV, Section 1,

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[15] *Id*. at 213-214.

[16] *Id*. at 215-217.

[17] *Id*. at 219-220.

[18] *Id*. at 221.

paragraphs (e) and (f) thereof, which specifically prohibit the misappropriation of union funds and property and give ground for the impeachment and recall of union officers.[19]

In an April 11, 2008 letter[20] to petitioners, PORFA communicated respondent's expulsion from the union.

On April 14, 2008, petitioners issued a letter of termination[21] to respondent, to take effect immediately.

Ruling of the Labor Arbiter

Respondent filed a complaint against petitioners before the Labor Arbiter for illegal dismissal, with monetary claims and damages, which was docketed as NLRC Case No. RAB-IV-08-27303-08-L. He claimed that his dismissal was effected in bad faith and without due process and was thus illegal. Petitioners countered that respondent's dismissal is valid under the union security clause of the CBA; that his failure to return the ₱300,000.00 loan to the union due to mismanagement/ misappropriation constitutes just cause for his expulsion from the union, as well as dismissal from employment; that he was accorded substantive and procedural due process; that the herein individual petitioners may not be held liable for respondent's claims; and that accordingly, the case should be dismissed.

On April 20, 2009, the Labor Arbiter issued a Decision[22] dismissing respondent's complaint on the finding that respondent was not illegally terminated, thus:

> While complainant, as then Union President, denies any misappropriation of union funds, it is undisputed that he failed to account for the missing union funds and to return the ₱300,000.00 which the respondent company had lent for the union's assistance upon the expiration of the CBA dated December 31, 2007.

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[19] *Id*. at 405.

[20] *Id*. at 221-222.

[21] *Id*. at 223.

[22] *Id*. at 253-260; penned by Labor Arbiter Enrico Angelo C. Portillo.

More importantly, in the investigation conducted by the newly elected officers of the union, it was uncovered that union funds were in fact personally used by the former officers of PORFA which includes complainant.

Thus, the union passed a resolution expelling complainant from the PORFA union and the corresponding letter was sent to the respondent company informing the latter of complainant's expulsion coupled with a recommendation that complainant be terminated from employment pursuant to the union security clause of the CBA.

Given the foregoing, we rule that complainant was validly dismissed since the respondent company merely did its obligation under the CBA by terminating the services of complainant who ceased to be a member in good standing of the PORFA union by reason of expulsion.

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of merit.

SO ORDERED.[23]

Ruling of the National Labor Relations Commission

Respondent appealed before the NLRC, which initially overturned the Labor Arbiter in a December 8, 2009 Decision,[24] which decreed as follows:

WHEREFORE, the assailed Decision is hereby SET ASIDE and a NEW one is entered declaring the complainant-appellant's dismissal to be illegal. Respondents Union [sic] and respondent company are hereby declared jointly and severally liable to pay complainant his full backwages from the date he was dismissed until date instant [sic] and to pay his separation pay equivalent to one month salary per year of service computed as follows:

BACKWAGES		
04/14/08 – 10/14/09		
₱396 x 26 days x 18 mos.		
₱10,296.00 x 18 days	=	₱185,328.00
SEPARATION PAY		
₱396.00 x 26 x 22yrs.		
₱10,296 x 22yrs.	=	₱226,512.00

[23] *Id*. at 260.

[24] *Id*. at 136-147.

13th Month Pay ₱185,328.00 / 12	=	₱ 15,444.00
Grand Total		₱427,284.00

SO ORDERED.[25]

However, on motion for reconsideration, the NLRC issued its June 11, 2011 Decision, which held as follows:

What cannot escape from [sic] our attention and consideration are the following: (1) there was an obligation x x x to return the amount of ₱300,000.00 to the respondent upon termination of the CBA on December 31, 2007, (2) complainant, as the President of the Union at the time the loan was due and demandable, failed to account for said funds, and under the same provision, was to be held personally accountable, (3) Pinuela actually participated x x x in the whole process of determining accountability over the union funds, (4) denied knowledge over and receipt of the missing funds, despite his being among those charged with its custody and safe-keep, as the Union President.

It is also to be noted that the complainant as union president, could not explain nor comment on the fact that their union's bank account is already a closed account. Even if We assume and in fact complainant admitted that he had custody of ₱78,723.60 as union funds as of June 3, 2005, still he could not account the whereabouts of the said money. As a signatory to the said account, complainant cannot be considered as entirely faultless since he was grossly negligent in the custody of the funds. There is substantial basis in complainant's dismissal thus, the award of backwages and 13th month pay should be deleted. However, even if We find complainant's dismissal to be valid, there is equally no evidence showing that he pocketed the missing funds of the union. In this regard since he had rendered a considerable number of years in the service (21 years) complainant may be awarded separation pay at the rate of ½ month salary for every year of service (396 x 13 x 21 years) from the inception of his employment till his dismissal in the interest of justice and compassion since his infraction did not involve serious misconduct.

Further, We also hold that while complainant's dismissal was valid pursuant to the enforcement of the Union Security Clause, respondents

[25] *Id*. at 146-147.

however did not comply with the requisite procedural due process. As held in the case of Agabon vs. NLRC, x x x the Supreme Court held that where the dismissal is for a cause recognized by the prevailing jurisprudence, the absence of the statutory due process should not nullify the dismissal or render it illegal x x x. Accordingly, for violating complainant's statutory rights, respondents should indemnify him the amount of ₱30,000.00 as nominal damages in addition to his separation pay.

WHEREFORE, premises considered, respondents-appellees' Motion for Reconsideration is GRANTED, a new Decision is rendered finding complainant's dismissal as valid. Respondents-appellees are however ordered to pay complainant the amounts of ₱108,108.00 and ₱30,000.00 as separation pay and nominal damages.

All other claims whether monetary or otherwise are hereby DISMISSED.

SO ORDERED.[26]

Ruling of the Court of Appeals

In a Petition for *Certiorari*[27] before the CA and docketed as CA-G.R. SP No. 115402, respondent sought to reverse the above NLRC Decision and reinstate its December 8, 2009 Decision, arguing that the Commission gravely erred in concluding that he was personally accountable for the missing funds, the closing of PORFA's bank account, and that he was grossly negligent in the custody of the union funds. In their Comment,[28] petitioners countered that respondent's dismissal was attended by due process; that he is guilty of the infractions for which he was dismissed; and that his guilt had been proved by substantial evidence.

On December 11, 2012, the CA issued the assailed Decision containing the following pronouncement:

Petitioner insists that he is innocent of the charges against him made by the PORFA (the union), particularly the embezzlement of

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[26] *Id*. at 132-134.

[27] *Id*. at 90-124.

[28] *Id*. at 291-298.

the union funds. He vehemently denied misappropriation of the same and that the PORFA Union officers conspired with the Respondents in removing him as a member in good standing of the said union and his subsequent dismissal as employee pursuant to the CBA's union security clause.

Respondents on the other hand, denied the Petitioner's allegation of conspiracy and that in fact, there was a series of conferences conducted jointly by the management and the union on the matter of lost union funds and that the Petitioner was made aware of the charges against him before he was terminated. They claim that the management participated in the investigations and that it was shown that even if the Petitioner as president of the union did not misappropriate the funds nevertheless he committed omission/gross negligence for which reason he was expelled therefrom. The Respondents also claim that Petitioner was accorded procedural due process during the investigations.

It is basic in labor jurisprudence that the burden of proof rests upon management to show that the dismissal of its worker was based on a just cause. When an employer exercises its power to terminate an employee by enforcing the union security clause, it needs to determine and prove the following: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union.

The dispute before Us does not raise any issue with respect to the first two requisites; the issue being whether there was sufficient evidence to support Petitioner's expulsion from PORFA. In arriving at any conclusion thereto, the Petitioner must first be accorded due process of law. x x x

x x x x x x x x x

On both questions of whether there exist[s] sufficient evidence to support Petitioner's expulsion from the union (substantive due process), and whether Petitioner was properly informed of the accusation against him and his dismissal from employment (procedural due process), We answer in the negative.

An examination of the submitted evidence before the Labor Arbiter show [sic] that the same are not enough to prove the alleged charges of misappropriation against the Petitioner and neither was he properly informed thereof.

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On the other hand, the Petitioner have [sic] shown adequate explanation about the funds of the union that came to his possession. The Memorandum of Ramon M. Martinez, a Certified Public Accountant, show [sic] that he made an audit of the funds of the union during the previous administration and that the actual funds the union had was merely ₱34,344.25 when Petitioner took over. This amount was not even shown to have been misappropriated by the Petitioner.

Compounding this want of substantive evidence is the lack of procedural due process that Petitioner was entitled to. As [has] been previously discussed, the Petitioner was not given the proper first notice. Thereafter, despite such lack of first notice, on the mere letter of the union that he was expelled therefrom because of alleged causes, the Petitioner was dismissed from employment by the Respondents in the termination letter dated 14 April 2008 on the sole basis of union security clause. Such action cannot be countenanced. In the same *Inguillo* case, the Supreme Court also ruled:

> 'Thus, as held in that case, 'the right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own Union is not wiped away by a Union Security Clause or a Union Shop Clause in a collective bargaining agreement. An employee is entitled to be protected not only from a company which disregards his rights but also from his own Union, the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and mere dismissal from his job.'

In sum, the NLRC gravely abused its discretion in reconsidering its earlier Decision which is more in accord with the evidence on record.

WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated 11 June 2010[29] is hereby SET ASIDE. The Decision dated 8 December 2009 is REINSTATED with the MODIFICATION that the backwages shall be recomputed from the date of Petitioner's dismissal to the finality of this Decision.

SO ORDERED.[30] (Citations omitted)

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[29] Should be "2011".

[30] *Rollo*, pp. 71-72, 74, 77-78.

Petitioners filed a Motion for Reconsideration,[31] which was denied by the CA in its October 10, 2013 Resolution. Hence, the instant Petition.

Issues

In a June 22, 2015 Resolution,[32] the Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE APPELLATE COURT ERRED IN RULING THAT THE CHARGES OF MISAPPROPRIATION AGAINST THE RESPONDENT WERE INSUFFICIENT (SUBSTANTIVE DUE PROCESS)

II.

THE APPELLATE COURT ERRED IN RULING THAT THE RESPONDENT WAS NOT PROPERLY INFORMED OF THE CHARGES AGAINST HIM (PROCEDURAL DUE PROCESS).

III.

THE APPELLATE COURT ERRED IN RULING THAT THE RESPONDENT IS ENTITLED TO SEPARATION PAY, BACKWAGES FROM DISMISSAL TO THE FINALITY OF ITS DECISION, AND 13TH MONTH PAY.[33]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that respondent's case be dismissed instead, petitioners maintain in their Petition and Reply[34] that substantive and procedural due process were observed in respondent's case; that respondent was apprised of the charges against him and given the opportunity to refute them; that the evidence points to the conclusion that he misappropriated the union's funds and was unable to explain

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[31] *Id*. at 80-86.

[32] *Id*. at 557-558.

[33] *Id*. at 35.

[34] *Id*. at 536-547.

the dissipation thereof; that for what he has done, respondent violated Article XV, Section 1, paragraphs (e) and (f) of the union's Constitution; that respondent's dismissal on the basis of the union security clause in the CBA was thus valid, based on substantial proof, and in accord with the pronouncement in *Cariño v. National Labor Relations Commission*,[35] where the dismissal of an employee was upheld on the basis of the union security and expulsion clauses contained in the CBA; and that since his dismissal is valid, then he is not entitled to his monetary claims.

Respondent's Arguments

In his Comment,[36] respondent maintains that the CA did not err in finding that the evidence against him was insufficient; that the CA was correct in ruling that his right to procedural due process was violated when he was not properly informed of the charges against him; and that for these reasons, he was illegally dismissed and thus entitled to his monetary claims.

Our Ruling

The Court denies the Petition.

Respondent's expulsion from PORFA is grounded on Article XV, Section 1, paragraphs (e) and (f) of the union's Constitution, which provides:

ARTICLE – XV

IMPEACHMENT AND RECALL

Section 1. Any of the following shall be ground for the impeachment or recall of the union officers.

a. Committing or causing the commission directly or indirectly of acts against the interest and welfare of the union;

b. Malicious attack against the union, its officers or against a fellow union officer or member;

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[35] 263 Phil. 877 (1990).

[36] *Rollo*, pp. 474-528.

c. Failure to comply with the obligation to turn over and return to union treasurer within three (3) days unexpanded [sic] sum of money received from the money funds to answer for an authorized union purpose;

d. Gross misconduct unbecoming of a union officer;

e. Misappropriation of union funds and property. This is without prejudice to the filing of an appropriate criminal or civil action against the responsible officer/(s) by any interested party;

f. Willful violation of any provision of the constitution or rules, regulations, measures, resolution(s) and decision of the union.[37] (Emphasis supplied)

However, these provisions refer to impeachment and recall of union officers, and not expulsion from union membership. This is made clear by Section 2(e) of the same Article XV, which provides that "(t)he union officers impeached shall 'IPSO FACTO' to [sic] be considered resigned or ousted from office and shall no longer be elected nor appointed to any position in the union." In short, any officer found guilty of violating these provisions shall simply be removed, impeached or recalled, from office, but not expelled or stripped of union membership.

It was therefore error on the part of PORFA and petitioners to terminate respondent's employment based on Article XV, Section 1, paragraphs (e) and (f) of the union's Constitution. Such a ground does not constitute just cause for termination.

A review of the PORFA Constitution itself reveals that the only provision authorizing removal from the union is found in Article X, Section 6, that is, on the ground of failure to pay union dues, special assessments, fines, and other mandatory charges.[38] On the other hand, grounds for disqualification from membership may be found in Article IV, which states that –

Section 3. The following are not eligible neither [sic] for membership nor to election or appointment to any position in the union:

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[37] *Id*. at 405.

[38] *Id*. at 403.

a. Subversive or persons who profess subversive ideas.

b. Persons who have been convicted of crime involving moral turpitude.

c. Persons who are not employees of the company.[39]

These provisions do not apply in respondent's case. Although he was eventually charged with estafa,[40] a crime involving moral turpitude,[41] still, he has not been convicted of the crime. For this reason, he may not be disqualified as union member.

Thus, for what he is charged with, respondent may not be penalized with expulsion from the union, since this is not authorized and provided for under PORFA's Constitution.

Contrary to petitioners' claim, *Cariño v. National Labor Relations Commission* is not applicable here. In that case, the employee was terminated on the basis of **existing** suspension and expulsion provisions contained in the CBA and rules on discipline found in the union's Constitution. There are no such provisions in PORFA's Constitution; neither has it been shown that there are similar stipulations in the parties' CBA.

The matter of respondent's alleged failure to return petitioners' ₱300,000.00 which was lent to PORFA is immaterial as well. It may not be used as a ground to terminate respondent's employment; under the Labor Code, such a contribution by petitioners to PORFA is illegal and constitutes unfair labor practice.

ART. 248. **Unfair labor practices of employers**. - It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x x x x x x

(d) To initiate, dominate, **assist** or otherwise **interfere** with the formation or administration of any labor organization, **including the**

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[39] *Id*. at 397.

[40] *Id*. at 50.

[41] *In Re: Atty. Isidro P. Vinzon*, 126 Phil. 96 (1967).

giving of financial or other support to it or its organizers or supporters;[42] (Emphasis supplied)

This could be an opportune time for the union to consider amending its Constitution in order to provide for specific rules on the discipline of its members, not just its officers. After all, it is given the right under the Labor Code, "to prescribe its own rules with respect to the acquisition or retention of membership."[43] But it may not insist on expelling respondent from PORFA and assist in his dismissal from UPI without just cause, since it is an unfair labor practice for a labor organization to "cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members."[44]

On account of the foregoing disquisition, the other issues raised by the parties need not be discussed.

WHEREFORE, for the foregoing reasons, the Petition is hereby **DENIED**. The December 11, 2012 Decision and October 10, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 115402 are **AFFIRMED**.

SO ORDERED.

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

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[42] Renumbered pursuant to Republic Act No. 10151.

[43] LABOR CODE, Article 249(a). Renumbered pursuant to Republic Act No. 10151.

[44] LABOR CODE, Article 249(b). Renumbered pursuant to Republic Act No. 10151.

FIRST DIVISION

[G.R. No. 227038. July 31, 2017]

JEFFREY MIGUEL *y* REMEGIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION BASED ON GROUNDS OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS.— In criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; BILL OF RIGHTS; THE ACTS OF THE *BANTAY BAYAN* OR ANY BARANGAY-BASED OR OTHER VOLUNTEER ORGANIZATIONS IN THE NATURE OF WATCH GROUPS - RELATING TO THE PRESERVATION OF PEACE AND ORDER IN THEIR RESPECTIVE AREAS HAVE THE COLOR OF A STATE-RELATED FUNCTION; AS SUCH, THEY SHOULD BE DEEMED AS LAW ENFORCEMENT AUTHORITIES FOR THE PURPOSE OF APPLYING THE BILL OF RIGHTS. — One of the arguments presented in the instant petition is that the search and arrest made on petitioner were illegal and, thus, the marijuana purportedly seized from him is inadmissible in evidence. In this relation, it is worth noting that his arresting officers, *i.e.*, BB Bahoyo and BB Velasquez, are mere *Bantay Bayan* operatives of Makati City. Strictly speaking, they are

not government agents like the Philippine National Police (PNP) or the National Bureau of Investigation in charge of law enforcement; but rather, they are ***civilian volunteers*** who act as "force multipliers" to assist the aforesaid law enforcement agencies in maintaining peace and security within their designated areas. Particularly, jurisprudence described the nature of *Bantay Bayan* as "a group of male residents living in [the] area organized for the purpose of keeping peace in their community[, which is] an accredited auxiliary of the x x x PNP." In the case of *Dela Cruz v. People* involving civilian port personnel conducting security checks, the Court thoroughly discussed that while the Bill of Rights under Article III of the 1987 Constitution generally cannot be invoked against the acts of private individuals, the same may nevertheless be applicable if such individuals ***act under the color of a state-related function***, *viz.*: x x x. **In *People v. Lauga*, this court held that a "*bantay bayan*," in relation to the authority to conduct a custodial investigation under Article III, Section 12 of the Constitution, "has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]"** x x x. In this light, the Court is convinced that the acts of the *Bantay Bayan* or any barangay-based or other volunteer organizations in the nature of watch groups - relating to the preservation of peace and order in their respective areas have the color of a state-related function. As such, they should be deemed as law enforcement authorities for the purpose of applying the Bill of Rights under Article III of the 1987 Constitution to them.

3. ID.; ID.; ID.; RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE; A SEARCH AND SEIZURE MUST BE CARRIED OUT THROUGH OR ON THE STRENGTH OF A JUDICIAL WARRANT PREDICATED UPON THE EXISTENCE OF PROBABLE CAUSE, ABSENT WHICH, SUCH SEARCH AND A SEIZURE BECOMES UNREASONABLE.— Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence**

obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRESTS; WARRANTLESS ARRESTS; WHEN MAY BE LAWFULLY EFFECTED.— One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made - the process cannot be reversed.** A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with. x x x**.** The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto*; (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

5. ID.; ID.; ID.; ID.; WARRANTLESS ARRESTS MADE PURSUANT TO SECTION 5 (a) AND (b) OF RULE 113; ELEMENTS; THE OFFICER'S PERSONAL KNOWLEDGE OF THE FACT OF THE COMMISSION OF AN OFFENSE IS ESSENTIAL.— In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. **In both instances,**

the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.

6. ID.; ID.; SEARCH AND SEIZURE; SEARCH INCIDENT TO A LAWFUL ARREST; THERE MUST FIRST BE A LAWFUL ARREST BEFORE A SEARCH CAN BE MADE, AND SUCH PROCESS CANNOT BE REVERSED.— [T]he Court simply finds highly implausible the prosecution's claim that a valid warrantless arrest was made on petitioner on account of the alleged public display of his private parts because if it was indeed the case, then the proper charge should have been filed against him. However, records are bereft of any showing that such charge was filed aside from the instant criminal charge for illegal possession of dangerous drugs - thereby strengthening the view that no prior arrest was made on petitioner which led to a search incidental thereto. [T]here must first be a lawful arrest before a search can be made and that such process cannot be reversed.

7. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; EXCLUSIONARY RULE; AN ACCUSED MUST BE ACQUITTED AND EXONERATED FROM CRIMINAL LIABILITY, WHERE THE CONFISCATED MARIJUANA, WHICH IS THE VERY *CORPUS DELICTI* OF THE CRIME CHARGED, IS INADMISSIBLE IN EVIDENCE AS THE SAME WAS SEIZED FROM HIM ON ACCOUNT OF AN ILLEGAL SEARCH.— [T]he *Bantay Bayan* operatives conducted an illegal search on the person of petitioner. Consequently, the marijuana purportedly seized from him on account of such search is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated marijuana is the very *corpus delicti* of the crime charged, petitioner must necessarily be acquitted and exonerated from criminal liability.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General 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 October 21, 2015 and the Resolution[3] dated September 5, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 35318, which affirmed the Decision[4] dated October 1, 2012 of the Regional Trial Court of Makati City, Branch 64 (RTC) in Criminal Case No. 10-912 convicting petitioner Jeffrey Miguel *y* Remegio (petitioner) of the crime of illegal possession of dangerous drugs.

The Facts

On May 27, 2010, an Information[5] was filed before the RTC charging petitioner of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," the accusatory portion of which reads:

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[1] *Rollo*, pp. 13-36.

[2] *Id*. at 40-53. Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Rosmari D. Carandang and Mario V. Lopez concurring.

[3] *Id*. at 55-56.

[4] *Id*. at 71-73. Penned by Judge Gina M. Bibat-Palamos.

[5] Dated May 26, 2010. Records, pp. 1-2.

[6] ENTITLED "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" approved on June 7, 2002.

On the 24th day of May 2010, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control, and custody a total of one point ten (1.10) grams of dried Marijuana leaves, a dangerous drug.

CONTRARY TO LAW.[7]

The prosecution alleged that at around 12:45 in the morning of May 24, 2010, a *Bantay Bayan* operative of Barangay San Antonio Village, Makati City named Reynaldo Bahoyo (BB Bahoyo) was doing his rounds when he purportedly received a report of a man showing off his private parts at Kaong Street. BB Bahoyo and fellow *Bantay Bayan* operative Mark Anthony Velasquez (BB Velasquez) then went to the said street and saw a visibly intoxicated person, which they later identified as herein petitioner, urinating and displaying his private parts while standing in front of a gate enclosing an empty lot. BB Bahoyo and BB Velasquez approached petitioner and asked him where he lived, and the latter answered Kaong Street. BB Bahoyo then said that he also lived in the same street but petitioner looked unfamiliar to him, so he asked for an identification card, but petitioner failed to produce one. BB Velasquez then repeated the request for an identification card, but instead, petitioner emptied his pockets, revealing a pack of cigarettes containing one (1) stick of cigarette and two (2) pieces of rolled paper containing dried marijuana leaves, among others. This prompted BB Bahoyo and BB Velasquez to seize the foregoing items, take petitioner to the police station, and turn him, as well as the seized items, over to SPO3 Rafael Castillo (SPO3 Castillo). SPO3 Castillo then inventoried, marked, and photographed the seized items, all in the presence of BB Bahoyo and BB Velasquez, and thereafter, prepared an inventory report and a request for qualitative examination of the seized two (2) pieces of rolled paper and for petitioner to undergo drug testing. After examination, it was confirmed that the aforesaid rolled paper

[7] Records, pp. 1-2.

contained marijuana and that petitioner was positive for the presence of methamphetamine but negative for THC-metabolites, both dangerous drugs.[8]

Petitioner pleaded not guilty to the charge, and thereafter, presented a different version of the facts. According to him, he was just urinating in front of his workplace when two (2) *Bantay Bayan* operatives, *i.e.*, BB Bahoyo and BB Velasquez, approached and asked him where he lived. Upon responding that he lived in Kaong Street, BB Bahoyo and BB Velasquez then frisked him, took away his belongings, and thereafter, handcuffed and brought him to the barangay hall. He was then detained for about an hour before being taken to the Ospital ng Makati and to another office where a bald police officer questioned him. Thereafter, he was taken back to the barangay hall where they showed him two (2) sticks of marijuana joints allegedly recovered from him.[9]

The RTC Ruling

In a Decision[10] dated October 1, 2012, the RTC found petitioner guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of ₱300,000.00, without subsidiary imprisonment in case of insolvency.[11]

The RTC found that BB Bahoyo and BB Velasquez conducted a valid warrantless arrest, as petitioner was scandalously showing his private parts at the time of his arrest. Therefore, the resultant search incidental to such arrest which yielded the seized marijuana in petitioner's possession was also lawful. In this

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[8] See *rollo*, pp. 42-44.

[9] See *id*. at 44-45.

[10] *Id*. at 71-73.

[11] *Id*. at 73.

regard, since the prosecution has adequately shown that petitioner freely and consciously possessed such marijuana without authority by law, then he must be convicted for violating Section 11, Article II of RA 9165.[12]

Aggrieved, petitioner appealed[13] to the CA.

The CA Ruling

In a Decision[14] dated October 21, 2015, the CA affirmed petitioner's conviction.[15] It held that the search made on petitioner which yielded the seized marijuana was validly made as it was done incidental to his arrest for exhibiting his private parts on public. As such, the said seized marijuana is admissible in evidence and, thus, sufficient to convict him for the crime charged.[16] The CA likewise held that the rule on chain of custody was duly complied with and, thus, the integrity and evidentiary value of the seized drugs were not compromised.[17]

Undaunted, petitioner moved for reconsideration,[18] which was, however, denied in a Resolution[19] dated September 5, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for illegal possession of dangerous drugs.

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[12] See *id*.

[13] See Notice of Appeal dated October 2, 2012; records, p. 164.

[14] *Rollo*, pp. 40-53.

[15] *Id*. at 52.

[16] See *id*. at 47-49.

[17] See *id*. at 49-52.

[18] See motion for reconsideration dated November 13, 2015; CA *rollo*, pp. 97-109.

[19] *Rollo*, pp. 55-56.

The Court's Ruling

The petition is meritorious.

In criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[20]

Proceeding from the foregoing, and as will be explained hereunder, petitioner's conviction must be set aside.

One of the arguments presented in the instant petition is that the search and arrest made on petitioner were illegal and, thus, the marijuana purportedly seized from him is inadmissible in evidence.[21] In this relation, it is worth noting that his arresting officers, *i.e.*, BB Bahoyo and BB Velasquez, are mere *Bantay Bayan* operatives of Makati City. Strictly speaking, they are not government agents like the Philippine National Police (PNP) or the National Bureau of Investigation in charge of law enforcement; but rather, they are ***civilian volunteers*** who act as "force multipliers" to assist the aforesaid law enforcement agencies in maintaining peace and security within their designated areas.[22] Particularly, jurisprudence described the nature of *Bantay Bayan* as "a group of male residents living in [the] area organized for the purpose of keeping peace in their community[, which is] an accredited auxillary of the x x x PNP."[23] In the case of

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[20] See *People v. Alejandro*, G.R. No. 225608, March 13, 2017, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[21] See *rollo*, pp. 19-23.

[22] See "Makati Police Increases Visibility in Burgos-Makati Avenue-Kalayaan Triangle" dated April 29, 2014, <http://www.makati.gov.ph/portal/news/view.jsp?id=3194#.WXqT5hWGPIU> (visited July 28, 2017).

[23] *People v. Lauga*, 629 Phil. 522, 530 (2010), citing *People v. Buendia*, 432 Phil. 471, 476 (2002).

Dela Cruz v. People[24] involving civilian port personnel conducting security checks, the Court thoroughly discussed that while the Bill of Rights under Article III of the 1987 Constitution generally cannot be invoked against the acts of private individuals, the same may nevertheless be applicable if such individuals ***act under the color of a state-related function***, *viz.*:

With regard to searches and seizures, **the standard imposed on private persons is different from that imposed on state agents or authorized government authorities**.

In *People v. Marti*, the private forwarding and shipping company, following standard operating procedure, opened packages sent by accused Andre Marti for shipment to Zurich, Switzerland and detected a peculiar odor from the packages. The representative from the company found dried marijuana leaves in the packages. He reported the matter to the National Bureau of Investigation and brought the samples to the Narcotics Section of the Bureau for laboratory examination. Agents from the National Bureau of Investigation subsequently took custody of the illegal drugs. Andre Marti was charged with and was found guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act.

This court held that there was no unreasonable search or seizure. The evidence obtained against the accused was not procured by the state acting through its police officers or authorized government agencies. **The Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals**:

> If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. **In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private**

[24] G.R. No. 209387, January 11, 2016, 779 SCRA 34.

individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

x x x x x x x x x

The Cebu Port Authority is clothed with authority by the state to oversee the security of persons and vehicles within its ports. **While there is a distinction between port personnel and port police officers in this case, considering that port personnel are not necessarily law enforcers, both should be considered agents of government under Article III of the Constitution. The actions of port personnel during routine security checks at ports have the color of a state-related function.**

In *People v. Malngan*, barangay tanod and the Barangay Chairman were deemed as law enforcement officers for purposes of applying Article III of the Constitution. **In *People v. Lauga*, this court held that a "*bantay bayan*," in relation to the authority to conduct a custodial investigation under Article III, Section 12 of the Constitution, "has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]**"

Thus, **with port security personnel's functions having the color of state-related functions and deemed agents of government, *Marti* is inapplicable in the present case**. x x x.[25] (Emphases and underscoring supplied)

In this light, the Court is convinced that the acts of the *Bantay Bayan* – or any barangay-based or other volunteer organizations in the nature of watch groups – relating to the preservation of peace and order in their respective areas have the color of a state-related function. As such, they should be deemed as law enforcement authorities for the purpose of applying the Bill of Rights under Article III of the 1987 Constitution to them.[26]

Having established that the Bill of Rights may be applied to the *Bantay Bayan* operatives who arrested and subsequently searched petitioner, the Court shall now determine whether such arrest and search were validly made.

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[25] *Id*. at 54-61; citations omitted.

[26] See *People v. Lauga*, *supra* note 23, at 529-531.

"Section 2,[27] Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2),[28] Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.[29]

One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed**.[30]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

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[27] Section 2, Article III of the 1987 Constitution states:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[28] Section 3 (2), Article III of the 1987 Constitution states:

Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[29] See *Sindac v. People*, G.R. No. 220732, September 6, 2016, citing *People v. Manago*, August 17, 2016, G.R. No. 212340.

[30] See *id*.

Section 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto;* (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[31]

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting

[31] See *id*., citing *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

officer had personal knowledge of facts indicating that the accused had committed it.[32]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed."[33]

In this case, the prosecution claims that the BB Bahoyo and BB Velasquez simply responded to a purported report of a man showing off his private parts at Kaong Street which led to petitioner's arrest. On the other hand, petitioner maintains that he was just urinating in front of his workplace when the *Bantay Bayan* operatives suddenly approached and questioned him, and thereafter, frisked and arrested him. BB Bahoyo's testimony on direct and cross-examinations is enlightening on this matter, to wit:

PROSECUTOR: x x x

x x x x x x x x x

So, upon seeing Jeffrey Miguel, what did you do?

WITNESS: We approached him and we asked him what was he doing in that place and he appears to be intoxicated, ma'am.

PROSECUTOR: After questioning him, what did you do?

WITNESS: We asked him from where he is residing and he told us that he is from Caong Street.

PROSECUTOR: What you do next?

WITNESS: Because I also live in Caong and he is not familiar to me, I asked for his I.D, ma'am.

PROSECUTOR: Was he able to produce an I.D?

WITNESS: He was not able to produce any I.D., ma'am.

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[32] See *id*.

[33] See *id*.

PROSECUTOR: When he failed to produce any I.D., what did you do?

WITNESS: One of my companions asked him if he has any I.D. with him.

PROSECUTOR: Who was this companion of yours?

WITNESS: Mark Anthony Velasquez, ma'am.

PROSECUTOR: What was the response of Jeffrey to the request of Mark Anthony Velasquez?

WITNESS: He brought out the contents of his pocket and he brought out one pack of Fortune with one stick inside and another pack, Marlboro light pack with one stick of cigarette and two sticks of marijuana.

x x x x x x x x x

[on cross-examination]

ATTY. PUZON: When you saw certain Jeffrey, you were not familiar with him, is that correct?

WITNESS: No, sir, I am not familiar with him.

ATTY. PUZON: And when you saw him, he was already showing his private parts, is that correct?

WITNESS: Yes, sir.

ATTY. PUZON: In your "Pinagsanib na Sinumpaang Salaysay" you stated that when you saw Jeffrey, his back was turned to you and it seemed that he was peeing. Do you remember saying that in your "Pinagsanib na Sinumpaang Salaysay"?

WITNESS: Yes, sir.

ATTY. PUZON: So, is it not true that when you saw him, he was already showing his private parts?

WITNESS: He was showing his private parts, sir.

ATTY. PUZON: While his back turned to you?

WITNESS: Yes, sir.

ATTY. PUZON: How could you see his private parts if his back was turned against you?

WITNESS: He faced us, sir.

x x x x x x x x x

COURT: Did you charge the accused for urinating in a public place or for showing his private parts?

WITNESS: No, Your Honor.

ATTY. PUZON: And in fact, only a drug case was filed against Jeffrey?

WITNESS: I have no idea, sir. (Emphases and underscoring supplied)[34]

On the other hand, pertinent portions of petitioner's Judicial Affidavit[35] containing his direct testimony read:

Q: *Naaalala mo pa ba ang petsang* 24 May 2010?

A: *Opo. Iyon po ang araw nang ako ay dakpin ng dalawang bantay-bayan*.

Q: *Ano ang naaalala mo bago ka mahuli, kung mayroon man?*

A: *Mga bandang pasado alas dose ng hating gabi ako ay umihi sa tapat ng pinagtatrabahuhan ko ng may biglang lumapit sa akin na dalawang bantay-bayan.*

Q: *Ano ang sumunod na nangyari* x x x, *kung mayroon man*?

A: *Nagtanong po sila kung saan ako nakatira at sinagot ko na nakatira ako sa* Kaong St., Brgy. San Antonio Village, Makati City *at pagkatapos ay kinapkapan nila ako*.

Q: *May nakuha ba sila sa iyo pakatapos kang kapkapan, kung mayroon man*?

A: *Opo. Nakuha nila ang aking* charger, cellphone, lighter *at sigarilyong* Fortune.

Q: *Ano ang sumunod na nangyari, kung mayroon man*?

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[34] TSN, February 27, 2012, pp. 5-6 and 19-21.

[35] Dated September 14, 2012. Records, pp. 149-151.

A: *Pinosasan nila ako at dinala sa* barangay.[36] (Emphases and underscoring supplied)

On cross-examination, petitioner testified, as follows:

PROSECUTOR: x x x Mr. Witness, you said that at past 12:00 in the midnight of May 24, 2010 you were arrested by two *Bantay Bayan*, do you affirm that Mr. Witness?

WITNESS: Yes, ma'am.

PROSECUTOR: And how did you know that they are *Bantay Bayan complement?*

WITNESS: They told me that they were *Bantay Bayan* personnel, ma'am.

PROSECUTOR: What were you doing then, Mr. Witness?

WITNESS: Urinating in front of my place of work, ma'am.

x x x x x x x x x

PROSECUTOR: And you were working at that time that you were allegedly arrested by these two *Bantay Bayan* complement, Mr. Witness?

WITNESS: Not anymore because I was staying in at the company, ma'am.

x x x x x x x x x

PROSECUTOR: You urinated outside because you do not have a comfort room inside, is it not a fact, Mr. Witness?

WITNESS: Yes, ma'am.

PROSECUTOR: What is this Fine Home Incorporation doing, Mr. Witness?

WITNESS: I am a caretaker at Fine Home Incorporation I guard the steels, ma'am.[37] (Emphases and underscoring supplied)

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[36] *Id*. at 149.

[37] TSN, September 17, 2012, pp. 5-6.

On the basis of the foregoing testimonies, the Court is inclined to believe that at around past 12 o'clock in the early morning of May 24, 2010, petitioner went out to the street to urinate when the *Bantay Bayan* operatives chanced upon him. The latter then approached and questioned petitioner, and thereafter, went on to search his person, which purportedly yielded the marijuana seized from him. Verily, the prosecution's claim that petitioner was showing off his private parts was belied by the aforesaid testimonies. Clearly, these circumstances do not justify the conduct of an *in flagrante delicto* arrest, considering that there was no overt act constituting a crime committed by petitioner in the presence or within the view of the arresting officer. Neither do these circumstances necessitate a "*hot pursuit*" warrantless arrest as the arresting *Bantay Bayan* operatives do not have any personal knowledge of facts that petitioner had just committed an offense.

More importantly, the Court simply finds highly implausible the prosecution's claim that a valid warrantless arrest was made on petitioner on account of the alleged public display of his private parts because if it was indeed the case, then the proper charge should have been filed against him. However, records are bereft of any showing that such charge was filed aside from the instant criminal charge for illegal possession of dangerous drugs – thereby strengthening the view that no prior arrest was made on petitioner which led to a search incidental thereto. As stressed earlier, there must first be a lawful arrest before a search can be made and that such process cannot be reversed.

All told, the *Bantay Bayan* operatives conducted an illegal search on the person of petitioner. Consequently, the marijuana purportedly seized from him on account of such search is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated marijuana is the very *corpus delicti* of the crime charged, petitioner must necessarily be acquitted and exonerated from criminal liability.[38]

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[38] See *People v. Manago*, *supra* note 29, citing *Comerciante v. People*, *supra* note 31, at 641.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 21, 2015 and the Resolution dated September 5, 2016 of the Court of Appeals in CA-G.R. CR No. 35318 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jeffrey Miguel *y* Remegio is **ACQUITTED** of the crime of illegal possession of dangerous drugs defined and penalized under Section 11, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held for any other reason.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 227695. July 31, 2017]

GENPACT SERVICES, INC., and DANILO SEBASTIAN REYES, *petitioners, vs.* **MARIA KATRINA SANTOS-FALCESO, JANICE ANN[*] M. MENDOZA, and JEFFREY S. MARIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION MUST FIRST BE FILED WITH THE LOWER COURT PRIOR TO RESORTING TO THE EXTRAORDINARY REMEDY OF *CERTIORARI*, SINCE A MOTION FOR RECONSIDERATION MAY STILL BE CONSIDERED AS A PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; RATIONALE; EXCEPTIONS;

[*] "Janice M. Mendoza" in some parts of the *rollo*.

PRESENT.— A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law. It is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. Given the special and extraordinary nature of a Rule 65 petition, the general rule is that a motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary remedy of *certiorari*, since a motion for reconsideration may still be considered as a plain, speedy, and adequate remedy in the ordinary course of law. The rationale for the pre-requisite is to grant an opportunity for the lower court or agency to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. This notwithstanding, the foregoing rule admits of 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 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 proceedings 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. A judicious review of the records reveals that the exceptions in items (*d*) and (*e*) are attendant in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; 2011 NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE, AS AMENDED; THE REMEDY OF FILING A MOTION FOR RECONSIDERATION MAY BE AVAILED OF ONCE BY

EACH PARTY; DEPRIVING THE PARTIES OF THE OPPORTUNITY TO FILE A MOTION FOR RECONSIDERATION CONSTITUTES A VIOLATION OF THEIR RIGHT TO DUE PROCESS.— The dispositive portion of the NLRC's June 30, 2014 Resolution which partially granted respondents' motion for reconsideration, and accordingly, increased their entitlement to separation pay to one (1) month salary per year of service - reads in its entirety x x x. **No further motion of similar import shall be entertained.** x x x. Otherwise worded, the highlighted portion explicitly warns the litigating parties that the NLRC shall no longer entertain any further motions for reconsideration. Irrefragably, this circumstance gave petitioners the impression that moving for reconsideration before the NLRC would only be an exercise in futility in light of the tribunal's aforesaid warning. Moreover, Section 15, Rule VII of the 2011 NLRC Rules of Procedure, as amended, provides, among others, that the remedy of filing a motion for reconsideration may be availed of **once by each party**. In this case, only respondents had filed a motion for reconsideration before the NLRC. Applying the foregoing provision, petitioners also had an opportunity to file such motion in this case, should they wish to do so. However, the tenor of such warning effectively deprived petitioners of such opportunity, thus, constituting a violation of their right to due process.

3. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DIRECT RECOURSE TO THE COURT OF APPEALS THROUGH A PETITION FOR *CERTIORARI* JUSTIFIED IN CASE AT BAR; REMAND OF THE CASE TO THE COURT OF APPEALS, WARRANTED.—** Petitioners were completely justified in pursuing a direct recourse to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. To rule otherwise would be clearly antithetical to the tenets of fair play, not to mention the undue prejudice to petitioners' rights. Thus, in light of the fact that the CA dismissed outright the petition for *certiorari* before it solely on procedural grounds, a remand of the case for a resolution on the merits is warranted.

APPEARANCES OF COUNSEL

Roberto V. Pasamba for petitioners.
Puyat Jacinto & Santos for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] filed by petitioners Genpact Services, Inc. (Genpact) and Danilo Sebastian Reyes (Reyes; collectively, petitioners) are the Decision[2] dated May 13, 2016 and the Resolution[3] dated October 12, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136878 which dismissed outright the petition for *certiorari* they filed before the CA solely on procedural grounds.

The Facts

Genpact is engaged in business process outsourcing, particularly servicing various multinational clients, including Allstate Insurance Company (Allstate).[4] On different dates spanning the years 2007 to 2011, Genpact hired respondents Maria Katrina Santos-Falceso, Janice Ann M. Mendoza, and Jeffrey S. Mariano (respondents) to various positions to service its Allstate account.[5] However, on April 19, 2012, Allstate ended its account with Genpact,[6] resulting in respondents being placed on floating status, and eventually, terminated from service.[7] This prompted respondents to file a complaint[8] before the National Labor Relations Commission (NLRC), docketed as NLRC-NCR-Case No. 12-18013-12 for illegal dismissal, non-payment of separation pay, damages, and attorney's fees against Genpact and/or its Country Manager, Reyes. Respondents alleged

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[1] *Rollo,* pp. 10-25.

[2] *Id.* at 46-55. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda concurring.

[3] *Id*. at 57-59.

[4] *Id*. at 13 and 47.

[5] See *id*. at 47 and 155-156.

[6] See *id*. at 128-129.

[7] See Notices of Termination Due to Closure/Cessation of Operation of the Establishment/Undertaking dated September 28, 2012, *id*. at 240-245.

[8] Dated December 12, 2012. *Id*. at 208-209.

that after Allstate terminated its contract with Genpact, they were initially placed on "benching" status with pay, and after five (5) months, Genpact gave them the option to either "voluntarily resign" or to "be involuntarily terminated on the ground of redundancy" with severance pay of one-half (½) month basic salary for every year of service, in either case. Left without the option to continue their employment with Genpact, respondents chose the latter option and were made to sign quitclaims as a condition for receiving any and all forms of monetary benefits.[9] In this light, respondents argued that the termination of Genpact and Allstate's agreement neither amounted to a closure of business nor justified their retrenchment. Respondents further contended that Genpact failed to observe the requirements of procedural due process as there was no showing that the latter served proper notice to the Department of Labor and Employment (DOLE) thirty (30) days before they were terminated from service, and that they were not accorded the chance to seek other employment opportunities.[10]

In their defense, petitioners justified respondents' termination of employment on the ground of closure or cessation of Allstate's account with Genpact as part of the former's "[g]lobal [d]ownsizing due to heavy losses caused by declining sales in North America."[11] Further, petitioners claimed that they incessantly pursued efforts to retain respondents within their organization, but the same proved futile, thus, leaving them with no other choice but to provide respondents with the option to either resign or be separated on account of redundancy – an option which they reported to the DOLE and resorted to in the exercise of management prerogative with utmost good faith.[12] Lastly, petitioners pointed out that respondents were properly given separation pay, as well as unpaid allowances and 13th

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[9] See *id*. at 47-48 and 131-132.

[10] *Id*. at 48 and 135.

[11] *Id*. at 48.

[12] *Id*. at 48.

month pay, thus, rendering the latter's monetary claims bereft of merit.[13]

The Labor Arbiter's Ruling

In a Decision[14] dated September 23, 2013, the Labor Arbiter (LA) dismissed respondents' complaint for lack of merit. The LA found that respondents' termination from service was due to the untimely cessation of the operations of Genpact's client, Allstate, wherein respondents were assigned.[15] In this regard, the LA pointed out that Genpact tried to remedy respondents' situation by assigning them to other accounts, but such efforts proved futile as respondents were hired specifically to match the needs of Allstate.[16] Furthermore, the LA took Genpact's act of paying respondents their separation pay computed at one-half (½) month pay for every year of service as a sign of good faith. Thus, the LA concluded that there was an authorized cause in terminating respondents' services, and that Genpact complied with DOLE's reportorial requirements in doing so.[17]

Aggrieved, respondents appealed[18] to the NLRC, docketed as NLRC LAC No. 11-003359-13.

The NLRC Ruling

In a Decision[19] dated May 20, 2014, the NLRC affirmed the LA ruling. It held that Allstate's pullout from Genpact does not mean an automatic termination of the employees assigned to the Allstate account, such as respondents, but purports that the employees assigned to the withdrawing client would be

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[13] *Id*. at 48-49.

[14] *Id*. at 72-80. Penned by Executive Labor Arbiter Fatima Jambaro-Franco.

[15] See *id*. at 77-78.

[16] See *id*. at 78.

[17] See *id*. at 79.

[18] See Memorandum of Appeal dated November 15, 2013; *id*. at 338-358.

[19] *Id*. at 127-148. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro concurring.

"benched" or placed on floating status as contemplated in Article 286 (now Article 301)[20] of the Labor Code, as amended. In fact, the NLRC pointed out that Genpact recognized the applicability of the said provision in the case of respondents, as well as other similarly-situated employees, considering that: (*a*) it embarked on a Retention Effort Program which resulted in the redeployment of more or less 100 of its employees affected by Allstate's pullout; (*b*) it placed respondents and the other similarly-situated employees on "benching" status with full pay; (*c*) it only resorted to termination after alleged incessant efforts to find a suitable position for respondents proved unsuccessful; and (*d*) such terminations were done during the six (6)-month period within which employees were allowed to be placed on floating status. Thus, Genpact's acts of placing respondents on "benching" or floating status, and thereafter, terminating their employment were made in the exercise of its management prerogative in good faith and in accordance with internal hiring procedures. As such, it cannot be said that respondents were illegally dismissed from service.[21]

Respondents moved for reconsideration,[22] which was partly granted by the NLRC in a Resolution[23] dated June 30, 2014, and accordingly, increased respondents' entitlement to separation pay to one (1) month salary for every year of service. In said

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[20] See Department Advisory No. 01, Series of 2015, entitled "Renumbering of the Labor Code of the Philippines, as Amended." Article 286 (now Article 301) of the Labor Code reads:

Article 301. [286]. *When Employment not Deemed Terminated*. – The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfilment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position, without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[21] *Rollo*, pp. 142-148.

[22] See Motion for Reconsideration dated June 6, 2014; *id*. at 407-414.

[23] *Id*. at 150-152.

Resolution, the NLRC held that since respondents' positions were rendered superfluous by the closure of the Allstate account, then it follows that they were terminated on account of redundancy pursuant to Article 286 (now Article 301), in relation to Article 283 (now Article 298) of the Labor Code. As such, they should be paid separation pay amounting to one (1) month salary for every year of service, instead of the one-half (½) month salary for every year of service.[24] Notably, the NLRC Resolution explicitly stated that "**[n]o further motion of similar import shall be entertained**."[25]

Dissatisfied, petitioners filed a petition for *certiorari*[26] before the CA.

The CA Ruling

In a Decision[27] dated May 13, 2016, the CA dismissed outright the petition for *certiorari* purely on procedural grounds. It held that petitioners' failure to file a motion for reconsideration before the NLRC prior to elevating the case to the CA is a fatal infirmity which rendered their petition for *certiorari* before the latter court dismissible, further noting that petitioners did not present any plausible justification nor concrete, compelling, and valid reason for dispensing with the requirement of a prior motion for reconsideration.[28]

Petitioners moved for reconsideration[29] which was, however, denied in a Resolution[30] dated October 12, 2016; hence, this petition.[31]

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[24] *Id*. at 151.

[25] *Id*.; emphasis and underscoring supplied.

[26] Dated August 28, 2014. *Id*. at 81-102.

[27] *Id*. at 46-55.

[28] See *id*. at 52-54.

[29] Not attached to the *rollo*.

[30] *Rollo*, pp. 57-59.

[31] *Id*. at 10-25.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly dismissed outright the *certiorari* petition filed by petitioners before it on procedural grounds.

The Court's Ruling

The petition is meritorious.

A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law. It is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction.[32]

Given the special and extraordinary nature of a Rule 65 petition, the general rule is that a motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary remedy of *certiorari*, since a motion for reconsideration may still be considered as a plain, speedy, and adequate remedy in the ordinary course of law. The rationale for the pre-requisite is to grant an opportunity for the lower court or agency to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[33] This notwithstanding, the foregoing rule admits of 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 the interests of the Government or of the petitioner or the subject matter of the

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[32] See *Hilbero v. Morales, Jr.*, G.R. No. 198760, January 11, 2017; citation omitted.

[33] See *Carpio Morales v. CA*, G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431, 467, citing *Republic v. Bayao*, 710 Phil. 279, 287-288 (2013).

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 proceedings 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.[34]

A judicious review of the records reveals that the exceptions in items (*d*) and (*e*) are attendant in this case.

The dispositive portion of the NLRC's June 30, 2014 Resolution[35] – which partially granted respondents' motion for reconsideration, and accordingly, increased their entitlement to separation pay to one (1) month salary per year of service – reads in its entirety:

> WHEREFORE, premises considered, the motion for reconsideration is partly granted. The assailed Decision is modified in that GENPACT Services LLC is ordered to pay complainants separation pay of one month salary per year of service. The amounts already received by complainants shall be deducted from the amounts due.
>
> **No further motion of similar import shall be entertained**.
>
> SO ORDERED.[36] (Emphasis and underscoring supplied)

Otherwise worded, the highlighted portion explicitly warns the litigating parties that the NLRC shall no longer entertain any further motions for reconsideration. Irrefragably, this circumstance gave petitioners the impression that moving for reconsideration before the NLRC would only be an exercise in futility in light of the tribunal's aforesaid warning.

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[34] *Id*.

[35] *Rollo*, pp. 150-152.

[36] *Id*. at 151.

Moreover, Section 15, Rule VII[37] of the 2011 NLRC Rules of Procedure, as amended, provides, among others, that the remedy of filing a motion for reconsideration may be availed of **once by each party**. In this case, only respondents had filed a motion for reconsideration before the NLRC. Applying the foregoing provision, petitioners also had an opportunity to file such motion in this case, should they wish to do so. However, the tenor of such warning effectively deprived petitioners of such opportunity, thus, constituting a violation of their right to due process.

All told, petitioners were completely justified in pursuing a direct recourse to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. To rule otherwise would be clearly antithetical to the tenets of fair play, not to mention the undue prejudice to petitioners' rights.[38] Thus, in light of the fact that the CA dismissed outright the petition for *certiorari* before it solely on procedural grounds, a remand of the case for a resolution on the merits is warranted.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 13, 2016 and the Resolution dated October 12, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136878 are hereby **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the CA for a resolution on the merits.

SO ORDERED.

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

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[37] Section 15, Rule VII of the 2011 NLRC Rules of Procedure, approved on May 31, 2011, states:

Section 15. *Motions for Reconsideration*. – Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

[38] See *Castells v. Saudi Arabian Airlines*, 716 Phil. 667, 675 (2013).

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APPEALS

Appeals in criminal cases — In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment or even reverse the trial court's decision based on grounds other than those that the parties raised as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law. (Miguel *y* Remegio *vs.* People, G.R. No. 227038, July 31, 2017) p. 1073

Concept of — Sec. 4 of Rule 43 limits the extension the appellate court may grant for the filing of an appeal; a liberal and flexible application of the technical rules be bestowed not only for reason of substantial justice, but also for meritorious reasons. (Philcontrust Resources Inc. [Formerly known as Inter-Asia Land Corp.] *vs.* Santiago, G.R. No. 174670, July 26, 2017) p. 507

Petition for review on certiorari to the Supreme Court under Rule 45 — Only errors of law are generally reviewed in Rule 45 petitions assailing decisions of the CA and questions of fact are not entertained. (Cosue *vs.* Ferritz Integrated Dev't. Corp., G.R. No. 230664, July 24, 2017) p. 77

— The scope of the Supreme Court's judicial review under Rule 45 is confined only to errors of law and does not extend to questions of fact; one of the recognized exceptions to the application of the above rule is when the findings of the Labor Arbiter are in conflict with those of the NLRC and the CA, as in instant case. (Maunlad Trans, Inc. *vs.* Isidro, G.R. No. 222699, July 24, 2017) p. 49

— The Supreme Court has recognized exceptions to the rule that the findings of fact of the CA are conclusive and binding in the following instances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly

done in the presence or within the view of the arresting officer. (Miguel *y* Remegio *vs.* People, G.R. No. 227038, July 31, 2017) p. 1073

— The waiver of the effects of Art. 125 of the RPC is not a license to detain a person *ad infinitum*; waiver of a detainee's right to be delivered to proper judicial authorities as prescribed by Art. 125 of the RPC does not trump his constitutional right in cases where probable cause was initially found wanting by reason of the dismissal of the complaint filed before the prosecutor's office even if such dismissal is on appeal, reconsideration, reinvestigation or on automatic review. (*Id.*)

— There must first be a lawful arrest before a search can be made and that such process cannot be reversed. (*Id.*)

— Three (3) instances when warrantless arrests may be lawfully effected; these are: (a) an arrest of a suspect *in flagrante delicto*; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another. (*Id.*)

ATTORNEYS

Code of Professional Responsibility — A lawyer is not entitled to unilaterally appropriate his client's money for himself by the mere fact that the client owes him attorney's fees; the failure of an attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice and violation of the general morality, as well as of professional ethics. (Heirs of Juan De Dios E. Carlos *vs.* Atty. Linsangan, A.C. No. 11494, July 24, 2017) p. 1

— Once a lawyer takes up the cause of his client, a lawyer is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and

Practice of law — Not a right but a privilege bestowed by the State upon those who show that they possess and continue to possess, the qualifications required by law for the conferment of such privilege. (Heirs of Juan De Dios E. Carlos *vs.* Atty. Linsangan, A.C. No. 11494, July 24, 2017) p. 1

Prohibition against — Art. 1491(5) of the Civil Code which forbids lawyers from acquiring, by purchase or assignment, the property that has been the subject of litigation in which they have taken part by virtue of their profession; jurisprudence provides an exception to the above proscription, *i.e.*, if the payment of contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer, such is not applicable to the instant case. (Heirs of Juan De Dios E. Carlos *vs.* Atty. Linsangan, A.C. No. 11494, July 24, 2017) p. 1

BAIL

Bail as a matter of right — An accused may file a second petition for bail, particularly if there are sudden developments or a new matter or fact which warrants a different view. (People *vs.* Escobar, G.R. No. 214300, July 26, 2017) p. 840

— The accused has the right to bail if the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment before conviction by the Regional Trial Court; however, if the accused is charged with an offense the penalty of which is death, *reclusion perpetua*, or life imprisonment regardless of the stage of the criminal prosecution and when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court. (*Id.*)

BILL OF RIGHTS

Invocation of — While the Bill of Rights under Art. III of the 1987 Constitution generally cannot be invoked against the acts of private individuals, the same may nevertheless

has been reclassified from agricultural to non-agricultural use. (*Id.*)

Just compensation — Courts of law possess the power to make a final determination of just compensation. (*Id.*)

— The Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. (Land Bank of the Phils. *vs.* Rural Bank of Hermosa [Bataan], Inc., G.R. No. 181953, July 25, 2017) p. 157

— Factors enumerated under Sec. 17 of R.A. No. 6657, as amended, *i.e.*: (a) the acquisition cost of the land; (b) the current value of like properties; (c) the nature and actual use of the property, and the income therefrom; (d) the owner's sworn valuation; (e) the tax declarations; (f) the assessment made by government assessors; (g) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (h) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered. (*Id.*)

— For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking or the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred in the name of the Republic of the Philippines (Republic), or Certificates of Land Ownership Award (CLOAs) are issued in favor of the farmer-beneficiaries. (*Id.*)

— Must be valued at the time of taking, such as when title is transferred in the name of the Republic, or CLOAs are issued in favor of the farmer-beneficiaries. (*Id.*)

COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what

thing sold and the payment therefor. (People *vs.* Mendoza *y* Potolin *a.k.a.* "Jojo", G.R. No. 220759, July 24, 2017) p. 31

Illegal sale of prohibited drugs — In sustaining a conviction for illegal sale of prohibited drugs, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs.* Segundo *y* Iglesias, G.R. No. 205614, July 26, 2017) p. 697

CONTEMPT

Contempt of court — A non-litigant may be cited in contempt if he or she acted in conspiracy with the parties in violating the court order. (Oca *vs.* Custodio, G.R. No. 199825, July 26, 2017) p. 641

— Punishment for contempt is classified into two (2): civil contempt and criminal contempt; civil contempt is committed when a party fails to comply with an order of a court or judge for the benefit of the other party; criminal contempt is committed when a party acts against the court's authority and dignity or commits a forbidden act tending to disrespect the court or judge. (*Id.*)

— There are two (2) types of contempt of court: (i) direct contempt and (ii) indirect contempt; direct contempt consists of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before [it]; it includes: (i) disrespect to the court, (ii) offensive behavior against others, (iii) refusal, despite being lawfully required, to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition; it can be punished summarily without a hearing; indirect contempt is committed through any of the acts enumerated under Rule 71, Sec. 3 of the Rules of Court; indirect contempt is only punished after a written petition is filed and an opportunity to be heard is given to the party charged. (*Id.*)

EMPLOYMENT, TERMINATION OF

— The remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelled under Sec. 1 of Rule 19. (*Id.*)

JUDGES

Discipline of — A disciplinary case against a judge or justice brought before the Supreme Court is an administrative proceeding; it is subject to the rules and principles governing administrative procedures. (Anonymous Complaint *vs.* Presiding Judge Dagala, A.M. No. MTJ-16-1886 [formerly OCA IPI No. 16-2869-MTJ], July 25, 2017) p. 103

— Proceedings for the discipline of judges and justices of lower courts may be instituted in three ways: by the Supreme Court *motu proprio*, through a verified complaint, and through an anonymous complaint; a verified complaint must be supported by affidavits of persons who have personal knowledge of the facts alleged or by documents which may substantiate the allegations; an anonymous complaint, on the other hand, should be supported by public records of indubitable integrity; while anonymous complaints should always be treated with great caution, the anonymity of the complaint does not, in itself, justify its outright dismissal. (*Id.*)

Gross misconduct — Misconduct is considered grave where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present. (Anonymous Complaint *vs.* Presiding Judge Dagala, A.M. No. MTJ-16-1886 [formerly OCA IPI No. 16-2869-MTJ], July 25, 2017) p. 103

Immorality — A judge was dismissed from service for siring a child outside of wedlock and for engaging in an extramarital affair; the absence of a public and private dichotomy when it comes to the ethical standards expected of judges and justices has since become an unyielding doctrine as consistently applied by the Supreme Court.

LAND REGISTRATION

Certificate of titles — The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred; reconstitution does not pass upon the ownership of the land covered by the lost or destroyed title. (Nat'l Housing Authority *vs.* Laurito, G.R. No. 191657, July 31, 2017) p. 1019

— Where two certificates of title are issued to different persons covering the same parcel of land in whole or in part, the earlier in date must prevail as between the original parties and, in case of successive registration where more than one certificate is issued over the land, the person holding title under the prior certificate is entitled to the property as against the person who relies on the second certificate. (*Id.*)

Land Titles — If the inclusion of the land in the earlier registered title was a result of a mistake, then the latter registered title will prevail; the *ratio decidendi* of this exception is to prevent a title that was earlier registered, which erroneously contained a parcel of land that should not have been included, from defeating a title that was later registered but is legitimately entitled to the said land. (Sps. Yu Hwa Ping and Mary Gaw *vs.* Ayala Land, Inc., G.R. No. 173120, July 26, 2017) p. 468

Torrens system — The fact that a person was able to secure a title in his name does not operate to vest ownership upon him of the subject land; registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership; a certificate of title is merely an evidence of ownership or title over the particular property described therein. (Sps. Yu Hwa Ping and Mary Gaw *vs.* Ayala Land, Inc., G.R. No. 173120, July 26, 2017) p. 468

LEGISLATIVE DEPARTMENT

ROBBERY WITH HOMICIDE

Commission of — Elements of the special complex crime of robbery with homicide are: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. (People *vs.* Gamba *y* Nissorada, G.R. No. 215332, July 24, 2017) p. 25

SEARCHES AND SEIZURE

Exclusionary Rule — The *Bantay Bayan* operatives conducted an illegal search on the person of petitioner; consequently, the marijuana purportedly seized from him on account of such search is rendered inadmissible in evidence pursuant to the exclusionary rule under Sec. 3 (2), Art. III of the 1987 Constitution. (Miguel *y* Remegio *vs.* People, G.R. No. 227038, July 31, 2017) p. 1073

Unreasonable search and seizure — A search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision; evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. (Miguel *y* Remegio *vs.* People, G.R. No. 227038, July 31, 2017) p. 1073

STATUTES

Interpretation of — When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; there is only room for application; according to the plain-meaning rule or *verba legis*, when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. (Padilla *vs.* Congress of the Phils., G.R. No. 231671, July 25, 2017) p. 344

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