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SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 1, 2017 TO AUGUST 8, 2017

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MANILA
2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 10562. August 1, 2017]

JEAN MARIE S. BOERS, *complainant, vs.* **ATTY. ROMEO CALUBAQUIB,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; RULES ON NOTARIAL PRACTICE; A PARTY ACKNOWLEDGING MUST APPEAR BEFORE THE NOTARY PUBLIC.—** The Rules on Notarial Practice governs the various notarial acts that a duly commissioned notary public is authorized to perform. These include acknowledgment, affirmation and oath, and *jurat*. x x x In *Cabanilla v. Cristal-Tenorio*, we held that "a party acknowledging must appear before the notary public." This rule is hinged on the obligation of a notary public to guard against any illegal arrangements. The appearance of the parties to the deed helps the notary public to ensure that the signature appearing on the document is genuine and that the document itself is not spurious. The persons who signed the document must appear before the notary public to enable the latter to verify that the persons who signed the document are the same persons making the acknowledgment. Their presence also enables the notary public to ensure that the document was signed freely and voluntarily. Thus, we have consistently repeated that a notary public should not notarize a document unless the persons who signed are the very same persons who executed and personally appeared before him or

her to attest to the contents and truth of the matters stated in the document.

2. ID.; ID.; NOTARY PUBLIC MANDATED TO RECORD IN THE NOTARIAL REGISTER EVERY NOTARIAL ACT AT THE TIME OF NOTARIZATION.— Calubaquib also violated the mandatory recording requirements under the Rules. Section 1 of Rule VI of the Rules requires a notary public to keep a notarial register. Section 2 mandates that a notary public must record in the notarial register every notarial act at the time of notarization. x x x The Certification from the National Archives reveals that Calubaquib failed to record the Deed of Sale in his notarial register.

APPEARANCES OF COUNSEL

Cesar L. Evangelista for complainant.

D E C I S I O N

***PER CURIAM*:**

The Case

On May 28, 2009, Jean Marie S. Boers (Boers) filed before the Commission on Bar Discipline (Commission) a complaint-affidavit[1] against Atty. Romeo Calubaquib (Calubaquib). Boers claims that Calubaquib violated the Rules on Notarial Practice and prays that he be given the appropriate disciplinary action. The Commission directed Calubaquib to file his answer.[2] It then conducted a mandatory conference and thereafter ordered the parties to submit their position papers.[3] On May 23, 2011, the Commission submitted its Report and Recommendation[4] to the Integrated Bar of the Philippines Board of Governors

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[1] *Rollo*, pp. 3-8.

[2] *Id.* at 30.

[3] *Id*. at 92.

[4] *Id*. at 122-126.

(IBP Board of Governors). The IBP Board of Governors adopted and approved the Commission's report and recommendation[5] and forwarded the resolution to this Court.[6]

The Facts

Boers and her siblings are co-owners of parcels of land in Tuguegarao City covered by a transfer certificate of title.[7] Sometime in October 2008, Boers learned that a certain Isaac Gavino (Gavino) annotated an adverse claim on their land.[8] The adverse claim was based on a Deed of Sale of a Portion of Land on Installment Basis (Deed of Sale) dated October 16, 1991.[9] Boers' signature appears on the Deed of Sale as one of the sellers. The Deed of Sale was notarized by Calubaquib on the same date.[10]

Boers claims that she could not have signed the Deed of Sale and appeared before Calubaquib for the notarization on October 16, 1991 because she was in Canada at the time. To prove this, Boers presented her passport which shows that she left the Philippines to return to Canada on December 20, 1990.[11] She also presented her Philippine visa which was valid only until February 7, 1991.[12] Boers also points to the absence of any residence certificate number under her name and signature in the notarization of the Deed of Sale. Neither was there any other competent form of identification stated in it.[13]

Boers inquired with the National Archives of the Philippines where she learned that the Deed of Sale does not appear in

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[5] *Id*. at 120.

[6] *Id*. at 139.

[7] See *id*. at 3, 10.

[8] *Id*. at 9.

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

[10] *Id*. at 11.

[11] *Id*. at 18.

[12] *Id*. at 19.

[13] *Id*. at 11.

Calubaquib's notarial file. It appears that the Deed of Sale was acknowledged as Doc. No. 143; Page No. 30; Book No. LIX; Series of 1991. However, upon verification with the National Archives, the document that corresponds to this is not the Deed of Sale but an Affidavit executed by one Alfred Danao on October 15, 1991.[14]

Boer also added that this Court has already sanctioned Calubaquib in *Lingan v. Calubaquib*.[15] In that case, we suspended Calubaquib from the practice of law for one (1) year for his failure to enter in his notarial record a certification of forum shopping which he notarized.[16]

In his defense, Calubaquib insists that Boers signed the Deed of Sale and the acknowledgment. He theorizes that Boers may have viewed the adverse claim as a hindrance to a planned sale of the land and thus filed this complaint against him.[17] As evidence, he attached to his answer a joint affidavit of Eulogia D. Simangan and Erlinda S. Tumaliuan, Boers' aunt and cousin, respectively.[18]

Notably, the joint affidavit states:

> 13. That when JEAN MARIE A. SIMANGAN-BOERS signed the document at the office of Atty. ROMEO I. CALUBAQUIB, the document was not immediately notarized because not all the parties to the document signed at one time.
>
> 14. That when all the parties to the document signed, the same was not immediately brought to Atty. Calubaquib for notarization because JOSE A. SIMANGAN, JR. wanted to increase the purchase price and which was objected to vigorously by the BUYERS.

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[14] *Id.* at 28.

[15] A.C. No. 5377, June 15, 2006, 490 SCRA 526.

[16] *Id.* at 537.

[17] *Rollo*, p. 36.

[18] *Id.* at 39-40.

15. That when Jose A. SIMANGAN, JR. and the BUYERS settled their differences, that was the time that the document was brought to the notary public for notarization.

16. That at the time the document was brought for notarization, JEAN MARIE A. SIMANGAN-BOERS was no longer in the country.[19]

The Commission recommended that Calubaquib be suspended from the practice of law for two (2) years. Further, it recommended the revocation of Calubaquib's notarial commission and his perpetual prohibition from being commissioned as a notary public.[20]

The IBP Board of Governors adopted the Commission's recommendation but added a stern warning that repetition of the same or similar conduct will be dealt with more severely.[21] On Calubaquib's motion for reconsideration, the IBP Board of Governors modified its resolution and removed the stern warning as part of Calubaquib's penalties.[22]

The Ruling of the Court

We affirm the findings of the Commission and the IBP Board of Governors.

The Rules on Notarial Practice governs the various notarial acts that a duly commissioned notary public is authorized to perform. These include acknowledgment, affirmation and oath, and *jurat*. In the case of the Deed of Sale, Calubaquib performed the notarial act identified under the Rules as acknowledgment. Rule II, Section 1 of the Rules define acknowledgment as:

Sec. 1. *Acknowledgment*. — "Acknowledgment" refers to an act in which an individual on a single occasion:

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[19] *Id*. at 40.

[20] *Id*. at 126.

[21] *Id*. at 120.

[22] *Id*. at 140.

(a) appears in person before the notary public and presents an integrally complete instrument or document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

In *Cabanilla v. Cristal-Tenorio*,[23] we held that "a party acknowledging must appear before the notary public."[24] This rule is hinged on the obligation of a notary public to guard against any illegal arrangements.[25] The appearance of the parties to the deed helps the notary public to ensure that the signature appearing on the document is genuine and that the document itself is not spurious. The persons who signed the document must appear before the notary public to enable the latter to verify that the persons who signed the document are the same persons making the acknowledgment. Their presence also enables the notary public to ensure that the document was signed freely and voluntarily. Thus, we have consistently repeated that a notary public should not notarize a document unless the persons who signed are the very same persons who executed and personally appeared before him or her to attest to the contents and truth of the matters stated in the document.[26]

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[23] A.C. No. 6139, November 11, 2003, 415 SCRA 353.

[24] *Id.* at 360.

[25] *Valles v. Arzaga-Quijano*, A.M. No. P-99-1338, November 18, 1999, 318 SCRA 411, 414.

[26] *Cabanilla v. Cristal-Tenorio*, *supra* at 361; *Fulgencio v. Martin*, A.C. No. 3223, May 29, 2003, 403 SCRA 216, 221; *Villarin v. Sabate, Jr.*, A.C. No. 3324, February 9, 2000, 325 SCRA 123, 128.

Calubaquib clearly violated this rule. Boer satisfactorily proved that she could not have personally appeared before Calubaquib on October 16, 1991 as she was out of the country as early as December 20, 1990. Moreover, Calubaquib's own evidence established this same fact. He presented a joint affidavit which expressly states that Boer was not in the Philippines when he notarized the Deed of Sale. For this violation of the Rules, the imposition of disciplinary sanctions is proper.

Calubaquib also violated the mandatory recording requirements under the Rules. Section 1 of Rule VI of the Rules requires a notary public to keep a notarial register. Section 2 mandates that a notary public must record in the notarial register every notarial act at the time of notarization. We explained the importance of this mandatory recording in *Vda. de Rosales v. Ramos*:[27]

> The notarial registry is a record of the notary public's official acts. Acknowledged documents and instruments recorded in it are considered public document. If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document. Considering the evidentiary value given to notarized documents, the failure of the notary public to record the document in his notarial registry is tantamount to falsely making it appear that the document was notarized when in fact it was not.[28]

The Certification from the National Archives reveals that Calubaquib failed to record the Deed of Sale in his notarial register. In the face of this evidence and the lack of any explanation on the part of Calubaquib, we rule that he committed a further violation of the Rules.

In *Sappayani v. Gasmen*[29] and *Sultan v. Macabanding*,[30] where the notary public involved notarized a document without the

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[27] A.C. No. 5645, July 2, 2002, 383 SCRA 498.

[28] *Id.* at 505.

[29] A.C. No. 7073, September 1, 2015, 768 SCRA 373.

[30] A.C. No. 7919, October 8, 2014, 737 SCRA 530.

presence of the affiant, we meted out the penalties of revocation of the notarial commission, suspension from the practice of law for one (1) year, and disqualification from being commissioned as a notary public for two (2) years. Further, in instances where the notary public improperly recorded entries in the notarial registry, as in the cases of *Gimeno v. Zaide*[31] and *Heirs of Pedro Alilano v. Examen*,[32] we ordered the revocation of the notarial commission. We also imposed the penalties of suspension from the practice of law for at least one (1) year and disqualification from being commissioned as a notary public for two (2) years.

In this case, however, we note that this is not the first time that we sanctioned Calubaquib for his violation of the Rules on Notarial Practice. This serves as an aggravating circumstance that merits a harsher penalty.

WHEREFORE, in view of the foregoing, we **AFFIRM WITH MODIFICATION** Resolution No. XX-2014-136 of the Board of Governors of the Integrated Bar of the Philippines. We impose on Calubaquib the penalty of **SUSPENSION** for **TWO (2) YEARS** from the practice of law effective upon finality of this Decision. Further, Calubaquib's notarial commission is **REVOKED** and he is **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public. Calubaquib is also **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

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

Caguioa, J., on leave.

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[31] A.C. No. 10303, April 22, 2015, 757 SCRA 11.

[32] A.C. No. 10132, March 24, 2015, 754 SCRA 187.

EN BANC

[A.C. No. 11504. August 1, 2017]

ARIEL G. PALACIOS, for and in behalf of the AFP Retirement and Separation Benefits System (AFP-RSBS), *complainant, vs.* **ATTY. BIENVENIDO BRAULIO M. AMORA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; PROSCRIPTION AGAINST REPRESENTING CONFLICTING INTERESTS.— [Under Rule 15.03 of the Code of Professional Responsibility] A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Respondent, however, failed to present any such document. He points to the fact that complainant approved several transactions between him and the complainant. In his Position Paper dated October 2, 2008, respondent argues that AFP-RSBS gave its formal and written consent to his status as an investor and allowed him to be subrogated to all the rights, privileges and causes of action of an investor. This purported approval, however, is not the consent that the CPR demands. In *Gonzales v. Cabucana*, *Jr.*, the Court ruled that a lawyer's failure to acquire a **written consent** from both clients after a full disclosure of the facts would subject him to disciplinary action: x x x Absent such written consent, respondent is guilty of representing conflicting interests.

2. ID.; ID.; ID.; CASE OF *HORNILLA V. SALUNAT,* EXPLAINED THE TEST TO DETERMINE WHEN A CONFLICT OF INTEREST IS PRESENT.— In *Hornilla v. Salunat*, We explained the test to determine when a conflict of interest is present, thus: There is conflict of interest 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 brief, 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 interest 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 thereof.** x x x In *Ylaya v. Gacott*, the Court was succinct in saying that a lawyer should **decline** any employment that would involve any conflict of interest: x x x It thus becomes quite clear that respondent's actions fall short of the standard set forth by the CPR and are in violation of his oath as a lawyer. By representing the interests of a new client against his former client, he violated the trust reposed upon him. His violation of the rules on conflict of interest renders him subject to disciplinary action.

3. **ID.; ID.; DUTY OF LAWYER TO PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED.—** It is undeniable that, in causing the filing of a complaint against his former client, respondent used confidential knowledge that he acquired while he was still employed by his former client to further the cause of his new client.

4. **REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THAT MONEY PAID BY ONE TO ANOTHER WAS DUE TO THE LATTER.—** Rule 131, Section 3, par. (f) provides: Sec. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x x (f) That money paid by one to another was due the latter; x x x x By alleging that respondent was not entitled to the payment of PhP1.8 Million, it was incumbent upon complainant to present evidence to overturn the disputable presumption that the payment was due to respondent. This, complainant failed to do. x x x The amount

of PhP1.8 Million is a substantial amount that, in normal human experience, no person would pay to someone who did not render any service.

5. LEGAL ETHICS; LAWYER REPRESENTING CONFLICTING INTERESTS; PENALTY.— While the Court cannot allow a lawyer to represent conflicting interests, the Court deems disbarment a much too harsh penalty under the circumstances. x x x [T]he Court finds that under the circumstances, a penalty of two (2) years suspension from the practice of law would suffice. Atty. Amora, however, is warned that a repetition of this and other similar acts will be dealt with more severely.

APPEARANCES OF COUNSEL

Vicente T. Verdadero and AFP-RSBS Legal Department for complainant.

Triccia Oco for respondent.

D E C I S I O N

***PER CURIAM*:**

The instant administrative case arose from a Complaint dated March 11, 2008[1] filed by Ariel G. Palacios, in his capacity as the Chief Operating Officer and duly authorized representative of the AFP Retirement and Separation Benefits System (AFP-RSBS), seeking the disbarment of respondent Atty. Bienvenido Braulio M. Amora, Jr. for alleged violation of: (1) Canon 1, Rules 1.01 to 1.03; Canon 10, Rules 10.01 to 10.03; Canon 15, Rule 15.03; Canon 17; Canon 21, Rule 21.01 and 21.02 of the Code of Professional Responsibility (CPR); (2) Section 20, Rule 138 of the Rules of Court; (3) Lawyer's Oath; and (4) Article 1491 of the Civil Code.

The Facts

The facts as found by the Integrated Bar of the Philippines, Board of Governors (IBP-BOG), are as follows:

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[1] *Rollo*, pp. 2-19.

Complainant is the owner[-]developer of more or less 312 hectares of land estate property located at Barangays San Vicente, San Miguel, Biluso and Lucsuhin, Municipality of Silang, Province of Cavite ("property"). Said property was being developed into a residential subdivision, community club house and two (2) eighteen[-]hole, world-class championship golf courses (the "Riviera project"). In 1996, complainant entered into purchase agreements with several investors in order to finance its Riviera project. One of these investors was Philippine Golf Development and Equipment, Inc. ("Phil Golf"). On 07 March 1996, Phil Golf paid the amount of Php54 Million for the purchase of 2% interest on the Riviera project consisting of developed residential lots, Class "A" Common Shares, Class "B" Common Shares, and Class "C" Common Shares of the Riviera Golf Club and Common Shares of the Riviera Golf Sports and Country Club.

On 02 June 1997, complainant retained the services of respondent of the Amora and Associates Law Offices to represent and act as its legal counsel in connection with the Riviera project (Annex "C" to "C-5" of the complaint). Respondent's legal services under the said agreement include the following: issuance of consolidated title(s) over the project, issuance of individual titles for the resultant individual lots, issuance of license to sell by the Housing and Land Use Regulatory Board, representation before the SEC, and services concerning the untitled lots included in the project. For the said legal services, respondent charged complainant the amount of Php6,500,000.00 for which he was paid in three different checks (Annexes "D" to "D3" of the complaint).

On 10 May 1999, complainant entered into another engagement agreement with respondent and the Amora Del Valle & Associates Law Offices for the registration of the Riviera trademark with the Intellectual Property Office (Annex "E" of the complainant) where respondent was paid in check in the amount of Php158,344.20 (Annex "F" of the complaint).

On **14 March 2000**, another contract for services was executed by complainant and respondent for the latter to act as its counsel in the reclassification by the Sangguniang Bayan of Silang, Cavite of complainant's agricultural lot to "residential commercial and/or recreational use" in connection with its Riviera project (Annexes "G" to "G4" of the complaint). Under this contract, respondent was hired to "act as counsel and representative of AFP-RSBS before the Sangguniang Bayan of Silang, Cavite in all matters relative to the

reclassification of the subject properties from agricultural to non-agricultural uses." On 21 March 2000, respondent furnished complainant a copy of Resolution No. MI-007, S of 2000 of the Sangguniang Bayan of Silang **dated 21 February 2000** ("resolution") approving the conversion and was paid the amount of Php1.8M (Annex "H" of the complaint). Notably, the resolution was passed on 21 February 2000 or a month before the signing of the said 14 March 2000 contract. Clearly, when [the] 14 March 2000 contract was signed by complainant and respondent, there was already a resolution of the Sangguniang Bayan of Silang approving the conversion of complainant's properties to residential/commercial. Clearly, the Php1.8M demanded and received by respondent is not justifiable for the sole and simple reason that respondent could not have performed any service under the 14 March 2000 contract considering that the result sought by the complainant (reclassification) has been fulfilled and completed as early as 21 February 2000. Respondent, must therefore, be ordered to return this amount to complainant.

On 06 November 2000, complainant entered into another contract for legal services with respondent for which the latter was paid the amount of Php14,000,000.00 to secure Certificate of Registration and License to Sell from the SEC (Annexes "I" to "I-5" of the complaint). In addition, complainant further paid respondent the following checks as professional fees in obtaining the Certificate of Registration and Permit to Offer Securities for shares and other expenses: EPCIB Check No. 443124 dated 13 February 2003 in the amount of Php1,500,000.00, CENB Check No. 74001 dated 29 February 2000 in the amount of Php6,754.00, CENB Check No. 70291 dated 15 September 1999 in the amount Php261,305.00, and LBP Check No. 48691 dated 26 January 2001 in the amount of Php221,970.00.

As complainant's legal counsel, respondent was privy to highly confidential information regarding the Riviera project which included but was not limited to the corporate set-up, actual breakdown of the shares of stock, financial records, purchase agreements and swapping agreements with its investors. Respondent was also very familiar with the Riviera project[,] having been hired to secure Certificate of Registration and License to Sell with the HLURB and the registration of the shares of stock and license to sell of the Riviera Golf Club, Inc. and Riviera Sports and Country Club, Inc. Respondent further knew that complainant had valid titles to the properties of the Riviera

project and was also knowledgeable about complainant's transactions with Phil Golf.

After complainant terminated respondent's services as its legal counsel, respondent became Phil Golf's representative and assignee. Respondent began pushing for the swapping of Phil Golf's properties with that of complainant. Respondent sent swapping proposals to his former client, herein complainant, this time in his capacity as Phil Golf's representative and assignee. These proposals were rejected by complainant for being grossly disadvantageous to the latter. After complainant's rejection of the said proposals, respondent filed a case against its former client, herein complainant on behalf of a subsequent client (Phil Golf) before the HLURB for alleged breach of contract (Annex "R" of the complaint). In this HLURB case, respondent misrepresented that Phil Golf is a duly organized and existing corporation under and by virtue of the laws of the Philippines because it appears that Phil Golf's registration had been revoked as early as 03 November 2003. Despite Phil Golf's revoked Certificate of Registration, respondent further certified under oath that he is the duly authorized representative and assignee of Phil Golf. Respondent, however, was not authorized to act for and on behalf of said corporation because Phil Golf's corporate personality has ceased. The Director's Certificate signed by Mr. Benito Santiago of Phil Golf dated 10 May 2007 allegedly authorizing respondent as Phil Golf's representative and assignee was null and void since the board had no authority to transact business with the public because of the SEC's revocation of Phil Golf's Certificate of Registration.[2]

Due to the above actuations of respondent, complainant filed the instant action for disbarment.

The IBP's Report and Recommendation

After hearing, the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD) issued a Report and Recommendation dated June 21, 2010, penned by Investigating Commissioner Victor C. Fernandez, recommending the dismissal of the complaint, to wit:

PREMISES CONSIDERED, it is respectfully recommended that the instant complaint be dismissed for lack of merit.

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[2] *Id.* at 435-438.

Respectfully submitted.[3]

On review, the IBP-BOG reversed the recommendation of the IBP-CBD and recommended the suspension from the practice of law of respondent for a period of three (3) years and ordering the return of the amount of PhP1.8 Million to the complainant within six (6) months. The dispositive portion of the Extended Resolution dated December 28, 2015,[4] reads:

WHEREFORE, premises considered, the Board RESOLVED to unanimously REVERSE the Report and Recommendation dated 21 June 2010 recommending the dismissal of the Complaint dated 11 March 2008 and instead resolved to suspend respondent from the practice of law for a period of three (3) years and ordered the latter to return the amount of Php1.8 Million to the complainant within six (6) months.

SO ORDERED.[5]

The IBP-BOG found that respondent violated Rules 15.01, 15.03, 21.01 and 21.02 of the CPR, as well as Article 1491 of the Civil Code.

As provided in Section 12(b), Rule 139-B of the Rules of Court,[6] the IBP Board forwarded the instant case to the Court for final action.

Issue

The singular issue for the consideration of this Court is whether Atty. Amora should be held administratively liable based on the allegations on the Complaint.

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[3] *Id*. at 432.

[4] *Id*. at 433-441.

[5] *Id*. at 440-441.

[6] Section 12. Review and decision by the Board of Governors. – x x x

b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

The Court's Ruling

The Court modifies the findings of the IBP-BOG and the penalty imposed on the respondent who violated the Lawyer's Oath and Rules 15.01, 15.03, 21.01 and 21.02 of the Code of Professional Responsibility.

Respondent represented conflicting interests

The Lawyer's Oath provides:

> I___________ of ___________ do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any court; I will not wittingly nor willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and **will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients**; and I impose upon myself this voluntary obligations without any mental reservation or purpose of evasion. So help me God. (Emphasis supplied)

while Rules 15.01 and 15.03 of the Code state:

> Rule 15.01. – A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.
>
> 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.

The requirement under Rule 15.03 is quite clear. A lawyer must secure the written consent of all concerned parties after a full disclosure of the facts. Respondent, however, failed to present any such document. He points to the fact that complainant approved several transactions between him and the complainant. In his Position Paper dated October 2, 2008,[7] respondent argues

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[7] *Id.* at 223-251.

that AFP-RSBS gave its formal and written consent to his status as an investor and allowed him to be subrogated to all the rights, privileges and causes of action of an investor.[8]

This purported approval, however, is not the consent that the CPR demands.

In *Gonzales v. Cabucana*, *Jr.*,[9] the Court ruled that a lawyer's failure to acquire a **written consent** from both clients after a full disclosure of the facts would subject him to disciplinary action:

> As we explained in the case of *Hilado vs. David*:
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> x x x x x x x x x
>
> In the same manner, his claim that he could not turn down the spouses as no other lawyer is willing to take their case cannot prosper as it is settled that while there may be instances where lawyers cannot decline representation they cannot be made to labor under conflict of interest between a present client and a prospective one. Granting also that there really was no other lawyer who could handle the spouses' case other than him, still **he should have observed the requirements laid down by the rules by conferring with the prospective client to ascertain as soon as practicable whether the matter would involve a conflict with another client then seek the written consent of all concerned after a full disclosure of the facts.** These respondent failed to do thus exposing himself to the charge of double-dealing.[10] (Emphasis supplied; citation omitted)

Absent such written consent, respondent is guilty of representing conflicting interests.

Moreover, as correctly pointed out by complainant, respondent did not merely act as its investor at his own behest. In a letter dated April 26, 2007,[11] the respondent wrote AFP-RSBS stating:

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[8] *Id*. at 245.

[9] A.C. No. 6836, January 23, 2006, 479 SCRA 320.

[10] *Id*. at 331-332.

[11] *Rollo*, p. 54.

"Further to our letter dated 24 April 2007 and on behalf of my principal, Philippine Golf Development and Equipment, Inc., x x x" Plainly, respondent was acting for and in behalf of Phil Golf.

Worse, at Phil Golf's instance, he caused the filing of a Complaint dated October 10, 2007[12] against complainant with the HLURB, stating that he is the duly authorized representative and assignee of Phil Golf and that he caused the preparation of the complaint.[13]

In *Hornilla v. Salunat*,[14] We explained the test to determine when a conflict of interest is present, thus:

> There is conflict of interest 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 brief, 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 interest 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 thereof.**[15] (Emphasis supplied)

Without cavil, or further need of elucidation, respondent's representation of Phil Golf violated the rules on conflict of

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[12] *Id*. at 56-72.

[13] *Id*. at 85.

[14] A.C. No. 5804, July 1, 2003, 405 SCRA 220.

[15] *Id*. at 223.

interest as he undertook to take up the causes of his new client against the interest of his former client.

In *Ylaya v. Gacott*,[16] the Court was succinct in saying that a lawyer should **decline** any employment that would involve any conflict of interest:

> The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. **Part of the lawyer's duty to his client is to avoid representing conflicting interests.** He is duty bound to decline professional employment, no matter how attractive the fee offered may be, if its acceptance involves a violation of the proscription against conflict of interest, or any of the rules of professional conduct. Thus, a lawyer may not accept a retainer from a defendant after he has given professional advice to the plaintiff concerning his claim; **nor can he accept employment from another in a matter adversely affecting any interest of his former client. It is his duty to decline employment in any of these and similar circumstances in view of the rule prohibiting representation of conflicting interests.**[17] (Emphasis supplied)

It thus becomes quite clear that respondent's actions fall short of the standard set forth by the CPR and are in violation of his oath as a lawyer. By representing the interests of a new client against his former client, he violated the trust reposed upon him. His violation of the rules on conflict of interest renders him subject to disciplinary action.

Respondent used confidential information against his former client, herein complainant

Additionally, by causing the filing of the complaint before the HLURB, the IBP-BOG correctly points out that respondent must have necessarily divulged to Phil Golf and used information that he gathered while he was complainant's counsel in violation of Rules 21.01 and 21.02 of the CPR, which state:

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[16] A.C. No. 6475, January 30, 2013, 689 SCRA 452.

[17] *Id*. at 476.

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

Rule 21.01 – A lawyer shall not reveal the confidences or secrets of his client except;

(a) When authorized by the client after acquainting him of the consequences of the disclosure;

(b) When required by law;

(c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

Rule 21.02 – A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

The IBP-BOG properly found thus:

Using confidential information which he secured from complainant while he was the latter's counsel, respondent accused his former client of several violations. In the process, respondent disclosed confidential information that he secured from complainant thereby jeopardizing the latter's interest. As discussed below, respondent violated his professional oath and the CPR.

x x x x x x x x x

x x x x In the instant case, despite the obvious conflict of interest between complainant and Phil Golf, respondent nevertheless agreed to represent the latter in business negotiations and worse, even caused the filing of a lawsuit against his former client, herein complainant, using information the respondent acquired from his former professional employment.[18]

In *Pacana, Jr. v. Pascual-Lopez*,[19] the Court reiterated the prohibition against lawyers representing conflicting interests:

Rule 15.03, Canon 15 of the Code of Professional Responsibility provides:

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[18] *Rollo*, pp. 438-439.

[19] A.C. No. 8243, July 24, 2009, 594 SCRA 1.

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

This prohibition is founded on principles of public policy, good taste and, more importantly, upon necessity. **In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care. No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof. 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 paramount in the administration of justice.** It is for these reasons that we have described the attorney-client relationship as one of trust and confidence of the highest degree.

Respondent must have known that her act of constantly and actively communicating with complainant, who, at that time, was beleaguered with demands from investors of Multitel, eventually led to the establishment of a lawyer-client relationship. **Respondent cannot shield herself from the inevitable consequences of her actions by simply saying that the assistance she rendered to complainant was only in the form of "friendly accommodations," precisely because at the time she was giving assistance to complainant, she was already privy to the cause of the opposing parties who had been referred to her by the SEC**.[20] (Emphasis supplied)

It is undeniable that, in causing the filing of a complaint against his former client, respondent used confidential knowledge that he acquired while he was still employed by his former client to further the cause of his new client. And, as earlier stated, considering that respondent failed to obtain any written consent to his representation of Phil Golf's interests, he plainly violated the above rules. Clearly, respondent must be disciplined for his actuations.

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[20] *Id*. at 13-14.

No basis for the return of PhP1.8 Million

Rule 131, Section 3, par. (f) provides:

> Sec. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (f) That money paid by one to another was due the latter;
>
> x x x x x x x x x

By alleging that respondent was not entitled to the payment of PhP1.8 Million, it was incumbent upon complainant to present evidence to overturn the disputable presumption that the payment was due to respondent. This, complainant failed to do.

Complainant alleged that:

> At the time of the signing of said contract, there was already a resolution approved by the Sangguniang Bayan of Silang approving the conversion of AFP-RSBS' properties to residential/commercial. Atty. Amora could not, thus, have acted as AFP-RSBS' legal counsel and representative during the said proceedings, which was conducted a month before he was hired by AFP-RSBS. However, he charged AFP-RSBS and was paid by the latter the amount of 1.8 million pesos for not doing anything. **He did not represent AFP-RSBS and was not instrumental in having the resolution passed and approved by the Sangguniang Bayan of Silang.**[21] (Emphasis supplied)

Notably, complainant never presented any evidence to prove that the resolution was passed without the intervention of respondent. This it could have done by asking the Sangguniang Bayan of Silang whether respondent represented AFP-RSBS before them. This, complainant did not do.

The amount of PhP1.8 Million is a substantial amount that, in normal human experience, no person would pay to someone

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[21] *Rollo*, p. 6.

who did not render any service. Further, the mere fact that the contract was executed after the issuance of the resolution does not *ipso facto* mean that respondent did not have any hand in its issuance.

Verily, complainant failed to overcome the abovementioned disputable presumption. Mere allegations cannot suffice to prove that respondent did not render any service to complainant and, therefore, not entitled to the payment of PhP1.8 Million.

The Court adopts the findings of Commissioner Fernandez of the IBP-CBD that respondent actually rendered the legal services in connection with the Sangguniang Bayan Resolution converting the land from agricultural to residential/commercial and that respondent is legally entitled to the payment. The Court finds that the explanation of respondent is credible and it clarifies why the Agreement came after the issuance of the Resolution, viz:

> The amount of Php 1.8 Million was paid by complainant AFP-RSBS for fees and expenses related to the approval of Sangguniang Bayan Resolution No. ML-007, Series of 2007. Based on the usual practice during that time, respondent performed the work upon the instruction of AFP-RSBS even without any written agreement regarding his fees and expenses. When respondent secured the Sangguniang Bayan Resolution, he then sent a billing for the fees and expenses amounting to Php1,850,000.00. It was addressed to Engr. Samuel Cruz, the then Project Director of RSBS-Riviera Project. However, since at that time, AFP-RSBS had a new President, the Head of its Corporation Holding and Investment Group (Col. Cyrano A. Austria) instructed respondent to draw a new contract to comply with the new policies and requirements. Thus, respondent and complainant entered into a contract for services if only to document the service already performed by respondent in accordance with the new policy of AFP-RSBS.[22]

As such, there is no basis to order respondent to return the PhP1.8 Million.

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[22] *Id.* at 428.

<u>Respondent did not acquire property of a client subject of litigation</u>

Moreover, with regard to the finding of the IBP-BOG that respondent violated Article 1491 of the Civil Code, We have to digress. The Article reads:

> 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:
>
> x x x x x x x x x
>
> (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**.
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> x x x x x x x x x (Emphasis supplied)

On this point, We sustain the respondent's position that the prohibition contained in Article 1491 does not apply in this case. "The subject properties which were acquired by respondent Amora were allegedly not in litigation and/or object of any litigation at the time of his acquisition."[23]

The Court in *Sabidong v. Solas*, clearly ruled: "For the prohibition to apply, the sale or assignment of the property must take place during the pendency of the litigation involving the property."[24]

<u>Under the circumstances, Atty. Amora must be suspended</u>

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[23] *Id.* at 137.

[24] A.M. No. P-01-1448, June 25, 2013, 699 SCRA 303, 320.

Notwithstanding the respondent's absolution from liability under Article 1491 of the Civil Code, the gravity of his other acts of misconduct demands that respondent Amora must still be suspended.

Section 27, Rule 138 of the Revised Rules of Court provides:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court **for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct**, or by reason of his conviction of a crime involving moral turpitude, or **for any violation of the oath which he is required to take before admission to practice**, or for a willful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

While the Court cannot allow a lawyer to represent conflicting interests, the Court deems disbarment a much too harsh penalty under the circumstances. Thus, in *Francia v. Abdon*, the Court opined:

In *Alitagtag v. Atty. Garcia*, the Court emphasized, thus:

Indeed, the power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should never be decreed where any lesser penalty could accomplish the end desired. Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.[25] (citation omitted)

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[25] A.C. No. 10031, July 23, 2014, 730 SCRA 341, 353.

In *Quiambao v. Bamba*,[26] the Court pointed out that jurisprudence[27] regarding the penalty solely for a lawyer's representation of conflicting interests is suspension from the practice of law for one (1) to three (3) years. While the IBP-BOG recommends the penalty of suspension from the practice of law for three (3) years be imposed on respondent, the Court finds that under the circumstances, a penalty of two (2) years suspension from the practice of law would suffice. Atty. Amora, however, is warned that a repetition of this and other similar acts will be dealt with more severely.

WHEREFORE, the Court finds Atty. Bienvenido Braulio M. Amora, Jr. **GUILTY** of violating the Lawyer's Oath and Canon 15, Rule 15.03; Canon 21, Rule 21.01 and 21.02 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of two (2) years. Atty. Amora is warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Bienvenido Braulio M. Amora, Jr. as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for dissemination to all trial courts for their information and guidance.

SO ORDERED.

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

Caguioa, J., on leave.

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[26] A.C. No. 6708, August 25, 2005, 468 SCRA 1, 16.

[27] *Vda. de Alisbo v. Jalandoni*, A.C. No. 1311, July 18, 1991, 199 SCRA 321; *PNB v. Cedo*, A.C. No. 3701, March 28, 1995, 243 SCRA 1; *Maturan v. Gonzales*, A.C. No. 2597, March 12, 1998, 287 SCRA 443; *Northwestern University, Inc. v. Arquillo*, A.C. No. 6632, August 2, 2005, 465 SCRA 513.

EN BANC

[A.M. No. P-09-2649. August 1, 2017]
(Formerly A.M. No. 09-5-219-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EDUARDO T. UMBLAS, Legal Researcher, and ATTY. RIZALINA G. BALTAZAR-AQUINO, Clerk of Court IV, both of the Regional Trial Court, Branch 33, Ballesteros, Cagayan,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; DISHONESTY, GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY WARRANT DISMISSAL.—** "Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." On the other hand, "[m]isconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former." Finally, and "as compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty." "Needless to say, these constitute [C]onduct [P]rejudicial to

the [B]est [I]nterest of the [S]ervice as they violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary." Jurisprudence outlined the following acts that constitute this offense, such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders. "In order to sustain a finding of administrative culpability under the foregoing offenses, only the quantum of proof of substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion."

2. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (URACCS); DISHONESTY, GRAVE MISCONDUCT, GROSS NEGLECT OF DUTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE ARE GRAVE OFFENSES; PENALTY.— [T]he Uniform Rules on Administrative Cases in the Civil Service (URACCS) classifies the offenses of Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service as Grave Offenses, with the first three punishable with Dismissal for the first offense, while the last one punishable with Suspension for a period of six (6) months and one (1) day to one (1) year for the first offense and Dismissal for the second offense. Applying Section 55 of the URACCS, respondents should be meted the supreme penalty of Dismissal from the service. Corollary thereto, they shall likewise suffer the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service. It is well to clarify, however, that their accrued leave credits, if any, shall not be forfeited, as it is a standing rule that "despite their dismissal from the service, government employees are entitled to the leave credits that they have earned during the period of their employment. As a matter of fairness and law, they may not be deprived of such remuneration, which they have earned prior to their dismissal." Nevertheless, such earned leave credits shall be first applied to respondents' respective cash shortages, and should such leave credits be insufficient, then respondents should be made to pay for the balance.

DECISION

***PER CURIAM*:**

The instant administrative case arose from a Memorandum[1] dated January 15, 2009 filed before the complainant Office of the Court Administrator (OCA) by then Deputy Court Administrator Reuben P. De La Cruz (DCA De La Cruz) reporting the commission of malversation thru falsification of official documents committed by employees of the Regional Trial Court of Ballesteros, Cagayan, Branch 33 (RTC-Cagayan Br. 33).[2]

The Facts

To verify DCA De La Cruz's report, an audit and investigation was conducted in the RTC-Cagayan Br. 33 covering the financial transactions of the court's former Officer-in-Charge, respondent Legal Researcher Eduardo T. Umblas (Umblas), from February 1997 to July 31, 2005 and respondent Clerk of Court Atty. Rizalina G. Baltazar-Aquino (Atty. Baltazar-Aquino) from August 2005 to January 31, 2009.[3] The results thereof were contained in a Memorandum[4] dated May 12, 2009 submitted before the OCA. In said Memorandum, the audit and investigation team discovered that during respondents Umblas and Atty. Baltazar-Aquino's (respondents) respective periods of accountability, they have committed various irregularities in the collections and deposits of the Judiciary Development Fund, General Fund, Sheriff's General Fund, Special Allowance for the Judiciary Fund, Fiduciary Fund, Legal Research Fund, Publication, and Sheriff's Trust Fund. It was likewise found out that there have been cases of uncollected and/or understated fees, tampered official receipts, and collections without issuing official receipts.[5] After collating all the relevant data, the audit

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[1] Not attached to the *rollo*.

[2] See *rollo*, pp. 10 and 393.

[3] See *id*. at 10.

[4] *Id*. at 10-26.

[5] See *id*. at 11-21.

and investigation team concluded that Umblas had total initial shortages amounting to ₱1,334,784.35,[6] while Atty. Baltazar-Aquino's total initial shortages amounted to ₱796,685.20.[7]

Adopting the recommendation of the audit and investigation team, the Court issued a Resolution[8] dated July 6, 2009 which, *inter alia*: (*a*) docketed the report as a regular administrative complaint against respondents; (*b*) ordered respondents to explain in writing their shortages as well as various irregularities they committed as accountable officers; and (*c*) ordered respondents to pay and deposit their shortages.[9]

In her Compliance[10] dated November 24, 2009, Atty. Baltazar-Aquino explained as follows: (*a*) for the Publication shortage

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[6] Broken down as follows (see *id*. at 20 and 401):

FUND	Shortages/ (Overages)
Judiciary Development Fund	₱2,184.00
General Fund	₱21,126.00
Sheriff's General Fund	₱244.00
Special Allowance for the Judiciary Fund	₱0
Fiduciary Fund	₱1,308,245.35
Balance	**₱1,331,799.35**
Add: Unreceipted collections (JDF)	₱2,985.00
TOTAL INITIAL SHORTAGES	**₱1,334,784.35**

[7] Broken down as follows (see *id*. at 21 and 401):

FUND	Shortages/ (Overages)
Fiduciary Fund	₱248,000.00
Judiciary Development Fund	₱323,162.29
Special Allowance for the Judiciary Fund	₱152,322.91
Sheriff's Trust Fund	₱48,000.00
Legal Research Fund	₱200.00
Publication	₱25,000.00
TOTAL INITIAL SHORTAGES	**₱796,685.20**

[8] *Id*. at 137-143. Signed by Assistant Clerk of Court Ma. Luisa L. Laurea.

[9] See *id*. at 137-141.

[10] *Id*. at 167-169.

amounting to ₱25,000.00, she issued an acknowledgement receipt in lieu of an official receipt, believing that the same is not part of the funds of the judiciary as it was turned over to the concerned publisher; (*b*) for the Sheriff's Trust Fund shortage of ₱48,000.00, she did not issue any receipt as the same was disbursed to the RTC-Cagayan Br. 33 Sheriff to cover expenses for delivering summonses and other court processes; and (*c*) for the ₱248,000.00 shortage in Fiduciary Fund, the cash bond amounting to ₱200,000.00 received in Criminal Case No. 33-611-33, entitled *People v. Wilfredo Uclos*, was already withdrawn upon the case's dismissal, while the remaining ₱48,000.00 should not be imputed to her as the transaction transpired from July to December 2005 and that the Fiduciary Fund account was only turned over to her by Umblas in January 2006. Further, Atty. Baltazar-Aquino requested for a copy of the financial audit report to enable her to explain all her remaining accountabilities.[11]

Accordingly, the Court ordered the OCA to furnish Atty. Baltazar-Aquino with the detailed list of the tampered official receipts, copies of acknowledgement receipts she issued in lieu of official receipts, and the detailed accounting of all funds audited and the corresponding shortages.[12] Despite this, Atty. Baltazar-Aquino repeatedly failed to submit her written explanation. As such, she was fined twice for such failure, and was even warned of being arrested should she fail to comply with the directives of the Court.[13] Finally, Atty. Baltazar-Aquino submitted a Compliance[14] dated April 14, 2014 voluntarily and unconditionally admitting to be the author of and thus, guilty of the falsifications, tampering, erasures, and shortages of funds imputed against her. In this regard, she expressed remorse over her actions, expressed willingness to return her incurred shortages, and pleaded for the Court to exercise some degree of compassion and mercy towards her.[15]

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[11] See *id*. at 168-169 and 405-406.

[12] See Resolution dated March 23, 2011; *id*. at 255-256.

[13] See *id*. at 406.

[14] *Id*. at 386-387.

[15] See *id*. See also *id*. at 407-408.

On the other hand, Umblas requested for additional periods to file his written explanation, but despite the periods given him, he never did so, and thus, was fined twice for such omission.[16]

The OCA's Report and Recommendation

In a Memorandum[17] dated May 5, 2016, the OCA recommended that: (*a*) respondents be found guilty of Dishonesty, Grave Misconduct, and Gross Neglect of Duty, and accordingly, be meted the penalty of dismissal with forfeiture of all retirement benefits excluding leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations; (*b*) Atty. Baltazar-Aquino be made to explain why she should not be disbarred for violations of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility; (*c*) the Leave Division of the Office of Administrative Services, OCA be directed to compute each of respondents' accrued leave credits; (*d*) the Financial Management Office, OCA be directed to apply the monetary value of respondents' leave credits to their respective cash shortages, and should the same prove to be insufficient, to order respondents to restitute the balance; and (*e*) the proper criminal charges be filed against respondents.[18]

As for Atty. Baltazar-Aquino, the OCA found that her voluntary and unconditional admission to falsifying and tampering various official receipts reveals a serious depravity in her character and integrity which has no place in the judiciary. The OCA added that she disregarded her mandated duty to safeguard court funds, thereby undermining the public's faith in the courts and in the administration of justice as a whole. Moreover, the OCA pointed out that Atty. Baltazar-Aquino did not collect initial sheriff's fees pursuant to Section 10 of Rule 141 of the Rules of Court nor issued official receipts for sheriff's

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[16] See *id*. at 408.

[17] *Id*. at 393-414. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia.

[18] See *id*. at 413-414.

fees she received, in violation of the directives contained in Circular Nos. 22-94 and 26-97. With regard to her Fiduciary Fund shortage, the OCA opined that Atty. Baltazar-Aquino was able to substantiate her claim that the cash bond in the amount of ₱200,000.00 posted in Criminal Case No. 33-611-33, entitled *People v. Wilfredo Uclos*, was already withdrawn after the case was dismissed. However, the remaining ₱48,000.00 was found to have been withdrawn within the period of her accountability, hence, she remained liable therefor. Thus, the total shortages incurred by Atty. Baltazar-Aquino should be pegged at ₱596,685.20.[19]

Finally, the OCA opined that Atty. Baltazar-Aquino's actuations not only ruined the image of the judiciary, but also put her moral character in serious doubt, thus, rendering her unfit to continue in the practice of law. As such, she should be made to explain why she should not be disbarred.[20]

As for Umblas, the OCA found that aside from various shortages in his books of account, there were also unreceipted collections, series of official receipts which were not reflected in the cashbook and monthly reports of collections and deposits, use of separate receipts, and various alterations/erasures in official receipts. In this regard, his failure to: (*a*) file any written explanation to controvert the aforesaid findings despite his numerous requests for additional periods to submit the same; and (*b*) comply with the Court's show cause resolutions, constitute not only an admission of guilt of the charges imputed against him, but also exhibits an act of defiance to a lawful order and lack of respect to authority which has no place in the judiciary.[21]

The Issue Before the Court

The essential issue in this case is whether or not respondents should be held administratively liable for Dishonesty, Grave Misconduct, and Gross Neglect of Duty.

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[19] See *id*. at 408-411.

[20] See *id*. at 411-413.

[21] See *id*. at 412.

The Court's Ruling

The Court concurs with the OCA's findings and recommendations, with modification holding respondents also administratively liable for Conduct Prejudicial to the Best Interest of the Service.

"Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[22]

On the other hand, "[m]isconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former."[23]

Finally, and "as compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty."[24]

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[22] See *OCA v. Dequito*, A.M. No. P-15-3386, November 15, 2016, citing *OCA v. Acampado*, 721 Phil. 12, 30 (2013).

[23] See *Commission on Elections v. Mamalinta*, G.R. No. 226622, March 14, 2017, citing *OCA v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 396.

[24] See *id.*, citing *OCA v. Viesca*, A.M. No. P-12-3092, *id.* at 395.

"Needless to say, these constitute [C]onduct [P]rejudicial to the [B]est [I]nterest of the [S]ervice as they violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary."[25] Jurisprudence outlined the following acts that constitute this offense, such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders.[26]

"In order to sustain a finding of administrative culpability under the foregoing offenses, only the quantum of proof of substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion."[27]

In this case, Atty. Baltazar-Aquino, being the Clerk of Court of RTC-Cagayan Br. 33, is considered to be the chief administrative officer of said court. With respect to the collection of legal fees, she performs a delicate function as the judicial officer entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by her at the very least constitutes misfeasance. Moreover, as a Clerk of Court, she is the custodian of court funds with the corresponding duty to immediately deposit various funds received by her and not keep the funds in her custody.[28] In *OCA v. Acampado*,[29] it was held that a Clerk of Court's failure to perform the aforementioned duties exposes him/her to administrative liability for Gross Neglect of Duty, Grave Misconduct, and also Serious Dishonesty, if it is shown that there was misappropriation of such collections, *viz.*:

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[25] *OCA v. Viesca*, *id*. at 396.

[26] See *Commission on Elections v. Mamalinta*, *supra* note 23, citing *Encinas v. Agustin, Jr.*, 709 Phil. 236, 263-264 (2013).

[27] See *id*., citing *OCA v. Lopez*, 654 Phil. 602, 607 (2011).

[28] See *OCA v. Viesca*, *supra* note 23, at 392.

[29] *Supra* note 22.

Clerks of Court are the custodians of the courts' "funds and revenues, records, properties, and premises." They are "liable for any loss, shortage, destruction or impairment" of those entrusted to them. **Any shortages in the amounts to be remitted and the delay in the actual remittance "constitute gross neglect of duty for which the clerk of court shall be held administratively liable."**

Respondent Acampado committed gross neglect of duty and grave misconduct when she failed to turn over the funds of the Judiciary that were placed in her custody within the period required by law. We said in [*OCA*] *v. Fueconcillo* [(585 Phil. 223 [2008])] **that undue delay by itself in remitting collections, keeping the amounts, and spending it for the respondent's "family consumption,** and fraudulently withdrawing amounts from the judiciary funds, **collectively constitute gross misconduct and gross neglect of dut**y." Such behaviour should not be tolerated as is denigrates this Court's image and integrity.

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Respondent Acampado's actions of misappropriating Judiciary funds and incurring cash shortages in the amounts of 1) Twenty-three Thousand Seven Hundred Twelve Pesos and Fifty-three Centavos (₱23,712.53) for the Judiciary Development Fund; 2) Fifty-eight Thousand Two Hundred Eighty-five Pesos and Eighty Centavos (₱58,285.80) for the Special Allowance for the Judiciary; and 3) Five Thousand Pesos (₱5,000.00) for the Mediation Fund (MF), totaling to Eighty-six Thousand Nine Hundred Ninety-eight Pesos and Thirty-three Centavos (₱86,998.33) **are serious acts of dishonesty that betrayed the institution tasked to uphold justice and integrity for all**. Moreover, respondent Acampado's act of repeatedly falsifying bank deposit slips is patent dishonesty that should not be tolerated by this Court. **Restitution of the missing amounts will not relieve respondent Acampado of her liability**.[30] (Emphases and underscoring supplied)

Here, Atty. Baltazar-Aquino voluntarily and unconditionally admitted that she authored the various acts of falsifying and tampering official receipts, resulting in cash shortages in her accountabilities. More importantly, she expressed her willingness

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

to return the amount comprising such shortages, thereby impliedly admitting that she misappropriated the same for her personal use.[31] Clearly, the foregoing admissions rendered Atty. Baltazar-Aquino administratively liable for the same.

Meanwhile, while Umblas was only a Legal Researcher, it must nevertheless be pointed out that he acted as RTC-Cagayan Br. 33's Officer-in-Charge from February 1997 to July 31, 2005 and was therefore an accountable disbursement officer thereof. In fact, during this period, he incurred cash shortages, all of which were left unexplained as he failed to file his written explanation despite his requests for numerous extensions of time to do so. As succinctly put by the OCA, his inexplicable silence on the matter can already be viewed as an admission of guilt on his part, warranting the imposition of administrative liabilities against him.

With respect to the proper penalty to be imposed on them, the Uniform Rules on Administrative Cases in the Civil Service (URACCS)[32] classifies the offenses of Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service as Grave Offenses, with the first three punishable with Dismissal for the first offense, while the last one punishable with Suspension for a period of six (6) months and one (1) day to one (1) year for the first offense and Dismissal for the second offense.[33] Applying Section 55[34] of the URACCS, respondents should be meted the supreme penalty

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[31] See Compliance dated April 14, 2014; *rollo*, pp. 386-387.

[32] The URACCS were still in effect at the time the offenses were committed, as the Revised Rules on Administrative Cases in the Civil Service (RRACCS) was promulgated only on November 8, 2011.

[33] See Section 52 of the URACCS.

[34] Section 55 of the URACCS states:

Section 55. *Penalty for the Most Serious Offense*. – If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

of Dismissal from the service. Corollary thereto, they shall likewise suffer the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service.[35] It is well to clarify, however, that their accrued leave credits, if any, shall not be forfeited, as it is a standing rule that "despite their dismissal from the service, government employees are entitled to the leave credits that they have earned during the period of their employment. As a matter of fairness and law, they may not be deprived of such remuneration, which they have earned prior to their dismissal."[36] Nevertheless, such earned leave credits shall be first applied to respondents' respective cash shortages, and should such leave credits be insufficient, then respondents should be made to pay for the balance.

At this juncture, it must be noted that in an earlier case decided by the Court entitled *OCA v. Umblas*,[37] Umblas was already meted the penalty of dismissal along with its accessory penalties. Further, in *Garingan-Ferreras v. Umblas*,[38] Umblas was supposed to be meted the same penalty as well, if not for the earlier imposition thereof. Thus, he was instead meted with the penalty of a fine in the amount of ₱40,000.00. Hence, the Court can no longer impose the penalty of dismissal with its accessory penalties to Umblas in this case. In lieu thereof, a penalty of a fine in the amount of ₱40,000.00 shall be imposed on him instead, which amount shall be deducted from his accrued leave credits and if such is insufficient, he shall be ordered to pay the balance.

Furthermore, suffice it to say that the Court agrees with the OCA's recommendations that: (*a*) the proper criminal charges be filed against respondents; and (*b*) Atty. Baltazar-Aquino should be made to explain why she should not be disbarred for violations of Canons 1 and 7, and Rule 1.01 of the Code of Professional Responsibility.

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[35] See Section 58 (a) of the URACCS.

[36] *Office of the Court Administrator v. Ampong*, 735 Phil. 14, 21-22 (2014).

[37] See A.M. No. P-09-2621, September 20, 2016.

[38] See A.M. No. P-11-2989, January 10, 2017.

As a final note, it is well to emphasize that "those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Institution demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. In this light, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public."[39]

WHEREFORE, judgment is hereby rendered as follows:

1. Respondent Eduardo T. Umblas, Legal Researcher of the Regional Trial Court of Ballesteros, Cagayan, Branch 33, is found **GUILTY** of Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service. In lieu of dismissal, he is hereby **ORDERED** to pay a fine of ₱40,000.00 to be deducted from his accrued leave credits. In case his leave credits be found insufficient, respondent is directed to pay the balance within ten (10) days from receipt of this Decision.

2. Respondent Atty. Rizalina G. Baltazar-Aquino, Clerk of Court VI, of the Regional Trial Court of Ballesteros, Cagayan, Branch 33, is likewise found **GUILTY** of Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service, and is thus, **DISMISSED** from service. Accordingly, her civil service eligibility is **CANCELLED**, and her retirement and other benefits, except accrued leave credits, are **FORFEITED**. Further, she is **PERPETUALLY DISQUALIFIED** from re-employment in the government service, including government-owned and controlled corporations;

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[39] *OCA v. Viesca*, *supra* note 23, at 398.

3. The Leave Division of the Office of Administrative Services, Office of the Court Administrator is **DIRECTED** to compute each of respondents' accrued leave credits, while the Financial Management Office, Office of the Court Administrator is **DIRECTED** to apply the monetary value of respondents' leave credits to their respective cash shortages in the amounts of ₱1,334,784.35 for respondent Eduardo T. Umblas, and ₱596,685.20 for respondent Atty. Rizalina G. Baltazar-Aquino. Should their accrued leave credits prove to be insufficient to cover their respective cash shortages, respondents are **ORDERED** to pay the balance;

4. The Office of the Court Administrator is hereby **DIRECTED** to file the appropriate criminal charges against respondents Eduardo T. Umblas and Atty. Rizalina G. Baltazar-Aquino; and

5. Respondent Atty. Rizalina G. Baltazar-Aquino is **DIRECTED** to explain why she should not be disbarred for violations of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility.

Let copies of this Decision be furnished the Office of the Court Administrator and the Office of the Bar Confidant to be attached to respondents' respective records.

SO ORDERED.

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

Caguioa, J., on leave.

EN BANC

[A.M. No. RTJ-10-2219. August 1, 2017]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **Retired Judge PABLO R. CHAVEZ, Former Presiding Judge, Regional Trial Court, Branch 87, Rosario, Batangas, Atty. TEOFILO A. DIMACULANGAN, JR., Clerk of Court VI, Mr. ARMANDO ERMELITO M. MARQUEZ, Court Interpreter III, Ms. EDITHA E. BAGSIC, Court Interpreter III, and Mr. DAVID CAGUIMBAL, Process Server, all of Regional Trial Court, Branch 87, Rosario, Batangas,** *respondents.*

[A.M. No. 12-7-130-RTC. August 1, 2017]

Re: Undated Anonymous Letter-Complaint against the Presiding Judge, Clerk of Court and Court Stenographer of the Regional Trial Court, Branch 87, Rosario, Batangas.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS NEGLIGENCE; PRESENT IN CASE AT BAR.—** We hold that Judge Chavez's claims of acting in good faith and being a victim of the betrayal of Atty. Dimaculangan and his court staff do not excuse him from liability. x x x We emphasize that judges must not only be fully cognizant of the state of their dockets, likewise, they must keep a watchful eye on the level of performance and conduct of the court personnel under their immediate supervision who are primarily employed to aid in the administration of justice. The leniency of a judge in the administrative supervision of his employees is an undesirable trait. Here, Judge Chavez's failure to meet the exacting standards of his position, as evidenced by the number and different irregularities discovered to have been occurring in his court, as well as his failure to eliminate these irregularities, establish that he was grossly negligent in the performance of his duties.

2. ID.; ID.; ID.; ID.; ID.; PENALTIES; MITIGATING AND AGGRAVATING CIRCUMSTANCES CONSIDERED; CASE AT BAR.— Be that as it may, the presence of mitigating circumstances which should be appreciated in favor of Judge Chavez warrants the reduction of the penalty to be imposed on him. Section 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) provides that in the determination of the penalties to be imposed, mitigating and/ or aggravating circumstances attendant to the commission of the offense shall be considered. x x x In previous cases, we have also imposed lesser penalties in the presence of these mitigating circumstances. This is consistent with precedent where we refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Indeed, while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of its judgment with mercy. x x x We apply to Judge Chavez the mitigating circumstances of: (1) remorse in committing the infractions; (2) length of government service; (3) first offense; and (4) health and age. These humanitarian considerations will mitigate Judge Chavez's penalty and remove him from the severe consequences of the penalty of dismissal and forfeiture of his retirement benefits. Taking into account these mitigating circumstances, together with the aggravating circumstance of being guilty of the lesser offense of undue delay in rendering decisions, we impose the penalty of fine equivalent to three months of Judge Chavez's last salary.

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

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; INABILITY TO MAINTAIN AN ORGANIZED COURT DOCKET SYSTEM; FOR SUCH ADMINISTRATIVE OFFENSE, JUDGE SHOULD BE HELD LIABLE UNDER RULE 140 OF THE RULES OF COURT FOR SIMPLE MISCONDUCT, INSTEAD OF UNDER THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS) FOR GROSS NEGLECT OF DUTY.—

I believe that the majority's application of an offense under the Revised Rules on Administrative Cases in the Civil Service (RRACCS) against Judge Chavez is erroneous. It is my position that the administrative offense or offenses with which a member of the judiciary, such as Judge Chavez, may be charged with and held liable under is governed by the provisions of Rule 140 of the Court and not by the RRACCS of the Civil Service Commission (CSC). x x x Instead of Gross Neglect of Duty under the RRACCS, I thus find it more appropriate to find Judge Chavez—for his failure to diligently discharge his administrative responsibilities and inability to establish and maintain an organized system of record-keeping and docket management for his court branch—guilty of Simple Misconduct under Section 9(7) of Rule 140 of the Rules of Court. After all, the said shortcomings of Judge Chavez may be considered as indicative of the judge's possible breach of Supreme Court rules, directives and circulars.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is the motion for reconsideration[1] filed by respondent retired Judge Pablo R. Chavez (Judge Chavez) of our Decision[2] dated March 7, 2017.

We adjudged Judge Chavez guilty of gross neglect of duty and undue delay in rendering decisions and imposed on him the penalty of forfeiture of all his retirement benefits, except accrued leave credits, in lieu of dismissal from service which can no longer be imposed due to Judge Chavez's retirement.

In his motion, Judge Chavez explains that the acts of omission attributed to him, far from being committed willfully and intentionally, betray his good faith and that his failure to

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[1] *Rollo* (A.M. No. 12-7-130-RTC), pp. 43-50.

[2] *Id*. at 22-42.

meet the exacting standards of performance required of a Presiding Judge in the supervision of his personnel and management of his case load was borne merely of his misplaced trust on his Clerk of Court, Atty. Teofilo Dimaculangan (Atty. Dimaculangan), and other court staff. He laments that he himself was a victim of Atty. Dimaculangan's betrayal and regrets his inability to pursue disciplinary actions on his court staff for their failure and refusal to observe and follow his instructions.

In any event, Judge Chavez begs the magnanimity and compassion of this Court and implores that we extend him leniency by mitigating the penalty imposed and reducing it to a fine. Judge Chavez requests that the following mitigating circumstances be considered in his favor: (1) his almost 31 years of continuous government service; (2) unblemished record as he is a first time offender; and (3) his good faith and extreme remorse for his infraction.

Also, Judge Chavez appeals that he is already 77 years old and experiencing various illnesses. He pleads that his retirement benefits would be used to support his daily needs and medication.

I

We hold that Judge Chavez's claims of acting in good faith and being a victim of the betrayal of Atty. Dimaculangan and his court staff do not excuse him from liability.

In *Office of the Court Administrator v. Sumilang*,[3] respondent judge was administratively charged in relation to an anomalous transaction involving misappropriation of funds committed by his court staff. In rejecting respondent judge's defense of lack of knowledge of the irregularities committed by his own staff and finding him guilty of gross negligence, we held:

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[3] A.M. No. MTJ-94-989, April 18, 1997, 271 SCRA 316.

A judge must always remember that as the administrator of his court, he is responsible for the conduct and management thereof. He has the duty to supervise his court personnel to ensure prompt and efficient dispatch of business in his court. The ignorance of respondent Judge as to the irregularities occurring in his own backyard constitutes serious breach of judicial ethics.

Judge Sumilang's excuse, that upon learning of the irregularities being committed by his court personnel, he immediately acted with haste and instructed Malla to turn over the money, is specious and unconvincing. His admission that he had no knowledge regarding the anomalies going on in his court underscores his inefficiency and incompetence. It clearly demonstrates a lack of control expected of a judge exercising proper office management.[4] (Citations omitted.)

We emphasize that judges must not only be fully cognizant of the state of their dockets, likewise, they must keep a watchful eye on the level of performance and conduct of the court personnel under their immediate supervision who are primarily employed to aid in the administration of justice. The leniency of a judge in the administrative supervision of his employees is an undesirable trait.[5]

Here, Judge Chavez's failure to meet the exacting standards of his position, as evidenced by the number and different irregularities discovered to have been occurring in his court, as well as his failure to eliminate these irregularities, establish that he was grossly negligent in the performance of his duties.

II

Be that as it may, the presence of mitigating circumstances which should be appreciated in favor of Judge Chavez warrants the reduction of the penalty to be imposed on him.

Section 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) provides that in the

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[4] *Id.* at 321.

[5] *Dysico v. Dacumos*, A.M. No. MTJ-94-999, September 23, 1996, 262 SCRA 275, 282.

determination of the penalties to be imposed, mitigating and/ or aggravating circumstances attendant to the commission of the offense shall be considered. The following are to be considered:

a. Physical illness;
b. Good faith;
c. Malice;
d. Time and place of offense;
e. Taking undue advantage of official position;
f. Taking advantage of subordinate;
g. Undue disclosure of confidential information;
h. Use of government property in the commission of the offense;
i. Habituality;
j. Offense is committed during office hours and within the premises of the office or building;
k. Employment of fraudulent means to commit or conceal the offense;
l. First offense;
m. Education;
n. Length of service; or
o. Other analogous circumstances.

In previous cases, we have also imposed lesser penalties in the presence of these mitigating circumstances. This is consistent with precedent where we refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors.[6] Indeed, while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of its judgment with mercy.[7]

In *Committee on Security and Safety, Court of Appeals v.*

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[6] *Cabigao v. Nery*, A.M. No. P-13-3153, October 14, 2013, 707 SCRA 424, 434.

[7] *Baculi v. Ugale*, A.M. No. P-08-2569, October 30, 2009, 604 SCRA 685.

Dianco,[8] we identified the instances where we imposed lesser penalties in the presence of mitigating factors:

> In *Judge Isidra A. Arganosa-Maniego v. Rogelio T. Salinas,* we suspended the respondent who was guilty of grave misconduct and dishonesty for a period of one (1) year without pay, taking into account the mitigating circumstances of: first offense, ten (10) years in government service, acknowledgment of infractions and feeling of remorse, and restitution of the amount involved.
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> In *Alibsar Adoma v. Romeo Gatcheco and Eugenio Taguba,* we suspended one of the respondents for one (1) year without pay, after finding him guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interests of the service. The respondent was a first-time offender.
>
> And, in *Horacio B. Apuyan, Jr. and Alexander O. Eugenio v. Alfredo G. Sta. Isabel,* we imposed the same penalty of one (1)-year suspension without pay to the respondent who was a first-time offender of the offenses of grave misconduct, dishonesty, and conduct grossly prejudicial to the best interests of the service.[9] (Italics in the original, citations omitted.)

As regards judges, in *Office of the Court Administrator v. Aguilar*,[10] we imposed the penalty of six months suspension instead of dismissal from service after taking into consideration the mitigating circumstances of dismissal of related criminal cases for lack of probable cause, good faith, respondent judge's strong credentials for appointment as judge, length of government service, first time offense, and remorse and promise to be more accurate and circumspect in future submissions before us.

In *In Re: Petition for the Dismissal from Service and/or Disbarment of Judge Baltazar R. Dizon*,[11] we reconsidered our earlier Decision dismissing from service the respondent

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[8] A.M. No. CA-15-31-P, January 12, 2016, 779 SCRA 158.

[9] *Id.* at 168.

[10] A.M. No. RTJ-07-2087, June 7, 2011, 651 SCRA 13.

[11] A.C. No. 3086, May 31, 1989, 173 SCRA 719.

judge and lowered the penalty to suspension from February 23, 1988 until the date of promulgation of the Resolution on May 31, 1989 after considering the mitigating circumstances of length of government service, lack of corrupt motives, environmental difficulties such as overloaded docket, unceasing strain caused by hearings on complex cases and lack of libraries, decent courtrooms, office equipment, supplies and other facilities, and humble repentance.

In *Rubin v. Corpus-Cabochan*,[12] we considered the mitigating circumstances of first offense in respondent judge's almost 23 years of government service, frail health, case load and candid admission of infraction in determining that the appropriate penalty to be imposed on respondent judge who was found guilty of gross inefficiency was admonition.

In *Fernandez v. Vasquez*,[13] we appreciated the mitigating circumstances of unblemished judicial service and first offense in imposing the penalty of fine of ₱50,000 against respondent judge who was held guilty of dishonesty, an offense punishable with dismissal even on the first commission. The fine was imposed in lieu of suspension from office which can no longer be imposed due to respondent judge's retirement.

In *Perez v. Abiera*,[14] we imposed the penalty of fine equivalent to three-month salary of respondent judge, deductible from his retirement benefits, after appreciating the mitigating circumstances of length of service and poor health.

Thus, we exercise the discretion granted by the RRACCS and prevailing jurisprudence in the imposition of penalty and reconsider the dismissal and forfeiture of Judge Chavez's retirement benefits in view of mitigating circumstances that were overlooked and not properly appreciated.

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[12] OCA I.P.I. No. 11-3589-RTJ, July 29, 2013, 702 SCRA 330.

[13] A.M. No. RTJ-11-2261, July 26, 2011, 654 SCRA 349.

[14] A.C. No. 223-J, June 11, 1975, 64 SCRA 302.

We apply to Judge Chavez the mitigating circumstances of: (1) remorse in committing the infractions; (2) length of government service; (3) first offense; and (4) health and age. These humanitarian considerations will mitigate Judge Chavez's penalty and remove him from the severe consequences of the penalty of dismissal and forfeiture of his retirement benefits. Taking into account these mitigating circumstances, together with the aggravating circumstance of being guilty of the lesser offense of undue delay in rendering decisions, we impose the penalty of fine equivalent to three months of Judge Chavez's last salary.

WHEREFORE, we **PARTIALLY GRANT** the motion for reconsideration filed by respondent retired Judge Pablo R. Chavez. The Decision dated March 7, 2017 is **MODIFIED**. Respondent retired Judge Pablo R. Chavez is ordered to pay a **FINE** equivalent to **THREE MONTHS** of his last salary, deductible from his retirement benefits.

SO ORDERED.

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

Velasco, Jr., J., see separate concurring opinion.

Leonen, J., joins *J. Velasco's* separate opinion.

Caguioa, J., on leave.

SEPARATE OPINION

VELASCO, JR., *J.*:

I join the majority in partially granting the motion for reconsideration of Judge Pablo R. Chavez (Judge Chavez) and in tempering the penalty imposed upon the said judge, from forfeiture of benefits and disqualification from holding public office to a fine equivalent to three months of his last salary. The appreciation of several mitigating circumstances in favor

of Judge Chavez, which was the basis of the new ruling, is only in tune with standing precedents on how administrative penalties ought to be imposed amidst the presence of extenuating circumstances.[1]

Be that as it may, I am compelled to submit this opinion in order to express my disagreement with the majority's pronouncement that Judge Chavez had been guilty of the offense of Gross Neglect of Duty under Section 46(A)(2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).[2] This pronouncement, which was originally made in our Decision dated March 7, 2017,[3] was effectively affirmed in the present resolution of the *en banc*.

I believe that the majority's application of an offense under the RRACCS against Judge Chavez is erroneous. It is my position that the administrative offense or offenses with which a member of the judiciary, such as Judge Chavez, may be charged with and held liable under is governed by the provisions of Rule 140 of the Court and not by the RRACCS of the Civil Service Commission (CSC). I proffer the following reasons in support:

1. The RRACCS is intended to govern administrative proceedings in the entire civil service, *in general*.[4] Rule 140 of the Rules of the Court, on the other hand, is *specifically* meant to govern the disciplinary proceedings against members

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[1] See *Office of the Court Administrator v. Aguilar*, A.M. No. RTJ-07-2087, June 7, 2011, 651 SCRA 13; *Office of the Court Administrator v. Flores*, A.M. No. P-07-2366, 16 April 2009, 585 SCRA 82; *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani*, A.M. No. P-06-2217, 30 July 2009, 594 SCRA 242; *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division,* 502 Phil. 264 (2005); *Reyes-Domingo v. Morales*, 396 Phil. 150 (2000); *Floria v. Sunga*, 420 Phil. 637 (2001).

[2] *Office of the Court Administrator v. Chavez*, A.M. Nos. RTJ-10-2219 & 12-7-130-RTC, March 7, 2017.

[3] *Id.*

[4] *See* Section 2, Rule 1 of RRACCS.

of the judiciary. Since the RRACCS could not possibly have repealed Rule 140, the latter rule ought to be considered as an exception to the former rule. **In other words, the RRACCS must yield to Rule 140 with respect to matters specifically treated in the latter**.

Among those specifically treated under Rule 140 of the Rules of Court are the different **administrative offenses that a member of the judiciary may be charged with and held liable under**.[5] Viewed thusly, the administrative offenses under RRACCS can have no application to members of the judiciary.

2. The above conclusion is supported by the 1982 case of *Macariola v. Asuncion*.[6]

   In *Macariola*, a judge, who associated himself with a private corporation as an officer and a stockholder during his incumbency, was administratively charged of, among others, violating a provision of the Civil Service Rules which was promulgated by the CSC pursuant to Republic Act (RA) No. 2260 or the Civil Service Act of 1959.[7] The issue then was whether the judge may be held administratively liable under such a charge.[8]

   Macariola answered the issue in the negative and dismissed the said charge. **It ruled that administrative charges under the Civil Service Act of 1959 and the rules that were promulgated thereunder do not apply to judges, they being members of the judiciary and thus covered by the Judiciary Act of 1948 as to matters pertaining to grounds for their discipline**.[9]

3. While the rules and laws referred to in *Macariola* had since been superseded by more recent issuances and enactments, the doctrine established therein, *i.e.*, **the non-application**

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[5] *See* RULES OF COURT, Rule 140, Sections 8, 9 and 10.

[6] A. M. No. 133-J, May 31, 1982, 114 SCRA 77.

[7] *Id.*

[8] *Id*.

[9] *Id*.

of administrative offenses under the ordinary civil service rules with respect to judges by reason of them being covered by another set of rules or law that specially deals with the grounds for their discipline, remains valid. Like it was during the time of *Macariola*, the grounds for the discipline of members of the judiciary are still provided for under a special set of rules distinct from the ordinary civil service rules promulgated by the CSC.

Rule 140 of the Rules of Court are the set of rules *especially* promulgated by the Court to govern disciplinary proceedings against members of the judiciary. Sections 8, 9 and 10 of the said rule, in turn, provide the specific administrative charges that can be applied against a member of the judiciary. These provisions are completely separate from the administrative offenses under Section 46 of the RRACCS.

4. There is also practical value in maintaining the *Macariola* doctrine. A contrary rule, *i.e.*, allowing the administrative offenses under the RRACCS to be concurrently applied with those under Rule 140, will only lead to confusion and even compromise the court's ability, in administrative proceedings against members of the judiciary, to impose uniform sanctions in cases that bear similar sets of facts. A couple of examples quickly comes to mind:

   a. A judge who fails to render a decision within the reglementary period under the Constitution is liable for the *less serious* charge of Undue Delay in Rendering Decision under Rule 140 of the Rules of Court.[10] However, if the offenses under the RRACCS are rendered applicable, then another judge who commits the same fault may instead find himself charged with the *grave* offense of Gross Neglect of Duty under the said rule.[11]

   b. A judge who is an alcoholic and a habitual drunk is liable for a *serious* charge under Rule 140 of the Rules of Court.[12] However, should the RRACCS be made

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[10] RULES OF COURT, Rule 140, Section 9(1).

[11] Section 46(A)(2), Rule 10 of the RRACCS.

[12] RULES OF COURT, Rule 140, Section 8(11).

> applicable, a second judge who is every bit as alcoholic and drunk as the first may instead be held accountable only for a *less grave* offense under the said rule.[13]

The above examples, needless to state, are merely the proverbial tip of the iceberg of confusion that may follow should we allow the administrative offenses under the RRACCS to be applied against members of the judiciary.

Instead of Gross Neglect of Duty under the RRACCS, I thus find it more appropriate to find Judge Chavez—for his failure to diligently discharge his administrative responsibilities and inability to establish and maintain an organized system of record-keeping and docket management for his court branch—guilty of Simple Misconduct under Section 9(7) of Rule 140 of the Rules of Court. After all, the said shortcomings of Judge Chavez may be considered as indicative of the judge's possible breach of Supreme Court rules, directives and circulars.

Subject to the foregoing considerations, I concur with the resolution.

EN BANC

[G.R. No. 186050. August 1, 2017]

ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR, and BEVERLY LONGID, *petitioners, vs.* **EDUARDO ERMITA, GILBERTO TEODORO, RONALDO PUNO, NORBERTO GONZALES, Gen. ALEXANDER YANO, Gen. JESUS VERZOSA, Brig. Gen. REYNALDO MAPAGU, Lt. P/Dir. EDGARDO DOROMAL, Maj.**

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[13] Section 46(D)(6), Rule 10 of the RRACCS.

Gen. ISAGANI CACHUELA, Commanding Officer of the AFP-ISU based in Baguio City, PSS EUGENE MARTIN, and several JOHN DOES, *respondents.*

[G.R. No. 186059. August 1, 2017]

SECRETARY EDUARDO ERMITA, SECRETARY GILBERTO TEODORO, SECRETARY RONALDO PUNO, SECRETARY NORBERTO GONZALES, GEN. ALEXANDER YANO, P/DGEN. JESUS VERZOSA, BRIG. GEN. REYNALDO MAPAGU, MAJ. GEN. ISAGANI CACHUELA, and POL. SR. SUPT. EUGENE MARTIN, *petitioners, vs.* **ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR, and BEVERLY LONGID,** *respondents.*[*]

SYLLABUS

POLITICAL LAW; THE RULE ON THE WRIT OF *AMPARO* (A.M. NO. 07-9-12-SC); ARCHIVING OF CASE WHERE THE ONGOING INVESTIGATION HAD REACHED AN IMPASSE IN GATHERING EVIDENCE THAT WOULD LEAD TO THE RESOLUTION OF THE CASE, UPHELD.— The present matter arose from a petition for the issuance of a writ of *amparo* filed by the relatives of James M. Balao (James) before the RTC, alleging [his politically motivated abduction] by five (5) unidentified men x x x. The RTC granted the privilege of the writ of *amparo*, thereby commencing the conduct of several investigations by the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). x x x [T]he PNP, [however,] x x x encountered problems x x x [and] proposed that their investigation be terminated. Meanwhile, the AFP x x x likewise led to a standstill in its own investigation. As a result, the RTC recommended, among others, the archiving of the case, considering that the ongoing investigation had reached

[*] As titled in the Decision, See *rollo* (G.R. No. 186059), Vol. II, p. 1130. Public Respondent then President Gloria Macapagal-Arroyo was dropped as party-respondent in the petition for writ of *amparo* in the December 13, 2011 Decision (see *id*. at 1161).

an impasse. x x x The Court adopts and approves the recommendations of the RTC. As mentioned in the Court's June 21, 2016 Resolution, "archiving of cases is a procedural measure designed to temporarily defer the hearing of cases **in which no immediate action is expected**, but where no grounds exist for their outright dismissal. Under this scheme, **an inactive case is kept alive but held in abeyance until the situation obtains in which action thereon can be taken**. To be sure, the *Amparo* rule sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from **effectively** hearing and conducting the *amparo* proceedings x x x."

APPEARANCES OF COUNSEL

National Union of Peoples' Lawyers for petitioners in G.R. No. 186050 and for respondents in G.R. No. 186059.
The Solicitor General for Eduardo Ermita, et al.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is the Report[1] dated June 13, 2017 submitted by the Regional Trial Court of La Trinidad, Benguet, Branch 63 (RTC) in compliance with the Court's directives contained in the Resolution[2] dated June 21, 2016 in the above-captioned consolidated cases.

The Facts

The present matter arose from a petition for the issuance of a writ of *amparo* filed by the relatives of James M. Balao (James) before the RTC, alleging that he was abducted by five (5) unidentified men on September 17, 2008 in La Trinidad, Benguet because of his activist/political leanings as founding member

[1] *Rollo* (G.R. No. 186050), Vol. IV, pp. 2019-2023.

[2] *Id*. at 2005-2016.

of the Cordillera Peoples Alliance (CPA).[3] The RTC granted the privilege of the writ of *amparo*, thereby commencing the conduct of several investigations by the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) to determine the whereabouts and the circumstances behind the disappearance of James.[4] In its Formal Report[5] dated November 12, 2014 submitted to the RTC, the PNP stated that they encountered problems in gathering evidence that would lead to the resolution of the case, and thus, proposed that their investigation be terminated. Meanwhile, the AFP overturned the suspicions behind the involvement of an active service officer of the army, *i.e.*, Major Ferdinand Bruce Tokong, in James's abduction, which likewise led to a standstill in its own investigation.[6] As a result, the RTC recommended, among others, the archiving of the case, considering that the ongoing investigation had reached an impasse.[7] Eventually, the consolidated cases were brought to the Court.[8]

The Court's Ruling in the June 21, 2016 Resolution

In a Resolution[9] dated June 21, 2016, the Court partially adopted the RTC's recommendations, and accordingly: (*a*) rejected the recommendation of the RTC to archive the cases; (*b*) relieved the AFP and the Commission on Human Rights from their respective obligations to investigate James's abduction; and (*c*) directed the PNP to further investigate the angle presented

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[3] See *id*. at 2006.

[4] See *id*. at 2007.

[5] See Formal Report (Re: Order dated August 1, 2014); *id*. at 1889-1907. Issued by Police Senior Superintendent Commander, SITG Balao Rodolfo S. Azurin, Jr.

[6] See Investigation Report dated September 29, 2015; *rollo* (G.R. No. 186059), Vol. II, pp. 1285-1288. See also discussions in the RTC's Final Report dated January 15, 2016; *id*. at 1271-1272.

[7] See Final Report; *id*. at 1283.

[8] See *rollo* (G.R. No. 186050), Vol. IV, p. 2007.

[9] *Id.* at 2005-2016.

by Bryan Gonzales (Gonzales) and to ascertain the identities of "Uncle John" and "Rene" who are persons of interest in these cases.[10] In light of the foregoing, the Court gave the PNP a period of six (6) months to complete its investigation on the aforesaid matter, and thereafter, turn over its results to the RTC. The RTC, in turn, shall then submit its full report and recommendation to the Court.[11]

The Court held that while it may appear that the investigation conducted by the AFP had reached an impasse, records disclose that the testimony of Gonzales, an asset of the Military Intelligence Group 1 and a cousin of James, alluded to the possibility that James could have been abducted by members of the CPA. In the same testimony, "Uncle John" and "Rene" were mentioned as CPA members who were James's housemates. Thus, there was still an active lead worth pursuing by the PNP, which means that the recommendation to archive the case was premature.[12]

Proceedings after the June 21, 2016 Resolution

On June 20, 2017, the RTC submitted its Report[13] dated June 13, 2017 to the Court.

Collating the findings of the PNP in its Compliance Report[14] dated March 14, 2017, and the attached Investigation Report[15] dated March 10, 2017 and Investigation/Compliance Report[16] dated May 18, 2017, the RTC disclosed that the PNP, through

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[10] *Id*. at 2014.

[11] *Id*. at 2014-2015.

[12] See *id*. at 2012-2014.

[13] *Id*. at 2019-2023. Submitted by Judge Jennifer P. Humiding.

[14] See Compliance Report to Order dated August 15, 2016; *id*. at 2027A-2028.

[15] See Investigation Report re James Balao Case; *id*. at 2029-2030.

[16] See Investigation/Compliance Report to Court Order dated March 31, 2017; *id*. at 2035-2037.

Senior Police Officer 2 Franklin Dulawan, interviewed Gonzales and presented thirty-two (32) photographs of James, most of them taken between the years 1992 to 2001, in order to allow him to review the faces therein and reveal the identities of "Uncle John" and "Rene." Unfortunately, Gonzales was unable to give any information regarding their identities due to the lapse of time. Similarly, other witnesses named Florence Luken (Luken) and Danette Balao Fontanilla (Fontanilla) could neither identify the said persons of interest.[17]

As such, the RTC concluded that the investigation has reached another impasse for failure to uncover relevant leads,[18] and once more recommended to archive the cases, to be revived upon motion by any of the parties should a significant lead arise. Further, the RTC asked the Court to relieve the PNP of its mandate to investigate the matter and to submit reportorial requirements until new witnesses or relevant evidence appear or are discovered.[19]

The Issue Before the Court

The issue for the Court's resolution is whether or not it should adopt the recommendations of the RTC in its Report dated June 13, 2017 relative to these cases.

The Court's Ruling

The Court adopts and approves the recommendations of the RTC.

As mentioned in the Court's June 21, 2016 Resolution, "archiving of cases is a procedural measure designed to temporarily defer the hearing of cases **in which no immediate action is expected**, but where no grounds exist for their outright dismissal. Under this scheme, **an inactive case is kept alive but held in abeyance until the situation obtains in which action thereon can be taken**. To be sure, the *Amparo* rule

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[17] See *Id*. at 2020-2021.

[18] *Id*. at 2022.

[19] *Id*. at 2022-2023.

sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from **effectively** hearing and conducting the *amparo* proceedings x x x."[20] Section 20 of A.M. No. 07-9-12-SC, entitled "The Rule on the Writ of *Amparo*,"[21] reads:

Section 20. *Archiving and Revival of Cases*. – The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the *amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year.

Based on the report submitted by the RTC, it appears that the PNP had indeed conducted the required investigation on the angle presented by Gonzales and further attempted to ascertain the identities of "Uncle John" and Rene" who are persons of interest in these cases. This notwithstanding, none of the material witnesses, namely, Gonzales himself, Luken, and Fontanilla, could provide any information on the identities of these persons, despite having been presented with various photographs of James and his companions. As such, the investigation of the PNP on James's case has once more reached an impasse without, this time, any other active leads left to further pursue. Given this situation, the Court therefore concludes that the archiving of the case is now appropriate and perforce, adopts and approves the recommendations of the RTC in its June 13, 2017 Report.

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[20] *Id*. at 2014; citation omitted. See also *Balao v. Ermita*, G.R. Nos. 186050 and 186059, June 21, 2016.

[21] (October 24, 2007).

WHEREFORE, the Court hereby resolves to **ADOPT** and **APPROVE** the recommendations of the Regional Trial Court of La Trinidad, Benguet, Branch 63 in its Report dated June 13, 2017.

Let these cases be **ARCHIVED** without prejudice to their revival upon due motion by any of the parties; and the Philippine National Police be **RELIEVED** from its mandate to investigate the case and to submit reportorial requirements until new witnesses or relevant evidence appear or are discovered.

SO ORDERED.

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

Jardeleza, J., no part

Caguioa, J., on leave.

EN BANC

[G.R. No. 210669. August 1, 2017]

HI-LON MANUFACTURING, INC., *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; IF THE TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL.—** As the Deed of Sale dated October 29, 1987 is very specific that the object of the sale is the 59,380

sq. m. portion of the subject property, HI-LON cannot insist to have acquired more than what its predecessor-in-interest (*TGPI*) acquired from APT. Article 1370 of the New Civil Code provides that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Every contracting party is presumed to know the contents of the contract before signing and delivering it, and that the words used therein embody the will of the parties. Where the terms of the contract are simple and clearly appears to have been executed with all the solemnities of the law, clear and convincing evidence is required to impugn it.

2. **POLITICAL LAW; PROPERTY OF PUBLIC DOMINION; INCLUDES ROAD RIGHT-OF-WAY (RROW); DIFFERENTIATED FROM THE CONCEPT OF EASEMENT OF RIGHT OF WAY.—** Under the Philippine Highway Act of 1953, "right-of-way" is defined as the land secured and reserved to the public for highway purposes, whereas "highway" includes rights-of-way, bridges, ferries, drainage structures, signs, guard rails, and protective structures in connection with highways. Article 420 of the New Civil Code considers as property of public dominion those intended for public use, such as roads, canals, torrents, ports and bridges constructed by the state, banks, shores, roadsteads, and others of similar character. Being of similar character as roads for public use, a road right-of-way (RROW) can be considered as a property of public dominion, which is outside the commerce of man, and cannot be leased, donated, sold, or be the object of a contract, except insofar as they may be the object of repairs or improvements and other incidental matters. However, this RROW must be differentiated from the concept of easement of right of way under Article 649 of the same Code, which merely gives the holder of the easement an incorporeal interest on the property but grants no title thereto, inasmuch as the owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement. As a property of public dominion akin to a public thoroughfare, a RROW cannot be registered in the name of private persons under the Land Registration Law and be the subject of a Torrens Title; and if erroneously included in a Torrens Title, the land involved remains as such a property of public dominion. In *Manila*

International Airport Authority v. Court of Appeals, the Court declared that properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. "Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale."

3. **ID.; ID.; ID.; HAVING ACTUAL NOTICE OF A PUBLIC HIGHWAY BUILT ON THE RROW PORTION OF THE SUBJECT PROPERTY, BUYER HI-LON CANNOT IGNORE THE POSSIBLE CLAIM OF ENCUMBRANCE THEREON BY THE GOVERNMENT.—** Given that prospective buyers dealing with registered lands are normally not required by law to inquire further than what appears on the face of the TCTs on file with the Register of Deeds, it is equally settled that purchasers cannot close their eyes to known facts that should have put a reasonable person on guard. Their mere refusal to face up to that possibility will not make them innocent purchasers for value, if it later becomes apparent that the title was defective, and that they would have discovered the fact, had they acted with the measure of precaution required of a prudent person in a like situation. Having actual notice of a public highway built on the RROW portion of the subject property, HI-LON cannot afford to ignore the possible claim of encumbrance thereon by the government, much less fail to inquire into the status of such property.

4. **ID.; ID.; ID.; ID.; FAILURE OF THE GOVERNMENT TO REGISTER ITS CLAIM OF RROW ON THE LAND TITLES IS NOT FATAL AS THE ACTUAL NOTICE OF THE PUBLIC HIGHWAY BUILT ON THE PROPERTY CONSTITUTES AS A STATUTORY LIEN AND IS EQUIVALENT TO REGISTRATION.—** The failure of the government to register its claim of RROW on the titles of CIREC, PPIC, DBP and TGPI is not fatal to its cause. Registration is the ministerial act by which a deed, contract, or instrument is inscribed in the records of the Office of the Register of Deeds and annotated on the back of the TCT covering the land subject of the deed, contract, or instrument. It creates a constructive notice to the whole world and binds third persons. Nevertheless,

HI-LON cannot invoke lack of notice of the government's claim over the 29,690 sq. m. RROW simply because it has actual notice of the public highway built thereon, which constitutes as a statutory lien on its title even if it is not inscribed on the titles of its predecessors-in-interest, CIREC, PPIC, DBP, and TGPI. Indeed, actual notice is equivalent to registration, because to hold otherwise would be to tolerate fraud and the Torrens System cannot be used to shield fraud.

5. **ID.; ID.; ID.; ID.; MISTAKE OF GOVERNMENT OFFICIALS IN OFFERING TO BUY THE RROW DOES NOT BIND THE STATE.—** [T]he mistake of the government officials in offering to buy the 29,690 sq. m. RROW does not bind the State, let alone vest ownership of the property to HI-LON. As a rule, the State, as represented by the government, is not estopped by the mistakes or errors of its officials or agents, especially true when the government's actions are sovereign in nature.

6. **CIVIL LAW; LAND TITLES; A PERSON WITH LAND TITLE THAT INCLUDES LAND WHICH CANNOT BE REGISTERED UNDER THE TORRENS SYSTEM DOES NOT BECOME THE OWNER OF THE LAND ILLEGALY INCLUDED.—** [T]here is no merit in HI-LON's argument that the TCTs issued in its name and that of its predecessor-in-interest (TGPI) have become incontrovertible and indefeasible, and can no longer be altered, cancelled or modified or subject to any collateral attack after the expiration of one (1) year from the date of entry of the decree of registration, pursuant to Section 32 of P.D. No. 1529. x x x In *Lacbayan v. Samoy, Jr.*, the Court noted that what cannot be collaterally attacked is the certificate of title, and not the title itself: x x x On point is the case of *Balangcad v. Court of Appeals* where it was held that "the system merely confirms ownership and does not create it. Certainly, it cannot be used to divest the lawful owner of his title for the purpose of transferring it to another who has not acquired it by any of the modes allowed or recognized by law. Where such an erroneous transfer is made, as in this case, the law presumes that no registration has been made and so retains title in the real owner of the land." It is also not amiss to cite *Ledesma v. Municipality of Iloilo* where it was ruled that "if a person obtains title, under the Torrens system, which includes, by mistake or oversight, lands which cannot be registered under the Torrens

system, he does not, by virtue of said certificate alone, become the owner of the land illegally included."

7. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); DISBURSEMENT OF PUBLIC FUNDS; THE COA MAY MAKE ITS OWN ASSESSMENT OF THE MERITS OF THE DISALLOWED DISBURSEMENT.—** COA may delve into the question of ownership although this was not an original ground for the issuance of the Notice of Disallowance, but only the proper valuation of the just compensation based on the date of actual taking of the property. In *Yap v. Commission on Audit*, the Court ruled that "COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render the COA's vital constitutional power unduly limited and thereby useless and ineffective." Tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's property, the COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.

8. **REMEDIAL LAW; EVIDENCE; FINDINGS OF THE COA, RESPECTED.—** It is the policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. Considering that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness amounting to grave abuse of discretion, it is only when the COA acted with such abuse of discretion that the Court entertains a petition for *certiorari* under Rule 65 of the Rules of Court.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for complainant.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J*.:

This Petition for *Certiorari* under Rule 64, in relation to Rule 65 of the 1997 Rules of Civil Procedure, seeks to annul and set aside the Commission on Audit (*COA*) Decision No. 2011-003[1] dated January 20, 2011, which denied HI-LON Manufacturing, Inc.'s (*HI-LON*) petition for review, and affirmed with modification the Notice of Disallowance (*ND*) No. 2004-032 dated January 29, 2004 of COA's Legal and Adjudication Office-National Legal and Adjudication Section (*LAO-N*). The LAO-N disallowed the amount of ₱9,937,596.20, representing the difference between the partial payment of ₱10,461,338.00 by the Department of Public Works and Highways (DPWH) and the auditor's valuation of ₱523,741.80, as just compensation for the 29,690-square-meter road right-of-way taken by the government in 1978 from the subject property with a total area of 89,070 sq. m. supposedly owned by HI-LON. The dispositive portion of the assailed COA Decision No. 2011-003 reads:

> **WHEREFORE**, premises considered, the instant petition for review is hereby **DENIED** for lack of merit. Accordingly, ND No. 2004-32 dated January 29, 2004 amounting to ₱9,937,596.20 is hereby **AFFIRMED** with modification on the reason thereof that the claimant is not entitled thereto.
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> On the other hand, the Special Audit Team constituted under COA Office Order No. 2009-494 dated July 16, 2009 is hereby instructed to issue a ND for the ₱523,741.80 payment to Hi-Lon not covered by ND No. 2004-032 without prejudice to the other findings to be embodied in the special audit report.[2]

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[1] Signed by Chairman Reynaldo A. Villar, and Commissioners Juanito G. Espino, Jr. and Evelyn R. Buenaventura.

[2] *Rollo*, p. 49.

This Petition likewise assails COA's Decision[3] No. 2013-212 dated December 3, 2013 which denied HI-LON's motion for reconsideration, affirmed with finality COA Decision No. 2011-003, and required it to refund payment made by DPWH in the amount of ₱10,461,338.00. The dispositive portion of the assailed COA Decision No. 2013-212 reads:

> **WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Decision No. 2011-003 dated January 20, 2011 is hereby **AFFIRMED WITH FINALITY**. Hi-Lon Manufacturing Co., Inc. is hereby required to refund the payment made by the Department of Public Works and Highways in the amount of ₱10,461,338.00.[4]

The antecedent facts are as follows:

Sometime in 1978, the government, through the then Ministry of Public Works and Highways (*now DPWH*), converted to a road right-of-way (*RROW*) a 29,690 sq. m. portion of the 89,070 sq. m. parcel of land (subject property) located in Mayapa, Calamba, Laguna, for the Manila South Expressway Extension Project. The subject property was registered in the name of Commercial and Industrial Real Estate Corporation (*CIREC*) under Transfer Certificate of Title (*TCT*) No. T-40999.

Later on, Philippine Polymide Industrial Corporation (*PPIC*) acquired the subject property, which led to the cancellation of TCT No. T-40999 and the issuance of TCT No. T-120988 under its name. PPIC then mortgaged the subject property with the Development Bank of the Philippines (*DBP*), a government financing institution, which later acquired the property in a foreclosure proceeding on September 6, 1985. TCT No. T-120988, under PPIC's name, was then cancelled, and TCT No. T-151837 was issued in favor of DBP.

Despite the use of the 29,690 sq. m. portion of the property as RROW, the government neither annotated its claim or lien

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[3] Signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

[4] *Rollo*, p. 234.

on the titles of CIREC, PPIC and DBP nor initiated expropriation proceedings, much less paid just compensation to the registered owners.

Upon issuance of Administrative Order No. 14 dated February 3, 1987, entitled "Approving the Identification of and Transfer to the National Government of Certain Assets and Liabilities of the Development Bank of the Philippines and the Philippine National Bank," the DBP submitted all its acquired assets, including the subject property, to the Asset Privatization Trust (*APT*) for disposal, pursuant to Proclamation No. 50 dated 8 December 1986.

On June 30, 1987, APT disposed of a portion of the subject property in a public bidding. The Abstract of Bids[5] indicated that Fibertex Corporation (*Fibertex*), through Ester H. Tanco, submitted a ₱154,000,000.00 bid for the asset formerly belonging to PPIC located in Calamba, Laguna, *i.e.*, "Land (5.9 hectares) TCT 4099, buildings & improvements, whole mill," while TNC Philippines, Inc. and P. Lim Investment, Inc. submitted a bid of ₱106,666,000.00 and ₱138,000,000.00, respectively. With respect to the former assets of Texfiber Corporation (*Texfiber*) in Taytay, Rizal *i.e.*, "Land (214,062 sq. m. TCT (493917) 506665, buildings & improvements, whole mill"), only Fibertex submitted a bid of ₱210,000,000.00.

In a Certification[6] dated July 1, 1987, APT certified that Fibertex was the highest bidder of PPIC and Texfiber assets for ₱370,000,000.00, and recommended to the Committee on Privatization to award said assets to Fibertex. In a Letter[7] dated November 10, 1988, APT certified that Fibertex paid APT ₱370,000,000.00 for the purchase of the said assets formerly belonging to PPIC and Texfiber.

Meanwhile, Fibertex allegedly requested APT to exclude separate deeds of sale for the parcel of land and for improvements

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[5] *Rollo*, p. 172.

[6] *Id.* at 173.

[7] *Id.* at 176.

under the subject property covered by TCT No. 151837 in the name of DBP. Having been paid the full bid amount, APT supposedly agreed with Fibertex that the land would be registered in the name of TG Property, Inc. (*TGPI*) and the improvements to Fibertex. Thus, APT executed two (2) separate Deeds of Sale with TGPI and Fibertex with regard to the property, namely:

a. Deed of Sale between APT and TGPI executed on October 29, 1987 for the sale of a parcel of land covered by TCT No. T-151837 for a consideration of ₱2,222,967.00.

b. Deed of Sale between APT and Fibertex executed on 19 August 1987 for the sale of improvements (machinery, equipment and other properties) on the same property for a consideration of ₱154,315,615.39.

Upon complete submission of the required documents and proof of tax payments on December 9, 1987, the Register of Deeds of Calamba, Laguna, cancelled DBP's TCT No. 151837 and issued TCT No. T-158786 in the name of TGPI, covering the entire 89,070 sq. m. subject property, including the 29,690 sq. m. RROW. From 1987 to 1996, TGPI had paid real property taxes for the entire 89,070 sq. m. property, as shown by the Tax Declarations and the Official Receipt issued by the City Assessor's Office and Office of the City Treasurer of Calamba, Laguna, respectively.

On April 16, 1995, TGPI executed a Deed of Absolute Sale in favor of HI-LON over the entire 89,070 sq. m. subject property for a consideration of ₱44,535,000.00. HI-LON registered the Deed with the Register of Deeds of Calamba, Laguna, which issued in its name TCT No. 383819.

Sometime in 1998, Rupert P. Quijano, Attorney-in-Fact of HI-LON, requested assistance from the Urban Road Project Office (*URPO*) DPWH for payment of just compensation for the 29,690 sq. m. portion of the subject property converted to a RROW. The DPWH created an *Ad Hoc* Committee which valued the RROW at ₱2,500/sq. m. based on the 1999 Bureau of Internal Revenue (*BIR*) zonal valuation.

On December 21, 2001, a Deed of Sale was executed between HI-LON and the Republic of the Philippines, represented by Lope S. Adriano, URPO-PMO Director, by authority of the DPWH Secretary, covering the 29,690 sq. m. parcel of land converted to RROW for a total consideration of ₱67,492,500.00. On January 23, 2002, the Republic, through the DPWH, made the first partial payment to HI-LON in the amount of ₱10,461,338.00.

On post audit, the Supervising Auditor of the DPWH issued Audit Observation Memorandum No. NGS VIII-A-03-001 dated April 2, 2003 which noted that the use of the 1999 zonal valuation of ₱2,500.00/sq. m. as basis for the determination of just compensation was unrealistic, considering that as of said year, the value of the subject property had already been "glossed over by the consequential benefits" it has obtained from the years of having been used as RROW. The auditor pointed out that the just compensation should be based on the value of said property at the time of its actual taking in 1978. Taking into account the average value between the 1978 and 1980 Tax Declarations covering the subject land, the Auditor arrived at the amount of ₱19.40/sq. m. as reasonable compensation and, thus, recommended the recovery of excess payments.

Upon review of the auditor's observations, the Director of the LAO-N issued on January 29, 2004 ND No. 2004-32 in the amount of ₱9,937,596.20, representing the difference between the partial payment of ₱10,461,338.00 to HI-LON and the amount of ₱532,741.80, which should have been paid as just compensation for the conversion of the RROW.

Acting on the request of Dir. Lope S. Adriano, Project Director (*URPO-PMO*) for the lifting of ND No. 2004-032 dated January 29, 2004, the LAO-N rendered Decision No. 2004-172 dated May 12, 2004, affirming the same ND, and stating the value of the property must be computed from the time of the actual taking.

Resolving (1) the motions for reconsideration and request for exclusion from liability of former DPWH Secretary Gregorio R. Vigilar, *et al.*; (2) the request for lifting of Notice of

Disallowance No. 2004-032 of OIC Director Leonora J. Cuenca; (3) the motion to lift the disallowance and/or exclusion as person liable of Ms. Teresita S. de Vera, Head, Accounting Unit, DPWH; and (4) the appeal from ND No. 2004-032 of former Assistant Secretary Joel C. Altea and of Mr. Rupert P. Quijano, Attorney-in-Fact of HI-LON, the LAO-N issued Decision No. 2008-172-A dated June 25, 2008, which denied the appeal and affirmed the same ND with modification that payment of interest is appropriate under the circumstances.

Aggrieved, HI-LON filed a petition for review before the COA. In its regular meeting on June 9, 2009, the COA deferred the resolution of the petition, and instructed its Legal Service Section to create a Special Audit Team from the Fraud Audit and Investigation Office to investigate and validate HI-LON's claim.

In its assailed Decision No. 2011-003 dated January 20, 2011, the COA denied for lack of merit HI-LON's petition for review of the LAO-N Decision No. 2008-172-A, and affirmed ND No. 2004-032 dated July 29, 2004 with modification declaring the claimant not entitled to just compensation. The COA also instructed the Special Audit Team to issue an ND for the ₱523,741.80 payment to HI-LON not covered by ND No. 2004-032, without prejudice to the other findings embodied by the special audit report.

On the issue of whether or not HI-LON is entitled to just compensation for the 29,690 sq. m. portion of the subject property, the COA found that the evidence gathered by the Special Audit Team are fatal to the claim for such compensation.

First, the COA noted that the transfer of the subject property in favor of TGPI, the parent corporation of HI-LON, was tainted with anomalies because records show that TGPI did not participate in the public bidding held on June 30, 1987, as only three (3) bidders participated, namely: Fibertex Corporation, TNC Philippines, Inc., and P. Lim Investment, Inc.

Second, the COA pointed out that the Deed of Sale between APT and Fibertex has a disclosure that "The subject of this

Deed of Absolute Sale, therefore, as fully disclosed in the APT Asset Catalogue, is the total useable area of 59,380 sq. m.,"[8] excluding for the purpose the 29,690 sq. m. converted to RROW. The COA added that such exclusion was corroborated by the Abstract of Bids duly signed by the then APT Executive Assistant and Associate Executive Trustee, showing that the land covered by TCT No. T-151387 was offered to the public bidding for its useable portion of 5.9 hectares only, excluding the subject 29,690 sq. m. converted to RROW.

Third, the COA observed that HI-LON is a mere subsidiary corporation which cannot acquire better title than its parent corporation TGPI. The COA stressed that for more than (7) seven years that the subject property was under the name of TGPI from its registration on December 9, 1987 until it was transferred to HI-LON on April 16, 1995, TGPI did not attempt to file a claim for just compensation because it was estopped to do so as the Deed of Sale executed between APT and TGPI clearly stated that the 29,690 sq. m. RROW was excluded from the sale and remains a government property. Applying the principle of piercing the veil of corporate fiction since TGPI owns 99.9% of HI-LON, the COA ruled that HI-LON cannot claim ignorance that the 29,690 sq. m. RROW was excluded from the public auction.

Having determined that HI-LON or its predecessor-in-interest TGPI does not own the RROW in question, as it has been the property of the Republic of the Philippines since its acquisition by the DBP up to the present, the COA concluded that the proper valuation of the claim for just compensation is irrelevant as HI-LON is not entitled thereto in the first place.

Dissatisfied, HI-LON filed a Motion for Reconsideration of COA Decision No. 2011-003 and a Supplement thereto.

On December 3, 2013, the COA issued the assailed Decision No. 2013-212 denying HI-LON's motion for reconsideration, affirming with finality its assailed Decision No. 2011-003, and

[8] *Id.* at 47.

requiring HI-LON to refund the payment made by DPWH in the amount of ₱10,461,338.00.

In this Petition for *Certiorari*, HI-LON argues that the COA committed grave abuse of discretion, amounting to lack or excess of jurisdiction when it held (1) that there was no property owned by HI-LON that was taken by the government for public use; (2) that the 89,070-sq. m. subject parcel of land, including the 29,690 sq. m. portion used as RROW by the government, had been the property of the Republic of the Philippines; (3) that HI-LON is not entitled to payment of just compensation; and (4) that it collaterally attacked HI-LON's ownership of the subject land, including the RROW.[9]

The Office of the Solicitor General (*OSG*) counters that the COA acted within its jurisdiction when it evaluated and eventually disallowed what it found to be an irregular, anomalous and unnecessary disbursement of public funds. The OSG agrees with the COA that HI-LON is not entitled to payment of just compensation because the 29,690 sq. m. portion used as RROW is already owned by the Republic since 1987 when DBP transferred the entire 89,070 sq. m. subject property to APT, pursuant to Administrative Order No. 14. The OSG emphasizes that the Deed of Absolute Sale dated October 29, 1987 between the Republic (through APT) and TGPI clearly stated that the subject thereof, as fully disclosed in the APT Asset Specific Catalogue, is the total useable area of 59,380 sq. m., hence, the 29,690 sq. m. portion used as RROW was expressly excluded from the sale. Besides, the OSG notes that the COA aptly found that there were only three bidders who participated in APT's public bidding of the subject property and TGPI was not one of the bidders. There being an anomaly in the transfer of the property from APT to TGPI, the OSG posits that HI-LON, as TGPI's successor-in-interest, is not entitled to just compensation.

Stating that the intention of Proclamation No. 50 was to transfer the non-performing assets of DBP to the national government, the OSG maintains that APT has no authority to

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[9] *Id,* at 21.

offer for sale the said portion because it is a performing asset, having been used by the government as RROW for the Manila South Expressway since 1978. Considering that the said 29,690 sq. m. portion was not sold and transferred by APT to TGPI, the OSG submits that TGPI cannot also transfer the same portion to its subsidiary, HI-LON. The OSG concludes that HI-LON is not entitled to payment of just compensation as it is not the owner of the said portion, and that the COA properly ordered full disallowance of the ₱10,461,338.00 paid to HI-LON.

HI-LON's Petition for *Certiorari* is devoid of merit.

In support of its claim of entitlement to just compensation, HI-LON relies on the Deed of Sale dated October 29, 1987, and insists that its predecessor-in-interest (*TGPI*) acquired from the national government, through APT, the entire 89,070 sq. m. property, which was previously registered in the name of DBP under TCT No. 151837. HI-LON asserts that the 29,690 sq. m. RROW was not excluded from the sale because: (1) APT referred to the entire property in the Whereas Clauses as one of the subject of the sale; (2) APT made an express warranty in the said Deed that the properties sold are clear of liens and encumbrances, which discounts the need to investigate on the real status of the subject property; and (3) the title registered in the name of DBP, as well as the titles of the previous owners, CIREC and PPIC, contains no annotation as regards any government's claim over the RROW.

HI-LON's assertions are contradicted by the clear and unequivocal terms of the Deed of Sale[10] dated 29 October 1987 between APT and TGPI, which state that the subject thereof is the total usable area of 59,380 sq. m. of the subject property. Contrary to HI-LON's claim, nothing in the Whereas Clauses of the Deed indicates that the object of the sale is the entire 89,070 sq. m. property, considering that the 29,690 sq. m. portion thereof had been used as road right-of-way (RROW) for the South Expressway, to wit:

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[10] *Rollo*, Vol. 1, pp. 188-191.

x x x x x x x x x

WHEREAS, the Development Bank of the Philippines (DBP) was the mortgagee of a parcel of land (hereafter to be referred to as the "PROPERTY") covered by Transfer Certificate of Title No. T-151837 of the Registry of Deeds for the Province of Laguna (Calamba Branch), more particularly described as follows:

> A parcel of land (Lot 2-D-I-J of the subd. Plan Psd-39402, being a portion of Lot 2-D-1, described on plan Psd-18888, LRC (GLRO Rec. No. 9933, situated in the Bo. of Mayapa & San Cristobal, Municipality of Calamba, Province of Laguna. Bounded on the N.E. by Lot No. 2-D-1-I; of the subd. Plan; on the S., by the Provincial Road; on the SW., by Lot 2-D-1-K of the subd. plan and on the NW., by Lot No. 2-B of plan Psd-925. Beginning at a point marked "1" on plan, being S. 62 deg. 03'W., 1946.22 from L.M. 5, Calamba Estate; Thence — N. 64 deg. 35'E., 200.27 m. to point 2; S.21 deg. 03'E. 166.82 m. to point 3; S. 12 deg. 30'E, 141.01 m. to point 4; S. 10 deg. 25'E, 168.29 m. to point 5; N. 84 deg. 47'W, 215.01 m. to point 6; N. 13 deg. 44'W., 150.99 m. Thence— to point 7; N. 13 deg. 45'W., 27.66 m. to the point of beginning; containing an area of EIGHTY-NINE THOUSAND SEVENTY (89,070) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground by PLS. cyl. conc. mons. bearings true detloop deg. 03'E., date of original survey Jan. 1906 – Jan. 1908 and Sept. 1913 and that of subd. survey, Aug. 23-25, 1953.
>
> [As per Tax Declaration No. 9114, an area of 29,690 sq. m. had been used (road-right-of-way) for the South Expressway. The subject of this Deed of Absolute Sale, therefore, as fully disclosed in the APT Asset Specific Catalogue, is the total useable area of 59,380 sq. m.][11]

WHEREAS, the PROPERTY was subsequently acquired by DBP at public auction in a foreclosure sale as evidenced by a Sheriff's Certificate of Sale dated September 6, 1985 issued by Mr. Godofredo E. Quiling, Deputy Provincial Sheriff, Office of the Provincial Sheriff of Laguna, Philippines, x x x

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[11] Emphasis and underscoring added.

WHEREAS, pursuant to Administrative Order No. 14 issued on February 3, 1987 [Approving the Identification of and Transfer to the National Government of Certain Assets and Liabilities of the Development Bank of the Philippines and the Philippine National Bank], DBP's ownership and interest over the PROPERTY were transferred to the National Government through the ASSET PRIVATIZATION TRUST (APT), a public trust created under Proclamation No. 50 dated December 8, 1986.

WHEREAS, in the public bidding conducted by the APT on June 30, 1987, the VENDEE [TGPI] made the highest cash bid for the PROPERTY and was declared the winning bidder.

WHEREAS, the sale of the PROPERTY has been authorized by the COMMITTEE ON PRIVATIZATION under Notice of Approval dated July 21, 1987 of the APT;

WHEREAS, the VENDEE [TGPI] has fully paid the VENDOR [Government of the Republic of the Philippines, through APT] the purchase price of the PROPERTY in the amount of PESOS: TWO MILLION TWO HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED SIXTY-SEVEN (₱2,222,967.00).

NOW, THEREFORE, for and in consideration of the above premises and for the sum of PESOS: TWO MILLION TWO HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED SIXTY-SEVEN (₱2,222,967.00), Philippine Currency, paid by the VENDEE to the VENDOR, the VENDOR does by these presents sell, transfer and convey the PROPERTY hereinabove described unto the VENDEE, its successors and assigns, subject to the following conditions:

1. The VENDOR hereby warrant that the PROPERTIES shall be sold and transferred free and clear of liens and encumbrances accruing before August 18, 1987, and that all taxes or charges accruing or becoming due on the PROPERTIES before said date have or shall be fully paid by the VENDOR;

2. Documentary Stamp Taxes, Transfer Taxes. Registration fees, and all other expenses arising out of or relating to the execution and delivery of this Deed shall be for the account of and paid by the VENDEE;

3. Capital gains tax, if any, payable on or in respect of the transfer of the PROPERTY to the VENDEE shall be for the account of and paid by the VENDOR.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed at Makati, Metro Manila this [29th] day of [October], 1987.[12]

As the Deed of Sale dated October 29, 1987 is very specific that the object of the sale is the 59,380 sq. m. portion of the subject property, HI-LON cannot insist to have acquired more than what its predecessor-in-interest (*TGPI*) acquired from APT. Article 1370 of the New Civil Code provides that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Every contracting party is presumed to know the contents of the contract before signing and delivering it,[13] and that the words used therein embody the will of the parties. Where the terms of the contract are simple and clearly appears to have been executed with all the solemnities of the law, clear and convincing evidence is required to impugn it.[14] Perforce, HI-LON's bare allegation that the object of the Deed of Sale is the entire 89,070 sq. m. area of the subject property, is self-serving and deserves short shrift.

The Court thus agrees with the COA in rejecting HI-LON's claim of ownership over the 29,690 sq. m. RROW portion of the subject property in this wise:

x x x x x x x x x

As clearly shown in the Abstract of Bids, the subject of the bidding was 59,380 sq. m. only. The Deed of Sale expressly states that –

> [As per Tax Declaration No. 9114, an area of 29,690 sq. m. had been used (road-right-of-way) for the South Expressway. **The subject of this Deed of Absolute Sale, therefore, as fully disclosed in the APT Asset Specific Catalogue, is the total useable area of 59,380 sq. m.**]

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[12] *Rollo*, Vol. 1, pp. 188-190.

[13] *Conde v. Court of Appeals*, 204 Phil. 589, 597 (1982).

[14] *Development Bank of the Philippines v. National Merchandising Corporation*, 148-B Phil. 310, 331 (1971).

The government cannot enter into a contract with the highest bidder and incorporate substantial provisions beneficial to the latter which are not included or contemplated in the terms and specifications upon which the bids were solicited. It is contrary to the very concept of public bidding to permit an inconsistency between the terms and conditions under which the bids were solicited and those under which the bids were solicited and those under which proposals are submitted and accepted. Moreover, the substantive amendment of the terms and conditions of the contract bid out, after the bidding process had been concluded, is violative of the principles in public bidding and will render the government vulnerable to the complaints from the losing bidders.

Thus, since the area of [29,690 sq. m. which later became] 26,997 sq. m. covered by the RROW was not subject of the public bidding, Hi-Lon cannot validly acquire and own the same. The owner of this property is still the Republic of the Philippines.

x x x x x x x x x.[15]

Citing *Bagatsing v. Committee on Privatization*[16] where it was held that Proclamation No. 50 does not prohibit APT from selling and disposing other kinds of assets whether they are performing or non-performing, necessary or appropriate, HI-LON contends that regardless of whether or not the RROW is a performing or non-performing asset, it could not have been excluded in the sale of the entire 89,070 sq. m. property pursuant to the said Proclamation.

Concededly, the 29,690 sq. m. portion of the subject property is not just an ordinary asset, but is being used as a RROW for the Manila South Expressway Extension Project, a road devoted for a public use since it was taken in 1978. Under the Philippine Highway Act of 1953, "right-of-way" is defined as the land secured and reserved to the public for highway purposes, whereas "highway" includes rights-of-way, bridges, ferries, drainage structures, signs, guard rails, and protective structures in connection with highways.[17] Article 420 of the New Civil Code

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[15] *Rollo*, Vol. 1, p. 232. (Emphasis in the original).

[16] G.R. No. 112399, July 14, 1995, 246 SCRA 334, 347.

[17] Article II, Section 3 (a) and (k), Republic Act No. 917.

considers as property of public dominion those intended for public use, such as roads, canals, torrents, ports and bridges constructed by the state, banks, shores, roadsteads, and others of similar character.

Being of similar character as roads for public use, a road right-of-way (RROW) can be considered as a property of public dominion, which is outside the commerce of man, and cannot be leased, donated, sold, or be the object of a contract,[18] except insofar as they may be the object of repairs or improvements and other incidental matters. However, this RROW must be differentiated from the concept of easement of right of way under Article 649[19] of the same Code, which merely gives the holder of the easement an incorporeal interest on the property but grants no title thereto,[20] inasmuch as the owner of the servient estate retains ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement.[21]

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[18] *Municipality of Cavite v. Rojas*, 30 Phil. 602, 607 (1915).

[19] Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

[20] *Bogo-Medellin Milling Co., Inc. v. Court of Appeals,* 455 Phil. 285, 300 (2003).

[21] Article 630 of the New Civil Code.

As a property of public dominion akin to a public thoroughfare, a RROW cannot be registered in the name of private persons under the Land Registration Law and be the subject of a Torrens Title; and if erroneously included in a Torrens Title, the land involved remains as such a property of public dominion.[22] In *Manila International Airport Authority v. Court of Appeals,*[23] the Court declared that properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. "Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale."[24]

It is, therefore, inconceivable that the government, through APT, would even sell in a public bidding the 29,690 sq. m. portion of the subject property, as long as the RROW remains as property for public use. Hence, HI-LON's contention that the RROW is included in the Deed of Absolute Sale dated 29 October 1987, regardless whether the property is a performing or non-performing asset, has no legal basis.

Neither can HI-LON harp on the express warranty in the Deed of Sale that the subject property is clear from any encumbrance, and the lack of annotation of the government's claim of RROW on the TCTs of CIREC, PPIC and DBP covering the subject property, to bolster its claim of having acquired ownership of such property in good faith.

There is no dispute as to the finding of COA Commissioner Juanito G. Espino and DPWH Officer-in-Charge Manuel M. Bonoan based on the examination of land titles of the subject property that the entire 89,070 sq. m. area thereof was never

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[22] *Monsignor Acebedo v. Director of Lands*, 150-A Phil. 806, 816 (1972); Civil Code of the Philippines Annotated by Edgardo L. Paras, Volume 2, p. 47 (2008).

[23] 528 Phil. 181, 219 (2006).

[24] *MIAA v. Court of Appeals, supra.*

reduced in the process of seven (7) transfers of ownership from Emerito Banatin, *et al.*, in 1971 to HI-LON in 1996, nor was there an annotation of a RROW encumbrance on the TCTs of CIREC, PPIC, DBP and TGPI. Be that as it may, HI-LON cannot overlook the fact that the RROW was taken upon the directive of the Ministry of Public Works and Highways in 1978 for the construction of the Manila South Expressway Extension project. Such public highway constitutes as a statutory lien on the said TCTs, pursuant to Section 39 of the Land Registration Act (Act No. 496) and Section 44 of the Property Registration Decree (Presidential Decree No. 1529):

Section 39. Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all encumbrance except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands cannot require to appear of record in the registry.

Second. Taxes within two years after the same have become due and payable.

Third. **Any public highway**, way, or private way established by law, **where the certificate of title does not state that the boundaries of such highway** or way have been determined. But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.

x x x x x x x x x

SECTION 44. *Statutory Liens Affecting Title.* — Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate

and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record.

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.

Third. **Any public highway** or private way established or recognized by law, or any government irrigation canal or lateral thereof, **if the certificate of title does not state that the boundaries of such highway** or irrigation canal or lateral thereof have been determined.

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform.[25]

Section 39 of Act No. 496 and Section 44 of P.D. No. 1529 provide for statutory liens which subsist and bind the whole world, even without the benefit of registration under the Torrens System. Thus, even if the TCTs of CIREC, PPIC, DBP and TGPI contain no annotation of such encumbrance, HI-LON can hardly feign lack of notice of the government's claim of ownership over the public highway built along the RROW, and claim to be an innocent purchaser for value of the entire 89,070 sq. m. subject property because such highway prompts actual notice of a possible claim of the government on the RROW.

Given that prospective buyers dealing with registered lands are normally not required by law to inquire further than what appears on the face of the TCTs on file with the Register of Deeds, it is equally settled that purchasers cannot close their eyes to known facts that should have put a reasonable person on guard.[26] Their mere refusal to face up to that possibility

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[25] Emphasis added.

[26] *Spouses Domingo v. Reed*, 513 Phil. 339, 341 (2005).

will not make them innocent purchasers for value, if it later becomes apparent that the title was defective, and that they would have discovered the fact, had they acted with the measure of precaution required of a prudent person in a like situation.[27] Having actual notice of a public highway built on the RROW portion of the subject property, HI-LON cannot afford to ignore the possible claim of encumbrance thereon by the government, much less fail to inquire into the status of such property.

Invoking the principle of estoppel by laches, HI-LON posits that the government's failure to assert its right of ownership over the RROW by registering its claim on the titles of CIREC, PPIC, and DBP since the 29,690 sq. m. portion of the property was converted to a RROW way back in 1978 until the purported sale of the entire 89,070 sq. m. property to TGPI in 1987, bars it from claiming ownership of the RROW because it slept over its rights for almost nine (9) years. HI-LON states that if it were true that the government was convinced that it acquired the RROW, it would have lost no time in registering its claim before the Register of Deeds, instead of surrendering to TGPI the owner's duplicate of TCT No. 151837 in the name of DBP, to facilitate the issuance of a new title over the entire 89,070 sq. m. property, which includes the 29,690 sq. m. RROW. HI-LON further claims that the government is estopped from claiming its alleged right of ownership of the RROW because the DPWH itself offered to buy and, in fact, executed a Deed of Sale, thereby acknowledging that the RROW is a private property owned by HI-LON.

The failure of the government to register its claim of RROW on the titles of CIREC, PPIC, DBP and TGPI is not fatal to its cause. Registration is the ministerial act by which a deed, contract, or instrument is inscribed in the records of the Office of the Register of Deeds and annotated on the back of the TCT covering the land subject of the deed, contract, or instrument.[28] It creates a constructive notice to the whole world and binds third persons.[29]

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[27] *Id*.

[28] *Tecklo v. Rural Bank of Pamplona*, *Inc.,* 635 Phil. 249, 259 (2010).

[29] *Id*.

Nevertheless, HI-LON cannot invoke lack of notice of the government's claim over the 29,690 sq. m. RROW simply because it has actual notice of the public highway built thereon, which constitutes as a statutory lien on its title even if it is not inscribed on the titles of its predecessors-in-interest, CIREC, PPIC, DBP, and TGPI. Indeed, actual notice is equivalent to registration, because to hold otherwise would be to tolerate fraud and the Torrens System cannot be used to shield fraud.[30]

Meanwhile, the mistake of the government officials in offering to buy the 29,690 sq. m. RROW does not bind the State, let alone vest ownership of the property to HI-LON. As a rule, the State, as represented by the government, is not estopped by the mistakes or errors of its officials or agents, especially true when the government's actions are sovereign in nature.[31] Even as this rule admits of exceptions in the interest of justice and fair play, none was shown to obtain in this case. Considering that only 59,380 sq. m. of the subject property was expressly conveyed and sold by the government (through APT) to HI-LON's predecessor-in-interest (TGPI), HI-LON has no legal right to claim ownership over the entire 89,070 sq. m. property, which includes the 29,690 sq. m. RROW taken and devoted for public use since 1978.

In arguing that the government had no legal title over the RROW, HI-LON points out that the government acquired title thereto only in 2001 when a Deed of Sale was executed between HI-LON and the DPWH. HI-LON claims that when the government used the 29,690 sq. m. portion of the subject property as RROW in 1978, it never acquired legal title because it did not institute any expropriation proceeding, let alone pay the registered owner just compensation for the use thereof.

HI-LON's claim of ownership over the said RROW has been duly rejected by the COA in this manner:

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[30] *Lavides v. Pre*, 419 Phil. 665, 672 (2001).

[31] *Heirs of Reyes v. Republic*, 529 Phil. 510, 519-520 (2006).

By virtue of Administrative Order No. 14, s. 1987, pursuant to Section 23 of Proclamation No. 50, the 89,070 sq. m. subject parcel of land, including the 29,690 sq. m. which had been used as RROW by the Government, was transferred to and owned by the National Government. TG Property, Inc. cannot acquire a portion of the parcel of land without authority and consent of the Philippine Government, being the owner and seller of the said property. Hi-Lon cannot even claim ownership on the portion of the subject land without the said deed of sale executed by the Government in favor of TG Property, Inc. The facts would show that **the RROW has been the property of the Republic of the Philippines since its transfer from DBP in 1987**.

x x x x x x x x x[32]

It bears emphasis that the right to claim just compensation for the 29,690 sq. m. portion which was not exercised by CIREC or PPIC, ceased to exist when DBP acquired the entire 89,070 sq. m. property in a foreclosure sale and later transferred it to the national government (through APT) in 1987, pursuant to Proclamation No. 50. Having consolidated its title over the entire property, there is no more need for the government to initiate an action to determine just compensation for such private property which it previously took for public use *sans* expropriation proceedings.

Citing Section 48 of P.D. 1529 which bars collateral attack to certificates of title, HI-LON asserts that COA erred in ruling that there was no property owned by HI-LON that was taken by the government for public use, despite the fact that: (a) the ownership of the subject property was not raised before the Commission Proper of the COA; and (b) COA has no jurisdiction over issues of ownership and entitlement to just compensation. HI-LON stresses that the titles issued to TGPI and HI-LON conclusively show that they are the registered owners of the entire 89,070 sq. m. property in Calamba, Laguna, including the 29,690 sq. m. RROW. Absent any proceeding directly assailing the said titles, the ownership of the said property by

[32] *Rollo*, Vol. 1, p. 232. (Underscoring in the original; emphasis added).

HI-LON and TGPI is beyond dispute. HI-LON further states that *Leoncio Lee Tek Sheng v. Court of Appeal*[33] cited by the OSG is inapplicable because a notice of *lis pendens* was annotated on the title subject of the case, unlike the titles of TGPI and HI-LON which contain no annotation of claims of ownership by the Republic.

Suffice it to state that there is no merit in HI-LON's argument that the TCTs issued in its name and that of its predecessor-in-interest (TGPI) have become incontrovertible and indefeasible, and can no longer be altered, cancelled or modified or subject to any collateral attack after the expiration of one (1) year from the date of entry of the decree of registration, pursuant to Section 32 of P.D. No. 1529. In *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*,[34] the Court clarified the foregoing principle, viz.:

> x x x While it is true that Section 32 of PD 1529 provides that the decree of registration becomes incontrovertible after a year, it does not altogether deprive an aggrieved party of a remedy in law. The acceptability of the Torrens System would be impaired, if it is utilized to perpetuate fraud against the real owners.
>
> Furthermore, ownership is not the same as a certificate of title. Registering 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. 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.[35]

In *Lacbayan v. Samoy, Jr.*,[36] the Court noted that what cannot be collaterally attacked is the certificate of title, and not the title itself:

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[33] G.R. No. 115402, July 15, 1998, 292 SCRA 544.

[34] 451 Phil. 368 (2003). (Citations omitted).

[35] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac, supra,* at 376-377. (Citations omitted).

[36] 661 Phil. 307, 317 (2011).

x x x The certificate referred to is that document issued by the Register of Deeds known as the TCT. In contrast, the title referred to by law means ownership which is, more often than not, represented by that document. xxx Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.

In *Mallilin, Jr. v. Castillo,*[37] the Court defined collateral attack on the title, as follows:

x x x When is an action an attack on a title? It is when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of an action or proceeding is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[38]

In this case, what is being assailed by the COA when it sustained the Notice of Disallowance for payment of just compensation is HI-LON's claim of ownership over the 29,690 sq. m. portion of the property, and not the TCT of TGPI from which HI-LON derived its title. Granted that there is an error in the registration of the entire 89,070 sq. m. subject property previously in the name of TGPI under TCT No.-156786[39] and currently in the name of HI-LON under TCT No. T-383819[40] because the 29,690 sq. m. RROW portion belonging to the government was mistakenly included, a judicial pronouncement is still necessary in order to have said portion excluded from the Torrens title.[41]

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[37] 389 Phil. 153 (2000), cited in *Caraan v. Court of Appeals,* 511 Phil. 162, 170 (2005).

[38] *Mallilin v. Castillo, supra*, at 165.

[39] *Rollo,* pp.79-80.

[40] *Id.* at 294-295.

[41] *Zobel v. Mercado,* 108 Phil. 240, 242 (1960).

HI-LON's assertion that the titles issued to TGPI and HI-LON conclusively show that they are the registered owners of the entire 89,070 sq. m. property in Calamba, Laguna, including the 29,690 sq. m. RROW is anathema to the purpose of the Torrens System, which is intended to guarantee the integrity and conclusiveness of the certificate of registration, but cannot be used for the perpetration of fraud against the real owner of the registered land.[42] On point is the case of *Balangcad v. Court of Appeals*[43] where it was held that "the system merely confirms ownership and does not create it. Certainly, it cannot be used to divest the lawful owner of his title for the purpose of transferring it to another who has not acquired it by any of the modes allowed or recognized by law. Where such an erroneous transfer is made, as in this case, the law presumes that no registration has been made and so retains title in the real owner of the land."

It is also not amiss to cite *Ledesma v. Municipality of Iloilo*[44] where it was ruled that "if a person obtains title, under the Torrens system, which includes, by mistake or oversight, lands which cannot be registered under the Torrens system, he does not, by virtue of said certificate alone, become the owner of the land illegally included." Inasmuch as the inclusion of public highways in the certificate of title under the Torrens system does not thereby give to the holder of such certificate said public highways,[45] the same holds true with respect to RROWs which are of similar character as roads for public use.

Assuming *arguendo* that collateral attack of said titles are allowed, HI-LON claims that its right of ownership of the subject RROW can no longer be assailed by the COA because it never questioned such right until after it denied the petition for review.

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[42] *Balangcad v. Justice of the Court of Appeals, 5th Div.,* 283 Phil. 59, 65 (1992).

[43] *Supra.*

[44] 49 Phil. 769, 773 (1926).

[45] *Ledesma v. Municipality of Iloilo, supra,* at 774.

HI-LON notes that ND No. 2004-032 was issued and it was denied payment of just compensation for the RROW solely on the ground that such compensation should be based on the value of the lot at the time of the actual taking by the government in 1978. HI-LON avers that it was surprised to find out that in the Decision dated 20 January 2011, the COA Commission Proper assailed for the first time TGPI's and HI-LON's right of ownership over the RROW, instead of merely finding whether or not the valuation of the property should be based on the value at the time of the taking in 1978 or the value of the ₱2,500.00/sq. m.

HI-LON's arguments fail to persuade.

COA may delve into the question of ownership although this was not an original ground for the issuance of the Notice of Disallowance, but only the proper valuation of the just compensation based on the date of actual taking of the property. In *Yap v. Commission on Audit,*[46] the Court ruled that "COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned . To hold otherwise would render the COA's vital constitutional power unduly limited and thereby useless and ineffective." Tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's property, the COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.[47]

It is the policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally

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[46] 633 Phil. 174 (2010).

[47] *Delos Santos v. Commission on Audit*, 716 Phil. 322, 332 (2013).

created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce.[48] Considering that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness amounting to grave abuse of discretion, it is only when the COA acted with such abuse of discretion that the Court entertains a petition for *certiorari* under Rule 65 of the Rules of Court.[49]

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility;[50] and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[51] No grave abuse of discretion can be imputed against the COA when it affirmed the Notice of Disallowance issued by the LAO-N in line with its constitutional authority[52] and jurisdiction over

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[48] *Id.* at 332-333.

[49] *Id.* at 333.

[50] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.,* 716 Phil. 500, 517 (2013).

[51] *Reyna v. Commission on Audit,* 657 Phil. 209, 236 (2011).

[52] Section 2, Article IX-D of the 1987 Constitution states:

Section 2.(1) The Commission on Audit shall have the **power, authority and duty to examine, audit, and settles all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations with original charters**, and on post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit such audit as a condition of subsidy or equity.

cases involving "disallowance of expenditures or uses of government funds and properties found to be illegal, irregular, unnecessary, excessive, extravagant or unconscionable."[53] Having determined that HI-LON does not own the disputed RROW, the COA correctly ruled that HI-LON is not entitled to payment of just compensation and must accordingly refund the partial payment made by the DPWH in the amount of ₱10,461,338.00. To stress, even if HI-LON is the registered owner of the subject property under TCT No. T-383819 with an area of 89,070 sq. m., the Deed of Absolute Sale dated 29 October 1987 clearly shows that only the 59,380 sq. m. portion of the subject property, and not 29,690 sq. m. portion used as RROW, was sold and conveyed by the government (through APT) to HI-LON's immediate predecessor-in-interest (TGPI).

In light of the foregoing disquisition, HI-LON's prayer for issuance of Temporary Restraining Order and/or Writ of Injunction must necessarily be denied for lack of clear and unmistakable right over the disputed 29,690 sq. m. portion of the subject property.

Lastly, from the finality of the Court's decision until full payment, the total amount to be refunded by HI-LON shall earn legal interest at the rate of six percent (6%) *per annum* pursuant to Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013, because such interest is imposed by reason of the Court's decision and takes the nature of a judicial debt.[54]

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x x x x x x x x x

(2) The Commission shall have **exclusive authority**, subject to the limitations in this Article, **to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties**. (Emphasis added)

[53] Section 1, Rule II, 2009 Revised Rules of Procedure of the Commission on Audit.

[54] *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, G.R. No. 179334, April 21, 2015, 756 SCRA 389, 415; See also *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

WHEREFORE, premises considered, the Petition for *Certiorari* is **DENIED** for lack of merit, and the Commission on Audit Decision No. 2011-003 dated January 20, 2011 and Decision No. 2013-212 dated December 3, 2013 are **AFFIRMED with MODIFICATION** that a legal interest of six percent (6%) *per annum* from the finality of this Decision until fully paid, is imposed on the amount of ₱10,461,338.00 that HI-LON Manufacturing Co., Inc. is required to refund to the Department of Public Works and Highways.

SO ORDERED.

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

Jardeleza, J., no part, prior OSG action.

Caguioa, J., on leave.

EN BANC

[G.R. No. 223366. August 1, 2017]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **OROVILLE DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; STATE POWERS; EMINENT DOMAIN; REQUISITES.—** Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.

The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. But the exercise of such right is not unlimited, for two mandatory requirements should underlie the Government's exercise of the power of eminent domain, namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

2. **ID.; ID.; ID.; CASE OF *REPUBLIC V. VDA. DE CASTELLVI* ON THE REQUISITES OF TAKING.—** The landmark case of *Republic v. Vda. De Castellvi* provides an enlightening discourse on the requisites of taking. *First*, The expropriator must enter a private property; *Second*, the entrance into private property must be for more than a momentary period; *Third*, the entry into the property should be under warrant or color of legal authority; *Fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and *Fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

3. **ID.; ID.; ID.; JUST COMPENSATION; RECKONED FROM THE DATE OF ACTUAL TAKING.—** Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. In addition, Section 4, Rule 67 of the Rules of Court provides: **Section 4.** *Order of expropriation*. – If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, **upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first**. x x x Indeed, the State is only obliged to make good the loss sustained by the landowner, with due consideration of the circumstances

availing at the time the property was taken. The concept of just compensation does not imply fairness to the property owner alone. Compensation must also be just to the public, which ultimately bears the cost of expropriation.

4. ID.; ID.; ID.; ID.; ID.; RULINGS IN *MACABANGKIT SANGKAY* AND *SALUDARES* RECKONING; JUST COMPENSATION FROM THE TIME THE PROPERTY OWNERS INITIATED INVERSE CONDEMNATION PROCEEDINGS NOTWITHSTANDING THAT THE TAKING OF THE PROPERTIES OCCURRED EARLIER ARE MERE EXCEPTIONS.— The Court is not unaware of the rulings in *National Power Corporation v. Heirs of Macabangkit Sangkay (Macabangkit Sangkay)* and *National Power Corporation v. Spouses Saludares (Saludares)* wherein it was held that just compensation should be reckoned from the time the property owners initiated inverse condemnation proceedings notwithstanding that the taking of the properties occurred earlier. x x x These rulings, however, are exceptions to the general rule that just compensation must be reckoned from the time of taking or filing of the complaint, whichever came first. The special circumstances of the aforementioned cases called for the valuation of just compensation at the time the landowners initiated inverse condemnation proceedings notwithstanding that taking of the properties occurred first. In *Macabangkit* Sangkay, NAPOCOR did not even inform the property owners of the construction of the underground tunnels. Hence, it could be said that NAPOCOR employed stealth instead of complying with the legal process of expropriation. Further, considering that the tunnels were constructed underground, the property owners came to know thereof only when the purchaser of the property refused to proceed with the sale upon discovery of the underground tunnels. In this case, however, the transmission lines are visible, such that Oroville could not deny knowledge of its construction in 1983. In *Saludares*, NAPOCOR refused to acknowledge the respondents' claim and insisted that it already paid just compensation because the respondents' property was the same one involved in the Pereyra case. Thus, NAPOCOR had no intention to pay just compensation. This circumstance does not exist in the case at bench. The rulings in *Macabangkit Sangkay* and *Saludares* are more in consonance with the rules of equity than with the Rules of Court, specifically Rule 67 on expropriation.

5. **ID.; ID.; ID.; ID.; DELAY IN THE PAYMENT OF JUST COMPENSATION WARRANTS PAYMENT OF INTEREST; FAILURE TO INITIATE AN EXPROPRIATION PROCEEDING TO THE PREJUDICE OF THE LANDOWNER WARRANTS AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES.—** The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. Thus, the rationale for imposing the interest is to compensate the landowners for the income they would have made had they been properly compensated for their properties at the time of the taking. x x x In the case at bench, x x x Oroville is entitled to twelve percent (12%) interest *per annum* which is the prevailing rate during such period pursuant to Central Bank Circular No. 905, effective from December 22, 1982 to June 30, 2013. Oroville is also awarded additional compensation by way of exemplary damages and attorney's fees. In *Republic v. CA*, the Court held that the failure of the government to initiate an expropriation proceeding to the prejudice of the landowner may be corrected with the awarding of exemplary damages, attorney's fees and costs of litigation. x x x Hence, considering that Oroville was deprived of beneficial ownership over their property without the benefit of a timely expropriation proceeding, and to serve as a deterrent to the State from failing to institute such proceedings, a grant of exemplary damages x x x is fair and reasonable. Moreover, an award for attorney's fees x x x is in order.

6. **REMEDIAL LAW; DOCTRINE OF *STARE DECISIS*; APPLIED IN CASE AT BAR.—** [T]he doctrine of *stare decisis* constrains the Court to follow the ruling laid down in *Tecson* and similar cases. "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. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* 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." To reiterate, the facts of the instant case are substantially the same with *Tecson* and similar cases cited therein. A government agency took possession of private property for the benefit of the public without, however, initiating expropriation proceedings, which thus, constrained the landowner to file actions to recover their properties or to demand payment of just compensation. Hence, in the absence of any compelling reason to deviate from the rulings in the aforecited cases, the Court, in the case at bench, must adhere to the doctrines established therein.

VELASCO, JR., ***J., dissenting opinion*:**

POLITICAL LAW; STATE POWERS; EMINENT DOMAIN; WITHOUT EXPROPRIATION SUIT, TAKING OF PRIVATE PROPERTY IS VIOLATION OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW; JUST COMPENSATION AND INTEREST SHOULD BE COMPUTED NOT AT THE TIME OF TAKING BUT AT THE TIME OF JUDICIAL DEMAND.— With due respect I deviate from the ruling that the just compensation should be reckoned as of 1983 when Transco illegally constructed the Tagoloan-Pulangi 138 kV transmission line without any complaint for condemnation filed. I submit that the just compensation should be computed as of April 20, 2007 when respondent Oroville filed a complaint for injunction and damages seeking to enjoin the construction of the Abaga-Kirahon 230 kV transmission line x x x [W]ithout an expropriation suit, private property is being taken from the landowner without due notice, without providing him or her the opportunity to be heard, and is a gross and blatant violation of his or her constitutional right to due process of law. x x x There being no faithful observance of procedural due process rights in this case, the rulings in *National Power Corporation v. Heirs of Macabangkit Sangkay* and *National Power Corporation v. Saludares* can properly be invoked herein. x x x In such cases of taking that is illegal, if not criminal, and where the landowner is compelled to seek payment from the expropriating agency, the value of just compensation should be reckoned from the

time of judicial demand, which in this case is in 2007. It is incorrect to claim that the payment of interest from the time of taking in 1983 would sufficiently answer for the delay in filing the expropriation complaint. For interest would accrue regardless of whether or not a case had been filed. Interest payment forms part of just compensation for the taking of the property, but it does not answer for the deprivation of due process. As held in *Macabangkit Sangkay* and *Saludares*, the more acceptable solution is to reckon the valuation of just compensation from the date of judicial demand.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Jo & Pintor Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the September 18, 2015 Decision[1] and January 25, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 03571, which affirmed with modification the December 12, 2012 Decision[3] of the Regional Trial Court, Branch 17, Misamis Oriental *(RTC)* in Civil Case No. 2007-85, a case for expropriation.

The Antecedents

The present case involves two (2) parcels of land located in Puerto, Cagayan de Oro City, which originally belonged to Alfredo Reyes *(Reyes)* and Grace Calingasan *(Calingasan)*,

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[1] Penned by Associate Justice Edgardo T. Lloren with Associate Justice Romulo V. Borja and Associate Justice Maria Filomena D. Singh, concurring; *rollo*, pp. 23-36.

[2] *Id.* at 38-39.

[3] Penned by Presiding Judge Florencia D. Sealana-Abbu; *id.* at 61-73.

covered by Original Certificate of Title *(OCT)* No. P-3 and OCT No. P-13, respectively.

In 1983, petitioner National Transmission Corporation *(TransCo)* constructed a power transmission line on these properties, known as the Tagoloan-Pulangi 138 kV transmission line.

At some point, Reyes sold his land to Antonio Navarette, who later sold the same property to respondent Oroville Development Corporation *(Oroville)*, which is now covered by Transfer Certificate of Title *(TCT)* No. T-85121. Likewise, Calingasan sold her land to Oroville, now registered under TCT No. T-104365. Thus, in 1995, Oroville became the registered owner of these properties with a total area of 13,904 square meters traversed by the existing Tagoloan-Pulangi 138 kV transmission line.

On November 17, 2006, TransCo offered to buy these properties from Oroville to be used for the construction of the Abaga-Kirahon 230 kV transmission line in Mindanao.

During the negotiation, Oroville, through its representative Antonio Tiu *(Tiu)*, requested to reroute the Abaga-Kirahon 230 kV transmission line because the Tagoloan-Pulangi 138 kV transmission line is already traversing its properties. Tiu also informed TransCo that Oroville has not been paid just compensation for the construction of the Tagoloan-Pulangi 138 kV transmission line in its property. TransCo, however, refused to reroute the proposed Abaga-Kirahon 230 kV transmission line because it planned to construct the said transmission line parallel to the existing Tagoloan-Pulangi 138 kV transmission line.

Consequently, on April 20, 2007, Oroville filed a complaint for injunction and damages with prayer for issuance of a temporary restraining order against TransCo, seeking to enjoin the construction of the Abaga-Kirahon 230 kV transmission line.

On May 9, 2007, TransCo filed its Answer denying the allegations in Oroville's complaint. It also manifested that it

would file the required expropriation proceedings against Oroville in order to acquire the latter's properties for the Abaga-Kirahon 230 kV transmission line project.

During trial, the parties agreed to have the subject properties surveyed for purposes of fixing the just compensation. As a result, the trial court suspended the proceedings and directed TransCo to conduct a survey of the properties.

Subsequently, Oroville filed an omnibus motion to convert the proceedings into an expropriation case and to require TransCo to pay the Bureau of Internal Revenue *(BIR)* the zonal value of the subject properties. TransCo made no objections to the motion.

On May 17, 2010, the trial court directed TransCo to make a provisional deposit of ₱7,647,200.00 as just compensation for Oroville's properties consisting of 13,904 square meters and affected by the existing Tagoloan-Pulangi 138 kV transmission line. TransCo complied after the trial court denied its objections.

On February 4, 2011, the trial court directed the Land Bank of the Philippines, NAPOCOR Branch, to release the aforesaid deposit to Tiu.

On March 21, 2011, the trial court issued a writ of possession directing Oroville to surrender possession of the properties to TransCo.

Subsequently, on August 8, 2011, per nomination of the parties, the trial court appointed three (3) Commissioners, namely, Engr. Marilyn P. Legaspi, Engr. Norberto Badelles and Atty. Avelino Pakino, to determine the just compensation of the properties affected by the Abaga-Kirahon 230 kV transmission line.

A summary of the Commissioners' report reads as follows:

1. Engr. Marilyn Legaspi (Court-appointed Commissioner)
   Date of Taking: 1983 per Transmission Line Data and Information

(Tagoloan-Pulangi 138 kV Transmission Line)
Valuation of the Property: ₱78.65 per square meter or a total of ₱5,924,772.48 inclusive of interests[4]

2. Engr. Norberto Badelles (engaged by Transco)
Date of Taking: 1983 per Transmission Line Data and Information
(Tagoloan-Pulangi 138 kV Transmission Line)
Valuation of the Property: ₱1.20 per square meter or a total of ₱45,716.35 inclusive of interests[5]

3. Atty. Avelino Pakino (nominated by Oroville)
Date of Taking: 1983 per Transmission Line Data and Information
(Tagoloan-Pulangi 138 kV Transmission Line)
Valuation of the Property: ₱2,000.00 per square meter or a total of ₱27,808,000.00 inclusive of interests[6]

The RTC Ruling

In its Decision, dated December 12, 2012, the RTC set aside the Commissioners' report and fixed the just compensation at the rate of ₱1,520.00 per square meter with legal interest of 12% per *annum* reckoned from April 20, 2007, the date of filing of the complaint. It held that the said amount was based on the fair market value of lots along the national highway of Barangay Puerto, Cagayan de Oro City in accordance with the schedule of values under City Ordinance No. 10425-2006 otherwise known as An Ordinance Prescribing the Revised Schedule of Fair Market Values of Real Property in Cagayan de Oro and in accordance with the BIR Comparative Value of Zonal Fair Market Values. The RTC opined that the just compensation should not be reckoned from 1983, the time of taking, because it was established by the landowners that entry into their property was without their knowledge. The *fallo* reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered as follows:

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[4] *Id*. at 65.

[5] *Id*. at 66.

[6] *Id*. at 68.

1) FIXING the just compensation of the affected area of 13,904 square meters at ₱1,520.00 per square meter reckoned from April 20, 2007, the date the complaint was filed, at interest rate of 12% per annum until the liability is fully paid

2) ORDERING defendant TRANSCO to pay plaintiff the just compensation in the amount of ₱1,520.00 per square meter for the 13,904 square meters the affected area at the rate of 12% per annum reckoned from April 20, 2007, the data of filing the complaint minus the amount of ₱7,647,200.00 representing the amount paid by TRANSCO as provisional payments

3) ORDERING defendant TRANSCO to pay plaintiff the interest of 12% per annum based on the deficiency amount;

4) ORDERING Plaintiff and Defendant to pay the Commissioners' fee in the amount of ₱10,000.00 each within 15 days from receipt of this Order.

The Court will leave to the parties the correct mathematical computation as to what is due to plaintiff based on the foregoing premises.

SO ORDERED.[7]

Aggrieved, TransCo elevated an appeal before the CA.

The CA Ruling

In its assailed Decision, dated September 18, 2015, the CA ruled that TransCo's entry into Oroville's lots in 1983 was made without warrant or color of authority because at the time TransCo constructed the Tagoloan-Pulangi 138 kV transmission line over the disputed properties in 1983, it was made without intent to expropriate. It added that TransCo constructed the transmission line without bothering to negotiate with the owner to purchase or expropriate the disputed lots.

Further, the CA adjudged that the construction of the Tagoloan-Pulangi 138 kV transmission line did not oust or deprive Oroville or its previous owners of the beneficial enjoyment of their

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

properties as they continued to possess the same. It observed that the previous owners were able to sell the properties to Oroville; and that after acquiring them, Oroville considered developing the lots for residential subdivision purposes, but the subject properties were later on classified as agricultural lands covered by the Comprehensive Agrarian Reform Program *(CARP)* of the government.

The CA concluded that there was no actual taking of the subject properties in 1983 when TransCo constructed the Tagoloan-Pulangi 138 kV transmission line. Accordingly, the computation of the just compensation should be reckoned at the time of the filing of the complaint in 2007. The dispositive portion reads:

> WHEREFORE, the Judgment dated 12 December 2012 of the Regional Trial Court, (Branch 17), 10th Judicial Region, Cagayan de Oro City, is MODIFIED. Appellant National Transmission Corporation is hereby ORDERED to pay appellee Oroville Corporation the unpaid balance of the just compensation in the sum of ₱13,486,880.00 with legal interest of TWELVE PERCENT (12%) per annum computed from 21 March 2011 to 30 June 2013 and SIX PERCENT (6%) per annum from 1 July 2013 until its full payment. Both parties are DIRECTED to pay the Commissioners' fee in the amount of ₱10,000.00 each within 15 days from notice.
>
> SO ORDERED.[8]

TransCo moved for reconsideration, but the same was denied by the CA in its assailed Resolution, dated January 25, 2016.

Hence, this petition.

ISSUES

WHETHER THE COMPUTATION OF JUST COMPENSATION FOR THE EXPROPRIATED PROPERTY SHOULD BE BASED ON ITS VALUE AT THE TIME OF THE TAKING OF THE PROPERTY

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[8] *Id*. at 35.

WHETHER THE IMPOSITION OF A LEGAL INTEREST OF 12% IS UNJUSTIFIED[9]

Petitioner argues that Section 4, Rule 67 of the Rules of Court and applicable jurisprudence are explicit in saying that just compensation for expropriated property shall be determined based on its fair market value at the time of its taking; that Oroville could not claim lack of knowledge to the construction of the transmission line since it is in plain view, considering its height and the huge space that it occupied; that Oroville should not be allowed to benefit from its failure to question such construction more than a decade after its completion; and that it should not be made to pay 12% interest *per annum* in the nature of damages for delay as it complied with the RTC's directive to make provisional deposit for the subject property.

In its Comment,[10] dated August 5, 2016, Oroville averred that to sustain the argument of TransCo that the basis of the payment for just compensation is the value of the property at the time of taking would sow immeasurable injustice; that the ₱78.65 per square meter valuation as recommended by Commissioner Legaspi and the ₱1.20 per square meter recommended by Commissioner Badelles would not be enough to reimburse Oroville for the realty taxes it paid from the year 1983 up to the present; that while it paid these annual taxes, TransCo had been earning billions of pesos from transmission charges; that as held in *Napocor v. Campos, Jr.,* there were instances when TransCo removed transmission lines from the affected properties due to diversion of its lines, thus, upon entry, TransCo did not have intent to expropriate the property because there might be a change of plans; that TransCo would initiate expropriation proceedings only when it was certain of its transmission plans; that the earlier entry into and/or possession of TransCo of the subject properties was patently without any color of legal authority as it did not have the slightest intention to acquire ownership of the subject properties either by voluntary

[9] *Id.* at 8.

[10] *Id*. at 128-144.

purchase or by exercise of eminent domain; and that the delay in the payment of just compensation justified the payment of 12% interest *per annum.*

In its Reply,[11] dated November 25, 2016, TransCo contended that this case is not an exception to the settled rule that just compensation should be based on the property's value at the time of its taking; that the value and classification of the subject property at the time of its taking in 1983 should be the basis for the computation of just compensation; that it informed Oroville of the construction of the new transmission line over its properties and readily agreed to the conversion of its complaint for injunctive relief into an expropriation case; and that the landowner should also bear the cost of being remiss in guarding against the effects of a belated claim.

The Court's Ruling

The petition is meritorious.

Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.[12] The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. But the exercise of such right is not unlimited, for two mandatory requirements should underlie the Government's exercise of the power of eminent domain, namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner.[13] These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.[14]

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[11] *Id*. at 153-159.

[12] *Heirs of Suguitan v. City of Mandaluyong,* 384 Phil. 677, 687 (2000).

[13] *Mactan-Cebu International Airport Authority v. Lozada, Sr.,*627 Phil. 434, 445 (2010).

[14] *Id.*

Taking of Oroville's property occurred in 1983 upon construction of the transmission lines

The landmark case of *Republic v. Vda. De Castellvi*[15] provides an enlightening discourse on the requisites of taking.

First, The expropriator must enter a private property; *Second,* the entrance into private property must be for more than a momentary period; *Third,* the entry into the property should be under warrant or color of legal authority; *Fourth,* the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and *Fifth,* the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[16]

The Court rules that there is taking of the property for purposes of eminent domain in 1983.

The first and fourth requisites are present in this case. TransCo took possession of Oroville's property in order to construct transmission lines to be used in generating electricity for the benefit of the public.

The second requisite is likewise present as there can be no question that the construction of transmission lines meant an indefinite stay in the property of Oroville. Further, TransCo's exercise of eminent domain is pursuant to its authority granted under Section 8 of Republic Act *(R.A.)* No. 9136 or the Electric Power Industry Reform Act of 2001.[17]

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[15] 157 Phil. 329 (1974).

[16] *Id*. at 345-346.

[17] Section 8. *Creation of the National Transmission Company.* – x x x

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities. x x x

Finally, Oroville has been deprived of the beneficial enjoyment of its property. In several rulings, notably *National Power Corporation v. Spouses Zabala,*[18] *Republic v. Spouses Libunao,*[19] and *National Power Corporation v. Tuazon*[20] this Court has already declared that "since the high-tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land, it is only just and proper to require Napocor to recompense them for the full market value of their property."

Just compensation reckoned from the date of actual taking

The next question to be resolved is whether just compensation should be reckoned from 1983 when the taking took place.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.[21]

In addition, Section 4, Rule 67 of the Rules of Court provides:

Section 4. *Order of expropriation.* — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, **upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.** xxxx[Emphasis supplied]

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[18] 702 Phil. 491, 501 (2013).

[19] 611 Phil. 748, 761 (2009).

[20] 668 Phil. 301, 310-311 (2011).

[21] *National Power Corporation v. Diato-Bernal*, 653 Phil. 345, 354 (2010).

The case of *Secretary of the Department of Public Works and Highways v. Spouses Tecson (Tecson)*[22] provides a discussion of cases wherein the Court conformed to the abovementioned rule and held that payment of just compensation should be reckoned from the date of taking when such preceded the filing of the complaint for expropriation, to wit:

In Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR], PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings. In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In Eusebio v. Luis, respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In Manila International Airport Authority v. Rodriguez, in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated. In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reivindicatoria* with damages against petitioner. In Republic v. Sarabia, sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

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[22] 713 Phil. 55 (2013).

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. **The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation**. In Forfom, the payment of just compensation was reckoned from the time of taking in 1973; in Eusebio, the Court fixed the just compensation by determining the value of the property at the time of taking in 1980; in MIAA, the value of the lot at the time of taking in 1972 served as basis for the award of compensation to the owner; and in Republic, the Court was convinced that the taking occurred in 1956 and was thus the basis in fixing just compensation.[23] [Citations omitted and emphases supplied]

As further pointed out in *Republic v. Lara, et al.*,[24] thus:

x x x "The value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken x x x.[25]

Indeed, the State is only obliged to make good the loss sustained by the landowner, with due consideration of the circumstances availing at the time the property was taken. The

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[23] *Id.* at 71-72.

[24] 96 Phil. 170 (1954).

[25] *Id*. at 177-178.

concept of just compensation does not imply fairness to the property owner alone. Compensation must also be just to the public, which ultimately bears the cost of expropriation.[26]

The sequence of events in all of these cited cases as well as in Tecson is similar to that obtaining in the case at bench, that is, the government took possession of private properties without initiating expropriation proceedings and later on, the property owners demanded either the return of their properties or the payment of just compensation. Thus, pursuant to the Rules of Court and in accordance with prevailing jurisprudence, the Court rules that just compensation must be ascertained as of the year 1983 when TransCo commenced construction of the transmission lines. Just compensation is therefore fixed at ₱78.65 per square meter, which is the fair market value of the property at the time of taking. As will be discussed later on, the imposition of interest would adequately compensate the property owner for the delay in the payment of just compensation considering that more often than not, the amount of interest to be paid is higher than the increase in the property's market value.

The rulings in Macabangkit Sangkay and Saludares are mere exceptions

The Court is not unaware of the rulings in *National Power Corporation v. Heirs of Macabangkit Sangkay (Macabangkit Sangkay)*[27] and *National Power Corporation v. Spouses Saludares (Saludares)*[28] wherein it was held that just compensation should be reckoned from the time the property owners initiated inverse condemnation proceedings notwithstanding that the taking of the properties occurred earlier.

In *Macabangkit Sangkay*, NAPOCOR, in the 1970s, undertook the construction of several underground tunnels to be used in

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[26] *Republic v. Court of Appeals,* 494 Phil. 494, 510 (2005).

[27] *National Power Corporation v. Heirs of Macabangkit Sangkay,* 671 Phil. 569 (2011).

[28] *National Power Corporation v. Spouses Saludares*, 686 Phil. 967 (2012).

diverting the water flow from the Agus River to the hydroelectric plants. On November 21, 1997, respondents therein sued NAPOCOR for recovery of property and damages, alleging that they belatedly discovered that one of the underground tunnels of NPC traversed their land.[29] In that case, the Court adjudged that the value of the property at the time the property owners initiated inverse condemnation proceedings should be considered for purposes of just compensation for the following reasons, *viz*:

> Compensation that is reckoned on the market value prevailing at the time either when NPC entered or when it completed the tunnel, as NPC submits, would not be just, for it would compound the gross unfairness already caused to the owners by NPC's entering without the intention of formally expropriating the land, and without the prior knowledge and consent of the Heirs of Macabangkit. NPC's entry denied elementary due process of law to the owners since then until the owners commenced the inverse condemnation proceedings. The Court is more concerned with the necessity to prevent NPC from unjustly profiting from its deliberate acts of denying due process of law to the owners. As a measure of simple justice and ordinary fairness to them, therefore, reckoning just compensation on the value at the time the owners commenced these inverse condemnation proceedings is entirely warranted.[30]

On the other hand, in *Saludares,* respondents therein filed a complaint for the payment of just compensation against NAPOCOR, averring that it had entered and occupied their property by erecting high-tension transmission lines and failed to reasonably compensate them for the intrusion. For its part, NAPOCOR countered that it had already paid just compensation for the establishment of the transmission lines by virtue of its compliance with the final and executory decision in *National Power Corporation v. Pereyras*.[31] In ruling that the reckoning value of just compensation is that prevailing at the time of the

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[29] *Supra* note 27, at 579-580.

[30] *Id*. at 597.

[31] *Supra* note 28, at 971.

filing of the inverse condemnation proceedings, the Court declared:

> x x x To reiterate, NAPOCOR should have instituted eminent domain proceedings before it occupied respondent spouses' property. Because it failed to comply with this duty, respondent spouses were constrained to file the instant Complaint for just compensation before the trial court. From the 1970s until the present, they were deprived of just compensation, while NAPOCOR continuously burdened their property with its transmission lines. This Court cannot allow petitioner to profit from its failure to comply with the mandate of the law. We therefore rule that, to adequately compensate respondent spouses from the decades of burden on their property, NAPOCOR should be made to pay the value of the property at the time of the filing of the instant Complaint when respondent spouses made a judicial demand for just compensation.[32]

These rulings, however, are exceptions to the general rule that just compensation must be reckoned from the time of taking or filing of the complaint, whichever came first. The special circumstances of the aforementioned cases called for the valuation of just compensation at the time the landowners initiated inverse condemnation proceedings notwithstanding that taking of the properties occurred first. In *Macabangkit* Sangkay, NAPOCOR did not even inform the property owners of the construction of the underground tunnels. Hence, it could be said that NAPOCOR employed stealth instead of complying with the legal process of expropriation. Further, considering that the tunnels were constructed underground, the property owners came to know thereof only when the purchaser of the property refused to proceed with the sale upon discovery of the underground tunnels. In this case, however, the transmission lines are visible, such that Oroville could not deny knowledge of its construction in 1983. In *Saludares*, NAPOCOR refused to acknowledge the respondents' claim and insisted that it already paid just compensation because the respondents' property was the same one involved in the Pereyra case. Thus, NAPOCOR had no intention to pay just compensation. This circumstance does not exist in the case at bench.

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[32] *Id.* at 979-980.

The rulings in *Macabangkit Sangkay* and *Saludares* are more in consonance with the rules of equity than with the Rules of Court, specifically Rule 67 on expropriation. Indeed, the practice of construct first, expropriate later is reprehensible and must not be countenanced. The Court, however, must not lose sight of Section 4, Rule 67 which mandates that just compensation must be determined "as of the date of the taking of the property or the filing of the complaint, whichever came first." This provision is, first and foremost, part of the Rules which the Court itself promulgated for purposes of uniformity, among others.

Further, the doctrine of *stare decisis* constrains the Court to follow the ruling laid down in *Tecson* and similar cases. "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. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* 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."[33]

To reiterate, the facts of the instant case are substantially the same with *Tecson* and similar cases cited therein. A government agency took possession of private property for the benefit of the public without, however, initiating expropriation proceedings, which thus, constrained the landowner to file actions to recover their properties or to demand payment of just compensation. Hence, in the absence of any compelling reason to deviate from the rulings in the aforecited cases, the Court, in the case at bench, must adhere to the doctrines established therein.

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[33] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,* 573 Phil. 320, 337 (2008).

Amount of interest to be paid

The owner's loss, of course, is not only his property but also its income-generating potential.[34] Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost.[35] Thus, the rationale for imposing the interest is to compensate the landowners for the income they would have made had they been properly compensated for their properties at the time of the taking.[36]

The Court, in *Republic v. Court of Appeals*,[37] further enunciated on the necessity of the payment of interest to compensate for delay in the payment of just compensation, *viz*:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, if fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, **the final compensation must include interest [s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest [s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.**[38] [Emphasis supplied]

Tecson also clarified the amount of interest due the landowners, to wit:

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[34] *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251, 276 (2010).

[35] *Id*.

[36] *Secretary of the Department of Public Works and Highways v. Spouses Tecson (Resolution),* G.R. No. 179334, 756 SCRA 389, 413 (2015).

[37] 433 Phil. 106 (2002).

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

x x x In other words, the just compensation due to the landowners amounts to an effective forbearance on the part of the State — a proper subject of interest computed from the time the property was taken until the full amount of just compensation is paid — in order to eradicate the issue of the constant variability of the value of the currency over time.

x x x x x x x x x

It is important to note, however, that interest shall be compounded at the time judicial demand is made pursuant to Article 2212 of the Civil Code of the Philippines, and sustained in *Eastern Shipping Lines v. Court of Appeals*, then later on in *Nacar v. Gallery Frames*, save for the reduction of interest rate to 6% for loans or forbearance of money. [39] x x x

In the case at bench, Transco made a provisional deposit of ₱7,647,200.00 on January 21, 2011. Consequently, from 1983 to January 21, 2011, Oroville is entitled to twelve percent (12%) interest per *annum* which is the prevailing rate during such period pursuant to Central Bank Circular No. 905,[40] effective from December 22, 1982 to June 30, 2013.

Oroville is also awarded additional compensation by way of exemplary damages and attorney's fees. In *Republic v. CA,*[41] the Court held that the failure of the government to initiate an expropriation proceeding to the prejudice of the landowner may be corrected with the awarding of exemplary damages, attorney's fees and costs of litigation. Thus:

x x x **However, we find it proper to award temperate and exemplary damages in light of NIA's misuse of its power of eminent domain**. Any arm of the State that exercises the delegated power of eminent domain must wield that power with circumspection and utmost

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[39] *Supra* note 36, at 414-419.

[40] Section 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve per cent (12%) per annum.

[41] *Supra* note 26.

regard for procedural requirements. **A government instrumentality that fails to observe the constitutional guarantees of just compensation and due process abuses the authority delegated to it, and is liable to the property owner for damages**.[42] x x x

Hence, considering that Oroville was deprived of beneficial ownership over their property without the benefit of a timely expropriation proceeding, and to serve as a deterrent to the State from failing to institute such proceedings, a grant of exemplary damages in the amount of One Million Pesos (₱1,000,000.00) is fair and reasonable. Moreover, an award for attorney's fees in the amount of Two Hundred Thousand Pesos (₱200,000.00) in favor of Oroville is in order.

To recapitulate, Transco is liable to pay Oroville ₱78.65 per square meter representing the fair market value of the property at the time of taking in 1983 and 12% interest *per annum* on the total fair market value, computed from 1983 to January 21, 2011, the date when Transco made a provisional deposit in favor of Oroville. Considering that the actual date of taking cannot be determined from the records of the case, the date of taking is pegged on January 1, 1983. Oroville is also awarded exemplary damages in the amount of ₱1,000,000.00 and attorney's fees in the amount of ₱200,000.00.

On a final note, there are several cases which reached this Court in which TransCo and even other government agencies constructed transmission lines, tunnels and other infrastructures before it decided to expropriate the private properties upon which they built the same. The Court reminds the government and its agencies that it is their obligation to initiate eminent domain proceedings whenever they intend to take private property for any public purpose. Before the expropriating power enters a private property, it must first file an action for eminent domain[43] and deposit with the authorized government depositary an amount equivalent to the assessed value of the property.[44]

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

[43] Rules of Court, Rule 67, Section 1.

[44] Rules of Court, Rule 67, Section 2.

TransCo should first file an expropriation case before it proceeds to construct transmission lines or any other infrastructure on any private property. The practice of construct first, expropriate later must be put to a stop.

WHEREFORE, the petition is **GRANTED**. The September 18, 2015 Decision and January 25, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 03571, are **REVERSED and SET ASIDE.** The valuation of the subject property owned by respondent Oroville shall be ₱78.65 per square meter, with interest at twelve percent (12%) per *annum* from January 1983 until January 21, 2011. Petitioner Transco is also ordered to pay respondent Oroville exemplary damages in the amount of ₱1,000,000.00 and attorney's fees in the amount of ₱200,000.00.

SO ORDERED.

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

Velasco, Jr., J., see dissenting opinion.

Caguioa, J., on leave.

DISSENTING OPINION

VELASCO, JR., *J.*:

I fully agree with the concluding statement in the *ponencia* of my esteemed colleague, Justice Jose Catral Mendoza, that the National Transmission Company (TransCo) "should first file an expropriation case before it proceeds to construct transmission lines or any infrastructure on any private party." It is about time that Government, especially the Department of Public Works and Highways, TransCo and other government corporations and agencies clothed with the power of expropriation, should stop the patently illegal and highly reprehensible practice of "construct now, expropriate later."

With due respect, however, I deviate from the ruling that the just compensation should be reckoned as of 1983 when

Transco illegally constructed the Tagoloan-Pulangi 138 kV transmission line without any complaint for condemnation filed. I submit that the just compensation should be computed as of April 20, 2007 when respondent Oroville filed a complaint for injunction and damages seeking to enjoin the construction of the Abaga-Kirahon 230 kV transmission line for the following reasons:

First, as can be gleaned from the Complaint, **the subject matter thereof is the area affected by the Abaga-Kirahon 230 kV transmission line**. Thus the reckoning date for determining just compensation should be April 20, 2007 when the complaint for the expropriation of property for that particular purpose was filed. **The date of the illegal taking of the areas affected by the irst TransCo line – the Tagoloan-Pulangi 138 kV transmission line in 1983 is irrelevant and immaterial.**

Second, it is clear that Transco impliedly admitted that the date to be used in computing the first compensation is the date of the filing of the complaint on April 20, 2007 because it did not object to the conversion of the proceedings into an expropriation case. At that time, **Transco has not yet occupied and possessed the areas to be used for the Abaga-Kirahon 230 kV transmission, which are SEPARATE and DISTINCT from the Tagaloan-Pulangi 138 kV transmission line**.

Third, TransCo already had the power to expropriate on April 20, 2007 (date of complaint) because Republic Act No. 8974 or the EPIRA Law, which was cited by the ponencia as the source of TransCo's power of eminent domain, became effective on June 8, 2001. On the other hand, the illegal taking of the areas affected by the Tagoloan-Pulangi 138 kV transmission line in 1983 occurred prior to the effectivity of the EPIRA Law.

Finally, and, more importantly, the power of eminent domain delegated unto TransCo is not unbridled and is, in fact, circumscribed under the EPIRA law:

Section 8. *Creation of the National Transmission Company*. – x x x

x x x x x x x x x

The TRANSCO may exercise the power of eminent domain **subject to the requirements of the Constitution and existing laws**. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

x x x x x x x x x

Thus, any taking of private property is subject to the Constitution, pertinent laws, and the Rules of Court.

Foremost of the statutory restrictions on the exercise of eminent domain are the constitutional guarantees enshrined in the Bill of Rights, *viz*:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

x x x x x x x x x

Section 9. Private property shall not be taken for public use without just compensation.

The Bill of Rights aims to protect the people against arbitrary and discriminatory use of political power. The basic rights and restrictions enumerated therein guarantee the preservation of our natural rights, which include personal liberty and security against invasion by the government or any of its branches or instrumentalities.[1] In relation to the inherent state power of eminent domain, the aforementioned provisions extend to the citizens a sense of security in their property rights despite the implied understanding that the sovereign can, at any time, reclaim from them the possession and ownership over portions of its territory. They afford the citizens a mantle of protection from indiscriminate land-grabbing by the government through the installation of defned safeguards, without which the exercise of the power of eminent domain can become oppressive.[2]

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[1] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2011, 269 SCRA 293, 310.

[2] *J.* Velasco, Jr., Dissenting Opinion, *Secretary of the Department of Public Works and Highways v. Tecson*, G.R. No. 179334, April 21, 2015, 756 SCRA 389, 435.

It may be that expropriation usually results in an involuntary sale to the authorities, but the ultimate immateriality of the seller's consent is not a license for the government's various instrumentalities to "construct first, expropriate later." We need no reminding that part and parcel of the imperatives of procedural due process in eminent domain proceedings is the prior filing of an expropriation case. This is so because filing the action for expropriation effectively serves as notice to the property owner that the government is taking title and possession thereof.[3] Moreover, this is the *only* avenue for the landowner to contest the validity of the taking, and for the government to prove that the requirements under Sec. 9, Art. III of the Constitution are satisfied. This is also the only time to set the amount of deposit that is a precondition for entry. As pertinently provided under Rule 67 of the Rules of Court:

Section 1. *The complaint*. – **The right of eminent domain shall be exercised by the filing of a veriied complaint** which shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein. x x x x.

Section 2. *Entry of plaintiff upon depositing value with authorized government depositary*. – Upon the fling of the complaint or at any time thereafter and after due notice to the defendant, **the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property** for purposes of taxation to be held by such bank subject to the orders of the court. x x x.

x x x x x x x x x

After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

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[3] *Air Transportation Ofice (ATO) v. Gopuco, Jr.*, G.R. No. 158563, June 30, 2005, 462 SCRA 544, 557.

Section 3. *Defenses and objections*. – x x x x

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall speciically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property.

Hence, without an expropriation suit, private property is being taken from the landowner without due notice, without providing him or her the opportunity to be heard, and is a gross and blatant violation of his or her constitutional right to due process of law.

The rationale behind placing the burden on the government to initiate condemnation proceedings prior to taking over property has been explained in the Court's eloquent pronouncement in *Alfonso v. City of Pasay*, *viz*:

This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property, summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes requests for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The offcials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeon holed and forgotten and the papers lost, mislaid, or even destroyed as happened during the last war. And when fnally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invokes prescription.

The litigation sometimes drags on for years. In our opinion, **that is neither just nor fair**. When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are frst initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and diffculty for the Government, but all of its own making.[4] (emphasis added)

Guilty of repetition, it is the government that is mandated to satisfy the constitutional due process requirement, including the initiation of condemnation proceedings. It is absurd to expect that the unwilling seller in the involuntary sale would also be the one required to additionally spend time, money, and effort to secure payment. And, as aptly observed in *Alfonso*, the private landowners, compared to the State, may not have the financial capacity to initiate the proceedings for just compensation themselves. The government, on the other hand, has the legal personnel and the access to the necessary funds to prosecute its case. These realities lead to the inevitable conclusion that respondents should not be the ones to suffer the adverse economic effects of the government's failure to file the expropriation proceedings. On the contrary, in such a scenario, it is the government that should bear the brunt of failing to comply with its constitutional mandate, and of the prejudicial effects of an illegal, if not criminal, act of usurping real property belonging to a private individual.[5]

There being no faithful observance of procedural due process rights in this case, the rulings in *National Power Corporation v. Heirs of Macabangkit Sangkay*[6] and *National Power Corporation v. Saludares*[7] can properly be invoked herein. In *Heirs of Macabangkit Sangkay*, the Court held that:

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[4] *Alfonso v. Pasay*, No. L-12754, January 30, 1960, 106 Phil. 1017.

[5] *J.* Velasco, Jr., Dissenting Opinion, *Secretary of the Department of Public Works and Highways v. Tecson*, *supra* note 2, at 438-439.

[6] G.R. No. 165828, August 24, 2011, 656 SCRA 60.

[7] G.R. No. 189127, April 25, 2012, 671 SCRA 266.

x x x x **Compensation that is reckoned on the market value prevailing at the time either when NPC entered or when it completed the tunnel, as NPC submits, would not be just, for it would compound the gross unfairness already caused to the owners by NPCs entering without the intention of formally expropriating the land, and without the prior knowledge and consent of the Heirs of Macabangkit. NPCs entry denied elementary due process of law to the owners** since then until the owners commenced the inverse condemnation proceedings. The Court is more concerned with the necessity to prevent NPC from unjustly profting from its deliberate acts of denying due process of law to the owners. As a measure of simple justice and ordinary fairness to them, therefore, reckoning just compensation on the value at the time the owners commenced these inverse condemnation proceedings is entirely warranted.[8] (emphasis added)

And in *Saludares*:

Indeed, **respondent spouses would be deprived of their right to just compensation if the value of the property is pegged back to its value in the 1970s**. To reiterate, NAPOCOR should have instituted eminent domain proceedings before it occupied respondent spouses' property. Because it failed to comply with this duty, respondent spouses were constrained to file the instant Complaint for just compensation before the trial court. From the 1970s until the present, they were deprived of just compensation, while NAPOCOR continuously burdened their property with its transmission lines. This Court cannot allow petitioner to profit from its failure to comply with the mandate of the law. We therefore rule that, to adequately compensate respondent spouses from the decades of burden on their property, NAPOCOR should be made to pay the value of the property at the time of the filing of the instant Complaint when respondent spouses made a judicial demand for just compensation.[9]

It bears stressing, that Our ruling in *Macabangkit Sangkay* is not premised on whether or not the landowner had knowledge of the government's entry, but on whether or not due process

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[8] *National Power Corporation v. Heirs of Macabangkit Sangkay*, *supra* note 6, at 88.

[9] *National Power Corporation v. Saludares*, *supra* note 7, at 279.

was observed. For more important than knowledge of the entry is the opportunity to oppose the same, which is why the Court endeavored to determine in that case whether or not the NPC actually intended to formally expropriate the property. Indeed, if knowledge of the entry is the controlling factor in determining just compensation, then *Saludares*, which similarly involves the construction of transmission lines, should have been resolved differently.

There is no substantial distinction between *Saludares* and the instant petition. The *ponencia* makes much ado of the lack of intent on the part of the NPC therein, but it also holds true for TransCo insofar as the first expropriation project is concerned. Needless to state, the construction of the Tagoloan-Pulangi 138kV transmission line commenced in 1983, yet it never bothered to formally initiate the condemnation proceedings. Instead, TransCo unceremoniously entered the titled land and constructed transmission lines thereon, allowing it to proft while the registered landowners are deprived not only of their right to possess the property, but to be paid just compensation for such deprivation.

Clearly, the doctrines in *Macabangkit Sangkay* and *Saludares* are herein applicable, *mutatis mutandis*. The common denominator among these three cases is the deprivation of due process. In such cases of taking that is illegal, if not criminal, and where the landowner is compelled to seek payment from the expropriating agency, the value of just compensation should be reckoned from the time of judicial demand, which in this case is in 2007.

It is incorrect to claim that the payment of interest from the time of taking in 1983 would suffciently answer for the delay in filing the expropriation complaint. For interest would accrue regardless of whether or not a case had been filed. Interest payment forms part of just compensation for the taking of the property, but it does not answer for the deprivation of due process. As held in *Macabangkit Sangkay* and *Saludares*, the more acceptable solution is to reckon the valuation of just compensation from the date of judicial demand.

As a final note, I reiterate my position in support of the campaign to put a stop to the "construct now, expropriate later" government strategy, which, deplorable as it may be, seems to have ripened into policy. However, this could not be achieved by merely slapping the culprits on their wrists through the imposition of exemplary damages. The gravity of the deprivation of due process caused to the landowners must be felt by valuing just compensation based on the prevailing prices at the time of judicial demand, and by prosecuting the erring offcials, if necessary, to the full extent of the law.

WHEREFORE, premises considered, I respectfully register my vote to **DENY** the instant petition. The Court of Appeals did not commit reversible error when it fixed the amount of just compensation based on 2007 prices. The September 18, 2015 Decision and January 25, 2016 Resolution of the appellate court in CA-G.R. CV No. 03571-MIN should, therefore, be **AFFIRMED IN TOTO**.

SECOND DIVISION

[G.R. Nos. 144760-61. August 2, 2017]

EVELYN L. MIRANDA, *petitioner, vs.* **SANDIGANBAYAN and THE OMBUDSMAN,** *respondents.*

[G.R. Nos. 167311-12. August 2, 2017]

EVELYN L. MIRANDA, *petitioner, vs.* **SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 167316-17. August 2, 2017]

VENANCIO R. NAVA, *petitioner, vs.* **HON. SANDIGANBAYAN 4TH DIVISION and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 167625-26. August 2, 2017]

PRIMO C. OBENZA, *petitioner, vs.* **SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHERE MOTION FOR RECONSIDERATION IS STILL AVAILABLE.—** [T]he special civil action of certiorari will not lie unless the aggrieved party has no other plain, speedy, and adequate remedy in the ordinary course of law. A recourse affording prompt relief from the injurious effects of the judgment or acts of a lower court or tribunal is considered "plain, speedy and adequate" remedy. The plain, speedy, and adequate remedy available to Miranda, which she opted not to avail of, was to file a motion for reconsideration so as to afford the Sandiganbayan another chance to review any actual or conjured errors it may have committed when it resolved her motion to quash. x x x Time and again, we have ruled that the filing of a motion for reconsideration is an indispensable condition before resorting to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any.

2. **ID.; ID.; ID.; AN ORDER DENYING A MOTION TO QUASH IS INTERLOCUTORY, NOT APPEALABLE NOR CAN IT BE THE SUBJECT OF A PETITION FOR *CERTIORARI*.—** [A]n order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari. The denial of the motion to quash means that the criminal information remains pending with the court, which must proceed with the trial to determine whether the accused is guilty of the crime charged therein. If a judgment of conviction is rendered and the lower court's

decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.

3. **ID.; ID.; *CERTIORARI* OR PROHIBITION INSTEAD OF APPEAL; WHEN ALLOWED.—** Miranda failed to bring her petition within the jurisprudentially established exceptions where appeal would be inadequate and the special civil action of certiorari or prohibition may be allowed, viz: (1) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (2) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (3) in the interest of a more enlightened and substantial justice; (4) to promote public welfare and public policy; and (5) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.

4. **ID.; ID.; *CERTIORARI*; REQUISITES.—** Certiorari as a special civil action can be availed of only if there is a concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.

5. **ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION.—** Jurisprudence instructs that where a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. That an abuse in itself to be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.

6. **ID.; ID.; ID.; REMEDY IS DESIGNED FOR ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT.—** [T]he alleged misapplication of facts and evidence, and whatever flawed conclusions of the Sandiganbayan, is an error in judgment, not of jurisdiction, and therefore not within the province of a

special civil action for certiorari. Erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. For as long as a court acts within its jurisdiction, any supposed error committed in the exercise thereof will amount to nothing more than an error of judgment reviewable and may be corrected by a timely appeal. x x x To stress, certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. Let us not lose sight of the true function of the writ of certiorari — "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction."

7. **ID.; CIVIL PROCEDURE; APPEALS; THE SOLE AND PROPER REMEDY TO OBTAIN REVERSAL OF THE DECISION OF THE SANDIGANBAYAN IS APPEAL TO THE SUPREME COURT.—** R.A. No. 8249, which governs the jurisdiction of the Sandiganbayan, pertinently states: Section 7. Form, Finality and Enforcement of Decisions. – x x x x x x x Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court. x x x. The afore-quoted is complimented by Part II, Rule X of the Revised Internal Rules of the Sandiganbayan, x x x [T)he sole and proper remedy available to Nava in his quest to obtain a reversal of the decision and resolution of the Sandiganbayan was to appeal pursuant to Rule 45 of the Rules of Court. The existence and availability of the right of appeal prohibits the resort to certiorari because a requirement for the latter remedy is there should be no appeal.

8. **ID.; ID.; LIBERAL APPLICATION OF THE RULES ALLOWED TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE AND EQUITY.—** While this Court recognizes the importance of procedural rules in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice, we likewise take into consideration that at stake in these cases are the life and liberty of Nava who, in his earnestness to seek the reversal of the findings of the Sandiganbayan, filed his petition on the eleventh day after his receipt of the questioned resolution. Thus, it would only be proper to relax the rules considering that, in numerous

cases, this Court had allowed the liberal construction of the rules when to do so would serve the demands of substantial justice and equity as amply discussed in *Aguam v. Court of Appeals*: x x x.

9. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC BIDDING REQUIRED IN ALL GOVERNMENT PURCHASES; ALTERNATIVE MODES OF PROCUREMENT MAY ONLY BE RESORTED TO IN INSTANCES PROVIDED BY LAW;.—** The Court takes notice of the fact that the transactions entered into by the DECS Region XI with D'Implacable took place in 1990 when the governing law was COA Circular No. 85-55A requiring public bidding on purchases of supplies, materials, and equipment in excess of ₱50,000.00 unless the law or the agency charter provides otherwise. x x x While public bidding was the general rule in COA Circular No. 85-55A, the exceptions were clearly identified as follows: emergency purchase, negotiated purchase, and repeat order. The fact is underscored that the subject transactions in these cases were undertaken through negotiated purchase but the grounds explicitly mentioned in the COA circular to justify a resort to this mode of procurement were conspicuously absent, viz: (a) failure of the required public bidding; (b) purchase is made from reputable manufacturers or exclusive distributors provided they offer the lowest or most advantageous price; (c) any purchase made from the Procurement Service; and (d) on emergency purchase as defined in the circular. x x x At present, the law governing the procurement activities in the government is R.A. No. 9184 requiring that **all** procurement be done through competitive bidding except when the alternative methods of procurement would apply, viz: (a) limited source bidding otherwise known as selective bidding; (b) direct contracting otherwise known as single source procurement; (c) repeat order; (d) shopping; and (e) negotiated procurement. Consistent with the above issuances is the well-entrenched ruling of this Court that competitive public bidding may not be dispensed with nor circumvented; and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law.

10. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); VIOLATION OF**

SECTION 3(G) THEREOF; ELEMENTS; THAT THE TRANSACTION IS GROSSLY AND MANIFESTLY DISADVANTAGEOUS TO THE GOVERNMENT; NOT ESTABLISHED IN CASE AT BAR.— [T]he elements of Violation of Sec. 3(g) of R.A. No. 3019: a) the accused is a public officer; b) that he entered into a contract or transaction on behalf of the government; and c) that such contract or transaction is grossly and manifestly disadvantageous to the government. The presence of the first and second elements is settled. As to the third, the Sandiganbayan primarily anchored on the report and the testimony of Soriano its declaration that the subject transactions were grossly and manifestly disadvantageous to the government. x x x It must be stressed that, pursuant to COA Circular No. 85-55A, the term "excessive expenditure" pertains to the variables of price and quality. As to the price, the circular provides that it is excessive if "it is more than the 10% allowable price variance between the **price for the item bought** and the **price of the same item per canvass of the auditor**." Undoubtedly, what was required to be canvassed was the very same item subject of the assailed transaction. Evaluated against this COA definition, it cannot be validly maintained that the prices of D'Implacable were excessive considering that the items bought by DECS-Davao Oriental were obviously not the very same items "canvassed" by the team. Soriano confirmed that her team had not prepared the canvass sheet – the single document that would have shown that a canvass was actually undertaken, the listing of the comparative prices of the science laboratory tools and devices (SLTDs) and the availability of the tools and devices from the three establishments. x x x The cash invoices support only the finding that the (SLTDs) were procured by the team from AMESCO and Berovan but, not that a canvass was undertaken or that these two establishments had offered the lowest price for particular tools and devices. The absence of the canvass sheets not only highlights the feebleness of the claim that the prices of the SLTDs procured from D'Implacable were excessively higher than those that were "canvassed" but also lends truth to the probability that in actuality no canvass was undertaken. x x x Obviously, the element that the transaction must be grossly and manifestly disadvantageous to the government was not sustained by the testimonial and documentary evidence of the People.

APPEARANCES OF COUNSEL

Jose Armand C. Arevalo for Venancio R. Nava.
Barbers Molina & Molina and *Jimenea & Associates Law Offices* for Evelyn L. Miranda.
Martin B. Delgra III for Primo Obenza.
The Solicitor General for public respondents.

D E C I S I O N

MARTIRES, *J.*:

At bar are the consolidated cases assailing the different issuances of the Sandiganbayan, Fourth Division (*Sandiganbayan*) in Criminal Case Nos. 23625-26 both entitled "People of the Philippines versus Venancio R. Nava, Primo C. Obenza, Exuperia B. Austero, Antonio S. Tan, and Evelyn L. Miranda," viz:

a) G.R. Nos. 144760-61, filed by Evelyn L. Miranda (*Miranda*), is a Petition for Certiorari and Prohibition pursuant to Rule 65, Sections 1, 2 and 4 in relation to Sec. 1 Rule 58 of the Rules of Court on the 14 August 2000 Resolution[1] of the Sandiganbayan denying her motion to quash the Informations;

b) G.R. Nos. 167311-12 and G.R. Nos. 167625-26, filed by Miranda and Primo C. Obenza (*Obenza*), respectively, are Appeals by Certiorari pursuant to Rule 45 of the Rules of Court on the 10 January 2005 Decision[2] of the Sandiganbayan finding the accused in Criminal Case Nos. 23625-26, except Exuperia B. Austero (*Austero*), guilty of Violation of Sec. 3(g) of Republic Act (*R.A.*) No. 3019, and its 7 March 2005 Resolution[3]

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[1] *Rollo* (G.R. Nos. 144760-61), pp. 21-30; promulgated on 16 August 2000.

[2] *Rollo* (G.R. Nos. 167311-12), pp. 27-66; Penned by Associate Justice Rodolfo A. Ponferrada, and concurred in by Associate Justices Gregory S. Ong and Jose R. Hernandez.

[3] *Id*. at 67-75.

denying the separate Motion for Reconsideration of Obenza, Miranda, and Venancio R. Nava (*Nava*); and

c) G.R. Nos. 167316-17, filed by Nava, is a Petition for Certiorari under Rule 65 of the Rules of Court on the above-mentioned 10 January 2005 Decision and 7 March 2005 Resolution of the Sandiganbayan.

THE FACTS

Sometime in August 1990, Nava, the Department of Education Culture and Sports (*DECS*) Region XI Director, and his school superintendents met to discuss Allotment Advice No. B-2-0392-90-2-014 (*Allotment Advice*) issued by DECS-Manila on 21 June 1990. During the meeting, Nava and his school superintendents agreed that the allotment, which was in the amount of ₱9.36 million and intended for the nationalized high schools in the region, be sub-allotted instead to the divisions and be used to procure science laboratory tools and devices (*SLTDs*). It was further agreed that the public bidding be dispensed with for the reason that the procurement had to be undertaken before the end of calendar year 1990; otherwise, the allotment would revert to the national fund.

On two separate occasions, the DECS Division of Davao Oriental (*DECS-Davao Oriental*) procured SLTDs from D'Implacable Enterprises (*D'Implacable*), owned by Antonio S. Tan (*Tan*) with business address at West Capitol Drive, Pasig, Metro Manila.[4] The DECS-Davao Oriental paid D'Implacable, whose sales representative was Miranda, using the allotments intended as additional miscellaneous operating expenses for the twenty nationalized high schools of Davao Oriental.

On 8 January 1991, the Commission on Audit (*COA*) Regional Office No. XI issued Assignment Order No. 91-174 creating an Audit Team (*team*) composed of Laura Soriano (*Soriano*) and Carmencita Eden T. Enriquez (*Enriquez*), as team leader and member, respectively, for the purpose of conducting a special audit on the releases made by the DECS Region XI to its different divisions involving the ₱9.36 million allotment.

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[4] Exhibit folder; Appendix No. 5 to Exhibit "A".

On 20 May 1991, the COA Region XI Office furnished the Office of the Ombudsman-Mindanao (*OMB-Min*) with the Special Audit Report (*the report*) of the team on the procurement by the DECS-Davao Oriental of SLTDs from D'Implacable,[5] and the corresponding affidavit of complaint.[6] The team claimed in their affidavit, docketed as OMB-MIN-91-0202, that the DECS-Davao Oriental procured the SLTDs at prices higher by 64% to 1,175% than the prevailing price causing the government to lose ₱398,962.55; hence, a violation of Sec. 3(g) of R.A. No. 3019, COA Circular Nos. 78-84 and 85-55A, and DECS Order No.100.

After the conduct of preliminary investigation, the OMB-Min found probable cause against Nava, Obenza, Austero, Tan, and Miranda for two counts of Violation of Sec. 3(g) of R.A. No. 3019,[7] and thus filed with the Sandiganbayan on 8 April 1997, the following Informations:

<u>Criminal Case No. 23625</u>

That sometime on 16 November 1990, in Mati, Davao Oriental, and within the jurisdiction of this Honorable Court, the accused VENANCIO R. NAVA, PRIMO C. OBENZA and EXUPERIA B. AUSTERO, all public officers being then the Regional Director Department of Education, Culture and Sports, Region XI Davao City and a high ranking official by express provision of RA 7975, Division Superintendent of DECS Division of Davao Oriental with salary grade below 27 and Administrative Officer of DECS Division of Davao Oriental with salary grade below 27, respectively, committing the offense in relation to their official duties and taking advantage of the same, conspiring, confederating, and mutually aiding one another and with accused ANTONIO S. TAN and EVELYN S. MIRANDA, there and then, willfully, unlawfully and criminally, enter into a contract of purchase grossly and manifestly disadvantageous to the government, namely: BY PURCHASING from accused Miranda and Tan, the following goods under Purchase Order dated 16 November 1990 and Check No. 072108, to wit:

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[5] Exhibit folder; Exhibit "A".

[6] Records (OMB-MIN-91-0202), pp. 2-3.

[7] *Rollo* (G.R. Nos. 144760-61), pp. 34-39.

350 Units of Test Tube Glass Pyrex	for	₱ 9,555.00;
250 Units of Glass Spirit Burner	for	40,875.00;
130 Units of Spring Balance	for	71,630.00; and
75 Units of Bunsen Burner	for	52,575.00

or a unit price of ₱27.30, ₱163.50, ₱551.00 and ₱701.00, respectively, when the actual price of the said items per canvass by the Commission on Audit after considering the 10% price variance were only ₱14.30, ₱38.50, ₱93.50 and ₱90.75, respectively, thus the above-said procurements were overpriced by as much as 91% or ₱4,550.00; 325% or ₱31,250.00; 489% or ₱59,475.00; and 672% or ₱45,768.75, respectively, thus shortchanging the government by as much as ₱141,043.75.[8]

Criminal Case No. 23626

That sometime on 27 December 1990, in Mati, Davao Oriental, and within the jurisdiction of this Honorable Court, the accused VENANCIO R. NAVA, PRIMO C. OBENZA and EXUPERIA B. AUSTERO, all public officers being then the Regional Director Department of Education, Culture and Sports, Region XI Davao City, a high ranking official by express provision of RA 7975, Division Superintendent of DECS Division of Davao Oriental with salary grade below 27 and Administrative Officer of DECS Division of Davao Oriental with salary grade below 27; respectively, committing the offense in relation to their official duties and taking advantage of the same, conspiring and confederating, and mutually aiding one another and with accused ANTONIO S. TAN and EVELYN L. MIRANDA, there and then, wilfully, unlawfully and criminally, enter into a contract of purchase grossly and manifestly disadvantageous to the government, namely: BY PURCHASING from accused Miranda and Tan, the following goods under Purchase Order dated 27 December 1990 and Check No. 073908, to wit:

89 Units of Flusk Brush (Nylon)	for	₱ 4,488,00;
444 Units of Graduated Cylinder	for	₱ 316,572.00;
195 Units of Iron Wire Gauge	for	₱ 3,159.00; and
54 Units of Beaker 250 ml. pyrex	for	₱ 6,751.00

or a unit price of ₱112.20, ₱713.00, ₱16.20, and ₱125.03, respectively, when the actual price of the said items per recanvassed by the Commission on Audit after considering the 10% price

[8] *Id*. at 40.

variance, were only ₱8.80, ₱159.50, ₱16.20, and ₱125.03, thus, the said purchases were overpriced, by as much as 1,175% or ₱8,892.40, 374% or ₱245,754.00, 64% or ₱1,228.50, and 434% or ₱2,043.90, respectively, thus shortchanging the government by as much as ₱257,918.80.[9]

During the hearing of these cases, the prosecution presented Soriano who identified the report.

For his defense, Nava testified that the documents pertinent to these transactions came from the office of Obenza. He claimed that he signed the documents because the amount involved for each of the two transactions was more than ₱100,000.00, and therefore within his authority to sign. He insisted that the transactions complied with the DECS' policies.

Obenza testified that the documents for the transactions with D'Implacable were already signed by Nava when these were brought to his office. Prudencio N. Mabanglo, the DECS Division Superintendent for Davao del Norte, testified that the documents for the procurement of SLTDs for his division were likewise already signed by Nava when these were brought to him.

Austero, Tan, and Miranda did not take the witness stand.

RULING OF THE SANDIGANBAYAN

On 10 January 2005, the Sandiganbayan rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered –

1. in Criminal Case No. 23625 – finding accused VENANCIO R. NAVA, PRIMO C. OBENZA, ANTONIO S. TAN and EVELYN MIRANDA guilty beyond reasonable doubt as charged and sentencing each of them to suffer the indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of ₱141,043.75 representing the losses that it suffered and to proportionately pay the costs;

[9] *Id*. at 41-43.

2. in Criminal Case No. 23626 – finding accused VENANCIO R. NAVA, PRIMO C. OBENZA, ANTONIO S. TAN and EVELYN MIRANDA guilty beyond reasonable doubt as charged and sentencing each of them to suffer the indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of ₱257,918.80 representing the losses that it suffered, and to proportionately pay the costs; and

3. in both cases ACQUITTING accused EXUPERIA B. AUSTERO, for insufficiency of evidence, with costs de officio.[10]

Obenza, Miranda,[11] and Nava[12] filed their separate motion for reconsideration which were denied by the Sandiganbayan in its 7 March 2005 Resolution.[13]

ISSUES

The following issues were submitted by Miranda for the consideration of this Court in her petition for certiorari in G.R. No. 144760-61:

1. Respondent Court committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion to quash;

2. The disputed resolution was in great contravention of the principle of "stare decisis" and settled jurisprudence;

3. The Respondent court should be immediately prohibited or restrained from further proceedings, in order not to render the subject petition moot and academic.[14]

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[10] *Rollo* (G.R. Nos. 167316-17), pp. 125-127.

[11] *Rollo* (G.R. Nos. 167311-12), pp. 76-87.

[12] *Rollo* (G.R. Nos. 167316-17), pp. 213-250.

[13] *Id*. at 129-137.

[14] *Rollo* (G.R. Nos. 144760-61), p.10.

On the other hand, Miranda anchored her petition in G.R. No. 167311-12 on the ground that "the [Sandiganbayan] had decided questions of substance in a way not in accord with law and the applicable decisions of this Honorable Court and/or [had] so far departed from the accepted and usual course of judicial proceeding[s] or so far sanctioned such a departure by the court a quo as to call for an exercise of the power of supervision vested in this Honorable Court."[15]

For G.R. Nos. 167316-17, Nava raised the following grounds to support his petition:

I. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN UPHOLDING THE FINDINGS OF THE SPECIAL AUDIT TEAM THAT IRREGULARLY CONDUCTED THE AUDIT BEYOND THE AUTHORIZED PERIOD AND WHICH TEAM FALSIFIED THE SPECIAL AUDIT REPORT.

II. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN UPHOLDING THE FINDINGS IN THE SPECIAL AUDIT REPORT WHERE, IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS, THE AUDIT TEAM EGREGIOUSLY FAILED TO COMPLY WITH THE MINIMUM STANDARDS SET BY THE SUPREME COURT AND ADOPTED BY THE COMMISSION ON AUDIT, AND CAME OUT WITH A REPORT THAT SUPPRESSED EVIDENCE FAVORABLE TO THE PETITIONER.

III. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN UPHOLDING THE FINDINGS IN THE SPECIAL AUDIT REPORT CONSIDERING THAT NONE OF THE ALLEGEDLY OVERPRICED ITEMS FROM THE DIVISION OF DAVAO ORIENTAL WERE CANVASSED OR PURCHASED BY THE SPECIAL AUDIT TEAM SUCH THAT THERE IS

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[15] *Rollo* (G.R. Nos. 167311-12), p. 15.

NO COMPETENT EVIDENCE FROM WHICH TO DETERMINE THAT THERE WAS AN OVERPRICE AND THAT THE TRANSACTION WAS MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT.

IV. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER WAS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE SPECIAL AUDIT REPORT.

V. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN REFUSING TO REVIEW THE MANNER IN WHICH THE FINDINGS IN THE SPECIAL AUDIT REPORT CAME ABOUT AS A BASIS FOR THE SANDIGANBAYAN TO DETERMINE THE CRIMINAL LIABILITY OF THE PETITIONER.

VI. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN GIVING CREDENCE TO THE SELF-SERVING AND PERJURIOUS TESTIMONY OF CO-ACCUSED PRIMO C. OBENZA THAT THE QUESTIONED TRANSACTIONS EMANATED FROM THE REGIONAL OFFICE IN SPITE OF THE DOCUMENTARY EVIDENCE WHICH PROVE THAT THE TRANSACTIONS EMANATED FROM THE DIVISION OFFICE OF DAVAO ORIENTAL HEADED BY CO-ACCUSED OBENZA.

VII. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONER PRE-SIGNED THE PROCUREMENT DOCUMENTS CONSIDERING THAT THERE IS NO DOCUMENTARY PROOF OF SUCH PRE-SIGNING AND WHERE THE TESTIMONIAL EVIDENCE IS OBVIOUSLY CONTRIVED.

VIII. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN FAILING TO ABSOLVE THE PETITIONER WHERE CONSPIRACY WAS NOT PROVEN.

IX. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OF OR EXCESS OF JURISDICTION IN CONVICTING THE PETITIONER IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.[16]

Obenza, on the one hand, raised the following issues in G.R. No. 167625-26 to justify his prayer for the reversal of the Sandiganbayan's assailed decision and resolution:

I. The Public Respondent Honorable Sandiganbayan has palpably erred in ruling that Petitioner committed the crime found in Section 3(g) of R.A. 3019.

II. The Public Respondent Honorable Sandiganbayan has palpably erred in ruling that there was conspiracy between Venancio R. Nava and the Petitioner.

III. The Public Respondent Honorable Sandiganbayan has palpably erred in adamantly refusing to consider in favor of the Petitioner a case with similar facts arising from similar circumstances which have been finally decided by them, in consonance with the doctrine of stare decisis.

IV. The Public Respondent Honorable Sandiganbayan seriously erred in ruling that the Rule on judicial notice of a case decided by the same decision of the Honorable Sandiganbayan is not authorized in this case, which case is closely similar if not entirely the same in facts, offense charged and parties involved.

V. The Public Respondent Sandiganbayan grievously erred in not acquitting herein Accused.[17]

THE COURT'S RULING

Discussion on the Petition for Review on Certiorari assailing the denial of the Motion to Quash
(G.R. Nos. 144760-61)

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[16] *Rollo* (G.R. Nos. 167316-17), pp. 12-13.

[17] *Rollo* (G.R. Nos. 167625-26), p. 27.

Miranda assailed through this special civil action of certiorari the 14 August 2000 Resolution[18] of the Sandiganbayan denying her motion to quash.[19] Miranda claimed that there was no appeal or any other plain, speedy, and adequate remedy available to her in the ordinary course of law. She no longer sought from the Sandiganbayan a reconsideration of its ruling denying her motion because her arraignment was already scheduled on 2 October 2000, thus, her prayer for injunctive relief.[20]

The petition must fail.

First, the special civil action of certiorari will not lie unless the aggrieved party has no other plain, speedy, and adequate remedy in the ordinary course of law.[21] A recourse affording prompt relief from the injurious effects of the judgment or acts of a lower court or tribunal is considered "plain, speedy and adequate" remedy.[22] The plain, speedy, and adequate remedy available to Miranda, which she opted not to avail of, was to file a motion for reconsideration so as to afford the Sandiganbayan another chance to review any actual or conjured errors it may have committed when it resolved her motion to quash.

Miranda could have pleaded in her motion for reconsideration that her arraignment set on 2 October 2000, be deferred until the resolution of this motion. For sure, her arraignment would not have proceeded unless the Sandiganbayan had resolved her motion for reconsideration before that date. Her scheduled arraignment was clearly not sufficient justification to dispense with the filing of a motion for reconsideration. Time and again, we have ruled that the filing of a motion for reconsideration is an indispensable condition before resorting to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any.[23]

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[18] *Rollo* (G.R. Nos. 144760-61), pp. 21-30; promulgated on 16 August 2000.

[19] Records, Vol. I, pp. 385-392.

[20] *Rollo* (G.R. Nos. 144760-61), pp. 9 and 16-17.

[21] *Tan, Jr. v. Sandiganbayan,* 354 Phil. 463, 469 (1998).

[22] *Rigor v. Tenth Division, Court of Appeals*, 526 Phil. 852, 855 (2006).

[23] *Fajardo v. Hon. Court of Appeals,* 591 Phil. 146, 151 (2008).

Second, an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari.[24] The denial of the motion to quash means that the criminal information remains pending with the court, which must proceed with the trial to determine whether the accused is guilty of the crime charged therein.[25] If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.[26]

Continuing accretions of case law reiterate the rationale for the rule:

> The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by him and interlocutory orders rendered or issued by the lower court.[27]

And third, Miranda failed to bring her petition within the jurisprudentially established exceptions where appeal would be inadequate and the special civil action of certiorari or prohibition may be allowed, viz: (1) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (2) when the interlocutory order is patently

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[24] *Tan, Jr. v. Sandiganbayan*, *supra* note 21 at 470 citing *Socrates v. Sandiganbayan*, 324 Phil. 151, 176 (1996).

[25] *Santos v. People,* 585 Phil. 337, 353 (2008).

[26] *Galzote v. Brionee,* 673 Phil. 165, 172 (2011).

[27] *Yee v. Bernabe*, 521 Phil. 514, 520 (2006) citing *Rudecon Management Corp. v. Singson*, 494 Phil. 581, 597 further citing *Sitchon v. Sheriff of Occidental Negros*, 80 Phil. 397, 399 (1948).

erroneous and the remedy of appeal would not afford adequate and expeditious relief; (3) in the interest of a more enlightened and substantial justice; (4) to promote public welfare and public policy; and (5) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.[28]

***Discussion on the Sandiganbayan Decision* (G.R. Nos. 167311-12, 167316-17 and 167625-26)**

It must be noted that Miranda and Obenza assailed the Sandiganbayan decision and resolution via a petition for review under Rule 45, while Nava availed of the special civil action for certiorari pursuant to Rule 65 of the Rules of Court.

a) The Petition of Nava

Certiorari as a special civil action can be availed of only if there is a concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.[29]

On the first requisite, there is no dispute that the Sandiganbayan had jurisdiction over Criminal Case Nos. 23625-26 and the person of Nava. Jurisprudence instructs that where a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its

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[28] *Navaja v. De Castro,* G.R. No. 182926, 22 June 2015, 759 SCRA 487, 508-509 citing *Querijero v. Palmes-Limitar,* 695 Phil. 107, 111 (2012).

[29] *Dr. Domalanta v. The Commission on Elections,* 390 Phil. 46, 65, citing *Sadikul v. Commission on Elections*, 381 Phil. 505, 516 (2000) further citing *Garcia v. House of Representatives Electoral Tribunal*, 371 Phil. 280, 291 (1999).

jurisdiction as to be equivalent to lack of jurisdiction.[30] That an abuse in itself to be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.[31] Grave abuse of discretion has a well-defined meaning:

> An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x[32]

Nothing from Nava's petition will confirm the merits of his claim that the Sandiganbayan had acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction when it rendered the assailed decision and resolution. Although Nava arrayed the issues in his petition with the alleged grave abuse of discretion by the Sandiganbayan, the truth is inescapably evident that these issues do not concern the resolution of errors of jurisdiction but of the alleged errors of judgment which the anti-graft court may commit in the exercise of its jurisdiction over Criminal Case Nos. 23625-26 and the person of Nava.

Corollary thereto, the alleged misapplication of facts and evidence, and whatever flawed conclusions of the Sandiganbayan, is an error in judgment, not of jurisdiction, and therefore not within the province of a special civil action for certiorari.

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[30] *Spouses Dycoco v. Court of Appeals,* 715 Phil. 550, 563 (2013).

[31] *Ysidoro v. Justice Leonardo-De Castro,* 681 Phil. 1, 17 (2012).

[32] *Spouses Dycoco v. Court of Appeals, supra* note 30.

Erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[33] For as long as a court acts within its jurisdiction, any supposed error committed in the exercise thereof will amount to nothing more than an error of judgment reviewable and may be corrected by a timely appeal.[34] The rationale of this rule is that, when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. Otherwise, every mistake made by a court will deprive it of its jurisdiction and every erroneous judgment will be a void judgment.[35]

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of certiorari, which is *extra ordinem* – beyond the ambit of appeal.[36] To stress, certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment.[37] Let us not lose sight of the true function of the writ of certiorari — "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction."[38] And to emphasize this point, the following passage in the 1913 case of *Herrera v. Barretto*[39] is reiterated as it is still of significance today:

> The office of the writ of certiorari has been reduced to the correction of defects of *jurisdiction* solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases — cases

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[33] *Ysidoro v. Justice Leonardo-de Castro, et al., supra* note 31.

[34] *Rigor v. Tenth Division, Court of Appeals, supra* note 22 at 856-857.

[35] *Candelaria v. Regional Trial Court, Branch 42, City of San Fernando, Pampanga,* 739 Phil. 1, 8 (2014), citing *Triplex Enterprises, Inc. v. PNB-Republic Bank*, 527 Phil. 685, 690 (2006).

[36] *Villareal v. Aliga*, 724 Phil. 47, 62, 64 (2014).

[37] *People v. Dir. Gen. Nazareno,* 612 Phil. 753, 769 (2009).

[38] *Fernando v. Vasquez,* 142 Phil. 266, 271 (1970).

[39] 25 Phil. 245, 271 (1913).

in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of certiorari is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it.[40]

On the second requisite, the remedy available to Nava was to appeal pursuant to Rule 45 of the Rules of Court. As discussed earlier, the issues raised by Nava were undoubtedly errors of judgment for which both law and jurisprudence prescribe the remedy of appeal. Significantly, R.A. No. 8249,[41] which governs the jurisdiction of the Sandiganbayan, pertinently states:

Section 7. Form, Finality and Enforcement of Decisions. — x x x

x x x x x x x x x

Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court. x x x.

The afore-quoted is complimented by Part II, Rule X[42] of the Revised Internal Rules of the Sandiganbayan, viz:

Section 1. Method of Review. —

(a) In General – A party may appeal from a judgment or final order of the Sandiganbayan imposing or affirming a penalty less than death, life imprisonment or reclusion perpetua in criminal cases, and, in civil cases, by filing with the Supreme Court a petition for review on certiorari in accordance with Rule 45 of the 1997 Rules of Civil Procedure.

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[40] *Id*. at 271 cited in *Fernando v. Vasquez, supra* note 38 at 271-272.

[41] An Act Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor and for Other Purposes.

[42] Review of Judgments and Final Orders.

As is clearly provided, the sole and proper remedy available to Nava in his quest to obtain a reversal of the decision and resolution of the Sandiganbayan was to appeal pursuant to Rule 45 of the Rules of Court. The existence and availability of the right of appeal prohibits the resort to certiorari because a requirement for the latter remedy is there should be no appeal.[43]

Nava's assertion that the Sandiganbayan had acted with grave abuse of discretion in convicting him and that his petition was anchored on questions of fact and law, did not render futile his remedy of petition for review on certiorari or sanction his resort to a special civil action on certiorari. This issue was firmly settled in *Estinozo v. Court of Appeals*:[44]

> A petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive remedies. *Certiorari* cannot co-exist with an appeal or any other adequate remedy. The nature of the questions of law intended to be raised on appeal is of no consequence. It may well be that those questions of law will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion. This is immaterial. The remedy is appeal, not *certiorari* as a special civil action.[45] (citations omitted)

While this Court recognizes the importance of procedural rules in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice, we likewise take into consideration that at stake in these cases are the life and liberty of Nava who, in his earnestness to seek the reversal of the findings of the Sandiganbayan, filed his petition on the eleventh day after his receipt of the questioned resolution. Thus, it would only be proper to relax the rules considering that, in numerous cases, this Court had allowed the liberal construction of the rules when to do so would serve the demands

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[43] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 513 (2013).

[44] 568 Phil. 390 (2008).

[45] *Id*. at 399.

of substantial justice and equity[46] as amply discussed in *Aguam v. Court of Appeals:*[47]

> The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[48]

b) The Petitions of Nava, Obenza and Mendoza

The Court takes notice of the fact that the transactions entered into by the DECS Region XI with D'Implacable took place in 1990 when the governing law was COA Circular No. 85-55A[49]

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[46] *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*, 551 Phil. 768 (2007).

[47] 388 Phil. 587 (2000).

[48] *Id*. at 593-594.

[49] Rules and Regulations for the prevention of Irregular, Unnecessary, Excessive or Extravagant (IUEE) Expenditures or Uses of Government Funds and Property.

requiring public bidding on purchases of supplies, materials, and equipment in excess of ₱50,000.00 unless the law or the agency charter provides otherwise.[50] Significantly, the need for public bidding had been clearly acknowledged by Nava and his Division Superintendents when they met in August 1990, to discuss the Allotment Advice, only that it was agreed during that meeting to dispense with the public bidding as there was an alleged need to procure the SLTDs before the end of calendar year 1990; otherwise, the allotment would revert to the national fund. Thus, pursuant to what had allegedly been agreed upon during the meeting, the procurement of SLTDs by the different divisions of DECS Region VIII proceeded without public bidding and notwithstanding DECS Order No. 100 dated 3 September 1990, suspending the purchase of tools and devices, among others, in response to the government's call for economy measures.

While public bidding was the general rule in COA Circular No. 85-55A, the exceptions were clearly identified as follows: emergency purchase, negotiated purchase, and repeat order.[51] The fact is underscored that the subject transactions in these cases were undertaken through negotiated purchase but the grounds explicitly mentioned in the COA circular to justify a resort to this mode of procurement were conspicuously absent, viz: (a) failure of the required public bidding; (b) purchase is made from reputable manufacturers or exclusive distributors provided they offer the lowest or most advantageous price; (c) any purchase made from the Procurement Service; and (d) on emergency purchase as defined in the circular.[52]

On 26 July 1987, President Corazon C. Aquino issued Executive Order No. 301[53] which provided, among others, for the decentralization of negotiated contracts, viz:

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[50] COA Circular No. 85-55A, No. 4.1(a).

[51] COA Circular No. 85-55A, No. 4.1.

[52] COA Circular No. 85-55A, No. 4.1(c).

[53] Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal.

A. DECENTRALIZATION OF NEGOTIATED CONTRACTS

Sec. 1. Guidelines for Negotiated Contracts. Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, except under any of the following situations:

a. Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;

b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

d. Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;

e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned;

f. Whenever the purchase is made from an agency of the government.

In the same vein, not one of the aforementioned situations find their significance in these cases in order to excuse these transactions from public bidding and to allow resort to a negotiated procurement.

At present, the law governing the procurement activities in the government is R.A. No. 9184[54] requiring that **all** procurement be done through competitive bidding[55] except when the alternative methods of procurement would apply, viz: (a) limited source bidding otherwise known as selective bidding; (b) direct contracting otherwise known as single source procurement; (c) repeat order; (d) shopping; and (e) negotiated procurement.[56]

Consistent with the above issuances is the well-entrenched ruling of this Court that competitive public bidding may not be dispensed with nor circumvented; and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law.[57] A competitive public bidding is not some token procedure in the government designed to suit the whim of a public officer. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.[58] It puzzles the Court therefore why the charges against the accused in Crim. Case Nos. 23625-26 were solely anchored on overpricing and failed to include the lack of public bidding when this was very evident from the case records.

On the several grounds raised by the petitioners to fortify their plea for acquittal, what caught the attention of this Court was the manner of canvass undertaken by the team to prove its claim of overpricing. Thus, the Court will task itself to consider foremost this ground *vis-a-vis* the elements of Violation of Sec. 3(g) of R.A. No. 3019:

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[54] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes.

[55] R.A. No. 9184, Article IV, Sec. 10.

[56] R.A. No. 9184, Article XVI, Sec. 48.

[57] *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.,* 567 Phil. 255, 277 (2008).

[58] *Lagoc v. Malaga, et al.*, 738 Phil. 623, 630 (2014).

a) the accused is a public officer;
b) that he entered into a contract or transaction on behalf of the government; and
c) that such contract or transaction is grossly and manifestly disadvantageous to the government.[59]

The presence of the first and second elements is settled. As to the third, the Sandiganbayan primarily anchored on the report and the testimony of Soriano its declaration that the subject transactions were grossly and manifestly disadvantageous to the government. It ruled that based on the re-canvass conducted by the team on the eight (8) items involved in the transactions, the prices of the SLTDs procured from D'Implacable exceeded the prevailing market prices by as much as 64% to 1,175%; thus, were overpriced.[60]

COA Circular No. 85-55A defines "excessive expenditures" as follows:

3.3. EXCESSIVE EXPENDITURES

Definition: The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

The report enumerated the procedure allegedly undertaken by the team in determining the prices of the SLTDs, viz:

OVERPRICING

1.6. To determine the reasonableness of the prices paid for by the Division Office on the purchase of SLTDs, the team performed the following audit procedure:

1.6.1. Obtained samples of each laboratory tool and devices purchased by the Division of Davao Oriental. Memorandum Receipts covering all the samples were issued by the agency to

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[59] *People v. Go,* 730 Phil. 363, 369 (2014).

[60] *Rollo* (G.R. Nos. 167316-17), p. 113.

the audit team and are marked as Exhibits 1, 2 and 3 of this report.

1.6.2. Brought and presented these samples to reputable business establishments in Davao City like the Mercury Drug Store, Berovan Marketing Incorporated and Allied Medical Equipment and Supply Corporation (AMESCO) where these items are also available, for price verification.

1.6.3. Available items which were exactly the same as the samples presented were purchased from AMESCO and Berovan Marketing Incorporated, the business establishments which quoted the lowest prices. Official Receipts were issued by the AMESCO and Berovan Marketing Incorporated which are hereto marked as Exhibits 4, 5, 6 and 7, respectively.[61]

A review of the exhibits attached to the report readily evinced that, contrary to the team's claim, no samples of the SLTDs were actually obtained from DECS-Davao Oriental, the subject of its audit. Exhibits 1[62] and 2[63] referred to in 1.6.1 of the report were the *Memorandum Receipt for Equipment, Semi-Expandable and Expandable Property,* respectively, issued by the Schools Division Superintendent of Digos, Davao del Sur, and Davao City, for the SLTDs received by the team and which were intended to be used for the canvass; while Exhibit 3[64] was the *Invoice-Receipt for Property* issued by the Superintendent of Tagum, Davao Province.

Because the sample SLTDs came from the divisions of Davao del Sur, Davao City, and Tagum, Davao Province, it was implausible to ascertain whether the tools and devices delivered by D'Implacable to DECS-Davao Oriental were exactly the same as those that were allegedly canvassed by the team. Consequently, it was improbable to determine whether the SLTDs of D'Implacable would have commanded equivalent or higher

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[61] Exhibit folder; Exhibit "A", pp. 13-14.

[62] *Id*. at 42.

[63] *Id*. at 43.

[64] *Id*. at 44.

prices than those shown by the team during the "canvass." Significantly, the different DECS divisions of Region XI procured SLTDs also from Joven's Trading[65] thus reinforcing the doubt as to the sameness of the brand and quality of the tools and devices delivered by D'Implacable to DECS-Davao Oriental with those that were presented for "canvassing" by the team.

It must be stressed that, pursuant to COA Circular No. 85-55A, the term "excessive expenditure" pertains to the variables of price and quality. As to the price, the circular provides that it is excessive if "it is more than the 10% allowable price variance between the **price for the item bought** and the **price of the <u>same item</u> per canvass of the auditor.**"[66] Undoubtedly, what was required to be canvassed was the very same item subject of the assailed transaction. Evaluated against this COA definition, it cannot be validly maintained that the prices of D'Implacable were excessive considering that the items bought by DECS-Davao Oriental were obviously not the very same items "canvassed" by the team.

Soriano confirmed that her team had not prepared the canvass sheet – the single document that would have shown that a canvass was actually undertaken, the listing of the comparative prices of the SLTDs and the availability of the tools and devices from the three establishments. Soriano forwarded the justification that an actual canvass was undertaken and that the team had procured particular SLTDs only from the establishments selling the lowest price as evidenced by the cash invoices.[67] Her justification fails to convince. The cash invoices support only the finding that the SLTDs were procured by the team from AMESCO and Berovan but, not that a canvass was undertaken or that these two establishments had offered the lowest price for particular tools and devices. The absence of the canvass sheets not only highlights the feebleness of the claim that the

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[65] Records (OMB-MIN-91-0202), pp. 247-254 and 260-263.

[66] Emphasis and underscoring supplied.

[67] TSN, 24 April 2001, pp. 45-46.

prices of the SLTDs procured from D'Implacable were excessively higher than those that were "canvassed" but also lends truth to the probability that in actuality no canvass was undertaken.

In a case[68] involving the alleged overpriced purchase of *walis tingting* by Parañaque City, the Court held that the prosecution failed to provide the requisite burden of proof in order to overcome the presumption of innocence in favor of petitioners where the evidence against them would merely indicate the present market price of *walis tingting* of a **different specification** purchased from a **non-supplier** of Parañaque City, and the price of *walis tingting* purchased **in Las Piñas City**. The Court stressed that to prove its case of overpricing resulting in gross and manifest disadvantage to the government, the prosecution should have presented evidence of the actual price of the particular *walis tingting* purchased by Parañaque City at the time of the audited transaction or, at the least, an approximation thereof.

Similarly, in *Buscaino v. Commission on Audit,*[69] we reiterated our ruling in *Arriola v. Commission on Audit, et al.,*[70] and in *National Center for Mental Health Management v. Commission on Audit*[71] that mere allegations of overpricing are not:

x x x [I]n the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects.

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/ canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

x x x As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service

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[68] *Caunan v. People,* 614 Phil. 179 (2009).

[69] 369 Phil. 886 (1999).

[70] 279 Phil. 156 (1991).

[71] 333 Phil. 222 (1996).

warranties/quality, special features of units purchased and the like
x x x x x x x x x

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.

x x x x x x x x x

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. x x x

x x x x x x x x x

It was incumbent upon the COA to prove that its standards were met in its audit disallowance. The records do not show that such was done in this case.

x x x [A]bsent due process and evidence to support COA's disallowance, COA's ruling on petitioner's liability has no basis.[72]

Obviously, the element that the transaction must be grossly and manifestly disadvantageous to the government was not sustained by the testimonial and documentary evidence of the People. "Manifest" means that it is evident to the senses, open, obvious, notorious, unmistakable, etc.[73] "Gross" means "flagrant, shameful, such conduct as is not to be excused."[74] On the one hand, "disadvantageous" is defined as unfavorable, prejudicial.[75] Assessed against these definitions, we cannot see how the assailed transactions in these cases could have been disadvantageous to the government when, at the very least, the evidence of the prosecution only confirmed that sample SLTDs were secured

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[72] *Buscaino v. Commission on Audit, supra* note 65 at 902-903.

[73] *Sajul v. Sandiganbayan*, 398 Phil. 1082, 1105 (2000).

[74] *Morales v. People of the Philippines*, 434 Phil. 471, 488 (2002).

[75] *Webster's Third New International Dictionary*, 1983.

by the team from three different divisions of Region XI, but not from DECS-Davao Oriental which was the subject of its audit; and that SLTDs, at a unit each, were purchased from Berovan and AMESCO.

In view of these findings, this Court finds it no longer necessary to dwell on the other issues raised by the petitioners.

The legal teaching in our jurisprudence is that the evidence adduced must be closely examined under the lens of the judicial microscope and that the conviction flows only from the moral certainty that guilt has been established by proof beyond reasonable doubt.[76] The presumption of innocence of an accused in a criminal case is a basic constitutional principle fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt.[77] For conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged. Short of these constitutional mandate and statutory safeguard – that a person is presumed innocent until the contrary is proved – the Court is then left without discretion and is duty bound to render a judgment of acquittal.[78]

WHEREFORE, premises considered, the 10 January 2005 Decision and 7 March 2005 Resolution of the Sandiganbayan, Fourth Division, in Criminal Case Nos. 23625-26 are hereby **REVERSED** and **SET ASIDE**. Petitioners VENANCIO R. NAVA, PRIMO C. OBENZA, and EVELYN L. MIRANDA are **ACQUITTED** of the charges against them.

SO ORDERED.

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

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[76] *Zapanta v. People,* G.R. Nos. 192698-99, 22 April 2015, 757 SCRA 173, 196.

[77] *People v. Maraorao*, 688 Phil. 458, 466 (2012).

[78] *Evangelista v. People,* 392 Phil. 449, 458 (2000).

* Additional member per Raffle dated 8 May 2017.

SECOND DIVISION

[G.R. No. 185559. August 2, 2017]

JOSE G. TAN and ORENCIO C. LUZURIAGA, *petitioners, vs.* **ROMEO H. VALERIANO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS.—** [O]ur scope of review in a Rule 45 petition is limited to questions of law. This limitation exists because the Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court subject to certain exceptions. These exceptional circumstances when we have entertained questions of fact are: *(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 Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; *(7)* when the findings are contrary to the trial court; *(8)* when the findings are conclusions without citation of specific evidence on which they are based; *(9)* when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; *(10)* when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and *(11)* when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.
2. **CIVIL LAW; CIVIL CODE; ARTICLE 19 REFERRED TO AS THE PRINCIPLE OF ABUSE OF RIGHTS;**

ELEMENTS; MALICE OR BAD FAITH IS THE FUNDAMENTAL ELEMENT IN ABUSE OF RIGHT.— Article 19 of the Civil Code contains what is commonly referred to as the principle of abuse of rights which requires that everyone must act with justice, give everyone his due, and observe honesty and good faith. The law recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct must be observed. A right, though by itself legal because it is recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. The elements of abuse of rights are the following: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) with the sole intent of prejudicing or injuring another. The existence of malice or bad faith is the fundamental element in abuse of right.

3. **ID.; ID.; ID.; ID.; TO RECOVER DAMAGES BASED ON MALICIOUS PROSECUTION, THE PROSECUTION MUST BE IMPELLED BY LEGAL MALICE.—** In an action to recover damages based on malicious prosecution, it must be established that the prosecution was impelled by legal malice. There is necessity of proof that the suit was patently malicious as to warrant the award of damages under Articles 19 to 21 of the Civil Code or that the suit was grounded on malice or bad faith. There is malice when the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless. The award of damages arising from malicious prosecution is justified *if and only if* it is proved that there was a misuse or abuse of judicial processes. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices for petitioners.

De Vera Law Office for respondent.

D E C I S I O N

MARTIRES, *J.*:

For resolution is the Petition for Review on Certiorari,[1] docketed as G.R. No. 185559, assailing the 25 September 2008 Decision[2] and the 5 December 2008 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 88795.

THE FACTS

The present case arose from a damages suit for malicious prosecution filed by respondent Romeo H. Valeriano (*Valeriano*) against petitioners Jose G. Tan, and Orencio C. Luzuriaga *(petitioners)*, as well as Toby Gonzales (*Gonzales*) and Antonio G. Gilana (*Gilana*).[4]

It is undisputed that on 4 January 2001, the Holy Name Society of Bulan, Sorsogon *(Holy Name Society)*, held a multi-sectoral consultative conference at the Bulan Parish Compound. Valeriano, the president of the religious organization, delivered a welcome address during the conference. In his address, Valeriano allegedly lambasted certain local officials of Bulan, Sorsogon, specifically Municipal Councilors petitioners, Gilana and Vice-Mayor Gonzales.

The following day, or on 5 January 2001, petitioners, together with Gilana and Gonzales, filed before the Civil Service Commission *(CSC)* an administrative complaint against Valeriano who was an incumbent resident auditor of the Commission on Audit *(COA)*. Believing that the real purpose of the conference was to choose the candidates who will be endorsed by the Holy

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 10-38.

[2] *Id*. at 40-59; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr.

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

[4] Records, pp. 1-3.

Name Society for the 2001 elections, petitioners, Gilana and Gonzales, charged Valeriano with acts of electioneering and engaging in partisan politics. They were convinced that, through his opening remarks, Valeriano had set the political tone of the conference. They also claimed that Valeriano did not advise or prevent the other speakers from criticizing the local administration with which they are politically aligned or identified. [5]

The COA was furnished with a copy of the administrative complaint against Valeriano. The COA, however, did not take any action on the complaint in view of the pendency of the case before the CSC.[6]

On 30 January 2001, the CSC dismissed the complaint due to a procedural defect, but without prejudice to its re-filing.[7] The CSC noted that the complaint-affidavit was not filed under oath.

The petitioners subsequently re-filed a Complaint-Affidavit[8] dated 23 March 2001 before the CSC. On motion of their counsel, however, the petitioners withdrew their complaint on 15 June 2001.[9]

In the meantime, the petitioners and Gilana filed on 22 March 2001 another administrative complaint[10] dated 13 March 2001 before the Office of the Ombudsman, this time for violation of Republic Act No. 6713,[11] in relation to Section 55 of the Revised Administrative Code of 1987. This complaint was dismissed by the Ombudsman on 21 June 2001 for want of evidence.[12]

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

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

[7] *Id.* at 6.

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

[9] *Id*. at 22.

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

[11] Otherwise known as the "Code of Conduct and ethical Standards of Public Officials and Employees."

[12] Records, pp. 10-14.

Aggrieved by the turn of events, Valeriano filed before Branch 65, Regional Trial Court *(RTC),* Sorsogon City, a complaint for damages against the petitioners.

The Ruling of the Regional Trial Court

After weighing the evidence, the RTC ruled that the act of filing of numerous cases against Valeriano by petitioners, Gilana, and Gonzales was attended by malice, vindictiveness, and bad faith.[13] The RTC observed that Valeriano earned the ire of petitioners, Gilana, and Gonzales because he was the one who organized and led the sponsorship of the Multi-Sectoral Consultative Conference which was attended by some opposition leaders who were allowed to air their views freely relative to the theme: "Facing Socio-Economic Challenges in the 3rd Millennium, Its Alternative for Good Governance," a theme which is not totally apolitical considering that it pertains to alternative good governance.[14] The RTC noted that the fact that Valeriano was singled out by petitioners, Gilana, and Gonzales, although his participation was only to deliver the Welcome Address, is indicative of malice. Also, the RTC held that the act of filing numerous cases before the CSC, COA, and the Ombudsman, which cases were subsequently found to be unsubstantiated, is reflective of ill will or the desire for revenge.[15]

Due to the unfounded complaints initiated by the petitioners, the RTC decided in favor of Valeriano. By reason of his physical suffering, mental anguish, and social humiliation, the RTC awarded Valeriano ₱300,000.00 as moral damages; ₱200,000.00 as exemplary damages; and ₱30,000.00 as attorney's fees and litigation expenses. [16]

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[13] *Id*. at 245-246.

[14] *Id*. at 246.

[15] *Id.*

[16] *Id*. at 249.

The Ruling of the Court of Appeals

In the assailed decision, the CA reversed the trial court's ruling insofar as Gonzales and Gilana were concerned,[17] but affirmed that petitioners should be held liable for damages.[18] It held that Gonzales and Gilana did not act with malice to vex or humiliate Valeriano by the mere act of initiating an administrative case against him with the CSC and the Ombudsman.[19] On the other hand, the CA held that petitioners' act of re-filing their complaint with the CSC in April 2001, notwithstanding the pendency of the administrative case with the Ombudsman, shows bad faith.[20] The CA further held that petitioners' intent to prejudice and injure Valeriano was revealed when they did not inform their lawyer of the pending case with the Ombudsman.[21]

The Issue

The pivotal issue in this case is whether petitioners acted with malice or bad faith in filing the administrative complaints against Valeriano.

The Court's Ruling

We rule in the negative.

At the onset, we must remember that our scope of review in a Rule 45 petition is limited to questions of law.[22] This limitation exists because the Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence

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[17] *Rollo*, pp. 55-56.

[18] *Id.* at 57.

[19] *Id*.

[20] *Id*. at 58.

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

[22] RULES OF COURT, Rule 45, Section 1. *Filing of petition with Supreme Court.* x x x The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law,** which must be distinctly set forth. x x x (emphasis supplied)

presented by the contending parties during the trial.[23] The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court subject to certain exceptions.[24]

These exceptional circumstances when we have entertained questions of fact are: *(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 Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; *(7)* when the findings are contrary to the trial court; *(8)* when the findings are conclusions without citation of specific evidence on which they are based; *(9)* when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; *(10)* when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and *(11)* when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[25]

The issue raised in the present petition is clearly not a question of law as it requires a re-examination of the weight and probative value of the evidence presented by the litigants and, thus, asking

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[23] *Maglana Rice and Corn Mill, Inc. v. Sps. Tan,* 673 Phil. 532, 539 (2011).

[24] *Id*., citing *FNCB Finance v. Estavillo,* 270 Phil. 630, 633 (1990).

[25] *Sampayan v. CA,* 489 Phil. 200, 208 (2005), citing *The Insular Life Assurance Co. Ltd. v. CA*, 472 Phil. 11, 22-23 (2004), further citing *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349, 1356 (2000); *Nokom v. NLRC*, 390 Phil. 1228, 1242-1243 (2000); *Sps. Sta. Maria v. CA*, 349 Phil. 275, 282-283 (2000); *Aguirre v. CA*, 466 Phil. 32, 42-43 (2004); *C & S Fishfarm Corporation v. CA*, 442 Phil. 279, 288 (2002).

us to make a different factual conclusion. In other words, what is being asked of us now is to review the factual circumstances that led to the filing of numerous administrative complaints against Valeriano, and to determine the presence of ill motive, malice or bad faith to justify the award for damages.

After reviewing the records and the conclusions arrived at by the lower courts, however, we find that they had misappreciated the factual circumstances in this case thereby qualifying this case as an exception to the rule that a petition for review on certiorari is limited to questions of law.

Article 19 of the Civil Code contains what is commonly referred to as the principle of abuse of rights which requires that everyone must act with justice, give everyone his due, and observe honesty and good faith. The law recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct must be observed. A right, though by itself legal because it is recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.[26]

The elements of abuse of rights are the following: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) with the sole intent of prejudicing or injuring another.[27]

The existence of malice or bad faith is the fundamental element in abuse of right. In an action to recover damages based on malicious prosecution, it must be established that the prosecution was impelled by legal malice.[28] There is necessity of proof

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[26] *Globe Mackay Cable and Radio Corp. v. CA,* 257 Phil. 783-789 (1989).

[27] *Diaz v. Davao Light and Power Co., Inc.,*549 Phil. 271, 296 (2007), citing *Hongkong and Shanghai Banking Corporation, Ltd. v. Catalan,* 483 Phil. 525, 539 (2004); *Saber v. CA,* 480 Phil. 723, 747 (2004).

[28] *Magbanua v. Junsay,* 544 Phil. 349, 367 (2007).

that the suit was patently malicious as to warrant the award of damages under Articles 19 to 21 of the Civil Code or that the suit was grounded on malice or bad faith.[29] There is malice when the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless.[30] The award of damages arising from malicious prosecution is justified *if and only if* it is proved that there was a misuse or abuse of judicial processes.[31] Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.[32]

In this case, what prompted petitioners to initiate the complaint against Valeriano was his vital participation in the multi-sectoral conference that was held wherein certain local officials were the subject of criticisms.

No less than the Constitution prohibits such officers and employees in the civil service in engaging in partisan political activity, to wit:

Section 2. (4) No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign.

Correspondingly, the Revised Administrative Code of 1987, in its provisions on the Civil Service, provides:

SEC. 55. *Political Activity.* — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to

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[29] *Bayani v. Panay Electric Co., Inc.,* 386 Phil. 980, 986 (2000), citing *Equitable Banking Corp. v. Intermediate Appellate Court,* 218 Phil. 135, 140 (1984).

[30] *Drilon v. CA,* 336 Phil. 949, 956-957 (1997).

[31] *Martires v. Cokieng,* 492 Phil. 81, 94 (2005), citing *Villanueva v. United Coconut Planters Bank (UCPB),* 384 Phil. 130, 143 (2000).

[32] *Drilon v. CA, supra* note 30 at 957.

coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.[33]

During the consultative conference held by the Holy Name Society, speakers were allowed to criticize certain incumbent local officials. The conference was held at a time so close to the holding of the 2001 elections. Valeriano, an employee of the COA, was, incidentally, the president of said religious organization. Given the law's prohibition on public officers and employees, such as Valeriano, from engaging in certain forms of political activities, it could reasonably be said that those who had filed the complaints against Valeriano before the CSC and the Office of the Ombudsman had done so as they had reason to believe that Valeriano was violating the prohibition. Given the circumstances of the conference, it can reasonably be said that the complaints were filed out of a belief in a viable cause of action against Valeriano. Put in another way, it cannot be said, for certain, that the complaints against Valeriano were filed simply out of malice.

Indeed, the CA, in absolving Gonzales and Gilana, found no malice or bad faith in the first complaint with the CSC, to wit:

Defendants-appellants miserably failed to show that plaintiff-appellee Valeriano probably engaged in partisan political activity when the latter urged the participants in his welcome address "to join hands together to build and offer our constituents a good governance as alternative of which, I will leave it to your noble hands." Witness for defendants-appellants Asotes did not even see and hear plaintiff-appellee Valeriano deliver his welcome address.

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[33] The Revised Administrative Code of 1987, Book V, Title I (Constitutional Commissions), Subtitle A (Civil Service Commission), Chapter 7 (Prohibitions), Section 55.

However, there is **no showing that defendants-appellants Gonzales and Gilana acted with malice or sinister design to vex or humiliate plaintiff-appellee Valeriano by the mere act of initiating an administrative case** for electioneering against the latter with the CSC and with the Office of the Ombudsman after the dismissal without prejudice of the complaint by the CSC.[34] (emphasis supplied)

This Court, however, disagrees with the CA that the mere re-filing of the complaint with the CSC is reason to hold petitioners liable for damages. It must be remembered that the same complaint had earlier been dismissed on a technicality,[35] and that the CSC directed that the dismissal was without prejudice, i.e., the complaint may be re-filed after compliance with the technical rules. Following the discussion of the CA as quoted above, we can say that this same complaint was likewise not filed out of malice. It was borne out of a reasonable belief on the illegality of Valeriano's acts. Parenthetically, whether Valeriano's acts do amount to illegalities is another question altogether, one that is not within the purview of the present review.

It is a doctrine well-entrenched in jurisprudence that the mere act of submitting a case to the authorities for prosecution, of and by itself, does not make one liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate.[36]

Valeriano failed to prove that the subject complaints against him were motivated purely by a sinister design. It is an elementary rule that good faith is presumed and that the burden

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[34] *Rollo*, pp. 55-56.

[35] Specifically, the technical requirement in Rule II, Section 8, of CSC Resolution No. 99-1936 dated 31 August 1999, which provides: **Section 8. *Complaint***—A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However in cases initiated by the proper disciplining authority, the complaint need not be under oath.

[36] See *Lao v. Court of Appeals*, 338 Phil. 191, 203 (1997).

of proving bad faith rests upon a party alleging the same. Absent such, petitioners cannot be held liable for damages.

WHEREFORE, the foregoing premises considered, the Decision dated 25 September 2008, and the Resolution dated 5 December 2008, of the Court of Appeals in CA-G.R. CV No. 88795 are hereby **REVERSED** and **SET ASIDE**. A new judgment is rendered **DISMISSING** the complaint in Civil Case No. 01-176 filed by Romeo H. Valeriano before the Regional Trial Court, Branch 65, Bulan, Sorsogon, for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185597. August 2, 2017]

JOHN E.R. REYES and MERWIN JOSEPH REYES, *petitioners, vs.* **ORICO DOCTOLERO, ROMEO AVILA, GRANDEUR SECURITYAND SERVICES CORPORATION, and MAKATI CINEMA SQUARE,** *respondents.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; QUASI-DELICTS; WHEN AN EMPLOYER VICARIOUSLY LIABLE FOR THE TORT COMMITTED BY HIS EMPLOYEE.— As a general rule, one is only responsible for his own act or omission. This general rule is laid down in Article 2176 of the Civil Code, x x x The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another. One

exception is an employer who is made vicariously liable for the tort committed by his employee under paragraph 5 of Article 2180. Here, although the employer is not the actual tortfeasor, the law makes him vicariously liable on the basis of the civil law principle of *pater familias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another. It must be stressed, however, that the above rule is applicable only if there is an employer-employee relationship. This employer-employee relationship cannot be presumed but must be sufficiently proven by the plaintiff. The plaintiff must also show that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of employees. x x x When the employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that the employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family. The "diligence of a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees. x x x The question of diligent *supervision*, however, depends on the circumstances of employment. Ordinarily, evidence demonstrating that the employer has exercised diligent supervision of its employee during the performance of the latter's assigned tasks would be enough to relieve him of the liability imposed by Article 2180 in relation to Article 2176 of the Civil Code.

APPEARANCES OF COUNSEL

Urbano Palamos & Pedrigon for respondent Grandeur Security and Services Corporation.

Law Firm of RV Domingo & Associate for respondent Makati Cinema Square Corporation.

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 challenging the Decision[2] dated July 25, 2008 and the Resolution[3] dated December 5, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 88101.

The case arose from an altercation between respondent Orico Doctolero (Doctolero), a security guard of respondent Grandeur Security and Services Corporation (Grandeur) and petitioners John E.R. Reyes (John) and Mervin Joseph Reyes (Mervin) in the parking area of respondent Makati Cinema Square (MCS).[4]

Petitioners recount the facts as follows: on January 26, 1996, between 4:30 to 5:00 P.M., John was driving a Toyota Tamaraw with plate no. PCL-349. As he was approaching the entrance of the basement parking of MCS, Doctolero stopped him to give way to outgoing cars. After a few minutes, Doctolero gave John a signal to proceed but afterwards stopped him to allow the opposite car to move to the right side. The third time that Doctolero gave John the signal to proceed, only to stop him again to allow a car on the opposite side to advance to his right, it almost caused a collision. John then told Doctolero of the latter's mistake in giving him signals to proceed, then stopping him only to allow cars from the opposite side to move to his side. Infuriated, Doctolero shouted "*PUTANG INA MO A*" at John. Then, as John was about to disembark from his vehicle, he saw Doctolero pointing his gun at him. Sensing that Doctolero was about to pull the trigger, John tried to run towards Doctolero

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[1] *Rollo*, pp.10-32.

[2] *Id.* at 112-123; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Fernanda Lampas Peralta and Myrna Dimaranan Vidal.

[3] *Id.* at 137-138.

[4] *Id.* at 112.

to tackle him. Unfortunately, Doctolero was able to pull the trigger before John reached him, hitting the latter's left leg in the process. Doctolero also shot at petitioner Mervin when he rushed to John's rescue. When he missed, Mervin caught Doctolero and pushed him down but was unable to control his speed. As a result, Mervin went inside MCS, where he was shot in the stomach by another security guard, respondent Romeo Avila (Avila).[5]

Grandeur advances a different version, one based on the Initial Report[6] conducted by Investigator Cosme Giron. While Doctolero was on duty at the ramp of the exit driveway of MCS's basement parking, John took over the left lane and insisted entry through the basement parking's exit driveway. Knowing that this is against traffic rules, Doctolero stopped John, prompting the latter to alight from his vehicle and confront Doctolero. With his wife unable to pacify him, John punched and kicked Doctolero, hitting the latter on his left face and stomach. Doctolero tried to step back to avoid his aggressor but John persisted, causing Doctolero to draw his service firearm and fire a warning shot. John ignored this and continued his attack. He caught up with Doctolero and wrestled with him to get the firearm. This caused the gun to fire off and hit John's leg. Mervin then ran after Doctolero but was shot on the stomach by security guard Avila.[7]

Petitioners filed with the Regional Trial Court (RTC) of Makati a complaint for damages against respondents Doctolero and Avila and their employer Grandeur, charging the latter with negligence in the selection and supervision of its employees. They likewise impleaded MCS on the ground that it was negligent in getting Grandeur's services. In their complaint, petitioners prayed that respondents be ordered, jointly and severally, to pay them actual, moral, and exemplary damages, attorney's fees and litigation costs.[8]

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[5] *Id.* at 112-113.

[6] Records, Exh. "28".

[7] *Rollo*, pp.113-114.

[8] *Id.* at 114.

Respondents Doctolero and Avila failed to file an answer despite service of summons upon them. Thus, they were declared in default in an Order dated December 12, 1997.[9]

For its part, Grandeur asserted that it exercised the required diligence in the selection and supervision of its employees. It likewise averred that the shooting incident was caused by the unlawful aggression of petitioners who took advantage of their "martial arts" skills.[10]

On the other hand, MCS contends that it cannot be held liable for damages simply because of its ownership of the premises where the shooting incident occurred. It argued that the injuries sustained by petitioners were caused by the acts of respondents Doctolero and Avila, for whom respondent Grandeur should be solely responsible. It further argued that the carpark was, at that time, being managed by Park Asia Philippines and MCS had no control over the carpark when the shooting incident occurred on January 26, 1996. It likewise denied liability for the items lost in petitioners' vehicle.[11]

On January 18, 1999, the RTC rendered judgment[12] against respondents Doctolero and Avila, finding them responsible for the injuries sustained by petitioners. The RTC ordered them to jointly and severally pay petitioners the following: ₱344,898.73 as actual damages; ₱360,000.00 as lost income; ₱20,000.00 as school expenses; ₱300,000.00 as moral damages; ₱100,000.00 as exemplary damages; ₱75,000.00 as attorney's fees; and costs of suit.[13] The trial thereafter continued with respect to Grandeur and MCS.

On April 15, 2005, the RTC rendered a decision dismissing the complaint against MCS. It, however, held Grandeur solidarily

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

[10] *Id.* at 114.

[11] *Id.* at 115.

[12] CA *rollo*, pp. 63-86.

[13] *Rollo*, p. 118.

liable with respondents Doctolero and Avila. According to the RTC, Grandeur was unable to prove that it exercised the diligence of a good father of a family in the *supervision* of its employees because it failed to prove strict implementation of its rules, regulations, guidelines, issuances and instructions, and to monitor consistent compliance by respondents.[14]

On September 19, 2005, upon Grandeur's motion for reconsideration, the RTC issued an Order modifying its April 15, 2005 Decision, to wit:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **GRANTED,** and the decision dated 15 April 2005 is hereby modified, as follows:

The Court renders judgment in favor of plaintiffs finding defendants Orico Doctolero and [Romeo] Avila liable for negligence and to pay plaintiffs, the following amounts:

1. [₱]344,898.73 as actual damages;
2. [₱]360,000.00 as the reasonable lost (*sic*) of income and ₱20,000.00 in the form of tuition fees, books, and other school incidental expenses;
3. [₱]300,000 as moral damages;
4. [₱]100,000.00 as exemplary damages;
5. [₱]75,000.00 as attorney's fees;
6. costs of suit.

The Court, however, orders the **DISMISSAL** of the complaint filed against defendants Grandeur Security and Services Corporation and [MCS]. It is likewise ordered the Dismissal of both the Counterclaims filed by defendants Grandeur Security and Services Corp., and [MCS] for the right to litigate is the price we pay in a civil society.

SO ORDERED.[15] (Emphasis in the original.)

In reconsidering its Decision, the RTC held that it re-evaluated the facts and the attending circumstances of the present case and was convinced that Grandeur has sufficiently overcome

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[14] *Id.* at 117-118.

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

the presumption of negligence. It gave credence to the testimony of Grandeur's witness, Eduardo Ungui, the head of the Human Resources Department (HRD) of Grandeur, as regards the various procedures in its *selection* and hiring of security guards. Ungui testified that Grandeur's hiring procedure included, among others, several rounds of interview, submission of various clearances from different government agencies, such as the NBI clearance and PNP clearance, undergoing neuro-psychiatric examinations, drug testing and physical examinations, attending pre-licensing training and seminars, securing a security license, and undergoing on the job training for seven days.[16]

Furthermore, the RTC held that Grandeur was able to show that it observed diligence of a good father of the family during the existence of the employment when it conducted regular and close *supervision* of its security guards assigned to various clients. In this regard, the RTC cited Grandeur's standard operational procedures, as testified to by Ungui, which include: (1) daily marking before the security guards are posted; (2) post-to-post station conducted by the branch supervisor and vice-supervisor; (3) round the clock inspection by the company inspector to determine the efficiency and fulfilment by the security guards of their respective duties; (4) a monthly area formation conducted by the operation officer; (5) a quarterly area formation conducted by the operation officer; (6) a general formation conducted every six months by the president, vice-president, operation officer and HRD head; (7) a yearly neuro-psychiatric test; (8) a special seminar conducted every two years; (9) re-training course also held every two years; and (10) monthly briefing or orientation to those security guards who committed violations.[17] The RTC likewise gave weight to the memorandum/certificates submitted by Grandeur as proof of its diligence in the *supervision* of the actual work performances of its employees.[18]

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

[17] *Id.* at 78-79; TSN, January 18, 2002, pp. 15-26.

[18] *Rollo*, p.79.

Petitioners assailed the RTC Order dated September 19, 2005 before the CA.

The CA dismissed petitioners' appeal and affirmed the RTC's Order. It agreed that Grandeur was able to prove with preponderant evidence that it observed the degree of diligence required in both selection and supervision of its security guards.[19]

The CA likewise rejected petitioners' arguments against the additional evidence belatedly adduced by Grandeur in support of its motion for reconsideration before the RTC. It ruled that the additional memoranda and certificate of attendance to seminars which Grandeur attached to its motion for reconsideration can be considered as they are related to the testimonial evidence adduced during trial.[20]

Finally, the CA rejected petitioners' argument that MCS should be held liable as indirect employers of respondents. According to the CA, the concept of indirect employer only relates to the liability for unpaid wages and, as such, finds no application to this case involving "imputed negligence" under Article 2180 of the Civil Code. It held that the lack of employer-employee relationship between respondents Doctolero and Avila and respondent MCS bars petitioners' claim against MCS for the former's acts.[21]

Petitioners filed a motion for reconsideration which the CA denied in its Resolution dated December 5, 2008.[22]

Hence, the present petition.

The sole issue for the consideration of this Court is whether Grandeur and MCS may be held vicariously liable for the damages caused by respondents Doctolero and Avila to petitioners John and Mervin Reyes.

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[19] *Id.* at 122.

[20] *Id.*

[21] *Rollo*, pp. 122-123.

[22] *Id.* at 137-138.

We deny the petition.

I

Petitioner contends that MCS should be held liable for the negligence of respondents Avila and Doctolero. According to petitioners, since the act or omission complained of took place in the vicinity of MCS, it is liable for all damages which are the natural and probable consequences of the act or omission complained of. They reasoned that MCS hired the services of Grandeur, whose employees (the security guards), in turn, committed harmful acts that caused the damages suffered by petitioners. MCS should thus be declared as a joint tortfeasor with Grandeur and respondent security guards. [23]

We cannot agree. MCS is not liable to petitioners.

As a general rule, one is only responsible for his own act or omission.[24] This general rule is laid down in Article 2176 of the Civil Code, which provides:

> 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 a quasi-delict and is governed by the provisions of this Chapter.

The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another. One exception is an employer who is made vicariously liable for the tort committed by his employee under paragraph 5 of Article 2180.[25] Here, although the employer is not the actual tortfeasor,

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[23] *Id.* at 273-274.

[24] *Filcar Transport Services v. Espinas*, G.R. No. 174156, June 20, 2012, 674 SCRA 117, 127.

[25] CIVIL CODE, Art. 2180. The obligation imposed by Article 2176 is demandable not only for one 's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

the law makes him vicariously liable on the basis of the civil law principle of *pater familias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another.[26]

It must be stressed, however, that the above rule is applicable only if there is an employer-employee relationship.[27] This employer-employee relationship cannot be presumed but must be sufficiently proven by the plaintiff.[28] The plaintiff must also show that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of employees.[29]

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Emphasis supplied.)

[26] *Filcar Transport Services v. Espinas*, *supra* at 128.

[27] *Metro Manila Transit Corp. v. Court of Appeals*, G.R. No. 104408, June 21, 1993, 223 SCRA 521, 539; *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 594-595.

[28] *Martin v. Court of Appeals*, *supra* at 594-596.

[29] *Metro Manila Transit Corp. v. Court of Appeals*, *supra* at 539.

In *Mamaril v. The Boy Scout of the Philippines*,[30] we found that there was no employer-employee relationship between Boy Scout of the Philippines (BSP) and the security guards assigned to it by an agency pursuant to a Guard Service Contract. In the absence of such relationship, vicarious liability under Article 2180 of the Civil Code cannot apply as against BSP.[31] Similarly, we find no employer-employee relationship between MCS and respondent guards. The guards were merely assigned by Grandeur to secure MCS' premises pursuant to their Contract of Guard Services. Thus, MCS cannot be held vicariously liable for damages caused by these guards' acts or omissions.

Neither can it be said that a principal-agency relationship existed between MCS and Grandeur. Section 8 of the Contract for Guard Services between them explicitly states:

8. LIABILITY TO GUARDS AND THIRD PARTIES

The SECURITY COMPANY is NOT an agent or employees (*sic*) of the CLIENT and the guards to be assigned by the SECURITY COMPANY to the CLIENT are in no sense employees of the latter as they are for all intents and purposes under contract with the SECURITY COMPANY. Accordingly, the CLIENT shall not be responsible for any and all claims for personal injury or death that arises of or in the course of the performance of guard duties.[32] (Emphasis in the original.)

II

On the other hand, paragraph 5 of Article 2180[33] of the Civil Code *may* be applicable to Grandeur, it being undisputed that

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[30] G.R. No. 179382, January 14, 2013, 688 SCRA 437.

[31] *Id.* at 447-448. In *Mamaril*, the Court also reiterated its statement in *Soliman, Jr. v. Tuazon*, G.R. No. 66207, May 18, 1992, 209 SCRA 47, 51-52, where we held: "x x x where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards and watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency. x x x"

[32] Records, Exh. "32", p. 3.

[33] Employers shall be liable for the damages caused by their employees

respondent guards were its employees. When the employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that the employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family.[34] The "diligence of a good father" referred to in the last paragraph of Article 2180 means diligence in the selection and supervision of employees.[35]

To rebut the presumption of negligence, Grandeur must prove two things: first, that it had exercised due diligence in the *selection* of respondents Doctolero and Avila, and second, that after hiring Doctolero and Avila, Grandeur had exercised due diligence in *supervising* them.

In *Metro Manila Transit Corporation v. Court of Appeals*, we held:

> On the matter of selection of employees, *Campo vs. Camarote, supra*, lays down this admonition:
>
> " x x x In order that the owner of a vehicle may be considered as having exercised all diligence of a good father of a family, **he should not have been satisfied with the mere possession of a professional driver's license; he should have carefully examined the applicant for employment as to his qualifications, his experience and record of service.** These steps appellant failed to observe; he has therefore, failed to exercise all due diligence required of a good father of a family in the choice or selection of driver.
>
> Due diligence in the supervision of employees, on the other hand, includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of

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and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[34] *Metro Manila Transit Corp. v. Court of Appeals*, *supra* at 539.

[35] *Yambao v. Zuñiga*, G.R. No. 146173, December 11, 2003, 418 SCRA 266, 273; *Barredo v. Garcia*, 73 Phil. 607 (1942).

necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.[36] (Emphasis supplied; citations omitted.)

In the earlier case of *Central Taxicab Corp. v. Ex-Meralco Employees Transportation Co.*,[37] the Court held that there was no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid defense to the legal presumption of negligence on the part of an employer or master whose employee has, by his negligence, caused damage to another. Jurisprudence nevertheless shows that testimonial evidence, without more, is insufficient to meet the required quantum of proof.[38]

In *Metro Manila Transit Corporation v. Court of Appeals*, the Court found that "[p]etitioner's attempt to prove its *diligentissimi patris familias* in the selection and supervision of employees **through oral evidence** must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony."[39] There, the supposed clearances, results of seminars and tests which Leonardo allegedly submitted and complied with were never presented in court despite the fact that, if true, then they were obviously in the possession and control of Metro Manila Transit Corporation (MMTC). Subsequently, in a different case also involving MMTC, the Court held that "in a trial involving the issue of vicarious liability,

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[36] *Metro Manila Transit Corp. v. Court of Appeals, supra* at 540-541.

[37] 54 O.G. No. 31, 7415 (1958).

[38] *Metro Manila Transit Corp. v. Court of Appeals*, *supra* at 535.

[39] *Id.* (Emphasis supplied.)

employers must submit **concrete proof**, including documentary evidence." [40]

A

Here, both the RTC and the CA found that Grandeur was able to sufficiently prove, through testimonial and documentary evidence, that it had exercised the diligence of a good father of a family in the *selection* and hiring of its security guards. As testified to by its HRD head Ungui, and corroborated by documentary evidence including clearances from various government agencies, certificates, and favorable test results in medical and psychiatric examinations, Grandeur's selection and hiring procedure was outlined as follows:

1. Initial screening;
2. Submission of personal bio-data;
3. Submission of the following documents and clearances: (1) NBI Clearance; (2) PDICE Clearance; (3) Barangay Clearance; (4) PNP Clearance; (5) Birth Certificate; (6) High School Diploma/Transcript/College Diploma; (7) Reserved Officers Training Corps or Citizens Army Training certificate; (8) Court Clearances; and (9) resignation or clearance from previous employment;
4. Pre-licensing training (15 days or 150 hours) for those without experience or pre-training course (56 hours) for applicants with working experience as security guard;
5. Undergo neuro-psychiatric examination, drug testing and physical examination;
6. Submit and secure a security license before being given an application form;
7. Series of Interviews by Grandeur's Recruiting Officer, Personnel Clerk, Head of Human Resources Department, Operation Department or Security Officer, Senior Security Officer, Chief Security Officer, Assistant Vice President for

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[40] *Metro Manila Transit Corporation v. Court of Appeals*, G.R. No. 116617, November 16, 1998, 298 SCRA 495, 504. (Emphasis supplied.)

Operations, Assistant Vice President for Accounting, and recommending approval by the Vice President and the President.

8. The applicant undergoes on-the-job training (OJT) for seven days assigned in the field or within Grandeur's office; and

9. The applicant then undergoes a probationary period of six months after which the employee automatically becomes regular upon meeting the company standards.[41]

Unlike in the aforecited *MMTC cases*, the evidence presented by Grandeur consists not only in the testimony of its HRD head but also by documentary evidence showing respondents Doctolero's and Avila's compliance with the above hiring and selection process consisting of their respective: (1) private security licenses;[42] (2) NBI Clearances;[43] (3) Medical Certificates;[44] (4) Police Clearances;[45] (5) Certificate of Live Birth[46]/Certification issued by the Local Civil Registrar appertaining to date of birth;[47] (6) Certificates issued by the Safety Vocational and Training Center for satisfactory completion of the Pre-Licensing Training Course;[48] (7) High School Diplomas;[49] (8) SSS Personal Data Records;[50] (9) Barangay

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[41] TSN, January 4, 2002, pp. 8-23; *rollo*, pp. 76-77.

[42] Records, Exh. "2" for Doctolero and Exh. "26" for Avila.

[43] *Id.* at Exh. "3" for Doctolero and Exh. "22" for Avila.

[44] *Id.* at Exh. "4" for Doctolero and Exh. "18" for Avila.

[45] *Id.* at Exh. "5" issued by the Central Police District and Exh. "14" issued by the General Headquarters of the PNP, Camp Crame for Doctolero and Exh. "20" issued by the PNP of Marinduque and Exh. "25" issued by the PNP station of Mogpog, Marinduque for Avila.

[46] *Id.* at Exh. "7" for Doctolero.

[47] *Id.* at Exh. "23" for Avila.

[48] *Id.* at Exh. "8" for Doctolero and Exh. "19" for Avila.

[49] *Id.* at Exh. "9" for Doctolero and Exh. "17" for Avila.

[50] *Id.* at Exh. "12" for Doctolero and Exh. "27" for Avila.

Clearances;[51] (10) Court Clearance;[52] (11) Neuro-psychiatric result issued by Goodwill Medical Center, Inc. for Doctolero's pre-employment screening as Security Guard[53]/Evaluation Report by Office Chief Surgeon Army, Headquarters, Phil. Army, Fort Bonifactio Metro-Manila for Avila showing an above-average result and no psychotic ideations;[54] (12) Certification from Varsitarian Security and Investigation Agency, Inc. that Doctolero has been employed with said agency;[55](13) Certificate issued by Cordova High School showing that Doctolero had completed the requirements of the courts of Institution in Citizen Army Training-1;[56] (14) Certification by Grandeur that Doctolero has submitted the requirements for his application for the post of Security Guard.[57] Thus, we agree with the RTC and CA's evaluation that Grandeur was able to satisfactorily prove that it had exercised due diligence in the selection of respondents Doctolero and Avila.

Once evidence is introduced showing that the employer exercised the required amount of care in *selecting* its employees, half of the employer's burden is overcome.[58]

B

The question of diligent *supervision*, however, depends on the circumstances of employment. Ordinarily, evidence demonstrating that the employer has exercised diligent supervision of its employee during the performance of the latter's assigned tasks would be enough to relieve him of the liability

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[51] *Id.* at Exh. "11" for Doctolero and Exh. "24" for Avila.

[52] *Id.* at Exh. "13" for Doctolero.

[53] *Id.* at Exh. "6".

[54] *Id.* at Exh. "21".

[55] *Id.* at Exh. "10" for Doctolero.

[56] *Id.* at Exh. "15" for Doctolero.

[57] *Id.* at Exh. "16" for Doctolero.

[58] *Valenzuela v. Court of Appeals*, G.R. No. 115024, February 7, 1996, 253 SCRA 303, 324.

imposed by Article 2180 in relation to Article 2176 of the Civil Code.[59]

Here, Grandeur's HRD head, Ungui, likewise testified on Grandeur's standard operational procedures, showing the means by which Grandeur conducts close and regular supervision over the security guards assigned to their various clients.[60] Grandeur also submitted as evidence certificates of attendance to various seminars[61] and the memoranda [62] both those commending respondents for their good works[63] and reprimanding them for violations of various company policies.[64] We agree with the CA that these may be considered, as they are related to the documents and testimonies adduced during trial to show Grandeur's diligence in the supervision of the actual work performance of its employees.

Considering all the evidence borne by the records, we find that Grandeur has sufficiently exercised the diligence of a good father of a family in the selection and supervision of its employees. Hence, having successfully overcome the legal presumption of negligence, it is relieved of liability from the negligent acts of its employees, respondents Doctolero and Avila.

WHEREFORE, the petition is **DENIED**. The Decision dated July 25, 2008 and the Resolution dated December 5, 2008 of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

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[59] *Id.*

[60] TSN, January 18, 2002, pp. 15-26; *rollo*, pp. 78-79.

[61] Records, pp. 508, 510.

[62] *Id.* at 506-507, 509, 511-515.

[63] *Id.* at 506, 509.

[64] *Id.* at 511-515.

FIRST DIVISION

[G. R. No. 186329. August 2, 2017]

DR. FRISCO M. MALABANAN, *petitioner, vs.* **SANDIGANBAYAN,** *respondent.*

[G.R. Nos. 186584-86. August 2, 2017]

ABUSAMA MANGUDADATU ALID, *petitioner, vs.* **THE HON. SANDIGANBAYAN – 1st DIVISION, OFFICE OF THE SPECIAL PROSECUTOR, HON. SECRETARY OF THE DEPARTMENT OF AGRICULTURE,** *respondents.*

[G.R. No. 198598. August 2, 2017]

ABUSAMA MANGUDADATU ALID, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; MOOT AND ACADEMIC CASES; WHEN, BY VIRTUE OF A SUPERVENING EVENT, THE CASE CEASES TO PRESENT A JUSTICIABLE CONTROVERSY.—** A case becomes moot and academic when, by virtue of supervening events, it ceases to present a justiciable controversy, such that a declaration thereon would no longer be of practical value. As a rule, courts decline jurisdiction over such a case or dismiss it on the ground of mootness.

2. **ID.; CRIMINAL PROCEDURE; RIGHT TO BE INFORMED OF THE NATURE AND THE CAUSE OF ACCUSATION; VARIANCE BETWEEN THE ALLEGATION IN THE INFORMATION AND THE CONVICTION FROM TRIAL CANNOT JUSTIFY A CONVICTION FOR EITHER THE OFFENSE CHARGED OR THE OFFENSE PROVED UNLESS EITHER IS INCLUDED IN THE OTHER.—** One of the fundamental rights of an accused person is the right to be "informed of the nature and cause of the accusation against

him." x x x Section 4, Rule 120 of the Rules of Criminal Procedure, commands: Section 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. Therefore, the accused can only be convicted of an offense when it is both charged and proved. If it is not charged, although proved, or if it is proved, although not charged, the accused cannot be convicted thereof. In other words, variance between the allegation contained in the Information and the conviction resulting from trial cannot justify a conviction for either the offense charged or the offense proved unless either is included in the other. As to when an offense includes or is included in another, Section 5 of Rule 120 provides: Section 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

3. **ID.; ID.; ID.; ID.; APPLICATION OF THE RULE IN CASE AT BAR.—** [For altering the Philippine Airline (PAL) Ticket, petitioner Alid was charged with falsification of documents committed by a public officer under Article 171 of the Revised Penal Code. However, he was convicted of Falsification of a Private Document under paragraph 2 of Article 172. Hence,] there is a variance between the felony as charged in the Information and as found in the judgment of conviction. Applying the rules, the conviction of Alid for falsification of a private document under paragraph 2, Article 172 is valid only if the elements of that felony constituted the elements of his indictment for falsification by a public officer under Article 171. Article 171 – the basis of the indictment of Alid – punishes public officers for falsifying a document by making any alteration or intercalation in a genuine document which changes its meaning. The elements of falsification under this provision are as follows: 1. The offender is a public officer, employee, or a notary public.

2. The offender takes advantage of his or her official position. 3. The offender falsifies a document by committing any of the acts of falsification under Article 171. Article 172 of the Revised Penal Code contains three punishable acts. x x x Paragraph 2 of Article 172 was the basis of Alid's conviction. Its elements are as follows: 1. The offender committed any of the acts of falsification, except those in Article 171(7). 2. The falsification was committed on a private document. 3. The falsification **caused damage or was committed with intent to cause damage to a third party**. Comparing the two provisions x x x in Article 171, damage is not an element of the crime; but in paragraph 2 of Article 172, x x x damage is an element necessary for conviction. x x x Indeed, the Information charging Alid of a felony did not inform him that his alleged falsification caused damage or was committed with intent to cause damage to a third party. Since Alid was not specifically informed of the complete nature and cause of the accusation against him, he cannot be convicted of falsification of a private document under paragraph 2 of Article 172. x x x [For falsifying a commercial document, the penal provision actually violated by Alid was paragraph 1 of Article 172.] x x x *Guillergan v. People* declares that the falsification of documents committed by public officers who take advantage of their official position under Article 171 necessarily includes the falsification of commercial documents by private persons punished by paragraph 1 of Article 172. x x x [P]aragraph 1 of Article 172 contains these requisites: 1. That the offender is a private individual or a public officer or employee who did not take advantage of his or her official position. 2. The falsification was committed in a public or official or commercial document. 3. The offender falsifies a document by committing any of the acts of falsification under Article 171. x x x [N]either [Article 171 nor paragraph 2 of Article 172] include damage or intent to cause damage as an element of the crime; x x x [Now,] [c]onsidering [that] the obvious intent of Alid in altering the PAL Ticket [was] to remedy his liquidation of cash advance with the correct date of his rescheduled travel[,] we find no malice on his part when he falsified the document. For this reason, and seeing the overall circumstances in the case at bar, we cannot justly convict Alid of falsification of a commercial document under paragraph 1 of Article 172.

APPEARANCES OF COUNSEL

Avila Galisanao Law Office for petitioner M. Alid.

Ferrer & Associates Law Offices for petitioner Alid.

Jasarino Young & Librojo Law Offices for petitioner Malabanan.

D E C I S I O N

SERENO, *C.J.*:

These three consolidated petitions stem from a common set of facts.

Abusama M. Alid (Alid) was the Assistant Regional Director of the Department of Agriculture (DA), Regional Field Office No. XII, Cotabato City.[1] Frisco M. Malabanan (Malabanan), on the other hand, was the Program Director of the *Ginintuang Masaganang Ani* Rice Program (GMA Rice Program) of the DA, Field Operations Office, Diliman, Quezon City.[2]

On 27 July 2004, Alid obtained a cash advance of ₱10,496 to defray his expenses for official travel. He was supposed to attend the turnover ceremony of the outgoing and the incoming Secretaries of the DA and to follow up, on 28 to 31 July 2004, funds intended for the GMA Rice Program. The turnover ceremony did not push through, however, and Alid's trip was deferred.[3]

On 22 August 2004, Alid took Philippine Airlines (PAL) Flight PR 188 from Cotabato City to Manila under PAL Ticket No. 07905019614316 (PAL Ticket).[4] He attended the turnover ceremony at the DA Central Office in Quezon City on 23 August

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[1] *Rollo* (G.R. No. 198598), p. 33; Sandiganbayan Decision dated 23 June 2011, penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Efren N. de la Cruz and Rafael R. Lagos.

[2] *Id*. at 40.

[3] *Id*.

[4] *Id*. at 214; Certification dated 24 September 2004.

2004.[5] The following day, or on 24 August 2004, he took a flight from Manila to Cotabato City per another ticket issued in exchange for the PAL Ticket.[6]

On 1 September 2004, Alid instructed his secretary to prepare the necessary papers to liquidate the cash advance.

In his Post Travel Report, he declared that his official travel transpired on 28 to 31 July 2004.[7]

He likewise attached an altered PAL Ticket in support of his Post Travel Report. The date "22 AUG 2004" was changed to read "28 JULY 2004", and the flight route "Cotabato-Manila-Cotabato" appearing on the PAL Ticket was altered to read "Davao-Manila-Cotabato."[8]

He further attached an undated Certificate of Appearance signed by Malabanan as Director of the GMA Rice Program.[9] The document stated that Alid had appeared at the DA Central Office in Quezon City from 28 to 31 July 2004 for the turnover ceremony and to follow up the status of the funds intended for the GMA Rice Program.[10]

During post-audit, discrepancies in the supporting documents were found and investigated. Thereafter, the Office of the Special Prosecutor charged Alid and Malabanan before the Sandiganbayan with falsification of public documents. [11]

In SB-07-CRM-0072, Alid was indicted for falsifying his Post Travel Report, as follows:

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[5] *Id*. at 40; Sandiganbayan Decision dated 23 June 2011.

[6] *Id*.

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

[8] *Id*. at 126-127; Information in SB-07-CRM-0073 dated 24 October 2007.

[9] *Id*. at 41.

[10] *Id*. at 129-130; Information in SB-07-CRM-0074 dated 24 October 2007.

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

That [on] or about July 2004, and sometime prior or subsequent thereto, in Cotabato City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ABUSAMA MANGUDADATU ALID, a high ranking public officer holding the position of Assistant Regional Director with salary grade 27 of the Department of Agriculture, Regional Field Office No. XII, Cotabato City, taking advantage of his official position, with abuse of confidence, and committing the offense in relation to his office, did then and there willfully, unlawfully and feloniously falsify or cause to be falsified his Post Travel Report prepared on September 1, 2004, which is an official document, by making it appear therein that on July 28, 2004, he proceeded to Davao to take a flight bound for Manila and that he was in Manila up to July 30, 2004 to attend to the turn-over ceremony of incoming and outgoing DA Secretaries and to follow up the funds intended for the Ginintuang Masaganang Ani (GMA) Rice Program projects and that on July 31, 2004, he took a taxi from his hotel to the airport and boarded a flight back to Cotabato City, which document he submitted to support his Liquidation Voucher for Ten Thousand Four Hundred Ninety Six Pesos (₱10,496.00) which he cash advanced [sic] for traveling expenses to Manila for the period July 28-31, 2004, when in truth and in fact, as the accused well knew, he did not take the aforesaid official trip to Manila for the said period of July 28 to 30, 2004 and that the turn-over ceremony between the incoming and outgoing DA Secretaries was postponed and moved to August 2004, nor did the accused follow up the funds for GMA projects in the said month, thus accused made [an] untruthful statement in a narration of facts, the truth of which he was legally bound to disclose.

CONTRARY TO LAW.[12]

In SB-07-CRM-0073, the Acting Deputy Special Prosecutor charged Alid with falsifying the PAL Ticket. The Information stated:

That on or about July 2004, and sometime prior or subsequent thereto, in Cotabato City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ABUSAMA MANGUDADATU ALID, a high ranking public officer holding the

[12] *Id*. at 123-124; Information in SB-07-CRM-0072 dated 24 October 2007.

position of Assistant Regional Director with salary grade 27 of the Department of Agriculture, Regional Field Office No. XII, Cotabato City, taking advantage of his official position and committing the offense in relation to his office, did then and there willfully, unlawfully and feloniously falsify or cause to be falsified the Philippine Airline (PAL) plane ticket No. 07905019614316[,] a genuine document which he attached and submitted as supporting document to his liquidation voucher for the purpose of liquidating his cash advance of Ten Thousand Four Hundred Ninety Six (₱10,496.00) Pesos as traveling expenses for the period July 28-31, 2004 thereby rendering the said plane ticket a public/official document, which falsification was committed in the following manner to wit: that in the upper right corner of the said plane ticket indicating the date and place of issue, accused inserted the figure/number 8 after the figure/number 2 and erased the original word Aug (August) and superimposed the [word] July to make it appear that the plane ticket was purchased/issued on July 28, 2004, when the original date of purchase/issue was August 2, 2004; that in the portion of the ticket indicating the flight route, accused also erased the original word "Cotabato" and superimposed therein the word "Davao" and under the column "Date" of flight, accused erased the original figure 22 and superimposed the figure "28" and also erased the word "Aug." and superimposed the word "Jul" to make it appear that the flight took place on July 28 originating from Davao, thus accused made alterations and intercalations in a genuine document which changed its original meaning and perverting the truth to make it appear that he made an official trip to Manila, originating from Davao on July 28, 2004 using a plane ticket issued/purchased on July 28, 2004 to conform with the entries in his liquidation voucher when accused knew [full] well that he did not make such official trip on said date and route as indicated in the aforesaid falsified PAL plane ticket.

CONTRARY TO LAW.[13]

In SB-07-CRM-0074, Alid and Malabanan were charged with falsifying the Certificate of Appearance that the former attached as a supporting document for the Post Travel Report. The Information reads:

That on or about July 2004, and sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of

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[13] *Id.* at 126-127; Information in SB-07-CRM-0073 dated 24 October 2007.

this Honorable Court, accused ABUSAMA MANGUDADATU ALID, a high ranking public officer holding the position of Assistant Regional Director with salary grade 27 of the Department of Agriculture (DA), Regional Field Office No. XII, Cotabato City, conspiring and conniving with accused FRISCO MERCADO [MALABANAN], Chief Science Research Specialist of the Philippine Rice Research Institute (Philrice) and Program Director of the Ginintuang Masaganang Ani (GMA) [Rice] Program of the Department of Agriculture, Field Operations Service, Diliman, Quezon City, holding a salary grade of 26, taking advantage of their official positions, with abuse of confidence and committing the offense in relation to their respective offices, did then and there willfully, unlawfully and feloniously falsify or cause to be falsified an undated Certificate of Appearance issued in the name of ABUSAMA MANGUDADATU ALID noted by accused FRISCO M. MALABANAN which is an official/public document and which the former submitted as one of the supporting document[s] to his liquidation voucher of his cash advance of Ten Thousand Four Hundred Ninety Six (₱10,496.00) Pesos as traveling expenses for the period of July 28-31, 2004 by making it appear in the said Certificate of Appearance that accused Abusama Mangudadatu Alid appeared in the Office of the DA Central Office, Diliman, Quezon City for the period of July 28-31, 2004 to attend to the turn-over ceremony of incoming and outgoing DA Secretaries and to follow-up the funds intended for the GMA Projects Implementation; when in truth and in fact, as both accused well knew, accused Abusama Mangudadatu Alid did not travel to Manila on said date as the turn-over ceremony of the incoming and outgoing DA Secretaries was postponed and moved to August 2004 nor did accused Alid follow up with accused Malabanan on the said period the funds intended for the GMA projects, thus accused made an untruthful statement in a narration of facts, the truth of which they are legally bound to disclose.

CONTRARY TO LAW.[14]

Upon arraignment, both Alid and Malabanan entered pleas of "not guilty."[15]

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[14] *Id*. at 129-130; Information in SB-07-CRM-0074 dated 24 October 2007.

[15] *Id*. at 33; Sandiganbayan Decision dated 23 June 2011.

While the cases were pending before the Sandiganbayan, the prosecution filed a Motion to Suspend Accused *Pendente Lite*, praying for their preventive suspension pending trial.[16]

In a Minute Resolution dated 29 October 2008, the Sandiganbayan granted the motion and ordered the suspension *pendente lite* of Alid and Malabanan for 90 days.[17]

Both of the accused sought reconsideration, but the Sandiganbayan denied their motions in a Minute Resolution dated 30 January 2009.[18]

Malabanan then filed before this Court a Rule 65 Petition for Certiorari and Prohibition[19] praying that the order of preventive suspension be set aside, and that a writ of prohibition be issued against the Sandiganbayan to forestall the threatened implementation of the Minute Resolutions.[20] This petition was docketed as **G.R. No. 186329**.

Alid filed a separate Rule 65 Petition for Certiorari and Prohibition[21] before us, likewise praying that the order of preventive suspension be set aside, and that a writ of prohibition be issued against the Sandiganbayan's implementation of the

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[16] *Rollo* (G.R. No. 186329), pp. 17-22; Motion to Suspend Accused *Pendente Lite* dated 28 April 2008.

[17] *Rollo* (G.R. No. 186329), pp. 52-54; *rollo* (G.R. Nos. 186584-86), pp. 19-21; Minute Resolution of the Sandiganbayan First Division dated 29 October 2008, approved by then Presiding Justice Diosdado M. Peralta (now a member of this Court), and Associate Justices Rodolfo A. Ponferrada and Alexander G. Gesmundo.

[18] *Rollo* (G.R. No. 186329), pp. 55-57; *rollo* (G.R. Nos. 186584-86), pp. 27-29; Minute Resolution of the Sandiganbayan First Division dated 30 January 2009, approved by Associate Justices Norberto Y. Geraldez, Rodolfo A. Ponferrada and Alexander G. Gesmundo.

[19] *Rollo* (G.R. No. 186329), pp. 3-12; Petition for *Certiorari* and Prohibition dated 25 February 2009.

[20] *Id*. at 11.

[21] *Rollo* (G.R. Nos. 186584-86), pp. 3-18; Petition for *Certiorari* and Prohibition dated 8 March 2009.

Minute Resolution dated 29 October 2008.[22] He further prayed for the issuance of a temporary restraining order pending the resolution of the principal case.[23] This petition was docketed as **G.R. Nos. 186584-86**.

In the meantime, the Sandiganbayan proceeded with the criminal cases and eventually rendered a Decision convicting Alid of falsification of a private document for altering the PAL Ticket.[24] The Sandiganbayan, however, acquitted both of the accused of the other charges. The dispositive portion of its ruling reads:

> ***IN VIEW OF ALL THE FOREGOING***, judgment is hereby rendered as follows –
>
> 1. In *SB-07-CRM-0072* – **ACQUITTING** accused ABUSAMA M. ALID for insufficiency of evidence, with costs *de oficio*;
> 2. In *SB-07-CRM-0073* – finding accused ABUSAMA M. ALID **GUILTY** beyond reasonable doubt of the crime of falsification of a private document under paragraph 2 of Article 172 of the Revised Penal Code and, with the application of the Indeterminate Sentence Law and without any mitigating or aggravating circumstance, hereby sentencing him to suffer the indeterminate penalty of ONE (1) YEAR and ONE (1) DAY to THREE (3) YEARS, SIX MONTHS and TWENTY-ONE (21) DAYS of *prision correccional*, as minimum and maximum, respectively, and to pay a fine of FIVE HUNDRED PESOS (₱500.00) with costs against the accused; and
> 3. In *SB-07-CRM-0074* – **ACQUITTING** accused ABUSAMA M. ALID and FRISCO M. MALABANAN for insufficiency of evidence, with costs *de oficio*.
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> SO ORDERED.[25]

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[22] *Id*. at 15.

[23] *Id*. at 16.

[24] *Rollo* (G.R. No. 198598), pp. 30-54; Sandiganbayan Decision dated 23 June 2011.

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

Alid moved for the reconsideration of the Sandiganbayan's decision convicting him of the crime of falsification of a private document under paragraph 2 of Article 172 of the Revised Penal Code.[26] The prosecution likewise moved for a partial reconsideration insofar as the acquittals were concerned.[27] However, the Sandiganbayan denied both motions.[28]

Alid thereafter filed the present Rule 45 Petition for Review[29] before this Court, praying for the reversal of the Decision and the Resolution of the Sandiganbayan insofar as SB-07-CRM-0073 is concerned. This petition was docketed as **G.R. No. 198598**.

THE COURT'S RULING

We dismiss the petitions in G.R. Nos. 186329 and 186584-86 for being moot and academic. However, we grant the petition in G.R. No. 198598 and rule that the Sandiganbayan committed a reversible error in convicting Alid of the crime of falsification of a private document under Article 172, paragraph 2 of the Revised Penal Code.

I
The petitions questioning the order of preventive suspension are moot and academic.

A case becomes moot and academic when, by virtue of supervening events, it ceases to present a justiciable controversy, such that a declaration thereon would no longer be of practical value.[30] As a rule, courts decline jurisdiction over such a case or dismiss it on the ground of mootness.[31]

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[26] *Id*. at 60-73; Motion for Reconsideration (of the June 23, 2011 Decision) dated 26 June 2011.

[27] *Id*. at 74-82; Partial Motion for Reconsideration dated 6 July 2011.

[28] *Id*. at 55-59; Resolution dated 6 September 2011.

[29] *Id*. at 9-26; Petition for Review dated 28 October 2011.

[30] *Gunsi, Sr. v. Commissioners of the COMELEC*, 599 Phil. 223 (2009).

[31] *Id*.

In G.R. Nos. 186329 and 186584-86, Alid and Malabanan pray that the Sandiganbayan's order imposing preventive suspension be set aside and its implementation restrained. It appears from the records, however, that the order of preventive suspension had already been implemented by the DA on 17 March 2009,[32] and that Alid had already retired from government service on 30 June 2009.[33] Clearly, therefore, by virtue of supervening events, there is no longer any justiciable controversy with regard to this matter, and any pronouncement that we may make upon it will no longer be of practical value. Thus, we rule that the Rule 45 petitions in G.R. Nos. 186329 and 186584-86 should be dismissed for mootness.

II

The Sandiganbayan erred in convicting Alid of the crime of falsification of a private document under paragraph 2 of Article 172 of the Revised Penal Code.

In G.R. No. 198598, the Sandiganbayan convicted Alid of falsification of a private document for altering the PAL Ticket. We disagree with that conviction for two reasons.

First, a conviction for falsification of a private document under paragraph 2 of Article 172 violates the right of Alid to be informed of the nature and cause of the accusation against him given that his Information charged him only with falsification of documents committed by a public officer under Article 171. Second, for falsifying a commercial document, the penal provision allegedly violated by Alid was paragraph 1, and not paragraph 2, of Article 172.

Right to Be Informed of the Nature and the Cause of Accusation

At the outset, we note that the appeal of Alid is grounded on two points: (1) that he was not the one who altered the plane

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[32] *Rollo* (G.R. Nos. 186584-86), p. 162; Manifestation dated 15 June 2009, citing an Order issued by DA Secretary Arthur C. Yap dated 17 March 2009.

[33] *Id*. at 114; Comment (on the Petition dated 25 February 2009 and the Petition dated 8 March 2009) dated 28 August 2009.

ticket; and (2) that he had no intent to cause damage. He has not raised the defense that his right to be informed of the nature and cause of the accusation against him has been violated. However, an appeal in a criminal case opens the whole matter for the review of any question, including those questions not raised by the parties.[34] In this case, a review is necessary because the conviction was made in violation of the accused's constitutional rights.

One of the fundamental rights of an accused person is the right to be "informed of the nature and cause of the accusation against him."[35] This means that the accused may not be convicted of an offense unless it is clearly charged in the Information.[36] Even if the prosecution successfully proves the elements of a crime, the accused may not be convicted thereof, unless that crime is alleged or necessarily included in the Information filed against the latter.[37]

Pursuant to this constitutional right, Section 4, Rule 120 of the Rules of Criminal Procedure, commands:

Section 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Therefore, the accused can only be convicted of an offense when it is both charged and proved**.** If it is not charged, although proved, or if it is proved, although not charged, the accused cannot be convicted thereof.[38] In other words, variance between

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[34] *People v. Yam-id*, 368 Phil. 131, 137 (1999).

[35] CONSTITUTION, Art. III, Sec. 14 (2).

[36] *People v. Manalili*, 355 Phil. 652, 684 (1998).

[37] *Laurel v. Abrogar*, 518 Phil. 409, 431 (2006).

[38] *Pecho v. Sandiganbayan*, 308 Phil. 120 (1993), citing *Esquerra v. People*, 108 Phil. 1078, 1084-85 (1960).

the allegation contained in the Information and the conviction resulting from trial cannot justify a conviction for either the offense charged or the offense proved unless either is included in the other.

As to when an offense includes or is included in another, Section 5 of Rule 120 provides:

> Section 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

Here, it cannot be overlooked that there is a variance between the felony as charged in the Information and as found in the judgment of conviction. Applying the rules, the conviction of Alid for falsification of a private document under paragraph 2, Article 172 is valid only if the elements of that felony constituted the elements of his indictment for falsification by a public officer under Article 171.

Article 171 – the basis of the indictment of Alid – punishes public officers for falsifying a document by making any alteration or intercalation in a genuine document which changes its meaning. The elements of falsification under this provision are as follows:[39]

1. The offender is a public officer, employee, or a notary public.
2. The offender takes advantage of his or her official position.
3. The offender falsifies a document by committing any of the acts of falsification under Article 171.[40]

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[39] *Garong v. People,* G.R. No. 172539, 16 November 2016.

[40] ARTICLE 171. *Falsification by Public Officer*, *Employee or Notary or Ecclesiastic Minister*. — The penalty of *prisión mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

Article 172 of the Revised Penal Code contains three punishable acts. It reads:

Art. 172. Falsification by Private Individuals and Use of Falsified Documents. — The penalty of *prisión correccional* in its medium and maximum periods and a fine of not more than ₱5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

Paragraph 2 of Article 172 was the basis of Alid's conviction. Its elements are as follows:

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1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. **Making any alteration or intercalation in a genuine document which changes its meaning;**
7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons. (Emphasis supplied)

1. The offender committed any of the acts of falsification, except those in Article 171(7).
2. The falsification was committed on a private document.
3. The falsification **caused damage or was committed with intent to cause damage to a third party**.[41]

Comparing the two provisions and the elements of falsification respectively enumerated therein, it is readily apparent that the two felonies are different. Falsification under paragraph 2 of Article 172 goes beyond the elements of falsification enumerated under Article 171. The former requires additional independent evidence of damage or intention to cause the same to a third person.[42] Simply put, in Article 171, damage is not an element of the crime; but in paragraph 2 of Article 172, or falsification of a private document, damage is an element necessary for conviction.

Therefore, not all the elements of the crime punished by paragraph 2, Article 172 are included under Article 171. Specifically, the former offense requires the element of damage, which is not a requisite in the latter. Indeed, the Information charging Alid of a felony did not inform him that his alleged falsification caused damage or was committed with intent to cause damage to a third party.

Since Alid was not specifically informed of the complete nature and cause of the accusation against him, he cannot be convicted of falsification of a private document under paragraph 2 of Article 172. To convict him therefor, as the Sandiganbayan did, violates the very proscription found in the Constitution and our Rules of Criminal Procedure. On this ground alone, we find that the court *a quo* erred in its decision.

Falsification under Articles 171 and 172 of the Revised Penal Code

Notwithstanding the erroneous conviction meted out by the Sandiganbayan, this Court proceeds to peruse the nature of the

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[41] *Manansala v. People*, G.R. No. 215424, 9 December 2015.

[42] *Tan, Jr. v. Matsuura,* 701 Phil. 236 (2013).

crime established in the records of this case. In *People v. Castillo,*[43] we emphasized a basic rule in criminal jurisprudence: that the defendant in a criminal case may be found guilty of any offense necessarily included in the allegation stated in the information and fully established by the evidence.

Guillergan v. People[44] declares that the falsification of documents committed by public officers who take advantage of their official position under Article 171 necessarily includes the falsification of commercial documents by private persons punished by paragraph 1 of Article 172. To reiterate, the elements of Article 171 are as follows:

1. The offender is a public officer, employee, or a notary public.
2. The offender takes advantage of his or her official position.
3. The offender falsifies a document by committing any of the acts of falsification under Article 171.

In turn, paragraph 1 of Article 172 contains these requisites:

1. That the offender is a private individual or a public officer or employee who did not take advantage of his or her official position.
2. The falsification was committed in a public or official or commercial document.
3. The offender falsifies a document by committing any of the acts of falsification under Article 171.

Analyzing these felonies, we find that neither of them include damage or intent to cause damage as an element of the crime; and that Article 171 encompasses all the elements required in a conviction for falsification under paragraph 1 of Article 172. Thus, in *Daan v. Sandiganbayan*,[45] we allowed the accused facing Informations for falsification of public documents under Article 171 to plead guilty to falsification under Article 172. We specifically stated that "in the charge for Falsification of

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[43] *People v. Castillo, C.A. No. 227,* 76 Phil. 72 (1946).

[44] 656 Phil. 527 (2011).

[45] 573 Phil. 368 (2008).

Public Documents, petitioner may plead guilty to the lesser offense of Falsification by Private Individuals inasmuch as it does not appear that petitioner took advantage of his official position in allegedly falsifying the timebook and payroll of the Municipality of Bato, Leyte."[46]

Here, if the records show sufficient allegations that would convict Alid of paragraph 1 of Article 172, the Sandiganbayan is bound to sentence him to that lesser offense. But, as mentioned, it overlooked this provision and jumped to convicting him of falsification under paragraph 2 of Article 172. As discussed, the latter felony is not covered by his indictment under Article 171.

This Court finds that the prosecution has sufficiently alleged all the elements of paragraph 1 of Article 172. As regards the first element, Alid was a public officer who did not take advantage of his official position.

Offenders are considered to have taken advantage of their official position in falsifying a document if (1) they had the duty to make or prepare or otherwise intervene in the preparation of the document; or (2) they had official custody of the falsified document.[47] Here, the accused definitely did not have the duty to make, prepare, or intervene in the preparation of the PAL Ticket. Neither was it in his official custody. Therefore, when he falsified the PAL Ticket, he did not take advantage of his official position as Assistant Regional Director of the DA.

Anent the second element, the Sandiganbayan concluded that because the PAL Ticket was a private document, Alid should not have been charged with falsifying a public document. However, the PAL Ticket fell under the category of commercial documents, which paragraph 1 of Article 172 protects from falsification.

Commercial documents or papers are those used by merchants or business persons to promote or facilitate trade or credit

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[46] *Id*. at 382.

[47] *Adaza v. Sandiganbayan,* 502 Phil. 702 (2005).

transactions. Examples include receipts, order slips, and invoices.[48] In *Seaoil Petroleum Corporation v. Autocorp Group,*[49] we considered a sales invoice a commercial document and explained:

> The Vehicle Sales Invoice [Autocorp sold to Seaoil one unit Robex 200 LC Excavator paid for by checks issued by one Romeo Valera] is the best evidence of the transaction. A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, e.g., order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired.

In this case, since the PAL Ticket functioned as a sales invoice that memorialized the consummation of the commercial transaction between the air carrier and the passenger, the Sandiganbayan should have considered the fact that Alid had altered a commercial document.

Finally, the accused did not dispute that he had altered a genuine document. The date "22 AUG 2004" was changed to read "28 JULY 2004"; and the flight route "Cotabato-Manila-Cotabato" appearing on the PAL Ticket was altered to read "Davao-Manila-Cotabato."[50] Hence, the third element of the felony punished by paragraph 1 of Article 172 is apparent in this case.

Criminal Liability of the Accused

Criminal intent or *mens rea* must be shown in felonies committed by means of *dolo*, such as falsification.[51] Such intent

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[48] *David v. People*, 767 Phil. 290 (2015); *Lagon v. Hooven Comalco Industries, Inc.,* 402 Phil. 404 (2001); *People v. Benito*, 57 Phil. 587 (1932).

[49] *Seaoil Petroleum Corporation v. Autocorp Group,* 590 Phil. 410, 419 (2008).

[50] Sandiganbayan Records, Vol. I, p. 10.

[51] *Mendoza-Arce v. Office of the Ombudsman*, 430 Phil. 101 (2002); REVISED PENAL CODE, Article 3.

is a mental state, the existence of which is shown by the overt acts of a person.[52] Thus, the acts of Alid must have displayed, with moral certainty, his intention to pervert the truth before we adjudge him criminally liable. In cases of falsification, we have interpreted that the criminal intent to pervert the truth is lacking in cases showing that (1) the accused did not benefit from the falsification; **and** (2) no damage was caused either to the government or to a third person.

In *Amora, Jr. v. Court of Appeals,*[53] the accused construction contractor was absolved even if he had admittedly falsified time books and payrolls. The Court appreciated the fact that he did not benefit from the transaction and was merely forced to adjust the supporting papers in order to collect the piece of work he had actually constructed. On that occasion, we explained at length the nuanced appreciation of criminal intent in falsification of documents, *viz.:*

Although the project was truly a contract for a piece of work, nevertheless he used the daily wage method and not the contract vouchers. This was not his idea but by the municipal mayor and treasurer to prepare a payroll and list of laborers and their period of work and to pay them the minimum wage so that the total payment would equal the total contract price. This is the so-called bayanihan system practiced by former Mayor Bertumen and Engineer Bertumen of the 2nd engineering district. In the payrolls only some 20 names of the 200 laborers were listed as not all of them could be accommodated. Those not listed received their wages from those listed. As all of the utilized laborers were duly paid, not one complained. Neither did the municipality complain. x x x.

x x x x x x x x x.

From the foregoing coupled with the fact that the town of Guindulman suffered no damage and even gained on the project (the cost of the boulders actually delivered was ₱18,285.00 but Murillo was paid only ₱13,455.00) plus the additional fact that the alleged complaining witness mentioned in the informations suffered no damage whatsoever and were in fact awarded no indemnity, it is obvious

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[52] *Lastrilla v. Granda*, 516 Phil. 667 (2006).

[53] 200 Phil. 777 (1982).

that the falsifications made by the petitioners were done in good faith; there was no criminal intent. x x x. In other words, although the accused altered a public document or made a misstatement or erroneous assertion therein, he would not be guilty of falsification as long as he **acted in good faith and no one was prejudiced by the alteration or error.** (Emphasis supplied)[54]

In *Regional Agrarian Reform Adjudication Board v. Court of Appeals,*[55] the heirs of the deceased falsified the signature of the latter in a Notice of Appeal. The Court rejected the imputation of falsification because the forgery produced no effect:

In the instant case, given the heirs' admissions contained in several pleadings that Avelino and Pedro are already deceased and their submission to the jurisdiction of the Regional Adjudicator as the successors-in-interest of the decedents, the effect would be the same if the heirs did not sign the decedents' names but their own names on the appeal.[56]

This Court is well aware that falsification of documents under paragraph 1 of Article 172, like Article 171, does not require the idea of gain or the intent to injure a third person as an element of conviction. But, as early as *People v. Pacana,*[57] we have said:

Considering that even though in the falsification of public or official documents, whether by public officials or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the solemnly proclaimed, it must, nevertheless, be borne in mind that **the change in the public document must be such as to affect the integrity of the same or to change the effects which it would otherwise produce**; for unless that happens, there could not exist the essential element

[54] *Id*. at 781-783.

[55] 632 Phil. 191 (2010).

[56] *Id*. at 214.

[57] 47 Phil. 48 (1924).

of the intention to commit the crime which is required by Article 1 [now Article 3] of the Penal Code. (Emphasis supplied)[58]

Here we find that, similar to *Amora, Jr.* and *Regional Agrarian Reform Adjudication Board,* there is no moral certainty that Alid benefitted from the transaction, with the government or any third person sustaining damage from his alteration of the document.

The peculiar situation of this case reveals that Alid falsified the PAL Ticket just to be consistent with the deferred date of the turnover ceremony for the outgoing and the incoming Secretaries of the DA Central Office in Quezon City. Notably, he had no control as to the rescheduling of the event he had to attend. Neither did the prosecution show that he had incurred any additional benefit when he altered the document. Moreover, after he submitted the PAL Ticket that he had used to support his liquidation for a cash advance of ₱10,496, the public funds kept by the DA remained intact: no apparent illegal disbursement was made; or any additional expense incurred.

Considering, therefore, the obvious intent of Alid in altering the PAL Ticket – to remedy his liquidation of cash advance with the correct date of his rescheduled travel – we find no malice on his part when he falsified the document. For this reason, and seeing the overall circumstances in the case at bar, we cannot justly convict Alid of falsification of a commercial document under paragraph 1 of Article 172.

WHEREFORE, the Rule 65 petitions in G.R. Nos. 186329 and 186584-86 are hereby **DISMISSED** for being moot and academic. The Rule 45 Petition for Review in G.R. No. 198598 is **GRANTED**. The assailed Decision and Resolution of the Sandiganbayan are **REVERSED** and **SET ASIDE**, and a new judgment is hereby rendered **ACQUITTING** petitioner Abusama M. Alid in SB-07-CRM-0073.

SO ORDERED.

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

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[58] *Id.* at 56.

SECOND DIVISION

[G.R. No. 188307. August 2, 2017]

MULTINATIONAL VILLAGE HOMEOWNERS' ASSOCIATION, INC., RAMON MAGBOO, JIMMY DEL MUNDO,[*] CARLOS RAPAY, and DR. JOSEFINA TIOPIANCO,[**] *petitioners, vs.* **ARNEL M. GACUTAN, RAFAEL TEYLAN, EDMUND T. HERNANDEZ, DANILO ARANETA, MIGUEL DAVID, JOLIE R. PELAYO, BOBBY D. YUTADCO,[***] DANIEL TENORIO, MICHAEL KHO, and DANILO CAMBEL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REVIEWS AN ERROR OF JURISDICTION; PROPER REMEDY TO ASSAIL A RESOLUTION OF THE OFFICE OF THE PRESIDENT WHICH ALLEGEDLY MODIFIED A FINAL AND EXECUTORY DECISION.—** As a rule, judgments, final orders or resolutions of the OP may be taken to the Court of Appeals by filing a verified petition for review within 15 days from notice. However, where the petition **alleges** grave abuse of discretion as when the assailed resolution substantially modifies a decision that already became final and executory, what is involved is an error of jurisdiction that is reviewable by *certiorari*, and no longer an error of judgment which is reviewable by an appeal under Rule 43. x x x [R]espondents in this case do not pray for a review on the merits of the OP resolutions. Rather, they challenge the jurisdiction of the OP to modify the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was affirmed by the final and executory OP Decision dated 16 May 2006. Necessarily, the case implicates an error of jurisdiction, **not** an error of judgment.

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[*] Also referred to in some parts of the records as Jaime Del Mundo.

[**] Also referred to in some parts of the records as Dr. Josefina Tiopiangco.

[***] Also referred to in some parts of the records as Roberto Yutadco.

2. ID.; ID.; ID.; THE OFFICE OF THE PRESIDENT (OP) CLARIFICATORY RESOLUTION DID NOT VIOLATE THE DOCTRINE OF IMMUTABILITY OF FINAL AND EXECUTORY JUDGMENTS.— Stripped to its core, the present controversy concerns the alleged variance between the Decision dated 10 March 2005 of the HLURB-NCRFO, as affirmed by the final and executory OP Decision dated 16 May 2006, on the one hand, and the OP Clarificatory Resolution, on the other. x x x [The Court ruled,] the OP Clarificatory Resolution did not modify but merely clarified the ambiguity in the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO. Indeed, when a final judgment is executory, it becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. However, where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final. x x x [A]ssuming that the OP Clarificatory Resolution modified the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, the supposed amendment partakes of a *nunc pro tunc* order. A *nunc pro tunc* order is an exception to the doctrine of immutability of final and executory judgments. x x x Further, in *Mocorro, Jr. v. Ramirez*, the Court cautioned that a *nunc pro tunc* judgment **cannot** prejudice any party.

3. POLITICAL LAW; ADMINISTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HOLD-OVER DIRECTORS CANNOT UNJUSTIFIABLY REFUSE TO CALL AND HOLD AN ELECTION WHEN MANDATED BY THE ASSOCIATION BY-LAWS.— HLURB Resolution No. 770, Series of 2004 (HLURB Resolution No. 770-04), entitled "Framework for Governance of Homeowners Associations," defines hold-over directors or officers in this wise: SECTION 67. *Hold-over*. — Where there is failure to elect a new set of directors or officers, the incumbents should

be allowed to continue in a holdover capacity until their successors are elected and qualified, subject to compliance with applicable HLURB Rules on the non-holding or postponement of regular or special elections. In this regard, HLURB Resolution No. R-771, Series of 2004 (HLURB Resolution No. R-771-04), entitled "Rules on the Registration and Supervision of Homeowners' Associations," lays down the rules on the election of directors x x x While HLURB Resolution Nos. 770-04 and R-771-04 do not expressly set the maximum period that a director or officer may serve in a hold-over capacity, the BOD of a homeowners' association cannot unjustifiably refuse to call and hold an election when mandated by the association by-laws. Section 4 of HLURB Resolution No. R-771-04 expressly authorizes the HLURB-NCRFO to call the election when the circumstances so warrant, as in this case. To sustain respondents' hold-over positions since 2005 is to make them stay in the BOD for approximately 12 years, notwithstanding the expiration of their one-year term. x x x Notably, Republic Act No. 9904, or the Magna Carta for Homeowners and Homeowners' Associations, was approved and became effective in 2010. Section 60 of its Implementing Rules and Regulations expressly sets forth that "**(i)n no case shall the hold-over term of the officers/directors/trustees exceed two (2) years**."

APPEARANCES OF COUNSEL

Tagle-Chua Cruz & Aquino for petitioners.
Sacramento Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This case involves an election contest between two rival groups of homeowners (the 2005 and 2004 directors as petitioners and respondents, respectively) whose feud started as far back as 2004.

Petitioners come before this Court via Rule 45 of the Rules of Court to assail the Decision dated 27 February 2009[1] and Resolution dated 5 June 2009[2] of the Court of Appeals in CA-G.R. SP No. 99712. The Court of Appeals nullified the Resolution dated 2 April 2007 (Clarificatory Resolution)[3] and Resolution dated 18 June 2007[4] issued by the Office of the President (OP) in O.P. Case No. 05-K-377, and directed the Housing and Land Use Regulatory Board (HLURB) to enforce the earlier OP Decision dated 16 May 2006,[5] which in turn, reinstated the Decision dated 10 March 2005[6] of the HLURB-National Capital Region Field Office (NCRFO). Further, the Court of Appeals set aside all the elections conducted while the case was pending, effectively declaring respondents as hold-over directors since the expiration of their term in 2005.

The Antecedent Facts

Sometime during the first week of January 2005, respondents, as then officers and members of the Board of Directors (BOD) of petitioner Multinational Village Homeowners Association, Inc. (MVHAI), approved a resolution setting the annual election of the members of the BOD on 23 January 2005 and the guidelines on proxy voting, among others. To notify the homeowners, copies of the resolution were distributed. Two days before the scheduled election, or on 21 January 2005, petitioner Jimmy del Mundo sought injunctive relief[7] from the HLURB-NCRFO because of the alleged lack of transparency in the issuance of proxy forms and the alleged burning of election records to supposedly prevent verification of

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[1] *Rollo*, pp. 58-86. Penned by Associate Justice Romeo F. Barza, with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok concurring.

[2] *Id*. at 88-90.

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

[4] *Id*. at 93.

[5] *Id*. at 151-155.

[6] *Id*. at 132-147.

[7] Docketed as HLURB Case No. NCRHOA-020105-557.

the previous elections. On the same day, the HLURB-NCRFO granted the application and issued a restraining order against, not only the further issuance of proxy forms, but also proxy voting itself in the forthcoming election. In turn, the Committee on Election (Comelec) of petitioner MVHAI, which was constituted by respondents as the 2004 directors, issued a resolution in the early morning of 23 January 2005 postponing the village poll to prevent disenfranchising the voters who wanted to vote by proxy. Majority of the qualified members of petitioner MVHAI allegedly ignored the resolution of the Comelec and constituted a new Comelec to supervise the election. The village poll proceeded as scheduled and based on the results, petitioners garnered the highest number of votes. Insisting that petitioners were not authorized under the association by-laws to call an election, respondents refused to relinquish their posts and declared themselves as hold-over directors until elections were properly held.

Petitioners then filed an election contest docketed as HLURB Case No. NCRHOA-020105-557 before the HLURB-NCRFO praying that their election be affirmed and that respondents be permanently enjoined from acting as hold-over directors of petitioner MVHAI. Meanwhile, petitioners were provisionally allowed to maintain their seats in the 2005 BOD until judgment was rendered. In its Decision dated 10 March 2005,[8] the HLURB-NCRFO dismissed the complaint and nullified the 2005 election for having been called without authority. The dispositive portion reads in its entirety:

> WHEREFORE, the foregoing premises considered, a judgment is hereby rendered dismissing complainants' prayers for affirmation of their election but instead invalidating said election last January 23, 2005.
>
> Accordingly, the complainants are hereby directed to peacefully and orderly relinquish their office and position to the former members of the Board of Directors of MVHAI and leave its clubhouse and turn-over [sic] the custody thereof to the Board of Directors, and submit a written accounting of moneys received and disbursed from the moment they took over on February 4, 2005 as well as inventory the items therein in

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[8] *Rollo*, pp. 132-147.

the presence of the Management Election Committee of MVHAI. To encourage and ensure a peaceful, humane, courteous, and orderly turn-over [sic] of the clubhouse and the above records and assets of MVHAI, let these proceedings be observed by the members of MVHAI, local government officials, interested entities; and, when warranted by overriding requirements of peace and tranquility, by authorized peace officers.

Let a [sic] Ad Hoc or Election Committee of MVHAI be immediately constituted and appointed which shall be composed of a competent professional or corporate attorney as chairman and representative of this Office, and one representative each from the parties who are members of MVHAI and are knowledgeable in corporate proceedings and with known reputation for competence, probity and integrity, which Committee shall provide MVHAI the requisite expertise and objectivity in calling and holding of the meeting of the members to elect the directors of MVHAI. The said Ad Hoc or Election Committee shall perform its functions and hold office in an accessible, open but secure portion or space of the clubhouse, free and unaffected or uncontrolled at all times from any partisan actions or influences of the parties.

After its constitution and appointment of its Chairman and two (2) members, the Committee shall forthwith meet to determine and formulate, among others, appropriate mechanics and rules for the qualification of the members who shall vote and seek an elective, etc. All meetings, discussions and deliberations to be conducted by the Ad Hoc or Election Committee shall be open and transparent to all parties and members of the association who shall have free and unrestrained access to the venue of said meeting or conferences of this special Committee.

This decision is immediately executory pursuant to Section 9, Rule VI of the 2004 Rules of Procedure of this Board.

IT IS SO ORDERED.[9]

Aggrieved, petitioners appealed to the HLURB-Board of Commissioners (BoC).[10] Reversing the decision of the HLURB-NCRFO, the HLURB-BoC declared the 2005 election valid on the ground that "the will of the majority of the members of (petitioner)

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[9] *Id*. at 146-147.

[10] Docketed as HLURB Case No. HOA-A-050413-0010.

MVHAI x x x must be respected." The dispositive portion of the Decision dated 13 October 2005 reads:

Wherefore, the appeal is granted. The decision of the office below is set aside and a new decision is rendered declaring the election held on January 23, 2005 for the Board of Directors of MVHA [sic] as valid.

So ordered.[11]

Respondents then filed with the OP a Petition for Review, docketed as O.P. Case No. 05-K-377. In its Decision dated 16 May 2006, the OP granted the appeal, set aside the decision of the HLURB-BoC and reinstated the earlier decision of the HLURB-NCRFO. The dispositive portion reads:

WHEREFORE, the instant appeal is hereby granted, and the assailed decision of the Board of Commissioners of the HLURB is SET ASIDE. The decision rendered by the NCR Field Office dated March 10, 2005 is hereby REINSTATED.

SO ORDERED.[12]

For failure of petitioners to seek reconsideration and upon motion of respondents, the OP issued a Resolution dated 18 July 2006 declaring its Decision dated 16 May 2006 final and executory:

WHEREFORE, in view of the foregoing, the Decision of this Office dated May 16, 2006 is hereby declared FINAL AND EXECUTORY. The records of this case are hereby remanded to the Housing and Land Use Regulatory Board for its appropriate action.

SO ORDERED.[13]

The HLURB-NCRFO then issued a Writ of Execution dated 3 August 2006 (Writ)[14] ordering the sheriff of the Regional Trial Court of Parañaque City to execute the Decision dated 10 March 2005 of the HLURB-NCRFO. On the other hand, petitioners filed

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[11] *Rollo*, p. 150.

[12] *Id*. at 155.

[13] *Id*. at 156.

[14] *Id*. at 157-160.

a Motion for Quashal of the Writ alleging that the Writ to be enforced had become *functus officio* because of a supposed material change in circumstances on account of the election held on 29 January 2006 and the subsequent constitution of the 2006 BOD. In its Order dated 16 August 2006,[15] the HLURB-NCRFO denied petitioners' motion holding that the 2006 election was invalid for having been called without authority under the by-laws of petitioner MVHAI.

Petitioners then filed a motion before the HLURB-BoC seeking to restrain the implementation of the Order dated 16 August 2006. On 31 August 2006, the HLURB-BoC enjoined the parties to maintain the status quo by allowing the 2006 BOD to continue performing their functions pending the resolution of the issues attendant to the implementation of the Writ.[16] Consequently, respondents went before the OP to assail the Status Quo Order of the HLURB-BoC. In its Order dated 2 January 2007,[17] the OP set aside the issuance and directed the HLURB-BoC to implement the final and executory OP Decision dated 16 May 2006. Meanwhile, the HLURB-BoC, instead of resolving petitioners' pending motion seeking to restrain the implementation of the Order dated 16 August 2006 and respondents' Urgent *Ex-Parte* Motion to Immediately Recall and/or Annul the Order dated 31 August 2006, sought for clarification from the OP on whom the Decision dated 16 May 2006 will be implemented against – whether the 2005 or 2006 BOD of petitioner MVHAI.[18]

In January 2007, the 2006 BOD of petitioner MVHAI planned to hold an election for the 2007 BOD. This prompted respondents to apply for injunctive relief[19] with the HLURB-NCRFO, which in turn, elevated the matter to the HLURB-BoC.[20] Citing the pending

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[15] *Id*. at 161-165.

[16] *Id*. at 166.

[17] *Id.* at 167-169.

[18] *Id.* at 170-172.

[19] Docketed as HLURB Case No. NCRHOA-011107-812.

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

request for a clarificatory order from the OP, the HLURB-BoC refused to act on the application.[21] Consequently, the 2006 BOD of petitioner MVHAI conducted an election on 28 January 2007 and the 2007 BOD was subsequently constituted.

Meanwhile, respondents moved for the issuance of an Alias Writ of Execution, which the HLURB-NCRFO granted in its Order dated 9 February 2007.[22] On 12 February 2007, the HLURB-NCRFO issued an Alias Writ of Execution.[23] The Alias Writ was partially implemented on 29 March 2007 with the successful takeover of the clubhouse, which, by then, was already emptied of records.[24] Holed up in the auditorium of petitioner MVHAI, the 2007 BOD refused to relinquish the records arguing that the Alias Writ was only enforceable against the 2005 BOD and not them.

The OP Clarificatory Resolution

On 2 April 2007, the OP issued a Clarificatory Resolution in response to the request of the HLURB-BoC. The dispositive portion reads:

> WHEREFORE, in order to give full meaning and equitably enforce the final and executory Decision of this Office dated May 16, 2006, it is hereby ordered that:
>
> (1) The 2004 MVHOA Board of Directors shall call, conduct an election, and proclaim the winners within thirty (30) days from receipt of this resolution;
>
> (2) The HLURB Board of Commissioners shall supervise the said election;
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> (3) Pending the conduct of the election and the proclamation of winners, all contracts to be entered into by the MVHOA shall be held in abeyance, but the 2004 Board of Directors shall manage MVHOA's daily operations; and

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[21] *Id*. at 175-177.

[22] *Id.* at 178-180.

[23] *Id*. at 181-185.

[24] *Id*. at 189-191.

(4) The winners in the election shall immediately assume their post after their proclamation so as not to further prejudice the affairs of the MVHOA.

SO ORDERED.[25]

Respondents moved for a partial reconsideration of the OP Clarificatory Resolution. According to them, the OP Clarificatory Resolution substantially modified the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was reinstated by the final and executory OP Decision dated 16 May 2006. In its Resolution dated 18 June 2007,[26] the OP denied respondents' motion.

The Decision of the Court of Appeals

On 16 July 2007, respondents filed a Petition for *Certiorari*[27] under Rule 65 of the Rules of Court. Initially, the Court of Appeals dismissed the petition in its Resolution dated 10 August 2007[28] for allegedly being the wrong remedy. Upon motion of respondents,[29] the Court of Appeals reconsidered its resolution, reinstated respondents' Petition for *Certiorari*, and directed petitioners to file their comment.[30]

Meanwhile, to implement the OP Clarificatory Resolution, specifically the order to call and hold an election, the HLURB-BoC issued an Order dated 4 May 2007[31] directing the HLURB-NCRFO to supervise the election. The former also authorized the latter to conduct a pre-election conference for the purposes of "constituting a Committee on Election, drawing up the list of qualified voters, and such other matters as may be necessary in order to ensure

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[25] *Id*. at 92.

[26] *Id*. at 93.

[27] *Id*. at 94-128.

[28] *Id*. at 210-212.

[29] *Id*. at 213-224.

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

[31] *Id*. at 204-205.

orderly proceedings and adherence to the association by-laws."[32] In turn, the HLURB-NCRFO issued an Order dated 8 May 2007[33] notifying the parties about the scheduled pre-election conference on 11 May 2007. On 12 August 2007, the election proceeded as scheduled under the supervision of the HLURB-NCRFO for the constitution of the 2007 BOD, but without the participation of respondents.[34] Subsequent elections were likewise held on 25 January 2009 and 30 January 2009.[35]

In its Decision dated 27 February 2009, the Court of Appeals granted respondents' Petition for *Certiorari* and nullified all elections conducted during the pendency of the case. The dispositive portion reads in its entirety:

> WHEREFORE, in view of the foregoing, the petition is GRANTED. Accordingly, the Resolutions, dated 02 April 2007, and 18 June 2007, of the Office of the President in O.P. Case No. 05-K-377 are hereby NULLIFIED and SET ASIDE for being VOID. Perforce, all the elections conducted after the 10 March 2005 Decision of the HLURB-NCRFO are hereby NULLIFIED. Accordingly, the HLURB is hereby directed to enforce the Decision of the Office of the President dated May 16, 2006, which reinstated HLURB-NCR Field Office Decision dated March 10, 2005, with utmost dispatch until it is fully satisfied.
>
> SO ORDERED.[36]

Petitioners then filed a motion for reconsideration,[37] which the Court of Appeals denied in its Resolution dated 5 June 2009[38] for lack of merit. Hence, petitioners filed this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

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[32] *Id.* at 205.

[33] *Id*. at 206-207.

[34] *Id.* at 241-245.

[35] *Id*. at 30, 304.

[36] *Id*. at 84-85.

[37] *Id*. at 256-284.

[38] *Id*. at 88-90.

The Issues

In sum, the issues to be resolved by the Court are the following:

I. Whether the Court of Appeals committed a reversible error in reconsidering the dismissal of and reinstating the Petition for *Certiorari* notwithstanding that the OP Clarificatory Resolution and Resolution dated 18 June 2007 sought to be nullified already became final and executory when respondents failed to timely appeal.

II. Whether the Court of Appeals committed a reversible error in declaring that the OP Clarificatory Resolution and Resolution dated 18 June 2007 modified the Decision dated 10 March 2005 of the HLURB-NCRFO, which was reinstated by the final and executory OP Decision dated 16 May 2006.

III. Whether the Court of Appeals committed a reversible error in invalidating all elections conducted during the pendency of this case.

The Ruling of the Court

We grant the petition.

Certiorari *is the proper remedy for assailing an order that allegedly modified a final decision.*

Petitioners argue that a petition for review under Rule 43 of the Rules of Court was the proper remedy to assail the OP Clarificatory Resolution and Resolution dated 18 June 2007 since they were final orders issued by the OP. On the other hand, respondents maintain that *certiorari* was warranted, considering that the OP committed grave abuse of discretion in modifying the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was reinstated *in toto* by the final and executory OP Decision dated 16 May 2006.

Respondents are correct.

As a rule, judgments, final orders or resolutions of the OP may be taken to the Court of Appeals by filing a verified petition for

review within 15 days from notice.[39] However, where the petition **alleges** grave abuse of discretion as when the assailed resolution substantially modifies a decision that already became final and executory, what is involved is an error of jurisdiction that is reviewable by *certiorari*, and no longer an error of judgment which is reviewable by an appeal under Rule 43. In *Fortich v. Corona*,[40] the Court thus explained:

> It is true that under Rule 43, appeals from awards, judgments, final orders or resolutions of any quasi-judicial agency exercising quasi-judicial functions, including the Office of the President, may be taken to the Court of Appeals by filing a verified petition for review within fifteen (15) days from notice of the said judgment, final order or resolution, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.
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> However, we hold that, in this particular case, the remedy prescribed in Rule 43 is inapplicable considering that the **present petition contains an allegation that the challenged resolution is "patently illegal" and was issued with "grave abuse of discretion" and "beyond his** (respondent Secretary Renato C. Corona's) **jurisdiction" when said resolution substantially modified the earlier OP Decision of March 29, 1996 which had long become final and executory**. In other words, the crucial issue raised here involves an error of jurisdiction, not an error of judgment which is reviewable by an appeal under Rule 43. Thus, the **appropriate remedy to annul and set aside the assailed resolution is an original special civil action for *certiorari* under Rule 65**, as what the petitioners have correctly done. x x x.[41] (Emphasis supplied; citations omitted)

Petitioners' reliance on *De Los Santos v. Court of Appeals*[42] is misplaced. In *De Los Santos*, the petitioners went before the Court via *certiorari* to seek the **reversal** of the resolutions rendered by the Court of Appeals. Otherwise put, what was involved was an error

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[39] Rules of Court, Rule 43, Sec. 1.

[40] 352 Phil. 461 (1998).

[41] *Id*. at 477-478.

[42] 522 Phil. 313 (2006).

of judgment, leading the Court to conclude that "x x x the remedy to obtain reversal or modification of a judgment is appeal x x x even if the error, or one of the errors, ascribed to the court rendering the judgment is its grave abuse of discretion or lack of jurisdiction or the exercise of power inexcess thereof."[43]

In contrast, respondents in this case do not pray for a review on the merits of the OP resolutions. Rather, they challenge the jurisdiction of the OP to modify the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was affirmed by the final and executory OP Decision dated 16 May 2006. Necessarily, the case implicates an error of jurisdiction, **not** an error of judgment.

The OP Clarificatory Resolution and Resolution dated 18 June 2007 were valid and did not violate the doctrine of immutability of final and executory judgments.

Stripped to its core, the present controversy concerns the alleged variance between the Decision dated 10 March 2005 of the HLURB-NCRFO, as affirmed by the final and executory OP Decision dated 16 May 2006, on the one hand, and the OP Clarificatory Resolution, on the other. Petitioners argue that the assailed resolutions did not modify the latter because the OP still ordered the holding of an election. Petitioners add that in any event, the amendment was justified by supervening events. Meanwhile, respondents contend that the assailed resolutions modified a final and executory decision in violation of the doctrine of immutability of final and executory judgments.

Respondents are wrong, but not for the reasons advanced by petitioners.

First, the OP Clarificatory Resolution did not modify but merely clarified the ambiguity in the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO.

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[43] *Id*. at 319-320.

Indeed, when a final judgment is executory, it becomes immutable and unalterable.[44] The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.[45] The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[46] However, where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final.[47] In *State Investment House, Inc. v. Court of Appeals*,[48] the Court made a jurisprudential survey establishing this doctrine:

> We begin by noting that the trial court has asserted authority to issue the clarificatory order in respect of the decision of Judge Fortun, even though that judgment had become final and executory. In *Reinsurance Company of the Orient, Inc. v. Court of Appeals*, this Court had occasion to deal with the applicable doctrine to some extent:
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>> "[E]ven a judgment which has become final and executory may be clarified under certain circumstances. The dispositive portion of the judgment may, for instance, contain an error clearly clerical in nature (perhaps best illustrated by an error in arithmetical computation) or an ambiguity arising from inadvertent omission, which error may be rectified or ambiguity clarified and the omission supplied by reference primarily to the body of the decision itself. Supplementary reference to the pleadings previously filed in the case may also be resorted to by way of corroboration of the existence of the error or of the ambiguity in the dispositive part of the judgment. In *Locsin et al. v. Paredes, et al.*, this Court allowed a judgment which had become final and executory to be clarified by

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[44] *Mayon Estate Corp. v. Altura*, 483 Phil. 404, 413 (2004).

[45] *Alba Patio de Makati v. National Labor Relations Commission*, 278 Phil. 370, 376 (1991).

[46] *Paramount Insurance Corp. v. Japzon*, 286 Phil. 1048, 1056 (1992).

[47] *Tuatis v. Sps. Escol*, 619 Phil. 465, 485 (2009).

[48] 275 Phil. 433 (1991).

supplying a word which had been inadvertently omitted and which, when supplied, in effect changed the literal import of the original phraseology:

x x x x x x x x x

In *Filipino Legion Corporation v. Court of Appeals, et al.*, the applicable principle was set out in the following terms:

'[W]here there is ambiguity caused by an omission or mistake in the dispositive portion of a decision, the court may clarify such ambiguity by an amendment even after the judgment had become final, and for this purpose it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision.'

In *Republic Surety and Insurance Company, Inc. v. Intermediate Appellate Court*, the Court, in applying the above doctrine, said:

'x x x We clarify, in other words, what we did affirm. What is involved here is not what is ordinarily regarded as a clerical error in the dispositive part of the decision of the Court of First Instance, x x x. At the same time, what is involved here is not a correction of an erroneous judgment or dispositive portion of a judgment. What we believe is involved here is in the nature of an inadvertent omission on the part of the Court of First Instance (which should have been noticed by private respondents' counsel who had prepared the complaint), of what might be described as a logical follow-through of something set forth both in the body of the decision and in the dispositive portion thereof; x x x.'[49] (Citations omitted).

To recall, in its final and executory Decision dated 16 May 2006, the OP reinstated the Decision dated 10 March 2005 of the HLURB-NCRFO. Notably, the dispositive portion of the latter consists of two parts: (a) an order to petitioners to relinquish their positions in favor of respondents; and (b) an order to hold an election for the next BOD. In this regard, a comparison of the dispositive portions of the OP Clarificatory Resolution and the reinstated Decision dated 10 March 2005 of the HLURB-NCRFO is instructive.

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[49] *Id.* at 440-441.

(a) Order to relinquish posts

HLURB-NCRFO Decision dated 10 March 2005	OP Clarificatory Resolution
WHEREFORE, the foregoing premises considered, a judgment is hereby rendered dismissing complainants' prayers for affirmation of their election but instead invalidating said election last January 23, 2005. Accordingly, the complainants are hereby directed to peacefully and orderly relinquish their office and position to the former members of the Board of Directors of MVHAI and leave its clubhouse and turn-over [sic] the custody thereof to the Board of Directors, and submit a written accounting of moneys received and disbursed from the moment they took over on February 4, 2005 as well as inventory the items therein in the presence of the Management Election Committee of MVHAI. To encourage and ensure a peaceful, humane, courteous, and orderly turn-over [sic] of the clubhouse and the above records and assets of MVHAI, let these proceedings be observed by the members of MVHAI, local government officials, interested entities; and, when warranted by overriding requirements of peace and tranquility, by authorized peace officers. x x x x[50]	WHEREFORE, x x x: x x x x (3) Pending the conduct of the election and the proclamation of winners, all contracts to be entered into by the MVHOA shall be held in abeyance, but the 2004 Board of Directors shall manage MVHOA's daily operations; and x x x x SO ORDERED.[51]

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[50] *Rollo*, p. 146.

[51] *Id*. at 130.

As illustrated in the foregoing table, the OP directed respondents, being the 2004 BOD, to manage the daily operations of petitioner MVHAI pending the election of the next BOD. Without doubt, respondents, as the legitimate BOD, can only manage the daily operations of petitioner MVHAI if they were allowed to sit in the board and enjoy physical possession of the clubhouse, records and other properties of petitioner MVHAI. In other words, paragraph 3 of the dispositive portion of the OP Clarificatory Resolution is simply a reiteration of the earlier order of the HLURB-NCRFO directing petitioners "to peacefully and orderly relinquish their office and position to the former members of the Board of Directors of MVHAI and leave its clubhouse and turn-over [sic] the custody thereof to the Board of Directors, and submit a written accounting of moneys received and disbursed from the moment they took over on February 4, 2005 as well as inventory the items therein."[52]

Contrary to the position of respondents, the omission of the exact same directive of the HLURB-NCRFO in the dispositive portion of the OP Clarificatory Resolution is not tantamount to its deletion as to constitute an amendment of a final and executory judgment. In *UPSI Property Holdings, Inc. v. Diesel Construction Co., Inc.*,[53] the Court thus held:

> The crucial issue for resolution revolves around the propriety of the inclusion of the legal interest in the writ of execution despite the "silence" of the Court in the dispositive portion of its judgment which has become final and executory.
>
> x x x x x x x x x
>
> Thus, contrary to UPSI's argument, there is no substantial variance between the March 24, 2008 final and executory decision of the Court and the writ of execution issued by the CIAC to enforce it. The Court's silence as to the payment of the legal interests in the dispositive portion of the decision is not tantamount to its deletion or reversal. The CA was correct in holding that if such was the Court's intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to UPSI.

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[52] *Id*. at 146.

[53] 740 Phil. 655 (2014).

x x x x x x x x x

x x x. As a corollary rule, the Court has clarified that "**a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto**."[54] (Emphasis in original; citation omitted)

More instructive, in *Republic Surety and Insurance Co., Inc. v. Intermediate Appellate Court*,[55] the Register of Deeds refused to cancel the existing transfer certificate of title (TCT) on the ground that the dispositive portion of the trial court's decision did not expressly order the cancellation of the TCT and revival of the old title in favor of the victorious party. Speaking through Justice Feliciano, the Court held that the missing "order to cancel and revive" should be deemed implied in the trial court's decision nullifying the deed of sale, thus:

x x x. What we believe is involved here is in the nature of an inadvertent omission on the part of the Court of First Instance x x x, of what might be described as a logical follow-through of something set forth both in the body of the decision and in the dispositive portion thereof: the inevitable follow-through, or translation into, operational or behavioral terms, of the annulment of the Deed of Sale with Assumption of Mortgage, from which petitioners' title or claim of title embodied in TCT 133153 flows. The dispositive portion of the decision itself declares the nullity *ab initio* of the simulated Deed of Sale with Assumption of Mortgage and instructed the petitioners and all persons claiming under them to vacate the subject premises and to turn over possession thereof to the respondent-spouses. Paragraph B of the same dispositive portion, confirming the real estate mortgage executed by the respondent-spouses also necessarily assumes that Title No. 133153 in the name of petitioner Republic Mines is null and void and therefore to be cancelled, since it is indispensable that the mortgagors have title to the real property given under mortgage to the creditor (Article 2085 [2], Civil Code). [56]

Indeed, even without the express reiteration of the order to petitioners to vacate their posts and turn over the physical possession

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[54] *Id*. at 664, 667 and 670.

[55] 236 Phil. 332 (1987).

[56] *Id*. at 339.

of the clubhouse, records and assets of petitioner MVHAI, paragraph 3 of the dispositive portion of the OP Clarificatory Resolution already sufficed. By itself, the express recognition of respondents as the lawful BOD without more can be lawfully executed against petitioners and compel them to surrender their custody of the clubhouse, records and assets of petitioner MVHAI in favor of respondents. Respondents' stubborn insistence on a word-for-word reproduction of the dispositive portion of the Decision dated 10 March 2005 finds no basis in law.[57]

(b) Order to hold an election

HLURB-NCRFO Decision dated 10 March 2005	OP Clarificatory Resolution
WHEREFORE, x x x. x x x x Let a [sic] Ad Hoc or Election Committee of MVHAI be immediately constituted and appointed which shall be composed of a competent professional or corporate attorney as chairman and representative of this Office, and one representative each from the parties who are members of MVHAI and are knowledgeable in corporate proceedings and with known reputation for competence, probity and integrity, which Committee shall provide MVHAI the requisite expertise and objectivity in calling and holding of the meeting of the members to elect the directors of MVHAI. The said Ad Hoc or Election Committee shall perform its functions and hold office in an	WHEREFORE, in order **to give full meaning and equitably enforce the final and executory Decision of this Office dated May 16, 2006**, it is hereby ordered that: (1) The 2004 MVHOA Board of Directors shall call, conduct an election, and proclaim the winners within thirty (30) days from receipt of this resolution; (2) The HLURB Board of Commissioners shall supervise the said election; (3) x x x; and (4) The winners in the election shall

[57] See *Col. dela Merced v. Government Service Insurance System*, 677 Phil. 88, 108 (2011).

accessible, open but secure portion or space of the clubhouse, free and unaffected or uncontrolled at all times from any partisan actions or influences of the parties.	immediately assume their post after their proclamation so as not to further prejudice the affairs of the MVHOA.
After its constitution and appointment of its Chairman and two (2) members, the Committee shall forthwith meet to determine and formulate, among others, appropriate mechanics and rules for the qualification of the members who shall vote and seek an elective, etc. All meetings, discussions and deliberations to be conducted by the Ad Hoc or Election Committee shall be open and transparent to all parties and members of the association who shall have free and unrestrained access to the venue of said meeting or conferences of this special Committee.	SO ORDERED.[59] (Emphasis supplied)
This decision is immediately executory pursuant to Section 9, Rule VI of the 2004 Rules of Procedure of this Board.	
IT IS SO ORDERED.[58]	

Similarly, the OP Clarificatory Resolution did not amend in any way the order to call an election contained in the Decision dated 10 March 2005 of the HLURB-NCRFO. If at all, the former merely set a 30-day timeline within which to hold an election. Other than that, the OP Clarificatory Resolution did not order anything new.

With respect to the directive to respondents to call and conduct an election, this is consistent with the legal conclusion of both the HLURB-NCRFO and the OP that under the by-laws of petitioner MVHAI, only the BOD can call and hold an election.

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[58] *Id*. at 146-147.

[59] *Rollo*, p. 92.

With respect to the supervision of the election by the HLURB-BoC, this was merely lifted from the body of the Decision dated 10 March 2005 of the HLURB-NCRFO. Paragraph 2 of the dispositive portion of the OP Clarificatory Resolution was also necessary to clarify how the Ad Hoc or Election Committee conceived by the HLURB-NCRFO would be constituted. In its Decision dated 10 March 2005, the HLURB-NCRFO thus explained:

Indeed, the real test by which the full support and backing by the members for the election and their candidates may be assessed is through a determination in whole and in every respect the qualifications of all members to vote and, after urging them all to cast their votes, save for those whose history of apathy is legend or nature and customary practice of snubbing elections is unswerving, the credible and honest counting or tabulation of their votes.

This objective may be achieved by **directing the opposing parties or protagonists in this highly-charged election contest to voluntarily and with good grace submit to an election to be supervised by this Office** in order that the members may unequivocally certify and attest through their ballots the bona fide representatives of their aspirations and goals in MVHAI.

For this purpose, a **Management, Ad Hoc or Election Committee**, which shall be composed of persons in MVHAI who are knowledgeable in corporate proceedings and with known reputation for competence, probity, and integrity, **shall be constituted by this Office** to provide the MVHAI the requisite expertise and objectivity in calling and holding of the meeting of the members to elect the true directors of MVHAI.[60] (Emphasis supplied)

Significantly, in its Order dated 4 May 2007,[61] the HLURB-BoC interpreted paragraph 2 of the dispositive portion of the OP Clarificatory Resolution in accordance with the Decision dated 10 March 2005 of the HLURB-NCRFO. The Order dated 4 May 2007 of the HLURB-BoC reads in pertinent part:

On April 02, 2007, the Office of the President promulgated a Resolution, the dispositive portion of which states:

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[60] *Id*. at 143.

[61] *Id*. at 204-205.

x x x x x x x x x

Wherefore, for the purpose of implementing the above orders, specifically paragraph 2 of the dispositive portion, and considering that the case has been previously remanded for execution proceedings, the Expanded National Capital Region Field Office (ENCRFO) is hereby ordered to supervise the said election. It is hereby authorized to call and conduct a pre-election conference for the purpose, among others, of constituting a Committee on Election, drawing up the list of qualified voters, and such other matters as may be necessary in order to ensure orderly proceedings and adherence to the association by-laws.[62]

The alleged amendment introduced by the insertion of the supervisory role of the HLURB-BoC in the election to be conducted is more apparent than real. To repeat, it was merely meant to clarify what was omitted in the dispositive portion, but expressly mentioned in the body, of the Decision dated 10 March 2005 of the HLURB-NCRFO.

With respect to the directive to the winners in the election to immediately assume their posts after their proclamation, this is the direct consequence of the last paragraph of the Decision dated 10 March 2005 of the HLURB-NCRFO declaring its decision "immediately executory pursuant to Section 9, Rule VI of the 2004 Rules of Procedure of this Board."

Hence, the OP Clarificatory Resolution merely clarified the Decision dated 10 March 2005 of the HLURB-NCRFO, nothing more.

Second, assuming that the OP Clarificatory Resolution modified the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, the supposed amendment partakes of a *nunc pro tunc* order.

A *nunc pro tunc* order is an exception to the doctrine of immutability of final and executory judgments. Affirming the *nunc pro tunc* judgment rendered by the Court of Appeals, the Court explained in *Filipinas Palmoil Processing, Inc. v. Dejapa*:[63]

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[62] *Id*.

[63] 656 Phil. 589 (2011).

As a general rule, final and executory judgments are immutable and unalterable, except under these recognized exceptions, to wit: (a) clerical errors; (b) *nunc pro tunc* entries which cause no prejudice to any party; and (c) void judgments. What the CA rendered on December 10, 2004 was a *nunc pro tunc* order clarifying the decretal portion of the August 29, 2002 Decision.

In *Briones-Vazquez v. Court of Appeals*, *nunc pro tunc* judgments have been defined and characterized as follows:

> The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.[64]

Further, in *Mocorro, Jr. v. Ramirez*,[65] the Court cautioned that a *nunc pro tunc* judgment **cannot** prejudice any party, thus:

The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. *Nunc pro tunc* judgments have been defined and characterized by the Court in the following manner:

x x x x x x x x x

Unquestionably, respondent and Azur were adjudged by the RTC jointly and severally liable for actual damages. But the *fallo* of the RTC decision did not indicate how the amount of the actual damages award should be determined. While the decision stated that the award of actual damages in the amount of PhP2,000 per Sunday was to be computed from August 2, 1992, there is nothing in the *fallo* suggesting at the very least when the PhP2,000 per Sunday liability will end.

In accordance with the exception for modification of a final judgment, there is a need to amend the decision of the RTC pursuant to the *nunc pro*

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[64] *Id.* at 598.

[65] 582 Phil. 357 (2008).

tunc rule which, we hasten to add, will cause **no prejudice to any party**. In this regard, justice and equity dictate that respondent and Azur should be held solidarily liable for actual damages in the amount of PhP2,000 for every actual illegal cockfight held, regardless of the staging date, in Azur's cockpit in Caibiran, Biliran, reckoned from August 2, 1992 to June 22, 2001 when the finality of the RTC Decision dated February 17, 1995 set in.[66] (Emphasis supplied)

To repeat, the OP Clarificatory Resolution did not add anything new, other than setting the 30-day timeline within which to conduct the election. This cannot in any way prejudice respondents considering that under the by-laws of petitioner MVHAI, the term of office of the BOD is one year only. Everything else in the assailed resolution is merely a reiteration of the body and/or *fallo* of the Decision dated 10 March 2005 of the HLURB-NCRFO. On the contrary, both the Decision dated 10 March 2005 of the HLURB-NCRFO and the OP Clarificatory Resolution were favorable to respondents as both issuances recognized them as the lawful BOD of petitioner MVHAI. Consequently, the OP Clarificatory Resolution is a valid *nunc pro tunc* order.

In view of the foregoing, the OP Clarificatory Resolution and Resolution dated 18 June 2007 denying respondents' Motion for Partial Reconsideration must be affirmed.

The election held on 12 August 2007 under the supervision of the HLURB and resulting in the constitution of the 2007 BOD of petitioner MVHAI was lawful.

Petitioners argue that the annual elections held during the pendency of the case before the Court of Appeals were justified by the expiration of the term of office of respondents as early as 2004. On the other hand, respondents claim that all elections, having been called by illegitimate BODs, were void.

Without doubt, the election of petitioners as the 2005 BOD of petitioner MVHAI is void. This was the categorical pronouncement of the HLURB-NCRFO, as affirmed by the OP in its Decision dated

[66] *Id.* at 367-368.

16 May 2006, which became final and executory. Pursuant to the doctrine of immutability of final and executory judgments, this Court can no longer disturb their conclusions of fact and law. However, the nullity of the 2005 election cannot be taken to the hilt as to invalidate all subsequent elections, particularly the election held on 12 August 2007.

The election held on 12 August 2007 was pursuant to the Decision dated 10 March 2005 of the HLURB-NCRFO, which was subsequently affirmed in the OP Decision dated 16 May 2006 and OP Clarificatory Resolution. Both parties were likewise duly notified of the pre-election proceedings as in fact, the HLURB orders were all attached as annexes to respondents' Petition for *Certiorari* before the Court of Appeals. However, respondents refused to participate because of their unfounded objection against the alleged variance between the Decision dated 10 March 2005 of the HLURB-NCRFO and the OP Clarificatory Resolution.

Surely, the annual election of directors of petitioner MVHAI cannot be held hostage by the whims of a group of homeowners who refuse to relinquish their seats in the BOD. In situations such as this, the issuances of the HLURB, which used to govern homeowners' associations at the time this case was filed, are instructive.

HLURB Resolution No. 770, Series of 2004 (HLURB Resolution No. 770-04), entitled "Framework for Governance of Homeowners Associations," defines hold-over directors or officers in this wise:

> SECTION 67. *Hold-over.* — Where there is failure to elect a new set of directors or officers, the incumbents should be allowed to continue in a holdover capacity until their successors are elected and qualified, subject to compliance with applicable HLURB Rules on the non-holding or postponement of regular or special elections.

In this regard, HLURB Resolution No. R-771, Series of 2004 (HLURB Resolution No. R-771-04), entitled "Rules on the Registration and Supervision of Homeowners' Associations," lays down the rules on the election of directors in this wise:

SECTION 3. *Inquiry on Non-Holding or Postponement of Association Meeting or Elections.* — If the reasons stated in the affidavit of non-holding of regular membership meeting or election as provided in Section 2 above are found to be without merit, the Regional Office may order the directors or trustees and officers of the Homeowners Association to immediately call for the conduct of the meeting or election that was not held or postponed. The directors or trustees and officers who failed to comply with the order shall be held jointly and severally liable therefor.

SECTION 4. *Election Supervision.* — The **Regional Office may call a special election for the officers of a Homeowners Association** and set the rules that shall govern the conduct thereof in consultation with the association.

SECTION 5. *Authority to Supervise Election.* — The Regional Office may designate one of its responsible officials to supervise, without right of substitution or delegation, the conduct of the special election of a Homeowners Association. Within ten (10) working days after the date of the election, said election supervisor shall submit a report to the Regional Office stating, among others, the following:

a. Whether the special election was held as scheduled;
b. Time of the commencement and end of the election;
c. The following information as appearing in the report of the committee on election of the Homeowners Association:
   i. Number of qualified voters;
   ii. Number of votes cast;
   iii. Number of votes received by individual candidates;
   iv. Protest registered on the day of election, if any; and
   v. Such other information as he may deem relevant and necessary.

While HLURB Resolution Nos. 770-04 and R-771-04 do not expressly set the maximum period that a director or officer may serve in a hold-over capacity, the BOD of a homeowners' association cannot unjustifiably refuse to call and hold an election when mandated by the association by-laws. Section 4 of HLURB Resolution No. R-771-04 expressly authorizes the HLURB-NCRFO to call the election when the circumstances so warrant, as in this case. To sustain respondents' hold-over positions since 2005 is to make them stay in the BOD for approximately 12 years, notwithstanding the expiration of their one-year term.

In *Valle Verde Country Club, Inc. v. Africa*,[67] the Court distinguished term from tenure, thus:

> Under the above-quoted Section 29 of the Corporation Code, a vacancy occurring in the board of directors caused by the expiration of a member's term shall be filled by the corporation's stockholders. Correlating Section 29 with Section 23 of the same law, VVCC alleges that a member's term shall be for one year and until his successor is elected and qualified; otherwise stated, a member's term expires only when his successor to the Board is elected and qualified. Thus, "until such time as [a successor is] elected or qualified in an annual election where a quorum is present," VVCC contends that "the term of [a member] of the board of directors has yet not expired."
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> x x x x x x x x x
>
> Term is distinguished from tenure in that an officer's "tenure" represents the term during which the incumbent actually holds office. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent.
>
> Based on the above discussion, when Section 23 of the Corporation Code declares that "the board of directors x x x shall hold office for one (1) year until their successors are elected and qualified", we construe the provision to mean that the term of the members of the board of directors shall be only for one year; their term expires one year after election to the office. The holdover period — that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification — is not part of the director's original term of office, nor is it a new term; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has expired, and the incumbent is holding the succeeding term.
>
> After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This

[67] 614 Phil. 390 (2009).

holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.[68]

Notably, Republic Act No. 9904, or the *Magna Carta* for Homeowners and Homeowners' Associations, was approved and became effective in 2010. Section 60 of its Implementing Rules and Regulations expressly sets forth that "**(i)n no case shall the hold-over term of the officers/directors/trustees exceed two (2) years**."

WHEREFORE, the petition is **GRANTED**. The Resolutions dated 2 April 2007 and 18 June 2007 of the Office of the President in O.P. Case No. 05-K-377 are **AFFIRMED** and the election conducted pursuant thereto in 2007 is hereby declared **VALID**.

SO ORDERED.

Peralta, Mendoza, Leonen, and *Martires, JJ.,* concur.

THIRD DIVISION

[G.R. No. 189493. August 2, 2017]

FCA SECURITY AND GENERAL SERVICES, INC., and/ or MAJ. JOSE LAID, JR., *petitioners, vs.* **SOTERO M. ACADEMIA, JR. II,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN EMPLOYER WHOSE DEFENSE IS AN EMPLOYEE'S VOLUNTARY RESIGNATION BEARS THE BURDEN OF PROVING SUCH DEFENSE BY CLEAR, POSITIVE AND CONVINCING EVIDENCE;

[68] *Id*. at 395-399.

CASE AT BAR.— The respondent alleged in his position paper that he had been placed on floating status for more than six months, x x x The respondent was bound to adduce sufficient proof of his allegations, but he did not discharge his burden. The only piece of evidence he tendered to substantiate his allegations was the January 27, 2003 memo issued by the petitioners. However, such evidence did not paint a clear picture of what actually transpired in the period from his altercation with Dunkin Donuts' driver up to January 27, 2003, and even after receiving such memo. Indeed, more proof was necessary from him. For sure, the memo alone did not suffice as evidence of his allegations because its text only indicated his being thereby "directed to report at FCA HEAD OFFICE for instruction and proper disposition." It behooved him to show if he actually complied with the directive of FCA to him, and to shed light on what happened after receiving the memo. But he did not discharge his burden because he did not establish how, from the time he received the directive to report to the head office, his situation had devolved into his having been placed on floating status. In contrast, the petitioners submitted the results of the investigation of the respondent. The results included the hand-written explanation on the incident at the RCBC branch as well as the typewritten statement in question-and-answer form, both executed and signed by the respondent himself. It is significant that he did not expressly repudiate his signatures therein, his only objection being solely based on the failure to have the statement sworn to before a notary public as borne out by the blank *jurat*. In an illegal dismissal case like this, the employer whose defense is the voluntary resignation of the employee must prove by clear, positive and convincing evidence that the resignation was voluntary. As the foregoing disquisition indicates, the petitioners fully discharged their burden of proof.

APPEARANCES OF COUNSEL

Batara Redublo & Partners Law Office for petitioners.
Public Attorney's Office for respondent.

DECISION

BERSAMIN, *J*.:

An employer who alleges an employee's voluntary resignation bears the burden of proving such allegation by clear, positive and convincing evidence. On the other hand, an employee who works as a security guard carries the burden of proving his allegation that he was placed on indefinite floating status, or was constructively dismissed.

The Case

The respondent, a security guard, instituted his complaint for illegal dismissal against petitioners FCA Security and General Services, Inc. (FCA) and its general manager, Maj. Jose Laid, Jr. (Maj. Laid, Jr.). In his decision issued on February 28, 2005,[1] Labor Arbiter Joel S. Lustria ruled the petitioners liable for illegal dismissal. However, the National Labor Relations Commission (NLRC) reversed the ruling on December 17, 2007, and dismissed the complaint for lack of merit.[2]

On *certiorari* initiated by the respondent, the Court of Appeals (CA) promulgated its decision on July 10, 2009 setting aside the decision of the NLRC on the ground that the latter had thereby gravely abused its discretion in reversing the Labor Arbiter, and, accordingly, reinstated the decision of the Labor Arbiter.[3] Hence, this appeal.

Antecedents

The NLRC recited the following factual and procedural antecedents:

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[1] *Rollo*, pp. 71-76.

[2] *Id.* at 131-138; penned by Commissioner Romeo L. Go, and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[3] *Id*. at 30-40; penned by Associate Justice Marlene Gonzales-Sison, and concurred in by Associate Justice Bienvenido L. Reyes (later a Member of this Court) and Associate Justice Isaias P. Dicdican.

The complainant alleges that on July 27, 1999, he was hired as a security guard by respondent FCA Security & General Services (FCA for brevity), a company engaged in the business of providing security and other related services. Complainant alleges that prior to his dismissal on January 27, 200[4], his last assignment was at the RCBC, Pasay City branch. Complainant claims that "*a twist of fate happened on January 28, 2003 when he was asked to report in their office and was pulled out with (sic) his post then in Rizal Commercial Banking Corporation Pasay City Branch*." Complainant asserts that respondent put him on "floating status" and was not given any assignment for more than six (6) months.

Hence, this complaint for illegal dismissal with monetary claims.

For their part, respondents admit that in July 1999, they employed complainant as a security guard. His latest assignment was at the RCBC branch in Edsa-Taft, Pasay City. During complainant's stint at the RCBC, he had an altercation with GEORGE CHUA, a driver of Dunking Donuts, wherein complainant drew and pointed his service firearm at CHUA. Consequently, GEORGE CHUA filed a complaint against complainant for grave threats with the Police Community Precinct No. 6, Pasay City Police Office, Southern Police District. Upon respondents' own investigation where complainant was given an opportunity to explain his side, Investigating Officer VIRGILIO D. TANGENTE recommended his suspension for seven (7) days. However, complainant expressed his preference to voluntary [sic] resign rather than receive his suspension. Thus, respondents gave him the clearance form for resigning personnel. Instead of submitting such form, complainant filed the instant case.

In his Reply, complainant asserts that he "*was relieved from duty on January 27, 2003 and promised that he will be given post again*", as evidence by a copy of respondents' memorandum dated January 27, 2003.

In their own Reply and Rejoinder, respondents stress that complainant conveniently chose not to touch the issues of his altercation with the driver of Dunkin Donut[s], the fact that he was served a suspension order which he refused to receive, and his offer to voluntarily resign from FCA. Contrary to complainant's claim that he was illegally dismissed, respondents presented the affidavit of Major JOSE A. LAID, General Manager, narrating the circumstances leading to complainant's voluntary resignation. Likewise submitted are the separate affidavits executed by three (3) FCA department

heads, namely, JULIO D. GONZALES, JR., ALLAN CRUZ, and LAUDEMER TINAY[A], Personnel Officer, Supply Custodian and Property and Materials Officer, respectively, which corroboratively attest to the fact that complainant approached them in connection with his accountabilities, if any, and to facilitate his resignation from the company.

Respondents admit the issuance of memorandum dated January 27, 2003 but they strongly deny that it contained a directive for complainant's reassignment. Respondents stress that the said memorandum explicitly directed complainant "*to report at FCA Head Office for instruction and proper disposition*." This was necessary in order to investigate the circumstances surrounding the drawing up of firearm and the resulting filing of a complaint for grave threat against herein complainant.

Respondents further stress that subsequent to memorandum dated January 27, 2003, was the issuance of inter-office memorandum dated February 5, 2003, informing complainant of the result of the investigation and the management's decision to suspend him for seven (7) days. Two (2) FCA personnel, namely, VIRGILIO TANGENTE and NELIA DE LA TORRE, issued their respective affidavits both dated February 3, 2004, stating that complainant refused to receive the suspension order/memorandum but instead, he offered to resign. Consequently, Major LAID accepted the verbal resignation of complainant.

In his own Rejoinder, complainant states that "*he will never mention other circumstances happened on January 27, 2003 for he only stated what really transpired on said date. The best evidence of what transpired on January 27, 2003 is that stated in the memorandum attached as Annex "A " in complainant's reply*." Complainant asserts that there was no investigation whatsoever and that he was never furnished with a copy of the said suspension order. He maintains that he was placed on "floating status" for more than six (6) months, and thus, constructively dismissed.[4]

As stated, the Labor Arbiter, holding that the respondent had been illegally dismissed; that the seven-day suspension meted on him was uncalled for because he was only performing

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[4] *Id*. at 132-134.

his duty as a security guard of the bank where he was then assigned when the incident with driver George Chua took place;[5] and that the petitioners did not substantiate their allegations about his having voluntarily resigned, and about offering to reinstate him while he was under floating status, awarded backwages of ₱200,083.32 and separation pay of ₱43,200.00 to him.[6]

On appeal, the NLRC reversed the ruling of the Labor Arbiter,[7] observing that the respondent had been oddly silent on the incidents leading to his supposed dismissal; that, on the other hand, the petitioners showed that after having been investigated on his altercation with the driver in the bank premises, he was meted the seven-day suspension; that there was sufficient proof of his voluntary resignation because several employees had affirmed such fact under oath; and that the dismissal of the complaint for lack of merit was in order. It decreed as follows:

> WHEREFORE, premises considered, the Decision dated February 28, 2005 is hereby REVERSED and SET ASIDE, and the complaint is DISMISSED for lack of merit.
>
> SO ORDERED.[8]

Upon the NLRC's denial of his motion for reconsideration,[9] the respondent assailed the outcome in the CA on *certiorari*, insisting that the NLRC had thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

Decision of the CA

As earlier mentioned, the CA granted the petition for *certiorari* upon finding, from its re-examination of the evidence presented by the parties, that the petitioners had issued an inter-office

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[5] CA *rollo*, pp. 72-77.

[6] *Id.* at 77.

[7] *Id*. at 104-110.

[8] *Id*. at 110.

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

memo on January 27, 2003 relieving the respondent from his post at the RCBC branch effective January 28, 2003, and directing him to report to the head office for instruction and proper disposition;[10] that the petitioners' investigation report and suspension order were made on February 3 and 5, 2003, respectively, only after the January 27, 2003 memo relieving the respondent from his post had issued; that he had been relieved of his post without any promise of re-assignment, making out a clear case of constructive dismissal, which was bolstered by the fact that he had not been given any re-assignment until the time when he filed the complaint in October of 2003;[11] that the respondent did not voluntarily resign from his employment; that the supposed resignation was belied by his filing of the complaint for illegal dismissal considering that any employee who took steps to protest his layoff could not be said to have abandoned his work; that if he had really resigned on February 3, 2005, there would have been no need to issue the February 5, 2003 suspension order; and that there was no proof that he had been notified of the suspension order itself. Accordingly, the CA reinstated the decision of the Labor Arbiter.[12]

Following the denial of its motion for reconsideration, the petitioners brought this appeal.[13]

Issues

Did the CA err in holding that the NLRC had acted with grave abuse of discretion in reversing the ruling of the Labor Arbiter?

Ruling of the Court

The appeal is meritorious.

The respondent alleged in his position paper that he had been placed on floating status for more than six months, *viz.*:

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[10] *Rollo*, p. 36.

[11] *Id.* at 37.

[12] *Id*. at 39.

[13] *Id*. at 42.

The complainant started working with the respondent herein on July 12, 1999. The complainant worked with all honest [sic] and dedication.

A twist of fate happened on January 28, 2003 when asked to report in their office and was pulled out with (*sic*) his post then in Rizal Commercial Banking Corporation Pasay City Branch. The respondent promised that he will be given another duty but until now he is not given duty.

As he felt he was deprived not only property rights but also his right to due process that will maintain his dignity as a person and as employee who observed honesty and good faith in his work that sustains his daily leaving (*sic*) as well as his family, he was compelled to file this case to this Honorable Office.[14]

The respondent was bound to adduce sufficient proof of his allegations, but he did not discharge his burden. The only piece of evidence he tendered to substantiate his allegations was the January 27, 2003 memo issued by the petitioners. However, such evidence did not paint a clear picture of what actually transpired in the period from his altercation with Dunkin Donuts' driver up to January 27, 2003, and even after receiving such memo. Indeed, more proof was necessary from him. For sure, the memo alone did not suffice as evidence of his allegations because its text only indicated his being thereby "directed to report at FCA HEAD OFFICE for instruction and proper disposition." It behooved him to show if he actually complied with the directive of FCA to him, and to shed light on what happened after receiving the memo. But he did not discharge his burden because he did not establish how, from the time he received the directive to report to the head office, his situation had devolved into his having been placed on floating status.

In contrast, the petitioners submitted the results of the investigation of the respondent. The results included the hand-written explanation on the incident at the RCBC branch as well as the typewritten statement in question-and-answer form, both executed and signed by the respondent himself.[15] It is significant

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[14] CA *rollo*, p. 22.

[15] *Id*. at 37-41.

that he did not expressly repudiate his signatures therein, his only objection being solely based on the failure to have the statement sworn to before a notary public as borne out by the blank *jurat*.

In an illegal dismissal case like this, the employer whose defense is the voluntary resignation of the employee must prove by clear, positive and convincing evidence that the resignation was voluntary.[16] As the foregoing disquisition indicates, the petitioners fully discharged their burden of proof.

The respondent submits that although the NLRC noted that several employees of FCA had substantiated and corroborated the verbal resignation of the respondent, and observed in that regard that said employees had no reason to testify falsely under oath against him, said employees were not just employees of FCA but were its officers whose testimony served their own best interest.

The respondent's submission does not impress.

To start with, the fact alone that the corroborating employees were officers of FCA did not discredit their confirmation of the verbal resignation of the respondent. The relationship of employment between the witnesses and one of the parties, although a factor to weigh the value of the testimony, is not of itself sufficient to discredit the testimony.[17] Secondly, Maj. Laid, Jr., asserting that the respondent had refused to accept his suspension and had instead offered to resign voluntarily, recalled that the respondent then started to process his necessary clearances. Maj. Laid, Jr.'s recollection was clear, positive and convincing, and was also validated by the respective corroborating affidavits of Virgilio Tangente, the officer assigned to investigate the incident; Nelia De La Torre, the administrative clerk called into the office of Maj. Laid, Jr. when the respondent

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[16] *Grande v. Philippine Nautical Training College*, G.R. No. 213137, March 1, 2017.

[17] *Lufthansa German Airlines v. Court of Appeals*, G.R. No. 108997, April 21, 1995, 243 SCRA 600, 608.

offered to resign; and Julio Gonzales, Jr., Allan Cruz, and Laudemer Tinaya, FCA's department heads who stated that the respondent had personally gone to each of them individually to seek clearances on his accountabilities and to obtain their signatures on his clearance form. The testimonial competence of said individuals to make the confirmation and the plausibility of their cohesive recollections were unassailable because only the petitioners, the relevant employees and officers of FCA as well as the respondent himself were privy to what had really transpired between the parties. And, thirdly, the submission of the respondent stands on weak legs primarily because his assertion of biased and fabricated testimony against him was not supported by any credible counter-statement of the facts from him.

The CA deemed the failure to promise to the respondent a re-assignment to another post a factor adverse to the petitioners. It is easily seen, however, that the latter did not promise any re-assignment precisely because the respondent was then still undergoing the investigation for misconduct. To make the promise at that point would have been imprudent on the part of the petitioners.

The respondent contends that the petitioners committed several lapses in their conduct of his investigation. The first lapse concerned his not being given the opportunity to confront the driver with whom he had the altercation; hence, the allegation about his having drawn and pointed his service firearm at the driver became unsubstantiated. The second lapse was the lack of substantiation of the existence of the company policy that he had violated whereby he could be appropriately meted the 7-day suspension. The third lapse related to the failure to furnish to him a copy of the February 5, 2003 memo imposing the suspension, as borne out by the absence of his signature from the copy of the memo.

The contentions of the respondent are misplaced and undeserving of serious consideration. His voluntary resignation, being established, rendered moot and academic the issue about the propriety of the proceedings at his investigation and the

correctness of the adverse outcome of the investigation. Moreover, the validity of the 7-day suspension meted on him had no real bearing on whether or not he was illegally dismissed, considering that his complaint centered on his allegation of having been pulled out from his post without re-assignment. Indeed, the suspension was not carried out because of his voluntary offer to resign before the suspension could be implemented.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on July 10, 2009; and **REINSTATES** the decision issued on December 17, 2007 by the National Labor Relations Commission.

No pronouncement on costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191615. August 2, 2017]

VICTORIA P. CABRAL, *petitioner, vs.* **HEIRS OF FLORENCIO ADOLFO and HEIRS OF ELIAS POLICARPIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES, RESPECTED.—** As this Court has often stressed, factual findings of administrative bodies charged with their specific field of expertise, such as the PARAD

and the DARAB, are afforded great weight, *nay*, finality by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.

2. **LABOR AND SOCIAL LEGISLATION; DEPARTMENT OF AGRARIAN REFORM (DAR) ADMINISTRATIVE ORDER NO. 02-94 ON CORRECTIONS AND CANCELLATION OF EMANCIPATION PATENTS (EPs) AND CERTIFICATES OF LAND OWNERSHIP AWARDS (CLOAs); A REGISTERED EP OR CLOA MAY BE CANCELLED ON THE GROUND THAT THE LAND IS EXEMPTED FROM P.D. NO. 27 (DECREE ON THE EMANCIPATION OF TENANTS).—** DAR Administrative Order No. 02-94 provides that a registered EP or Certificate of Land Ownership Award (CLOA) may be cancelled on the following grounds, to wit: x x x 9. The land is found to be exempt/excluded from P.D. No. 27/E.O. No. 228 or CARP coverage or to be part of the landowners' retained area as determined by the Secretary or his authorized representative.

3. **ID.; P.D. NO. 27 (LAW ON EMANCIPATION OF TENANTS); IMPLEMENTATION OF THE OPERATION LAND TRANSFER (OLT) PROGRAM; REQUISITES.—** It bears stressing that P.D. No. 27, which implemented the Operation Land Transfer (OLT) program, covers only tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease tenancy obtaining therein.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; EVIDENTIARY WEIGHT GIVEN TO THE CERTIFICATIONS ISSUED BY THE ZONING ADMINISTRATOR, ATTESTING TO THE CLASSIFICATION OF THE PROPERTY AS RESIDENTIAL.—** This Court, in G.R. No. 198160, sustained such findings, as well as the Certifications issued by the zoning administrator, attesting to the classification of the property as being within the residential zone. Evidentiary weight is accorded to the said documents as the same were issued by such officer having jurisdiction over the area where the land in question is situated and is, therefore, more familiar with the property in

issue. These certifications carried the presumption of regularity in its issuance and respondents have the burden of overcoming this presumption.

5. **LABOR AND SOCIAL LEGISLATION; P.D. NO. 27; TENANCY RELATIONSHIP MUST BE SUFFICIENTLY ESTABLISHED.—** This Court has, time and again, held that occupancy and cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant. Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner. Tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away by conjectures. Thus, as petitioner denies such tenancy relationship and it is respondents who assert the same, the latter has the burden to prove their affirmative allegation of tenancy.

6. **ID.; ID.; PROVISION DECLARING TENANT-FARMERS AS OWNERS OF THE LAND THEY TILL AS OF OCTOBER 21, 1972; REQUIREMENTS MUST BE COMPLIED WITH BEFORE FULL OWNERSHIP IS VESTED UPON THE TENANT-FARMERS.—** Indeed, under P.D. No. 27, tenant-farmers of rice and corn lands were deemed owners of the land they till as of October 21, 1972 or the effectivity of the said law. This policy was intended to emancipate the tenant-farmers from the bondage of the soil. However, the provision declaring tenant- farmers as owners as of October 21, 1972 should not be construed as automatically vesting upon them *absolute ownership* over the land they are tilling. Certain requirements must also be complied with before full ownership is vested upon the tenant-farmers. Thus, in G.R. No. 198160, We laid down the steps to be undertaken before an EP can be issued to effectively transfer the land to the tenant-farmers, x x x Furthermore, there are several supporting documents which a tenant -farmer must submit before he can receive the EP[.]

7. **ID.; ID.; ID.; ID.; PRIOR COMPLIANCE, CERTIFICATE OF LAND TRANSFER (CLT) IS ISSUED TO TENANT-FARMERS IN RECOGNITION OF THEIR INCHOATE RIGHT.—** [P]rior to the compliance with the prescribed requirements, tenant-farmers have, at most, an *inchoate right* over the land they were tilling. x x x In recognition of the said inchoate right, a Certificate of Land Transfer (CLT) is issued to a tenant -farmer to serve as a provisional title of ownership

over the landholding while the lot owner is awaiting full payment of just compensation or for as long as the tenant-farmer is an amortizing owner. The CLT proves inchoate ownership of an agricultural land primarily devoted to rice or corn production. In *Del Castillo v. Orciga*, We explained that land transfer under P.D. No. 27 is effected in two stages: first, the issuance of a CLT; and second, the issuance of an EP. The first stage serves as the government's recognition of the tenant-farmer's inchoate right as "deemed owners" of the land they till. The second stage perfects the title of the tenant-farmers and vests in them *absolute ownership* upon full compliance with the prescribed requirements. As a preliminary step then, the CLT immediately serves as the tangible evidence of the government's recognition of the the tenant-farmers' inchoate right and of the subjection of the land to the OLT program.

8. **ID.; P.D. NO. 27 AND R.A. NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW); LAND ACQUISITION PARTAKES OF THE NATURE OF EXPROPRIATION; NOTICE TO LANDOWNER IS REQUIRED.—** Land acquisition by virtue of P.D. No. 27 and Republic Act (R.A.) No. 6657 partakes of the nature of expropriation. In fact, jurisprudence states that it is an extraordinary method of expropriating private property. As such, the law on the matter must be strictly construed. Faithful compliance with legal provisions, especially those which relate to procedure for acquisition of expropriated lands should therefore be observed. In expropriation proceedings, as in judicial proceedings, notice is part of the constitutional right to due process of law. It informs the landowner of the State's intention to acquire private land upon payment of just compensation and gives him the opportunity to present evidence that his landholding is not covered or is otherwise excused from the agrarian law.

9. **ID.; AGRARIAN REFORM LAWS; COMPLIANCE WITH THE PROCEDURE MUST BE PROVED BY PREPONDERANCE OF EVIDENCE.—** In this issue of compliance with the procedure, it must be remembered that the burden of proof lies with the party who asserts a right and the quantum of evidence required by law in civil cases is preponderance of evidence. Preponderance of evidence is the weight, credit, and 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 credible evidence." Moreover, parties must rely on the strength of their own evidence, not upon the weakness of that of their opponent's.

10. **ID.; ID.; MERE ISSUANCE OF EPs AND TCTs DOES NOT PUT THE OWNERSHIP OF THE AGRARIAN REFORM BENEFICIARY BEYOND ATTACK AND SCRUTINY.—** This Court has already ruled that the mere issuance of EPs and TCTs does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. EPs issued to agrarian reform beneficiaries may be corrected and cancelled for violations of agrarian laws, rules, and regulations. Besides, registration is nothing more than a mere species of notice of an acquired vested right of ownership of a landholding. 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 protect a usurper from the true owner. Thus, the jurisdiction of the PARAD/DARAB cannot be deemed to disappear the moment a certificate of title is issued as such certificates are not modes of transfer of property but merely evidence of such transfer, and there can be no valid transfer of title should the EPs, on which such TCTs are grounded, be void.

APPEARANCES OF COUNSEL

Cruz Enverga & Lucero Law Office for petitioner.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 is the Court of Appeals' (CA) Decision[2] dated November

[1] *Rollo*, pp. 9-34 with Annexes.

[2] Penned by Court of Appeals Associate Justice Jose C. Mendoza (now Supreme Court Associate Justice) with Justices Myrna Dimaranan-Vidal and Ramon R. Garcia concurring, *id.* at 35-50.

23, 2009 in CA-G.R. SP No. 108518. The CA's Resolution[3] dated March 15, 2010, denying petitioner's Motion for Reconsideration in the said case is likewise impugned herein.

The Facts

Petitioner claims that she is the registered owner of several parcels of land situated at Barangay Purok (formerly Iba), Meycauayan, Bulacan, originally covered by Original Certificate of Title (OCT) No. 0-1670, subsequently renumbered as OCT No. 0-220 (M), of the Registry of Deeds of Meycauayan, Bulacan.[4] The property subject of the instant case are portions of Lot 4 of Plan Psu-164390 covered by the said OCT No. 0-1670.

On October 21, 1972, the Ministry of Agrarian Reform subjected the said land under the coverage of the Operation Land Transfer (OLT) program of the government under Presidential Decree (P.D.) No. 27.[5]

In July 1973, petitioner sought to convert her landholdings, which include not only the subject property but also her lands in Marilao and Meycauayan, to non-agricultural purposes.[6] In his 2nd Indorsement Letter[7] to the DAR Secretary dated October 1, 1973, DAR District Officer Fernando Ortega, stated that per the reports of the Agrarian Reform Team, the subject property was not included in the OLT program under P.D. No. 27, nor has any portion thereof been transferred to a tenant. Thus, District Officer Ortega recommended the conversion of the same into residential, commercial, industrial, or other purposes.[8]

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[3] Penned by Court of Appeals Associate Justice Ramon R. Garcia with Justices Rosalinda Asuncion-Vicente and Franchito N. Diamante concurring, *id.* at 51-55.

[4] *Id*. at 11.

[5] Presidential Decree No. 27, "*Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor*" (1972).

[6] *Victoria P. Cabral v. Gregoria Adolfo, Gregorio Laz*aro, *and Heirs of Elias Policarpio*, G.R. No. 198160, August 31, 2016.

[7] *Rollo*, p. 58.

[8] *Id.*

On April 25, 1988, Emancipation Patents (EPs) were issued to Gregoria Adolfo, Gregorio Lazaro, Florencio Adolfo, and Elias Policarpio pursuant to the OLT program covering the subject property. Corresponding Transfer Certificates of Titles (TCTs) were then issued to herein respondents Florencio Adolfo on October 24, 1989 and Elias Policarpio on November 8, 1989 upon registration of their respective EPs with the Register of Deeds of Meycauayan, Bulacan[9] as follows:[10]

NAMES	LOT NO.	EP NO.	TCT NO.	AREA (sq. m.)
Florencio Adolfo	1	A-117858	EP-003(M)	29759
Florencio Adolfo	2	A-117859-H	EP-004(M)	957
Gregoria Adolfo	3	A-117978-H	EP-005(M)	630
Gregoria Adolfo	4	A-117979	EP-006(M)	21793
Gregorio Lazaro	5	A-117980-H	EP-007(M)	839
Gregorio Lazaro	10	A-117981	EP-008(M)	16906
Elias Policarpio	11	A-117983	EP-010(M)	995
Elias Policarpio	12	A-117982-H	EP-009(M)	18019

On January 16, 1990, petitioner filed a petition before the Barangay Agrarian Reform Council (BARC) for the cancellation of the EPs issued in favor of Florencio Adolfo, Gregorio Lazaro, Gregoria Adolfo, and Elias Policarpio.[11] On January 19, 1990, petitioner filed another petition for cancellation of the said EPs and TCTs before the DAR. The said petition was, however, forwarded to the DAR Regional Director, who dismissed the case. In a case decided by this Court in 2001 entitled *Victoria P. Cabral v. CA*,[12] however, this Court held that the Regional Director had no jurisdiction over the case as it is the PARAD who has jurisdiction over cases involving cancellation of EPs.[13]

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[9] *Id*. at 167.

[10] *Rollo*, pp. 12-13.

[11] *Id*. at 13; *Victoria P. Cabral v. Court of Appeals, Hon. Eligio Pacis, Regional Director, Region III, DAR, Florencio Adolfo, Gregorio Lazaro, Gregoria Adolfo, and Elias Policarpio*, 413 Phil. 469 (2001).

[12] *Id*.

[13] *Id*.

Meanwhile, in 1994, petitioner filed an OLT Letter Protest before the DAR Regional Director, questioning the coverage of her landholdings under P.D. No. 27, on the ground that the same had already been classified as either residential, commercial, or industrial.[14]

In its November 16, 1994 Order, the DAR Regional Director denied the said OLT protest, finding that despite the reclassification of the subject parcels of land, the same will not be a bar in placing the said lands under the OLT program, considering that petitioner's landholdings exceeded 24 hectares.[15]

On appeal, the then DAR Secretary Ernesto D. Garilao, in his Order[16] dated July 12, 1996, affirmed the DAR Regional Director's Order, declaring that the subject landholdings are covered by the OLT program under P.D. No. 27 as it was only after the landholdings were placed under the OLT program on October 21, 1972 when it was classified as within the residential zone. The Order cited Administrative Order (A.O.) No. 06, series of 1994,[17] which provides that reclassification of lands to non-agricultural uses shall not operate to divest tenant-farmers of their rights over lands covered by P.D. No. 27, which were vested prior to June 15, 1988, and also Executive Order (E.O.) No. 228,[18] which provides that tenant-farmers are deemed full owners of the land they acquired by virtue of P.D. No. 27 as of October 21, 1972. In fine, Secretary Garilao concluded that the petitioner's landholdings are covered by P.D. No. 27.[19]

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[14] *Id*. at 199-201.

[15] *Id.*

[16] *Id*. at 202-205.

[17] Guidelines for the Issuance of Exemption Clearances based on Sec. 3 (c) of RA 6657 and the Department of Justice (DOJ) Opinion No. 44, Series of 1990 (1994).

[18] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner (1987).

[19] *Rollo,* pp. 202-205.

On August 16, 2003, petitioner filed a Petition for Cancellation of Emancipation Patents and Torrens Title[20] before the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Malolos City, Bulacan against the said respondents and the Department of Agrarian Reform (DAR), Region III. In the main, petitioner contended that the issuance of the said EPs and TCTs were violative of applicable agrarian laws considering that the subject property was already classified as residential, hence, not covered by P.D. No. 27. Petitioner invoked a Certification[21] dated February 24, 1983 issued by the Zoning Administrator of the Office of the HSRC Deputized Zoning Administration of Meycauayan, Bulacan, and Certification[22] dated August 28, 1989 issued by the Zoning Administrator of Meycauayan, Bulacan, both attesting to the classification of the subject property as within the residential zone. Petitioner also averred that the said EPs were issued without due process and without payment of just compensation.[23]

On June 18, 2004, the Provincial Reform Adjudicator (PARAD) rendered a Decision[24] in favor of the petitioner, thus:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1. Ordering the Register of Deeds of Bulacan to cancel the Emancipation Patent Titles issued to the private respondents, as follows: FLOPRENCIO [sic] ADOLFO – TCT No. EP-003, FLORECNCIO [sic] ADOLFO – TCT No. RP-004, GREGORIA ADOLFO – TCT No. EP-005, GREGORIA ADOLFO – TCT No. EP-006, GREGORIO LAZARO – TCT No. EP-008, ELIAS POLICARPIO – TCT No. 010, ELIAS POLICARPIO – TCT No. 009.

2. Ordering the private respondents and all persons claiming rights under them to vacate the landholdings under their respective possessions and surrender the same to petition.

3. Ordering the Register of Deeds of Bulacan to revived *(sic)* OCT No. 0-220-(M) (formerly OCT No. 0-1670 registered under the name of petitioner Victoria Cabral), insofar as Lot 4 thereof is concerned.

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[20] *Id*. at 68-80.

[21] *Id*. at 56.

[22] *Id*. at 57.

[23] *Id*. at 75-77.

[24] *Id*. at 103-109.

SO ORDERED.[25]

Aggrieved, Gregoria Adolfo, Gregorio Lazaro, Heirs of Florencio Adolfo, and Heirs of Elias Policarpio appealed the said decision to the Department of Agrarian Reform Adjudication Board (DARAB).

In its July 29, 2008 Decision,[26] the DARAB affirmed PARAD's Decision, thus:

WHEREFORE, premises considered, the Appeal is DENIED for lack of merit and the assailed Decision is hereby affirmed.

SO ORDERED.[27]

Undaunted, herein respondents elevated the case to the CA for review.

In its assailed Decision, the CA reversed and set aside the DARAB Decision. The CA found that the subject land was never converted into a residential land and, therefore, not exempt from the coverage of the government's OLT program under P.D. No. 27, relying heavily upon Secretary Garilao's Order above-cited. Hence, the CA concluded that when the predecessors-in-interest of the herein respondents were identified as farmer-beneficiaries and were given EPs/TCTs, they were deemed owners thereof. The CA disposed, thus:

WHEREFORE, the July 29, 2008 Decision of the [DARAB] is hereby REVERSED and SET ASIDE. The Petition for Cancellation of Emancipation Patents and Torrens Titles (Case No. 2-03-02-0242'03) is hereby ordered DISMISSED.

SO ORDERED.[28]

Respondents' Motion for Reconsideration was denied in the DARAB's Resolution[29] dated March 11, 2009.

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[25] *Id*. at 109.

[26] *Id*. at 110-119.

[27] *Id*. at 119.

[28] *Id.* at 32.

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

Hence, this petition.

G.R. No. 198160

Before We proceed to discuss the instant petition, it is noteworthy that the issue on the coverage of Lot 4 under the OLT program pursuant to P.D. No. 27 had already been settled by this Court in its Decision dated August 31, 2016 in the case of *Victoria P. Cabral v. Gregoria Adolfo, Gregorio Lazaro, and Heirs of Elias Policarpio*.[30]

The said case involves the same issues, same assailed decisions of the PARAD and DARAB, same subject property, and same parties (except Gregoria Adolfo and Gregorio Lazaro who were parties in G.R. No. 198160 but not in this case, and Florencio Adolfo who is a party herein but not in G.R. No. 198160).

Essentially, this Court upheld the findings of the PARAD and DARAB, recognizing the zoning reclassification made on the subject property as evidenced by the Certifications dated February 24, 1983 and August 28, 1989 issued by the zoning administrator of Meycauayan, Bulacan above-cited. We also considered therein the 2nd Indorsement Letter of then DAR District Officer Ortega, declaring that petitioner's landholdings were not covered by the OLT program. The Court also found that no CLTs were issued in favor of the respondents therein, which bolstered the fact that the subject property was not covered by P.D. No. 27.

Hence, as it was established that Lot 4 was not covered by the OLT program, this Court declared that the EPs covering the subject lands therein were erroneously issued to the respondents.[31]

With this judicial precedent in mind, We now proceed to resolve the instant petition.

Issue

Did the CA err in reversing the PARAD and DARAB's order of cancelling the subject EPs/TCTs?

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[30] G.R. No. 198160, August 31, 2016.

[31] *Id.*

The Court's Ruling

We answer in the affirmative.

DAR Administrative Order No. 02-94[32] provides that a registered EP or Certificate of Land Ownership Award (CLOA) may be cancelled on the following grounds, to wit:

Grounds for the cancellation of registered EPs or CLOAs may include but not limited to the following:

1. Misuse or diversion of financial and support services extended to the ARB (Agrarian Reform Beneficiaries); (Section 37 of R.A. No. 6657)

2. Misuse of the land; (Section 22 of R.A. No. 6657)

3. Material misrepresentation of the ARB's basic qualifications as provided under Section 22 of R.A. No. 6657, P.D. No. 27, and other agrarian laws;

4. Illegal conversion by the ARB; (Cf. Section 73, Paragraphs C and E of R.A. No. 6657)

5. Sale, transfer, lease or other forms of conveyance by a beneficiary of the right to use or any other usufructuary right over the land acquired by virtue of being a beneficiary, in order to circumvent the provisions of Section 73 of R.A. No. 6657, P.D. No. 27, and other agrarian laws. However, if the land has been acquired under P.D. No. 27/E.O. No. 228, ownership may be transferred after full payment of amortization by the beneficiary; (Sec. 6 of E.O. No. 228)

6. Default in the obligation to pay an aggregate of three (3) consecutive amortizations in case of voluntary land transfer/direct payment scheme, except in cases of fortuitous events and force majeure;

7. Failure of the ARBs to pay for at least three (3) annual amortizations to the LBP, except in cases of fortuitous events and force majeure; (Section 26 of R.A. No. 6657)

8. Neglect or abandonment of the awarded land continuously for a period of two (2) calendar years as determined by the Secretary or his authorized representative; (Section 22 of R.A. No. 6657)

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[32] Rules Governing the Correction and Cancellation of Registered/ Unregistered Emancipation Patents (EPs), Certificates of Land Ownership Awards (CLOAS) Due to Unlawful Acts and Omissions or Breach of Obligations of Agrarian Reform Beneficiaries (ARBs) and for Other Causes (1994).

9. The land is found to be exempt/excluded from P.D. No. 27/E.O. No. 228 or CARP coverage or to be part of the landowners' retained area as determined by the Secretary or his authorized representative; and

10. Other grounds that will circumvent laws related to the implementation of agrarian reform program.[33] *(emphasis supplied)*

In this case, petitioner maintains that the subject property is excluded from the coverage of P.D. No. 27 as it has already been classified as residential land, invoking the Certifications dated February 24, 1983 and August 28, 1989 issued by the zoning administrator. Petitioner also avers that as early as October 1, 1973, the DAR already made a declaration that her landholdings are not included under the OLT program, and thus made a recommendation for the conversion of the same to residential, commercial, industrial, or other purposes.[34] In fine, petitioner argues that there was never any showing that the lands subject of the controversy were primarily devoted to rice and corn as to be covered by P.D. No. 27. Also, petitioner argues that the subject EPs were issued without compliance with the requirements for its issuance under P.D. No. 27, such as the prior issuance of corresponding Certificates of Land Transfer (CLTs). Further, petitioner alleges that her constitutional right to due process was violated as the issuance of the subject EPs was done without any notice or consultation with her and without the payment of just compensation.[35]

The subject property (Lot 4) is not covered by the OLT program under P.D. No. 27.

The resolution of the instant controversy is primarily anchored upon the determination of whether the subject lands are covered by the OLT program under P.D. No. 27.

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[33] *Pedro Mago (deceased), represented by his spouse Soledad Mago, Augusto Mago (deceased), represented by his spouse Natividad Mago, and Ernesto Mago, represented by Levi Mago v. Juana Z. Barbin*, 618 Phil. 384 (2009).

[34] *Rollo*, p. 58.

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

As We have determined in G.R. No. 198160, Lot 4 had already been reclassified to non-agricultural uses and was, therefore, already outside the coverage of the OLT program under P.D. No. 27.

The CA in this case, however, ruled otherwise, relying heavily upon the July 12, 1996 Order of then DAR Secretary Garilao. In the said Order, Sec. Garilao cited AO 6-94, which states that "reclassification of lands to non-agricultural uses shall not operate to divest tenant-farmers of their rights over lands covered by P.D. No. 27, which have vested prior to June 15, 1988," and EO 228, which provides that "tenant-farmers are deemed full owners of the land they acquired by virtue of P.D. No. 27 as of October 21, 1972."[36] Notably, respondents' arguments are also grounded on these provisions.[37]

We differ.

As this Court has often stressed, factual findings of administrative bodies charged with their specific field of expertise, such as the PARAD and the DARAB, are afforded great weight, *nay*, finality by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[38] Contrary to the CA's conclusion, We find no cogent reason to disturb the said quasi-judicial agency's findings. Consider:

(1) *The July 12, 1996 Order of DAR Secretary Garilao involves parcels of land different from the subject property in the case at bar.*

As can be gleaned from the said Order, the certifications of reclassification considered in the said case are as follows, to wit:

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[36] *Id*. at 202-205.

[37] Comment, *rollo,* pp. 166-180.

[38] *Supra* note 30 citing *Jose v. Novida*, G.R. No. 177374, July 2, 2014, 728 SCRA 552, 576, citing *Sugar Regulatory Administration v. Tormon, et al.*, 700 Phil. 165, 178 (2012).

1. Certification for TCT No. T-149964 (M) with an area of [sic] 42,109 square meters that it is classified as RESIDENTIAL ZONE as per Municipal Ordinance No. 43, Series of 1988 dated December 21, 1988.

2. Certification for TCT No. T-149928 (M) with an area of 20,954 square meters classified as INDUSTRIAL ZONE as per Municipal Ordinance No. 43, Series 1988 dated December 21, 1988.

3. Certification for TCT No. T-0611(M) with an area of 30,881 square meters classified as RESIDENTIAL ZONE per Municipal Ordinance No. 43, Series of 1988 dated December 21, 1988.

4. Certification for TCT No. T-73.736 (M) (Lot 1-A) with an area of 3,020 square meters classified as RESIDENTIAL ZONE as per Comprehensive Zoning Code dated October 14, 1987.

5. Certification for TCT No. T-73.737 (M) (Lot 1-A) with an area of 3,020 square meters classified as RESIDENTIAL ZONE as per Comprehensive Zoning Code dated October 14, 1987.

6. Certification for OCT No. 0-1670 with an area of 12,299 square meters (**Lot 2**) classified as RESIDENTIAL ZONE as per Comprehensive Zoning Code approved on November 7, 1990.[39] *(emphasis supplied)*

Contrariwise, the subject property in the case at bar constitutes parcels of land covering certain portions of Lot 4 of Plan Psu-164390 of OCT No. 0-1670. Clearly, thus, the CA erred in relying heavily on the said Order in reversing the PARAD and DARAB decisions.

(2) *The records are bereft of proof that the subject lands are tenanted and devoted primarily to rice or corn production.*

It bears stressing that P.D. No. 27, which implemented the OLT program, covers only tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease tenancy obtaining therein.[40]

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[39] *Rollo*, pp. 47-48.

[40] *Eudosia Daez and/or her Heirs, represented by Adriano D. Daez v. Court of Appeals, Macario Sorientes, Apolonio Mediana, Rogelio Macatulad, and Manuel Umali,* 382 Phil. 742 (2000).

Neither of these requisites is present in this case.

(a) The subject property is not covered by the OLT because of its residential nature.

Again, as found by both the PARAD and the DARAB as early as October 1, 1973, the DAR, through District Officer Ortega, already declared that the subject landholding is not included in the OLT program by virtue of the Agrarian Reform Team's report that the subject property is suited for residential, commercial, industrial, or other urban purposes considering its potential for national development.[41] District Officer Ortega, thus, recommended for its conversion into residential, commercial, industrial, or other urban purposes.[42]

This Court, in G.R. No. 198160, sustained such findings, as well as the Certifications[43] issued by the zoning administrator, attesting to the classification of the property as being within the residential zone. Evidentiary weight is accorded to the said documents as the same were issued by such officer having jurisdiction over the area where the land in question is situated and is, therefore, more familiar with the property in issue.[44] These certifications carried the presumption of regularity in its issuance and respondents have the burden of overcoming this presumption,[45] which they failed to do.

(b) As to whether a tenancy relationship exists, petitioner insists that respondents are not her tenants. On the other hand, the respondents, anchoring their rights upon P.D. No. 27, necessarily claim that there is a system of share-crop between them and the petitioner.

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[41] *Rollo*, p. 58.

[42] *Id.*

[43] *Id.* at 56-57.

[44] *Heirs of Luis A. Luna and Remigio A. Luna, and Luz Luna-Santos, as represented by their Attorney-In-Fact, Aurea B. Lubis v. Ruben S. Afable, Tomas M. Afable, Florante A. Evangelista, Leovy S. Evangelista, Jaime M. Ilagan, et al.*, 702 Phil. 146 (2013).

[45] *Id.*

This Court has, time and again, held that occupancy and cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant.[46] Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner.[47] Tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away by conjectures.[48] Thus, as petitioner denies such tenancy relationship and it is respondents who assert the same, the latter has the burden to prove their affirmative allegation of tenancy.[49] Again, the respondents failed to discharge such burden as there is nothing on record that will provide this Court factual basis to determine that indeed a crop-sharing agreement exists between the parties.

(c) Farmer-beneficiaries cannot be deemed full owners when there is no compliance with the procedure for the issuance of an EP under P.D. No. 27 and related rules.

Thus, neither do We subscribe to Sec. Garilao's reasoning and respondents' argument that since the reclassication of the property was made after the effectivity of P.D. No. 27, tenant-farmers enjoy a vested right and should be deemed as "full owners" of the property.

Indeed, under P.D. No. 27, tenant-farmers of rice and corn lands were deemed owners of the land they till as of October 21, 1972 or the effectivity of the said law.[50] This policy was intended to emancipate the tenant-farmers from the bondage of the soil.[51] However, the provision declaring tenant-farmers as owners as of

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[46] *Estate of Pastor M. Samson, represented by his heir Rolando B. Samson v. Mercedes R. Susano and Norberto R. Susano*, 664 Phil. 590 (2011).

[47] *Id*. citing *Landicho v. Sia*, G.R. No. 169472, January 20, 2009, 576 SCRA 602, 619.

[48] *Id*.

[49] *Id*.

[50] *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines, et al.*, G.R. No. 169913, 666 Phil. 350 (2011).

[51] *Id*.

October 21, 1972 should not be construed as automatically vesting upon them *absolute ownership* over the land they are tilling.[52]

Certain requirements must also be complied with before full ownership is vested upon the tenant-farmers.[53] Thus, in G.R. No. 198160, We laid down the steps to be undertaken before an EP can be issued to effectively transfer the land to the tenant-farmers, to wit: *first*, the identification of tenants, and the land covered by OLT; *second*, land survey and sketching of the actual cultivation of the tenant to determine parcel size, boundaries, and possible land use; *third*, the issuance of the CLT. To ensure accuracy and safeguard against falsification, these certificates are processed at the National Computer Center (NCC) at Camp Aguinaldo; *fourth*, valuation of the land covered for amortization computation; *fifth*, amortization payments of tenant-tillers over afifteen (15) year period; and *sixth*, the issuance of the EP.[54]

Furthermore, there are several supporting documents which a tenant-farmer must submit before he can receive the EP such as: (a) Application for issuance of EP; (b) Applicant's (owner's) copy of the CLT; (c) Certification of the landowner and the Land Bank of the Philippines that the applicant has tendered full payment of the parcel of land as described in the application and as actually tilled by him; (d) Certification by the President of the Samahang Nayon or by the head of a farmers' cooperative duly confirmed by the municipal district officer (MDO) of the Ministry of Local Government and Community Development (MLGCD) that the applicant is a full-fledged member of a duly registered farmers' cooperative or a certification to these effect; (e) Copy of the

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[52] *Id.*

[53] *Id.*

[54] *Supra* note 50 citing *Renato Reyes v. Leopoldo Barrios*, 653 Phil. 213 (2010) citing The Primer on Agrarian Reform Produced by the Agrarian Reform Communication Unit, National Media Production Center for the Ministry of Agrarian Reform (1979) and prepared in consultation with the Bureau of Land Tenure Improvement, Bureau of Agrarian Legal Assistance, Bureau of Resettlement, Center for Operation Land Transfer and the Public Information Division of the Ministry of Agrarian Reform and the Land Bank of the Philippines.

technical (graphical) description of the land parcel applied for prepared by the Bureau of Land Sketching Team (BLST) and approved by the regional director of the Bureau of Lands; (f) Clearance from the MAR field team (MARFT) or the MAR District Office (MARDO) legal officer or trial attorney; or in their absence, a clearance by the MARFT leader to the effect that the land parcel applied for is not subject of adverse claim, duly confirmed by the legal officer or trial attorney of the MAR Regional Office or, in their absence, by the regional director; (g) Xerox copy of Official Receipts or certification by the municipal treasurer showing that the applicant has fully paid or has effected up-to-date payment of the realty taxes due on the land parcel applied for; and (h) Certification by the MARFT leader whether applicant has acquired farm machineries from the MAR and/or from other government agencies.[55]

As We have held in the case of *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform*:[56]

> It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as of October 21, 1972 and declared that he shall be deemed the owner of a portion of land consisting of a family-sized farm except that no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmers cooperative. It was understood, however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.
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> When E.O. No. 228, categorically stated in its Section 1 that:
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>> All qualified farmer-beneficiaries are now deemed full owners as of October 21, 1972 of the land they acquired by virtue of P.D. No. 27.
>
> it was obviously referring to lands already validly acquired under the said decree, after proof of full-fledged membership in the farmers cooperatives and full payment of just compensation. Hence, it was also perfectly proper for the Order to also provide in its Section 2 that the lease rentals paid to the landowner by the farmer-beneficiary after October 21, 1972

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[55] *Id.*

[56] G.R. No. 78742, July 14, 1989, 175 SCRA 343, 390-391.

(pending transfer of ownership after full payment of just compensation), shall be considered as advance payment for the land.

The CARP Law, for its part, conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment or deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. Until then, title also remains with the landowner. No outright change of ownership is contemplated either.

Clearly, thus, prior to the compliance with the prescribed requirements, tenant-farmers have, at most, an *inchoate right* over the land they were tilling.[57]

In this case, the records are bereft of evidence to show that the procedure above-enumerated was complied with by the respondents to prove that the said provisional title was perfected, from the time that the entitlement to such right started pursuant to P.D. No. 27 or specifically on October 21, 1972 and before the claimed land was reclassified.

Foremost, there was no CLT issued prior to the issuance of the subject EPs.

In recognition of the said inchoate right, a CLT is issued to a tenant-farmer to serve as a provisional title of ownership over the landholding while the lot owner is awaiting full payment of just compensation or for as long as the tenant-farmer is an amortizing owner.[58] The CLT proves inchoate ownership of an agricultural land primarily devoted to rice or corn production.[59]

In *Del Castillo v. Orciga*,[60] We explained that land transfer under P.D. No. 27 is effected in two stages: first, the issuance of a CLT; and second, the issuance of an EP. The first stage serves as the government's recognition of the tenant-farmer's inchoate right

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[57] *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines, et al., supra* note 50.

[58] *Id.*

[59] *Id.*

[60] 532 Phil. 204 (2006).

as "deemed owners" of the land they till. The second stage perfects the title of the tenant-farmers and vests in them *absolute ownership* upon full compliance with the prescribed requirements.[61] As a preliminary step then, the CLT immediately serves as the tangible evidence of the government's recognition of the the tenant-farmers' inchoate right and of the subjection of the land to the OLT program.[62]

To bolster the finding that the subject landholding was not covered by the OLT program, We echo the PARAD and DARAB pronouncement that the fact that no CLTs were previously issued to the respondents signifies the non-inclusion of the subject lands under the coverage of the OLT.[63] Indeed, there is nothing in the records that will show that CLTs were issued in favor of the respondents before the issuance of the subject EPs considering that, to reiterate, the issuance of a CLT is a proof that the property was previously covered by the OLT program and proof of the government's recognition of the farmer-beneficiary's inchoate right over the same.

In G.R. No. 198160, this Court found that Elias Policarpio's TCTs, along with therein respondent Gregoria Adolfo's TCTs, were not derived from a CLT. In this case, the CA cited a Certification[64] from the DAR dated April 27, 2009 to conclude that CLTs were issued to the respondents. A perusal of the said Certification, however, shows that only one of the lands being claimed by Florencio Adolfo was issued a CLT (CLT No. 0-056491). The other person stated therein who was purportedly issued a CLT was Gregorio Lazaro, who is not a party in this case. Hence, We are perplexed on why the CA sweepingly concluded that CLTs were issued to the respondents and applied the same to this case.

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[61] *Id*.

[62] *Victoria P. Cabral v. Gregoria Adolfo, Gregorio Lazaro, and Heirs of Elias Policarpio, supra* note 30.

[63] *Rollo,* pp. 103-119.

[64] *Id*. at 161.

At any rate, assuming that such Certification is valid, it could readily be seen that CLT No. 0-056491 was only issued on September 11, 1981 or nine years after the lot had supposedly been brought under the OLT program. The fact that as of October 1973 a determination had already been made by the DAR Regional Director that the subject property was not covered by the OLT program is also telling. Thus, We agree with the findings of the PARAD and DARAB that no CLTs were issued in this case, in violation of the procedure for the issuance of an EP above-enumerated.

Likewise, there is no showing that petitioner was notified of the placement of her landholdings under the OLT program and, more importantly, there was no proof that petitioner was paid just compensation therefor.

Land acquisition by virtue of P.D. No. 27 and Republic Act (R.A.) No. 6657[65] partakes of the nature of expropriation. In fact, jurisprudence states that it is an extraordinary method of expropriating private property.[66] As such, the law on the matter must be strictly construed. Faithful compliance with legal provisions, especially those which relate to procedure for acquisition of expropriated lands should therefore be observed. In expropriation proceedings, as in judicial proceedings, notice is part of the constitutional right to due process of law. It informs the landowner of the State's intention to acquire private land upon payment of just compensation and gives him the opportunity to present evidence that his landholding is not covered or is otherwise excused from the agrarian law.[67]

In this case, the respondents and the DAR failed to adduce evidence to prove actual notice to the petitioner and payment of just compensation for the taking of the latter's property.

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[65] Comprehensive Agrarian Reform Law. Approved on June 10, 1988.

[66] *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines, et al., supra* note 50 citing *Heirs of Jugalbot v. CA*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 210-213.

[67] *Id.* citing *Sta. Monica Industrial & Dev't. Corp. v. DAR*, G.R. No. 164846, June 18, 2008, 555 SCRA 97, 104.

Indeed as We have settled in G.R. No. 198160,[68] there is nothing on record that will show that the landholding was brought under the OLT program, CLTs were issued prior to the issuance of the subject EPs, respondents are full-fledged members of a duly recognized farmer's cooperative, they finished payment of amortizations, and that petitioner, as the landowner, was notified and paid just compensation for the taking of her lands before the issuance of the subject EPs.

In this issue of compliance with the procedure, it must be remembered that the burden of proof lies with the party who asserts a right and the quantum of evidence required by law in civil cases is preponderance of evidence.[69] Preponderance of evidence is the weight, credit, and 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 credible evidence".[70] Moreover, parties must rely on the strength of their own evidence, not upon the weakness of that of their opponent's.[71] Significantly, as We have observed by in G.R. No. 198160, this Court is in the dark as to what actually transpired prior to the issuance of the subject EPs, which only raises more questions than answers.

To Our mind, it would have been easy for the respondents to prove their claims had they presented the documents above-

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[68] *Victoria P. Cabral v. Gregoria Adolfo, Gregorio Lazaro, and Heirs of Elias Policarpio, supra* note 30.

[69] *Philippine National Bank v. Gayam. Pas Imio*, 769 Phil. 70 (2015).

[70] *Id*.; Section 1, Rule 133, Rules of Court: Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[71] *Spouses Nilo Ramos and Eliadora Ramos v. Raul Obispo and Far East Bank and Trust Company*, 705 Phil. 221 (2013).

enumerated. Thus, this Court is baffled by the fact that the respondents did not adduce such evidence before the PARAD and/ or the DARAB, instead, they resorted to defenses such as an attack to the complaint for suffering from procedural defect and prescription of the action. Also, respondents merely relied on the provision in P.D. No. 27 declaring that farmer-beneficiaries are deemed owners of the land that they are tilling as of October 21, 1972, which, as amply discussed above, is not sufficient to vest absolute ownership to farmer-beneficiaries. Notably, respondent presented documents such as certifications to prove payment of the value of land allotted to Florencio Adolfo, TCTs reflecting CLT numbers, among others, for the first time on appeal before the CA and also before this Court as attached to their Comment to the Petition. However, these documents are merely photocopies and were not presented before the PARAD and DARAB, hence, cannot be given evidentiary value by this Court.

The issue on the validity of EPs is not barred by prescription.

Respondents argue that the EPs and subsequent TCTs issued to them, registered with the Register of Deeds, have already become indefeasible upon the expiration of one year from the date of the issuance thereof and can no longer be cancelled. Respondents point out that their EPs were issued in 1988 and the instant case was filed only in 2003 or 15 years after such issuance.

This Court has already ruled that the mere issuance of EPs and TCTs does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny.[72] EPs issued to agrarian reform beneficiaries may be corrected and cancelled for violations of agrarian laws, rules, and regulations.[73] Besides, registration is nothing more than a mere species of notice of an acquired vested right of ownership of a landholding. Registration of a piece of land

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[72] *Pedro Mago (deceased), represented by his spouse Soledad Mago, Augusto Mago (deceased), represented by his spouse Natividad Mago, and Ernesto Mago, represented by Levi Mago v. Juana Z. Barbin*, *supra* note 33.

[73] *Id.*

under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership.[74] A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot protect a usurper from the true owner. Thus, the jurisdiction of the PARAD/DARAB cannot be deemed to disappear the moment a certificate of title is issued as such certificates are not modes of transfer of property but merely evidence of such transfer, and there can be no valid transfer of title should the EPs, on which such TCTs are grounded, be void.[75]

At any rate, contrary to the respondents' contention, records reveal that as early as January 1990, or less than three and two months after Florencio Adolfo and Elias Policarpio registered their titles with the Register of Deeds, respectively, petitioner had already pursued actions to protect her right over the subject landholding.[76]

WHEREFORE, premises considered, the instant petition is **GRANTED**. Accordingly, the assailed Court of Appeals Decision dated November 23, 2009 and Resolution dated March 15, 2010 in CA-G.R. SP No. 108518 are hereby **REVERSED** and **SET ASIDE**. The Decision dated July 29, 2008 and Resolution dated March 11, 2009 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 13552, ordering the cancellation of Transfer Certificate of Title Nos. EP-003 and EP-004 in the name of Florencio Adolfo, and EP-010 and EP-009 in the name of Elias Policarpio, are **REINSTATED**.

SO ORDERED.

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

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[74] *Mariflor T. Hortizuela, represented by Jovier Tagufa v. Gregoria Tagufa, Roberto Tagufa and Rogelio Lumaban*, 754 Phil. 499 (2015).

[75] *Victoria P. Cabral v. Gregoria Adolfo, Gregorio Lazaro, and Heirs of Elias Policarpio, supra* note 30 citing *Gabriel, et al. v. Jamias, et al.,* 587 Phil. 216, 231 (2008).

[76] *Victoria P. Cabral v. Court of Appeals, Hon. Eligio Pacis, Regional Director, Region III, DAR, Florencio Adolfo, Gregorio Lazaro, Gregoria Adolfo, and Elias Policarpio*, *supra* note 11.

FIRST DIVISION

[G.R. No. 193544. August 2, 2017]

YOLANDA E. GARLET, *petitioner, vs.* **VENCIDOR T. GARLET,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; MOTION FOR EXTENSION OF TIME TO FILE A MOTION FOR RECONSIDERATION FILED WITH THE SUPREME COURT; LARGE VOLUME OF WORK IS NOT A VALID EXCUSE TO GRANT THE EXTENSION.—** In its Resolution issued on May 30, 1986 in *Habaluyas Enterprises,* the Court already elucidated, for the guidance of Bench and Bar, that: 1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that *no motion for extension of time to file a motion for new trial or reconsideration* may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the [Court of Appeals]. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested. The foregoing rule is still good presently. x x x Petitioner's counsel in the instant case sought extension of time to file the motion for reconsideration of the Court of Appeals Decision claiming that she had already started the draft of said motion but was unable to finalize the same "due to heavy pressure of work in the preparation of pleadings in other equally important cases requiring immediate attention." The excuse of petitioner's counsel does not constitute cogent reason or extraordinary circumstance that warrant a departure from the general rule.

2. **FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; NULLITY OF MARRIAGE ON THE GROUND OF PSYCHOLOGICAL INCAPACITY; GUIDING PRINCIPLES.—** Jurisprudence had laid down guiding principles in resolving cases for the declaration of nullity of marriage on the ground of psychological incapacity. x x x

[Thus,] (1) **The burden of proof to show the nullity of the marriage belongs to the plaintiff.** Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x (2) **The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.** Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms may be physical. **The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis (Salita v. Magtolis,* 233 SCRA 100, 108), nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.** (3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage.** The evidence must show that the illness was existing when the parties exchanged their "I do's". **The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.** (4) **Such incapacity must also be shown to be medically or clinically permanent or incurable.** Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, **such incapacity must be relevant to the assumption of marriage obligations,** not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x (5) **Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.** x x x **The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby**

complying with the obligations essential to marriage. (6) **The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife** as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. x x x (7) **Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts** x x x.

3. **ID.; ID.; ID.; ID.; REFUSAL TO LOOK FOR A JOB, VICE OF DRINKING AND GAMBLING AND SEXUAL INFIDELITY DO NOT NECESSARILY INDICATE PSYCHOLOGICAL INCAPACITY.—** The Court pronounced in *Suazo v. Suazo*: Habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness. x x x [Also,] The Court already declared that sexual infidelity, by itself, is not sufficient proof that a spouse is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes the spouse completely unable to discharge the essential obligations of marriage.

4. **ID.; ID.; ID.; ID.; THE COURT IS NOT BOUND BY THE PSYCHOLOGICAL REPORT.—** [T]he Court is not bound by Ms. De Guzman's Psychological Report. While the Court previously held that "there is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician," yet, this is qualified by the phrase, "if the totality of evidence presented is enough to sustain a finding of psychological incapacity." The psychologist's findings must still be subjected to a careful and serious scrutiny as to the bases of the same, particularly, the source/s of information, as well as the methodology employed.

APPEARANCES OF COUNSEL

Hazel R. Naredo-Ruiz for petitioner.
Aladdin F. Trinidad for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Petitioner Yolanda E. Garlet assails in this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court the: (1) Decision[1] dated June 21, 2010 of the Court of Appeals in CA-G.R. CV No. 89142, which reversed and set aside the Decision[2] dated November 27, 2006 of the Regional Trial Court (RTC), Branch 159, Pasig City in JDRC Case No. 6796; and (2) Resolution[3] dated August 24, 2010 of the appellate court in the same case, which denied petitioner's Motion for Reconsideration.

The factual antecedents of the case are as follows:

Petitioner and respondent Vencidor T. Garlet met each other sometime in 1988. They became intimately involved and as a result, petitioner became pregnant. Petitioner gave birth to their son, Michael Vincent Garlet (Michael), out of wedlock on November 9, 1989. Petitioner and respondent eventually got married on March 4, 1994. Their union was blessed with a second child, Michelle Mae Garlet (Michelle), on January 23, 1997. However, petitioner and respondent started experiencing marital problems. After seven years of marriage, petitioner and respondent separated in 2001. Petitioner now has custody over their two children.

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[1] *Rollo*, pp. 25-35; penned by Associate Justice Isaias Dicdican with Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Stephen C. Cruz concurring.

[2] *Id.* at 39-51; penned by Presiding Judge Rodolfo R. Bonifacio.

[3] *Id.* at 37-38.

On May 6, 2005, petitioner filed a Petition[4] for Declaration of Nullity of Marriage on the ground of respondent's psychological incapacity to fulfill his essential marital obligations to petitioner and their children. The Petition was docketed as JDRC Case No. 6796. On June 30, 2005, respondent filed his Answer[5] to the Petition.

At the pre-trial, the parties admitted the following facts:

1. The petitioner and respondent contracted marriage on [March[6]] 4, 1994;
2. The parties' first son was named Michael Vincent Garlet and was born on November 9, 1989;
3. The petitioner gave birth to another child named Michelle Mae Garlet on January 23, 1997;
4. The respondent is aware that the petitioner is working in Japan as an entertainer;
5. There is no ante-nuptial agreement prior to the celebration of the marriage;
6. There is no separation of properties during the marriage;
7. The petitioner has the custody and the one supporting the children from the time the respondent lost communication with the children as he does not exert effort to see them;
8. The petitioner admitted that the parties acquired several properties during cohabitation with qualification that the same was bought out of the efforts and finances of the petitioner; and
9. The petitioner likewise admitted that the respondent was not subjected to psychological examination by the psychologist sought by the petitioner with qualification that respondent was given several opportunities to attend the psychological evaluation but failed to do so.[7]

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[4] Records, pp. 3-11.

[5] *Id*. at 55-64.

[6] *Id*. at 12, Certificate of Marriage.

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

Thereafter, trial ensued.

Testifying for petitioner were petitioner herself; Marites Ereve (Marites), petitioner's sister who served as the children's nanny from 1993 to 2001; and Ms. Nimia Hermilia C. De Guzman (De Guzman), the clinical psychologist.

Petitioner and respondent were introduced to each other by a common friend in 1988. Respondent courted petitioner and they became close. One day, after partying and drinking liquor with some friends, petitioner and respondent lost their inhibitions and indulged in sexual intercourse. Petitioner became pregnant as a result. Respondent doubted if he fathered the unborn child and refused to support petitioner. Respondent urged petitioner to have an abortion, to which she did not agree. During petitioner's pregnancy, respondent did not visit her nor did he give any financial assistance. After giving birth to Michael, respondent visited petitioner only once.[8]

In order to support Michael, petitioner left for Japan to work for six months as a cultural dancer. Petitioner temporarily entrusted Michael's care and custody to her mother and siblings in Bicol. Upon returning to the Philippines, petitioner took Michael back to live in Manila. Petitioner also brought Marites with them to Manila to serve as the nanny.[9] Respondent visited petitioner and Michael several times but respondent still did not offer petitioner any monetary help as he was jobless.[10]

From 1990 to 1994, petitioner returned to Japan several more times to work, but she maintained her relationship with respondent for the sake of their son. Sometime in 1992, petitioner instructed respondent to scout for a real property on which she may invest her money. With the money petitioner remitted, respondent purchased a 210-square meter lot in Morong, Rizal (Morong property),[11] but registered the Transfer Certificate of

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[8] TSN, March 10, 2006, pp. 23-27.

[9] Records, p. 333.

[10] TSN, March 10, 2006, pp. 27-29.

[11] Records, p. 333.

Title (TCT) No. M-38509[12] covering said property in his name. Despite petitioner's pleas, respondent refused to transfer the certificate of title to the Morong property in petitioner's name.[13] Later on, respondent, without petitioner's consent, sold a 69-square meter portion of the Morong property to spouses Avelino Garlet (Avelino) and Cipriana A. Garlet, respondent's brother and sister-in-law, respectively, who secured TCT No. M-56993 for said portion in their names.[14] Respondent also mortgaged the Morong property to his sister-in-law's friend, which forced petitioner to redeem it for ₱50,000.00.[15]

Petitioner bought another parcel of land in Pila, Laguna on March 3, 1994 (Pila property).[16] Respondent insisted on including his name as one of the buyers in the deed of sale for the Pila property even though he was jobless and had no money to contribute for the purchase of said property.[17]

It was also in 1992 that petitioner and respondent started living together on the Morong property. They often quarreled but respondent stayed with petitioner because she was the breadwinner of the family. Respondent later asked petitioner to marry him. Thinking it was for the best interest of their son, petitioner agreed and she married respondent on March 4, 1994.[18]

After their wedding, respondent turned into a "selfish, greedy, irresponsible, philandering and physically abusive husband." From 1994 to 1997, their family relied on petitioner's savings for their needs. Petitioner purchased a jeepney to augment their family's finances but respondent did not ply the jeepney.[19]

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[12] *Id*. at 275.

[13] *Id*. at 333.

[14] TSN, March 10, 2006, pp. 34-35; Records, p. 280.

[15] TSN, April 6, 2006, p. 24.

[16] *Kasulatan ng Manahan ng Labas sa Hukuman na may Pagbabahagui na may Bilihang Patuluyan*; Records, pp. 36-37.

[17] TSN, March 10, 2006, pp. 36-38.

[18] Records, p. 508.

[19] *Id.* at 334.

Petitioner hoped and asked respondent to change his ways. But even after the birth of their daughter, Michelle, respondent never bothered to look for a stable job. Worse, respondent maintained his vices of gambling, drinking, and womanizing.[20] Respondent neglected Michael and Michelle, and relied on Marites to take care of the children.[21]

In 1998, petitioner was forced to work in Japan again as all her savings had been exhausted. Petitioner was able to save enough money to invest in a mini-grocery store. Petitioner placed respondent in charge of the store but the store suffered losses, which respondent could not account. Petitioner infused additional capital into the store but it still ultimately closed.[22]

Upon returning to the Philippines in 2000, petitioner felt devastated upon learning that respondent had squandered her hard-earned money, pawned her jewelry, and incurred debts in her name.[23] Petitioner also discovered the incident when respondent allowed a "male friend" to sleep in the master's bedroom. According to petitioner, this was highly unusual as they never previously allowed anyone to sleep at their house.[24]

Additionally, every time petitioner came home and brought presents for her parents and siblings, respondent got angry and demanded from petitioner all her earnings.[25]

Petitioner and respondent were fighting constantly. Sometime in 2001, they had a serious altercation during which, respondent strangled petitioner. Fortunately, a third person intervened and saved petitioner.[26]

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[20] *Id.* at 335.

[21] TSN, June 15, 2006, p. 8.

[22] TSN, March 10, 2006, pp. 44-47.

[23] Records, p. 335.

[24] TSN, March 10, 2006, p. 48; records, p. 510.

[25] *Id*. at 42.

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

Petitioner and respondent tried to settle their marital issues before the *barangay*. There, respondent admitted taking petitioner's money and jewelry because he had no means to support himself and the family. Realizing that there was no more love and respect between them and that respondent was just using her, petitioner finally separated from respondent.[27] Petitioner and respondent executed on September 10, 2001 before the *barangay* a *Kasunduang Pag-aayos*[28] wherein they agreed that respondent would leave the house in exchange for the jeepney, tricycle, and ₱300,000.00; and that respondent would have visitation rights, *i.e.*, twice a week, over their children. Since the separation, petitioner had been solely supporting their children with the income from her businesses in Bicol, Bulacan, and Pasig.

Petitioner filed an application for support, alleging that she had been spending approximately ₱15,000.00 a month for the two children, and paying the children's tuition fees in the following amounts:[29]

Michael		Michelle	
Grade 6	₱ 18,118.10	Nursery	₱ 18,280.00
1st year high school	20,366.00	Grade 1	21,741.00
2nd year high school	24,241.00	Grade 2	15,050.00
3rd year high school	26,996.00	Grade 3	17,704.00
4th year high school	29,676.00		

In addition, petitioner had expended around ₱15,000.00 for the children's medical and dental needs and about ₱100,000.00 for the children's clothing needs since 2001. As the children would be starting school again, Michael would need ₱15,000.00 for his tuition fee for the first semester in college, plus ₱20,000.00 for his monthly allowance, books, supplies, and other

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[27] *Id*. at 54.

[28] Records, pp. 297-299.

[29] *Id*. at 532.

miscellaneous expenses; while Michelle would need ₱30,000.00 for her annual tuition fee, as well as ₱15,000.00 for food allowance, school supplies, tutorials, clothing, and other miscellaneous expenses.[30]

Considering the children's foregoing expenses, petitioner asserted that her demand for respondent to pay ₱20,000.00 per month, or ₱10,000.00 a month for each child, was just and reasonable.[31]

Clinical psychologist, Ms. De Guzman, reported that she interviewed petitioner and gathered information from the couple's relatives and neighbors.[32] Ms. De Guzman's attempts to talk to respondent at his house were unsuccessful. Ms. De Guzman, however, explained that her failure to personally interview respondent would not affect her findings, saying that "what is being tapped in the psychological assessment is the unconscious level, more or less. And what is represented or uncovered in the unconscious level would be correlated to the manifested behavior. Having observed the respondent since the time that I have been appearing in this case, there are some aspects or some attitudes and behaviors that correlated with the descriptions of those people whom I interviewed."[33]

In her report entitled "Psychological Capacity of Petitioner Yolanda Ereve Garlet"[34] (Psychological Report), Ms. De Guzman cleared petitioner of any psychological disorder, saying that petitioner has the capacity to understand and comply with her marital obligations. In contrast, Ms. De Guzman found respondent to be suffering from a narcissistic type of personality disorder. Quoted below are Ms. De Guzman's test results and her evaluation of both petitioner and respondent:

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[30] *Id*.

[31] *Id*.

[32] TSN, June 1, 2006, pp. 11-17.

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

[34] Records, pp. 507-518.

Petitioner is endowed with an average intellectual capacity and possesses practical sounding cognitive skills that enables her to confront her challenges in an efficient manner. However, her better judgment and analytical functions are inclined to falter when pressures and stresses overwhelm her.

Personality profile reveals a woman who is overly submissive to the point of being gullible such that she normally gets the raw end of a deal in most social situations. As much as possible, she would want a smooth sailing interaction especially with her loved ones, trying to compensate for lost time when she is not around them.

She is however, the type who knows and honors her commitments and obligations even if the people she trusts, as in the case of her wayward husband – Respondent have already betrayed her.

She is basically goal-focused and independent-minded but these mature and positive traits easily dwindle when her sentimental nature gets the better of her. She welcomes praises and attention accorded to her by her milieu such that she sometimes fail to decipher who among them are merely taking advantage of her generosity/kindness. Consequently, she easily gets fooled, particularly as she could really be too trusting.

Assertiveness and strength of character are the least among her traits but Petitioner always makes it a point to maintain a positive outlook and disposition in life despite her failures. She is very sensitive and considerate of the feelings of other people.

Pyschosexual adjustment is basically adequate even if she has developed a wary attitude towards members of the opposite sex.

Over-all analysis of the test data failed to yield traces of any on-going psychopathological condition nor of any type of personality disorder. Thus, **Petitioner** is still **Psychologically Capacitated** to understand, comply and execute her marital obligations.

The same could not be said as true for the Respondent who is undoubtedly suffering from the Narcissistic Type of Personality Disorder, as evidenced by the following symptomatic behavior:

1. He is unable to maintain his own direction in life without the financial help and support of other people. He clings to the Petitioner, who is the breadwinner, sacrificing to be away from home to be able to build up a stable future, for his

finances. He also maintains an amorous relationship with different women as a source of added emotional support, boost of and satisfaction of his self-directed/immediate needs and desires.

2. He is not motivated to work and likewise capitalizes on his physical assets to attain what he wants to achieve.

3. He is contented with his present lifestyle without thought of others and has no foresight to prepare for a healthy family, emotionally and socially. He is not bothered by his conscience and even flaunts his indiscretions publicly.

4. He has marked adjustment difficulties with his immediate relatives.

5. He has a very poor impulse control, easily using invectives/ verbal tirades and at times unable to control his aggressions that physical fights with Petitioner arose.

6. He took advantage of Petitioner's kindness, resourcefulness and industry, by not fulfilling his part of the marriage covenant. He never cared nor attended to his children but often delegated them to whoever would be willing to assist him.

7. He appears not to make use of his judgment and decision making abilities as he is under the mercy of his immature impulses where the important aspect of his life, is himself and immediate gratification of his needs.

Thus, attending to his responsibility, understanding and complying with his obligations in marriage are beyond his capacity. Conclusively, the breakdown of their marriage could be traced to Respondent's aforementioned traits plus his inadequacy and insecurity in dealing with mature roles. Respondent's traits and attitudes have been present even before marriage so that to effect any change or improvement in his dispositions, would be difficult to do. The Psychological Incapacitation is pervasive, permanent and clinically proven to be incurable. Respondent has accepted it as his means of coping with stressing life demands and is not aware that it was the source of their estrangement and final breakdown of their marital relationship.

The root cause of which started in his early days of training where ambivalent/matter-of-fact treatment was received from immediate

caregivers. Because of his ordinal position among the children, being the youngest boy, he was always given the choice of what to do, favored or praised. He was not able to overcome such indulgence, carried it to his adolescent/adult years, as he was always given the most attention.

Contrarily, they were also somehow neglected because of financial lack so much so that parents had to work overtime to earn adequately for their living. Respondent together with his younger siblings were left to the care of elder brothers/sisters who just simply/literally followed what their parents would want of them. Guidance and discipline were imposed upon the elder siblings but became oblivious towards the Respondent. It developed in Respondent on how he would go about his life without experiencing the deprivation and hardship that he had undergone. He became self-focused and at the same time hunted for women vulnerable to his superficialities.

Thus, they are better off apart for the sake of everyone who are within their bounds of reach for Respondent does not realize the pain he is causing towards other people, specifically his legal wife – the Petitioner as well as their children.

It is therefore recommended that their marriage covenant be dissolved for everyone's peace of mind, through due process in this Honorable Court.[35]

Respondent testified on his own behalf. However, in an Order[36] dated September 14, 2006, the RTC declared respondent's direct testimony stricken off the record because of respondent's failure to appear for his cross-examination. After petitioner submitted her Memorandum,[37] the case was deemed submitted for decision.[38]

In its Decision dated November 27, 2006, the RTC gave weight to Ms. De Guzman's conclusion that respondent was suffering from a Narcissistic Personality Disorder and ruled that:

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[35] *Id*. at 515-518.

[36] *Id*. at 331.

[37] *Id*. at 332-340.

[38] *Id*. at 341.

Based on the evidence submitted, the parties never shared a true married life.

After a careful evaluation of the records, this Court finds the petition to be impressed with merit. The respondent is described as suffering from narcissistic personality disorder found to be permanent, severe, serious, and incurable, rendering him as psychologically incapacitated to perform the marital obligations.

Respondent neglected his obligations as a husband and father to their children. Even prior to the marriage, the respondent manifested his psychological incapacity. He suspected the paternity of his son with the petitioner and even turned his back upon learning it. He has visited only on the day of giving birth by the petitioner of their son. He never cared for his son and would only visit him once in a while. He never worked to support his son. In fact, the respondent was financially dependent on the petitioner even before the marriage. He defrauded the petitioner by registering all the properties bought by the petitioner from the latter's exclusive income under his name declaring themselves as married. Worst, he sold a portion of the property in Morong without the knowledge of the petitioner.

During the marriage, the respondent's laziness became manifest. He focused on his self and does not care who gets hurt for as long as it satisfies him. He gambles and drinks at the expense of the petitioner. He was given the chance to earn for himself and for the family and still, he did not handle it well and instead continued with his vices.

The respondent disregarded his obligations to spend quality time with the petitioner and especially with their children. He even committed infidelities.

All deeds and actions of the respondent are clear demonstrations of an utter insensitivity or inability to give meaning and significance to the marriage.

By reason of the respondent's immaturity and irresponsibility stemming from his NARCISSISTIC PERSONALITY DISORDER, he was unable to fulfill his duties and responsibilities towards his wife and children, thus constituting psychological incapacity.

The psychological report shows that respondent's psychological incapacity is characterized by juridical antecedence as it was found to have existed even prior to the time he contracted marriage with

petitioner. Respondent's personality disorder, the root cause of which can be traced in his childhood years was found to be pervasive and permanent. Being the youngest boy, Respondent was always favored and praised but was not properly guided and disciplined by his parents as the latter were pre-occupied with improving their finances.

It also speaks of gravity because respondent is incapable of rendering marital obligations like commitment, fidelity, trust, support and love toward the petitioner and their children which are very vital in a marital relationship. In fact, Ms. De Guzman stated in her report that attending to his responsibilities, understanding and complying with his obligations in marriage are beyond respondent's capacity.

It is incurable because the psychological incapacity of the respondent is deeply rooted, it is already in his character. No amount of therapy, no matter how intensive, can possibly change the respondent insofar as incapability to perform his essential marital obligations with the petitioner and to his children are concerned. Respondent has already accepted such incapacity as his means of coping with stressing life demands.[39]

The RTC further held that all of the properties which were acquired during the marriage were bought with petitioner's exclusive funds, thus, negating the presumption of equality of shares between the parties in a void marriage under Article 147 of the Family Code. The RTC awarded the custody of the children to petitioner, but granted weekly visitation rights to respondent and ordered respondent to give support to the children.

In the end, the RTC adjudged:

WHEREFORE, judgment is hereby rendered declaring the marriage between YOLANDA EREVE GARLET and VENCIDOR TAEP GARLET held at the Office of the Mayor, Morong, Rizal on March 4, 1994, as NULL AND VOID AB INITIO on [the] ground of psychological incapacity of the respondent to perform the essential marital obligations in accordance with Article 36 of the Family Code, with all the legal effects thereon.

The property relation between the petitioner and respondent under Article 147 of the Family Code is deemed DISSOLVED. The real

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[39] *Rollo*, pp. 48-49.

properties acquired prior to marriage and cohabitation is hereby declared exclusive properties of the petitioner particularly the real property covered by Transfer Certificate [of Title] No. M-38509 of the Registry of Deeds of Rizal; and the tricycle and jeepney covered by Certificate of Registration Nos. 13175616 and 27224267, respectively.

The parties are directed to submit list of properties for liquidation, partition and distribution; and the delivery of presumptive legitime of their common children with notice to their creditors upon finality of this decision.

The custody of the children, namely: 1) Michael Vincent E. Garlet; and 2) Michelle Mae E. Garlet is hereby awarded to the petitioner subject to visitorial right of the respondent once a week at the most convenient time of the said children. The respondent is hereby adjudged to give support to the children in the amount of ₱3,000.00 a month each to be deposited every 5th day of the month in their respective bank accounts under trust of the petitioner; and he is hereby directed to provide at least one-half of the cost of their education.

The petitioner shall revert to the use of her maiden name.

The Local Civil Registrars of Morong, Rizal, and Pasig [City] are directed to cause the entry of the foregoing judgment in the Book of Marriages upon issuance thereof.

A decree of declaration of nullity of marriage shall be issued upon compliance with the foregoing judgment.[40]

The RTC denied respondent's Motion for Reconsideration in its Order dated February 26, 2007.

Respondent's appeal before the Court of Appeals was docketed as CA-G.R. CV No. 89142. The Court of Appeals, in its Decision dated June 21, 2010, reversed the RTC judgment, reasoning as follows:

[W]e scrutinized the totality of evidence adduced by Yolanda and found that the same was not enough to sustain a finding that Vencidor was psychologically incapacitated.

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[40] *Id*. at 50-51.

In essence, Yolanda wanted to equate Vencidor's addiction to alcohol, chronic gambling, womanizing, refusal to find a job and his inability to take care of their children as akin to psychological incapacity. At best, Yolanda's allegations showed that Vencidor was irresponsible, insensitive, or emotionally immature. The incidents cited by Yolanda did not show that Vencidor suffered from a psychological malady so grave and permanent as to deprive him of awareness of the duties and responsibilities of the matrimonial bond.

Yolanda's portrayal of Vencidor as jobless and irresponsible is not enough. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological illness. Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by this rule. What the law requires to render a marriage void on the ground of psychological incapacity is downright incapacity, not refusal or neglect or difficulty, much less ill will.

In ruling for Yolanda, the trial court gave credence to the psychological report prepared by Ms. De Guzman. x x x

While it is true that courts rely heavily on psychological experts for its understanding of human personality, still the root cause of the psychological incapacity must be identified as a psychological illness, its incapacitating nature fully explained, and said incapacity established by the totality of the evidence presented during trial. Likewise, although there is no requirement that a party to be declared psychologically incapacitated should be personally examined by a physician or a psychologist (as a condition *sine qua non*), there is nevertheless still a need to prove the psychological incapacity through *independent evidence* adduced by the person alleging said disorder.

In the instant case, the root cause of the alleged psychological incapacity, its incapacitating nature and the incapacity itself were not sufficiently explained. What can be perused from the psychological report prepared by Ms. De Guzman is that it only offered a general evaluation on the supposed root cause of Vencidor's personality disorder. The report failed to exhaustively explain the relation between being a pampered youngest son and suffering from a psychological

malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond.

The psychological report failed to reveal that the personality traits of Vencidor were grave or serious enough to bring about an incapacity to assume the essential obligations of marriage. Ms. De Guzman merely stated in the said report that it is beyond the capacity of Vencidor to attend to his responsibility and understand and comply with his marital obligations. Such statement is a mere general conclusion which, unfortunately, is unsubstantiated. We cannot see how Vencidor's supposed personality disorder would render him unaware of the essential marital obligations or to be incognitive of the basic marital covenants that concomitantly must be assumed and discharged by him.

Also, we cannot help but note that Ms. De Guzman's conclusions about Vencidor's psychological incapacity were primarily based on the informations fed to her by Yolanda whose bias for her cause cannot be doubted. Moreover, Ms. De Guzman testified that the informations that she obtained from Yolanda were the result of one-hour interview with Yolanda and initial testing given at intervals.

While this circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards. Ms. De Guzman only examined Vencidor from a third-party account. To make conclusions on x x x Vencidor's psychological condition based on the information fed by Yolanda, during a one-hour interview, is not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

It remains settled that the State has a high stake in the preservation of marriage rooted in its recognition of the sanctity of married life and its mission to protect and strengthen the family as a basic autonomous social institution. Hence, any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. Presumption is always in favor of the validity of marriage. *Semper praesumitur pro matrimonio*.[41]

The dispositive portion of the foregoing Court of Appeals Decision reads:

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

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **GRANTED**. Accordingly, the assailed Decision dated November 27, 2006 and the Order dated February 26, 2007 are hereby **REVERSED** and **SET ASIDE**. The marriage between herein parties is hereby declared as still subsisting and valid.[42]

Petitioner received a copy of the Decision of the appellate court on June 28, 2010. Petitioner filed a motion[43] seeking an extension of twenty days, or until August 2, 2010, within which to file a motion for reconsideration. Petitioner filed her Motion for Reconsideration on August 2, 2010. However, the Court of Appeals issued a Resolution[44] on August 24, 2010 denying petitioner's Motion for Reconsideration for being filed out of time, citing the ruling in *Habaluyas Enterprises, Inc. v. Japzon*[45] that the filing of the motion for extension of time does not toll the fifteen-day period for filing a motion for reconsideration.

Petitioner seeks redress from this Court through the instant Petition, grounded on the following assignment of errors:

I

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT AND DECLARING THAT THE MARRIAGE BETWEEN YOLANDA GARLET AND VENCIDOR GARLET TO BE SUBSISTING. THE COURT OF APPEALS MISINTERPRETED AND MISAPPRECIATED THE APPLICABLE LAW AND JURISPRUDENCE OF THE CASE.

II

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN DENYING THE MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION AND

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[42] *Id*. at 34-35.

[43] Motion for Extension of Time to File a Motion for Reconsideration; CA *rollo*, pp. 130-131.

[44] CA *rollo*, pp. 181-182.

[45] 226 Phil. 144, 148 (1986).

CONSEQUENTLY DECREEING THAT THE MOTION FOR RECONSIDERATION WAS FILED OUT OF TIME.[46]

Petitioner avers that the Court of Appeals erred in (a) disregarding Ms. De Guzman's findings for being based solely on petitioner's version of events, which was a third party account; (b) treating petitioner's evidence as "no different from hearsay;" (c) finding that the root cause of respondent's psychological incapacity was not sufficiently explained; and (d) declaring the marriage of petitioner and respondent as valid.

Petitioner argues that based on *Marcos v. Marcos*,[47] it is not required that the psychologist personally examine the spouse who is alleged to be suffering from a psychological disorder. What matters is that the totality of petitioner's evidence establish psychological incapacity.

Petitioner asserts that her evidence consists of not just her testimony, but also those of her witnesses. Petitioner's description of her marriage was substantiated by the statements of respondent's brother, sister-in-law, and neighbors, which were incorporated in the Psychological Report. What is more, the root cause of respondent's psychological incapacity had been properly alleged in the Petition, clinically identified, and proven by Ms. De Guzman in her testimony and her Psychological Report. Petitioner points out that the RTC gave considerable weight to her evidence, and found respondent to be suffering from a Narcissistic Personality Disorder so permanent, serious, severe, and incurable that it rendered respondent incapable of performing his marital obligations. Considering that the RTC had the opportunity to observe the demeanor of the witnesses when they testified, its findings are entitled to respect from the appellate courts. Underscoring the importance of the appreciation of the facts by the trial court in determining whether a party to a marriage is psychologically incapacitated, petitioner refers to the case of *Ngo Te v. Gutierrez Yu-Te*[48] wherein the

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[46] *Rollo*, p. 6.

[47] 397 Phil. 840, 850 (2000).

[48] 598 Phil. 666, 691 (2009).

findings of the trial court were declared to be final and binding on the appellate courts. Based on the totality of the evidence, petitioner maintains that her marriage should be declared null and void on account of respondent's psychological incapacity.

Lastly, petitioner alleges that the Court of Appeals erred in denying her Motion for Reconsideration for being filed out of time based on *Habaluyas Enterprises*, and pleads for liberality in the application of the rules in the interest of substantial justice.

The Petition is without merit.

The Court shall first address the procedural issue regarding the denial of petitioner's Motion for Reconsideration by the Court of Appeals for being filed out of time.

In its Resolution issued on May 30, 1986 in *Habaluyas Enterprises,* the Court already elucidated, for the guidance of Bench and Bar, that:

> 1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that *no motion for extension of time to file a motion for new trial or reconsideration* may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the [Court of Appeals]. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.[49]

The foregoing rule is still good presently. The Court, in the more recent case of *V.C. Ponce Company, Inc. v. Municipality of Parañaque*,[50] still observed strict adherence to the rule laid down in *Habaluyas Enterprises*. The Court acknowledged in said case that it sometimes allowed a liberal reading of the rules in the interest of equity and justice, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance. However, the Court also found therein that petitioner's reason for failing to meet the deadline, *i.e.*, it was

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[49] *Habaluyas Enterprises, Inc. v. Japzon*, *supra* note 45 at 148.

[50] 698 Phil. 338, 351 (2012).

without aid of counsel, did not warrant a relaxation of the rules as "it is incumbent upon the client to exert all efforts to retain the services of new counsel."

Petitioner's counsel in the instant case sought extension of time to file the motion for reconsideration of the Court of Appeals Decision claiming that she had already started the draft of said motion but was unable to finalize the same "due to heavy pressure of work in the preparation of pleadings in other equally important cases requiring immediate attention."[51] The excuse of petitioner's counsel does not constitute cogent reason or extraordinary circumstance that warrant a departure from the general rule. Pressure and large volume of legal work do not excuse a counsel for filing a pleading out of time. It is the counsel's duty to devote his/her full attention, diligence, skills, and competence to every case that he/she accepts.[52]

The Court stressed in *De Leon v. Hercules Agro Industrial Corporation*[53] that compliance with the reglementary period for perfecting an appeal is not only a procedural issue, but jurisdictional, thus:

As the period to file a motion for reconsideration is non-extendible, petitioner's motion for extension of time to file a motion for reconsideration did not toll the reglementary period to appeal; thus, petitioner had already lost his right to appeal the September 23, 2005 decision. As such, the RTC decision became final as to petitioner when no appeal was perfected after the lapse of the prescribed period.

Doctrinally-entrenched is that the right to appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as

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[51] CA *rollo*, p. 130.

[52] *Ramos v. Dajoyag, Jr.*, 428 Phil. 267, 279 (2002).

[53] 734 Phil. 652, 660-661 (2014).

well, hence, failure to perfect the same renders the judgment final and executory.

The CA correctly ordered that petitioner's appellant's brief be stricken off the records. As the CA said, the parties who have not appealed in due time cannot legally ask for the modification of the judgment or obtain affirmative relief from the appellate court. A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses his right to do so. As petitioner failed to perfect his appeal within the period for doing so, the September 23, 2005 decision has become final as against him. The rule is clear that no modification of judgment could be granted to a party who did not appeal. It is enshrined as one of the basic principles in our rules of procedure, specifically to avoid ambiguity in the presentation of issues, facilitate the setting forth of arguments by the parties, and aid the court in making its determinations. It is not installed in the rules merely to make litigations laborious and tedious for the parties. It is there for a reason.

Petitioner received a copy of the Decision dated June 21, 2010 of the Court of Appeals on June 28, 2010 and the 15-day reglementary period expired on July 13, 2010 without her filing a motion for reconsideration or an appeal, hence, the said judgment already became final.

Moreover, the Court is unconvinced that it should set aside the finality of the Court of Appeals judgment for the sake of substantive justice, as the appellate court did not commit reversible error in ruling that the marriage of petitioner and respondent is subsisting and valid because petitioner failed to establish respondent's psychological incapacity.

Petitioner insists on respondent's psychological incapacity, a ground for declaration of nullity of marriage under Article 36 of the Family Code,[54] which provides:

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

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[54] Took effect on August 3, 1988.

Jurisprudence had laid down guiding principles in resolving cases for the declaration of nullity of marriage on the ground of psychological incapacity. In *Azcueta v. Republic,*[55] the Court presented a summation of relevant jurisprudence on psychological incapacity, reproduced hereunder:

> Prefatorily, it bears stressing that it is the policy of our Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. Our family law is based on the policy that marriage is not a mere contract, but a social institution in which the state is vitally interested. The State can find no stronger anchor than on good, solid and happy families. The break up of families weakens our social and moral fabric and, hence, their preservation is not the concern alone of the family members.
>
> Thus, the Court laid down in *Republic of the Philippines v. Court of Appeals and Molina* stringent guidelines in the interpretation and application of Article 36 of the Family Code, to wit:
>
> > (1) **The burden of proof to show the nullity of the marriage belongs to the plaintiff.** Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation". It decrees marriage as legally "inviolable", thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.
> >
> > The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.
> >
> > (2) **The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.** Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms may be physical. **The**

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[55] 606 Phil. 177, 186-189 (2009).

evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis (Salita v. Magtolis,* 233 SCRA 100, 108), nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage.** The evidence must show that the illness was existing when the parties exchanged their "I do's". **The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.**

(4) **Such incapacity must also be shown to be medically or clinically permanent or incurable.** Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, **such incapacity must be relevant to the assumption of marriage obligations,** not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) **Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.** Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. **The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.**

(6) **The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife** as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) **Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts** x x x.

In *Santos v. Court of Appeals,* the Court declared that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. It should refer to "no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." The intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

However, in more recent jurisprudence, we have observed that notwithstanding the guidelines laid down in *Molina,* there is a need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In regard to psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on "all fours" with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court. With the advent of *Te v. Te,* the Court encourages a reexamination of jurisprudential trends on the interpretation of Article 36 although there has been no major deviation or paradigm shift from the *Molina* doctrine. (Citations omitted.)

It bears to stress that the burden of proving the nullity of the marriage falls on petitioner. Petitioner's evidence shall still be scrutinized and weighed, regardless of respondent's failure

to present any evidence on his behalf. Any doubt shall be resolved in favor of the existence and continuation of the marriage. Tested against the present guidelines, the Court agrees with the Court of Appeals that the totality of petitioner's evidence is insufficient to establish respondent's psychological incapacity.

Petitioner imputes almost every imaginable negative character trait against respondent, but not only do they not satisfactorily constitute manifestations of respondent's psychological incapacity as contemplated in the Family Code, petitioner's averments are riddled with inconsistencies that are sometimes contradicted by her own evidence.

Petitioner avers that respondent tried to persuade her to have an abortion when she became pregnant with Michael and respondent even questioned Michael's paternity. Yet, notably, respondent never sought the correction of Michael's Certificate of Live Birth, which specifically named him as Michael's father. The following verbal exchanges between the couple in the *Kasunduang Pag-aayos*[56] also show that respondent acknowledged his children with petitioner, namely, Michael and Michelle, and was concerned with their welfare:

Yoly - Ayoko na nga basta umalis ka sa bahay natin at kung hindi ka aalis kami ng mga anak mo ang aalis.

Vencidor – Paano mga anak natin, sinong mag-aalaga sa kanila.

Yoly – Ako na ang bahala sa mga anak ko bubuhayin ko sila.

x x x x x x x x x

Yoly – Makikita mo pa naman ang mga anak mo, puwede mo rin naman dalawin kahit dalawang beses sa isang lingo.

Vencidor – Ayoko yata Yoly na magkahiwalay tayo paano na ako, sino ang mag-iintindi sa mga anak ko, halimbawa na umalis ka uli papunta abroad.

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[56] Records, pp. 297-299.

Even assuming that respondent initially reacted adversely to petitioner's pregnancy with Michael, it would appear from respondent's subsequent actuations that he had come to accept that he is indeed Michael's father.

In her testimony, petitioner claimed that her relationship with respondent was cut off when she got pregnant; that respondent never visited her during her pregnancy; and that respondent visited her only once after she gave birth to Michael on November 9, 1989. According to petitioner, she had no relationship with respondent until she purchased the Pila property on March 3, 1994.[57] The records, though, bear out the continuous relationship between petitioner and respondent. *First*, petitioner stated in her own Memorandum before the RTC that she "did not sever her ties with [respondent]."[58] *Second*, petitioner remitted money to respondent sometime in 1992 for the purchase of the Morong property, where they eventually lived. *Third*, Ms. De Guzman recounted in her Psychological Report that sometime "[i]n 1992, Petitioner and Respondent started to live [in] Morong, Rizal."[59] And *fourth*, petitioner married respondent on March 4, 1994, which would just be the day after she bought the Pila property.

Petitioner further alleges that respondent meddled with the purchase and registration of the Morong and Pila properties. Although he did not make any monetary contribution at all for the said purchases, respondent registered the TCT of the Morong property in his name and as one of the owners in the TCT of the Pila property. In addition, respondent purportedly sold a portion of the Morong property without petitioner's consent. But the Court notes that petitioner and respondent had already deported themselves as husband and wife long before the purchase of the Morong and Pila properties and their actual marriage. Petitioner had a direct hand in the preparation of Michael's Certificate of Live Birth in 1989 and she made it to

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[57] TSN, March 10, 2006, pp. 24-27 and 38.

[58] Records, p. 333.

[59] *Id*. at 508.

appear therein that she and respondent were already married on December 27, 1988 in Pasay City. It is not inconceivable, therefore, that petitioner and respondent continued to misrepresent themselves as a married couple in the purchase of the Pila property and in the case of the Morong property, the purchase took place when petitioner was then working in Japan. It appears that petitioner belatedly renounced respondent's authority to purchase and register the subject properties, as well as to sell a portion of the Morong property, only after their relationship had gone sour.

Furthermore, petitioner complains about respondent's joblessness, gambling, alcoholism, sexual infidelity, and neglect of the children during their marriage.

Contrary to petitioner's assertion, it appears that respondent took on several jobs. As indicated in Michael's Certificate of Live Birth, respondent's occupation was listed as a "vendor." Respondent was also in-charge of the mini-grocery store which he and petitioner put up. Most recently, respondent worked as a jeepney driver. Petitioner's claim that respondent never plied the jeepney[60] was contradicted by her own sister and witness, Marites, who testified that respondent sometimes plied the jeepney himself or asked somebody else to drive it for him.[61] Petitioner criticized respondent for not looking for a stable job, but did not specify what job suits respondent's qualifications. More importantly, it is settled in jurisprudence that refusal to look for a job *per se* is not indicative of a psychological defect.[62]

As for respondent's alleged drinking and gambling vices, petitioner herself had no personal knowledge of the same, relying only on what relatives relayed to her while she was in Japan.[63]

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[60] *Id*. at 334.

[61] TSN, June 15, 2006, p. 8.

[62] *Suazo v. Suazo*, 629 Phil. 157, 184 (2010).

[63] Q - Now Madam Witness, how did you know that your husband was not trying to look for a job while you were in Japan?

A - Yes, ma'am. The truth of the matter, **my sister told me** that he is always out of the house and frequently drinking and gambling, ma'am.

Being hearsay evidence, petitioner's testimony on the matter had no probative value[64] even if allowed by the Court as part of her narration. It is Marites, in her testimony[65] and *Sinumpaang Salaysay*,[66] who recounted that petitioner would often play *tong-its* and *mahjong* until early morning, come home drunk, sleep until afternoon, and leave again to gamble. While respondent could have indulged in the vices of drinking and gambling, it was not established that it was due to some debilitating psychological condition or illness or that it was serious enough as to prevent him from performing his essential marital obligations. As the Court pronounced in *Suazo v. Suazo*[67]:

> Habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness.

There is utter lack of factual basis for respondent's purported sexual infidelity. Aside from petitioner's bare allegations, no concrete proof was proffered in court to establish respondent's unfaithfulness to petitioner. Petitioner failed to provide details on respondent's supposed affairs, such as the names of the other women, how the affairs started or developed, and how she discovered the affairs. Ms. De Guzman, in her Psychological Report, quoted respondent's brother, Avelino, as saying that

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Q - How did you know that your husband was out all the time and drinking and gambling while you were in Japan?

A - **I was being told by my relatives and also his relatives of his activities**, ma'am. (TSN, March 10, 2006, pp. 40-41.)

[64] *PNOC Shipping and Transport Corp. v. Court of Appeals,*358 Phil. 38, 56 (1998).

[65] TSN, June 15, 2006, pp. 7-8.

[66] Records, pp. 281-283.

[67] *Supra* note 62 at 184.

different women often looked for and visited respondent at the latter's house after petitioner and respondent separated, but this is still insufficient evidence of respondent's marital infidelity.

The Court already declared that sexual infidelity, by itself, is not sufficient proof that a spouse is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes the spouse completely unable to discharge the essential obligations of marriage.[68] In *Navales v. Navales,*[69] the Court still found no factual basis for the husband's claim that his wife, being flirtatious and sexually promiscuous, was psychologically incapacitated, regardless of the submitted psychological report concluding that the wife was a nymphomaniac. The Court reasoned as follows:

> The Court finds that the psychological report presented in this case is insufficient to establish Nilda's psychological incapacity. In her report, Vatanagul concluded that Nilda is a nymphomaniac, an emotionally immature individual, has a borderline personality, has strong sexual urges which are incurable, has complete denial of her actual role as a wife, has a very weak conscience or superego, emotionally immature, a social deviant, not a good wife as seen in her infidelity on several occasions, an alcoholic, suffers from anti-social personality disorder, fails to conform to social norms, deceitful, impulsive, irritable and aggressive, irresponsible and vain. She further defined "nymphomania" as a psychiatric disorder that involves a disturbance in motor behavior as shown by her sexual relationship with various men other than her husband.
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> **The report failed to specify, however, the names of the men Nilda had sexual relationship with or the circumstances surrounding the same. As pointed out by Nilda, there is not even a single proof that she was ever involved in an illicit relationship with a man other than her husband**. **Vatanagul claims, during her testimony, that in coming out with the report, she interviewed not only Reynaldo but also Jojo Caballes, Dorothy and Lesley who were Reynaldo's sister-in-law and sister, respectively, a certain**

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[68] *Villalon v. Villalon*, 512 Phil. 219, 227-228 (2005).

[69] 578 Phil. 826, 845-846 (2008).

Marvin and a certain Susan. Vatanagul however, did not specify the identities of these persons, which information were supplied by whom, and how they came upon their respective informations. Indeed, the conclusions drawn by the report are vague, sweeping and lack sufficient factual bases. As the report lacked specificity, it failed to show the root cause of Nilda's psychological incapacity; and failed to demonstrate that there was a "natal or supervening disabling factor" or an "adverse integral element" in Nilda's character that effectively incapacitated her from accepting, and thereby complying with, the essential marital obligations, and that her psychological or mental malady existed even before the marriage. x x x. (Citations omitted.)

That respondent delegated the care for the children to Marites, petitioner's sister, does not necessarily constitute neglect. While it is truly ideal that children be reared personally by their parents, in reality, there are various reasons which compel parents to employ the help of others, such as a relative or hired nanny, to watch after the children. In the instant case, it was actually petitioner who brought Marites from Bicol to Manila to care for Michael, and also later on, for Michelle. Granting that Marites was primarily responsible for the children's care, there is no showing that a serious psychological disorder has rendered respondent incognizant of and incapacitated to perform his parental obligations to his children. There is no allegation, much less proof, that the children were deprived of their basic needs or were placed in danger by reason of respondent's neglect or irresponsibility.

Petitioner additionally accuses respondent of taking her money and jewelry after their marital dispute sometime in 2001, and submitted the *Kasunduang Pag-aayos* they executed before the *barangay* in which respondent admitted doing so. The submitted document recorded the exchange between the couple, thus:

Vencidor – **O sige Yoly ibabalik ko yong alahas mo at pera mo magsimula uli tayo.**

Yoly – Ayoko na nga makisama sa iyo, basta ibalik mo na lang ang pera ko at mga alahas ko.

Vencidor – Paano naman ako dapat tayo ay hati.

Yoly – O sige ibalik mo ang ₱150,000.00, at alahas ko.

Vencidor – Gawin mo namang ₱300,000.00.

Yoly – O sige gawin mo ng Tatlong daan, pati bahay sa Pila, Laguna jeep at trysikel sa iyo na umalis ka lang ng bahay.

Vencidor – Saan naman ako uuwi, pero pansamantala lang ito di ba?

Yoly – Makikita mo pa naman ang mga anak mo, puwede mo rin naman dalawin kahit dalawang beses sa isang lingo.

Vencidor – Ayoko yata Yoly na magkahiwalay tayo paano na ako, sino ang mag-iintindi sa mga anak ko, halimbawa na umalis ka uli papunta abroad.

Yoly – Ayoko na nga makisama sayo kung [di] ka aalis mapipilitan ako na itataas ko na ito kaso natin.

Vencidor – O sige kukunin ko ang pera sa bangko at ibibigay ko sa iyo dadalhin ko sa bahay.

Yoly – Ang kikita (sic) ko lagi niyang sinisilip.

Vencidor – Dapat naman mag-asawa naman tayo kung ano ang iyo ay akin rin yon di ba.

Yoly – Bakit mo kinuha ang pera ko [?]

Vencidor – Ginalaw ko iyon kasi inuunahan mo ako. Di mo ako pinalalapit pagtulog ay mag-asawa tayo. At yong Hapon palaging tumatawag, kaya naitago ko ang mga alahas mo. Hinabol pa niyan ng saksak.

Yoly – Sinisiraan niya ako sa Hapon ay iyon ay mga kustomer ko. Masasakit ang mga sinasabi niya sa kin.

Vencidor – Binabalewala niya ako.

Yoly – Basta umalis ka na sa bahay at naibigay ko na sa iyo ang [b]ahay sa [L]aguna, jeep, trysikel at pera ano pa ang gusto mo[?] [S]a amin ng mga anak mo ang bahay sa Natividad St., Ibaba. Wala ka pakialam

roon at ako ang nagpundar noon.[70] (Emphases supplied.)

A perusal of the aforequoted verbal exchange between petitioner and respondent in the *Kasunduang Pag-aayos*, though, reveals that respondent only hid petitioner's money and jewelry as a desperate attempt to stop petitioner from leaving him, taking with her the children. In fact, respondent repeatedly expressed concern about saving their marriage, offering to return the money and jewelry back to petitioner as long as they stay together. It was petitioner who categorically stated that she no longer wanted to live with respondent, offering to the latter ₱300,000.00 cash, the Pila property, the jeepney and the tricycle, just for respondent to leave their marital home.

Petitioner asserts too that she had been physically abused by respondent, but offers no substantiating evidence, such as details on the instances of abuse, pictures of her injuries, medico-legal report, or other witness' testimony.

While the Court does not hold respondent totally without blame or free of shortcomings, but his failings as husband and father are not tantamount to psychological incapacity which renders their marriage void from the very beginning. Worthy of reiterating herein is the declaration of the Court in *Agraviador v. Amparo-Agraviador*[71] that:

These acts, in our view, do not rise to the level of psychological incapacity that the law requires, and should be distinguished from the "difficulty," if not outright "refusal" or "neglect," in the performance of some marital obligations that characterize some marriages. The intent of the law has been to confine the meaning of psychological incapacity to the **most serious cases** of personality disorders – existing at the time of the marriage – clearly demonstrating an utter insensitivity or inability to give meaning and significance to the marriage. The psychological illness that must have afflicted a party at the inception of the marriage should be a malady **so grave and permanent** as to deprive one of awareness of the duties and

[70] Records, pp. 298-299.

[71] 652 Phil. 49, 64-65 (2010).

responsibilities of the matrimonial bond he or she is about to assume. (Emphases supplied, citations omitted.)

Finally, the Court is not bound by Ms. De Guzman's Psychological Report. While the Court previously held that "there is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician," yet, this is qualified by the phrase, "if the totality of evidence presented is enough to sustain a finding of psychological incapacity."[72] The psychologist's findings must still be subjected to a careful and serious scrutiny as to the bases of the same, particularly, the source/s of information, as well as the methodology employed.

In *Padilla-Rumbaua v. Rumbaua,*[73] the Court did not give credence to the clinical psychologist's report because:

> We cannot help but note that Dr. Tayag's conclusions about the respondent's psychological incapacity were based on the information fed to her by only one side – the petitioner – whose bias in favor of her cause cannot be doubted. While this circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards in the manner we discussed above. For, effectively, Dr. Tayag only diagnosed the respondent from the prism of a third party account; she did not actually hear, see and evaluate the respondent and how he would have reacted and responded to the doctor's probes.
>
> Dr. Tayag, in her report, merely summarized the petitioner's narrations, and on this basis characterized the respondent to be a self-centered, egocentric, and unremorseful person who "believes that the world revolves around him"; and who "used love as a . . . deceptive tactic for exploiting the confidence [petitioner] extended towards him." Dr. Tayag then incorporated her own idea of "love"; made a generalization that respondent was a person who "lacked commitment, faithfulness, and remorse," and who engaged "in promiscuous acts that made the petitioner look like a fool"; and finally

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[72] *Ngo Te v. Gutierrez Yu-Te, supra* note 48 at 702-703, citing*Marcos v. Marcos*, *supra* note 47 at 850.

[73] 612 Phil. 1061, 1084-1086 (2009).

concluded that the respondent's character traits reveal "him to suffer Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable."

We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential obligations of marriage. It failed to identify the root cause of the respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. Neither did it explain the incapacitating nature of the alleged disorder, nor show that the respondent was really incapable of fulfilling his duties due to some incapacity of a psychological, not physical, nature. Thus, we cannot avoid but conclude that Dr. Tayag's conclusion in her Report – *i.e.,* that the respondent suffered "Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable – is an unfounded statement, not a necessary inference from her previous characterization and portrayal of the respondent. While the various tests administered on the petitioner could have been used as a fair gauge to assess her own psychological condition, this same statement cannot be made with respect to the respondent's condition. To make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.

The Court similarly rejected the psychiatric evaluation report presented by the petitioner in *Agraviador* for the following reasons:

The Court finds that Dr. Patac's Psychiatric Evaluation Report fell short in proving that the respondent was psychologically incapacitated to perform the essential marital duties. We emphasize that Dr. Patac did not personally evaluate and examine the respondent; he, in fact, recommended at the end of his Report for the respondent to "undergo the same examination [that the petitioner] underwent." Dr. Patac relied only on the information fed by the petitioner, the parties' second child, Emmanuel, and household helper, Sarah. Largely, the doctor relied on the information provided by the petitioner. Thus, while his Report can be used as a fair gauge to assess the petitioner's own psychological condition (as he was, in fact, declared by Dr.

Patac to be psychologically capable to fulfill the essential obligations of marriage), the same statement cannot be made with respect to the respondent's condition. The methodology employed simply cannot satisfy the required depth and comprehensiveness of the examination required to evaluate a party alleged to be suffering from a psychological disorder.

We do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory. We have confirmed in *Marcos v. Marcos* that the person sought to be declared psychologically incapacitated must be personally examined by a psychologist as a condition *sine qua non* to arrive at such declaration. If a psychological disorder can be proven by independent means, no reason exists why such independent proof cannot be admitted and given credit. No such independent evidence appears on record, however, to have been gathered in this case.[74]

Much in the same way, the Court finds herein that Ms. De Guzman's sources and methodology is severely lacking the requisite depth and comprehensiveness to judicially establish respondent's psychological incapacity. Ms. De Guzman relied on the information given by petitioner; Avelino, respondent's brother; Ramil Ereve, petitioner's brother; an anonymous female cousin of petitioner;[75] and the couple's neighbors who refused to give their names.[76] On the basis thereof, Ms. De Guzman determined that respondent suffered from Narcissistic Personality Disorder, the root cause of which, Ms. De Guzman traced back to respondent, as the youngest child in the family, being favored, praised, and indulged by his caregivers. From there, Ms. De Guzman already concluded that respondent's disorder rendered it beyond his capacity to understand, comply, and attend to his obligations in the marriage; was present even before marriage; and was "pervasive, permanent and clinically proven to be incurable." To put it simply, Ms. De Guzman is saying that respondent was a spoiled child, and while it can be said that

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[74] *Agraviador v. Amparo-Agraviador*, *supra* note 71 at 65-66.

[75] TSN, June 1, 2006, p. 19.

[76] *Id*. at 14.

respondent has grown up to be a self-centered and self-indulgent adult, it still falls short of establishing respondent's psychological incapacity characterized by gravity, juridical antecedence, and incurability, so as to render respondent's marriage to petitioner void *ab initio*.

All told, the Court agrees with the Court of Appeals in declaring that the marriage of petitioner and respondent as subsisting and valid. As the Court decreed in *Republic v. Galang:*[77]

> The Constitution sets out a policy of protecting and strengthening the family as the basic social institution, and marriage is the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies with the plaintiff. Unless the evidence presented clearly reveals a situation where the parties, or one of them, could not have validly entered into a marriage by reason of a grave and serious psychological illness existing at the time it was celebrated, we are compelled to uphold the indissolubility of the marital tie.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated June 21, 2010 and Resolution dated August 24, 2010 of the Court of Appeals in CA-G.R. CV No. 89142 are **AFFIRMED**.

SO ORDERED.

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

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[77] 665 Phil. 658, 677-678 (2011).

SECOND DIVISION

[G.R. No. 197297. August 2, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES DANILO GO and AMORLINA GO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; PUBLIC LAND ACT; ANY APPLICATION FOR CONFIRMATION OF TITLE ALREADY CONCEDES THAT THE LAND IS PREVIOUSLY PUBLIC.—** Any application for confirmation of title under Commonwealth Act No. 141 already concedes that the land is previously public. For a person to perfect one's title to the land, he or she may apply with the proper court for the confirmation of the claim of ownership and the issuance of a certificate of title over the property. This process is also known as judicial confirmation of title. Section 48(b) of Commonwealth Act No. 141, as amended by Presidential Decree No. 1073, states who can apply for judicial confirmation of title: x x x Commonwealth Act No. 141 is a special law that applies to agricultural lands of the public domain, not to forests, mineral lands, and national parks. The requisite period of possession and occupation is different from that of land classification. In an application for judicial confirmation of title, an applicant already holds an imperfect title to an agricultural land of the public domain after having occupied it from June 12, 1945 or earlier. Thus, for purposes of obtaining an imperfect title, the date it was classified is immaterial.

2. **ID.; PUBLIC LAND ACT (CA 141) AND PROPERTY REGISTRATION DECREE (PD 1529); REQUISITES FOR FILIPINO CITIZENS APPLYING FOR THE JUDICIAL CONFIRMATION AND REGISTRATION OF AN IMPERFECT TITLE.—** [U]nder Section 48(b) of Commonwealth Act No. 141, as amended, and Section 14(1) of Presidential Decree No. 1529, Filipino citizens applying for the judicial confirmation and registration of an imperfect title must prove several requisites. First, they must prove that they,

by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession of the property. Second, it must be settled that the applicants' occupation is under a *bona fide* claim of acquisition or ownership since June 12, 1945 or earlier, immediately before the application was filed. Third, it should be established that the land is an agricultural land of public domain. Finally, it has to be shown that the land has been declared alienable and disposable.

3. **ID.; ID.; ID.; POSSESSION; TAX DECLARATION MAY BE A BASIS TO INFER POSSESSION.—** Although not adequate to establish ownership, a tax declaration may be a basis to infer possession. This Court has highlighted that where tax declaration was presented, it must be the 1945 tax declaration because June 12, 1945 is material to the case. The specific date must be ascertained; otherwise, applicants fail to comply with the requirements of the law.

4. **ID.; ID.; ID.; APPLICANT HAS TO PROVE THAT THE PUBLIC LAND HAS BEEN CLASSIFIED AS ALIENABLE AND DISPOSABLE.—** The 1987 Constitution declares that the State owns all public lands. Public lands are classified into agricultural, mineral, timber or forest, and national parks. Of these four (4) types of public lands, only agricultural lands may be alienated. x x x Thus, an applicant has the burden of proving that the public land has been classified as alienable and disposable. To do this, the applicant must show a positive act from the government declassifying the land from the public domain and converting it into an alienable and disposable land. "[T]he exclusive prerogative to classify public lands under existing laws is vested in the Executive Department."

5. **ID.; ID.; ID.; ID.; THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) SECRETARY IS THE APPROVING AUTHORITY FOR LAND CLASSIFICATION AND RELEASE OF LANDS OF THE PUBLIC DOMAIN AS ALIENABLE AND DISPOSABLE; A COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE (CENRO) CERTIFICATION SHOULD BE ACCOMPANIED BY THE SAID DENR SECRETARY'S ISSUANCE.—** Section X(1) of the DENR Administrative Order No. 1998-24 and Section IX(1) of DENR Administrative Order No. 2000-11 affirm that the DENR

Secretary is the approving authority for "[l]and classification and release of lands of the public domain as alienable and disposable." x x x The DENR Secretary's official acts "may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy." x x x The Community Environment and Natural Resources Office (CENRO) certification is issued only to verify the DENR Secretary issuance through a survey. x x x To establish that a land is indeed alienable and disposable, applicants must submit the application for original registration with the CENRO certification and a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Jose Amor M. Amorado for respondents.
AMA Law Office, co-counsel for respondents.

D E C I S I O N

LEONEN, *J*.:

Public land remains inalienable unless it is shown to have been reclassified and alienated to a private person.[1]

This resolves a Petition for Review assailing the Court of Appeals Decision dated January 21, 2011 and Resolution dated June 6, 2011 in CA-G.R. CV No. 93000, which affirmed the Decision of the Municipal Trial Court in Cities dated December 12, 2008 issuing the Decree of Registration for Lot No. 4699-B of Subdivision Plan Csd-04-022290-D in favor of the Spouses Danilo and Amorlina Go.

On August 26, 2006, respondents Spouses Danilo and Amorlina Go (the Spouses Go) applied for the registration and

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[1] *Republic v. Vega,* 654 Phil. 511, 520 (2011) [Per *J.* Sereno, Third Division].

confirmation of title over Cadastral Lot No. 4699-B (Lot No. 4699-B), a parcel of land in Barangay Balagtas, Batangas City covering an area of 1,000 square meters. [2]

The Spouses Go registered Lot No. 4699-B in their names for taxation purposes. They had paid the real property taxes, including the arrears, from 1997 to 2006, as shown in Tax Declaration No. 026-04167.[3] They had also established a funeral parlor, San Sebastian Funeral Homes, on the lot.[4] According to them, there were no other claimants over the property.[5]

The Spouses Go claimed to be in an open, continuous, exclusive, notorious, and actual possession of the property for seven (7) years since they bought it.[6] They also tacked their possession through that of their predecessors-in-interest, as follows:

Sometime in 1945,[7] Anselmo de Torres (Anselmo) came to know that his parents, Sergia Almero and Andres de Torres (the Spouses de Torres),[8] owned Lot No. 4699,[9] a bigger property where Lot No. 4699-B came from. According to Anselmo, the Spouses de Torres paid the real property taxes during their lifetime and planted bananas, mangoes, calamansi, and rice on this lot.[10] His mother, Sergia Almero (Sergia), allegedly inherited

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[2] *Rollo*, p. 32, Court of Appeals Decision.

[3] *Id*. at 34, Court of Appeals Decision.

[4] *Id*. at 56, RTC Decision.

[5] *Id*. at 57.

[6] *Id*. at 56.

[7] *Id*. at 39. The records state that Anselmo was born on April 21, 1938 and he was seven (7) years old when he allegedly learned his parents' ownership of the land.

[8] *Id*. at 32, Court of Appeals Decision.

[9] *Id*. at 39. *See rollo*, pp. 54 and 56. Lot No. 4699 was a 3,994-square-meter parcel of land that was subdivided into small areas under Subdivision Plan Csd-04-022290-D.

[10] *Id*. at 39.

Lot No. 4699 from her parents, Celodonio and Eufemia Almero (the Spouses Almero).[11]

In the 1960s, Anselmo and his siblings inherited Lot No. 4699 from their parents upon their deaths.[12]

One of Anselmo's sisters, Cristina Almero de Torres Corlit (Cristina), then built a residential house on Lot No. 4699-B,[13] declaring this parcel of land under her name for tax purposes, as evidenced by Tax Declaration No. 026-03492.[14] Meanwhile, Anselmo and his other siblings built their homes on another portion of Lot No. 4699.[15] Anselmo, who was then 28 years old, started living in the eastern portion from 1966.[16]

On January 26, 2000, the Spouses Go bought Lot No. 4699-B from the previous owners, siblings Anselmo, Bernardo Almero de Torres, Leonila Almero de Torres Morada, and Cristina, as evidenced by a Deed of Absolute Sale.[17]

On August 26, 2006, the Spouses Go (respondents) applied for the registration and confirmation of title of Lot No. 4699-B.[18] They attached the Report dated January 31, 2007 of Special Land Investigator I Ben Hur Hernandez (Hernandez) and the Certification dated January 29, 2008 of Forester I Loida Maglinao (Maglinao) of the Batangas City Community Environment and Natural Resources Office (CENRO) of the Calamba, Laguna, Batangas, Rizal, and Quezon (CALABARZON) Region of the Department of Environment and Natural Resources (DENR).[19]

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[11] *Id*. at 32.

[12] *Id*. at 57, RTC Decision.

[13] *Id*. at 56-57, RTC Decision.

[14] *Id*. at 34, Court of Appeals Decision.

[15] *Id*. at 56-57, RTC Decision.

[16] *Id*. at 57.

[17] *Id*. at 15, 32.

[18] *Id*. at 32, Court of Appeals Decision.

[19] *Id*. at 57-58, RTC Decision.

Hernandez's January 31, 2007 Report and Maglinao's January 29, 2008 Certification stated that the property was located in an alienable and disposable zone[20] since March 26, 1928, under Project No. 13, Land Classification Map No. 718.[21] No patent or decree was previously issued over the property.[22]

On November 3, 2006, the Republic of the Philippines (petitioner) opposed respondents' application for registration for the following reasons: 1) Lot No. 4699-B was part of the public domain; 2) neither the Spouses Go nor their predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the property since June 12, 1945 or even before then; 3) the tax declaration and payment were not competent or sufficient proof of ownership, especially considering that these were relatively recent.[23]

Anselmo and his siblings had no proof of their inheritance. He claimed that the office having custody of the documentary proof of their inheritance was burned[24] and they no longer had the original copy of the documents.[25]

In the Decision[26] dated December 12, 2008, the Municipal Trial Court in Cities confirmed the title of the lot in the name of the Spouses Go. The dispositive portion read:

Considering that the applicants have duly established essential facts in support of the application, the Court hereby confirms title

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[20] *Id*. at 57.

[21] *Id*. at 74.

[22] *Id*. at 57, RTC Decision.

[23] *Id*. at 36-37, Court of Appeals Decision.

[24] *Id*. at 32. *See rollo,* p. 56, the Municipal Trial Court in Cities cites a Certification dated March 31, 2008 of the Office of the City Assessor of Batangas City purportedly showing that the office was burned on an unstated date.

[25] *Id*. at 56, RTC Decision.

[26] *Id*. at 54-59. The Decision, docketed as LRC Case No. 2006-162, was penned by Judge Eleuterio L. Bathan of Branch 2, Municipal Trial Court in Cities, Pallocan West, Batangas City.

to Lot 4699-B, Cad 264 Batangas Cadastre covered in approved plan Csd-04-22290-D, containing an area of ONE THOUSAND (1,000) SQUARE METERS situated at Barangay Balagtas, Batangas City in the name of Spouses Danilo Go and Amorlina A. Go, of legal age, Filipino and residents of San Jose Subdivision, Barangay San Sebastian, Lipa City.

Once the Decision becomes final, let the corresponding Decree of Registration be issued.

SO ORDERED.[27]

Petitioner appealed directly to the Court of Appeals. In the Decision[28] dated January 21, 2011, the Court of Appeals denied the appeal:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed *Decision,* dated December 12, 2008, of the Municipal Trial Court in Cities (MTCC), Branch 2, Pallocan West, Batangas City in Land Registration Case No. 2006-162, is **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.[29]

Petitioner filed its Motion for Reconsideration,[30] which was denied on June 6, 2011.[31]

Petitioner elevated[32] the case before this Court, arguing that Maglinao testified having investigated only 200 square meters

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[27] *Id*. at 58-59.

[28] *Id*. at 31-49. The Decision, docketed as CA-G.R. CV No. 93000, was penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante of the Special Thirteenth Division, Court of Appeals, Manila.

[29] *Id*. at 48.

[30] *Id*. at 60-65.

[31] *Id*. at 50-53. The Resolution was penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante of the Former Special Thirteenth Division of the Court of Appeals, Manila.

[32] *Id*. at 10-30, Petition for Review.

of the 1,000-square-meter land for registration.[33] She also admitted that her certification was based on the approved plan and not on the Land Classification Map. She certified the lot only to determine "the point or monument of the entire or whole area" and not to identify its alienable character. Thus, petitioner argues that Maglinao's certification should not have been used to determine that the land was alienable and disposable.[34]

Petitioner assails respondents' failure to submit a copy of the original classification map that bears the DENR Secretary's approval and its legal custodian's certification as a true copy.[35] Petitioner argues that a CENRO Certification is insufficient to establish that a land applied for registration is alienable.[36]

In the Resolution dated August 15, 2011, this Court required respondents to submit a certified true copy of any Presidential or DENR Secretary's issuance stating Lot No. 4699-B as alienable and disposable.[37]

In their Compliance[38] dated September 25, 2011, the Spouses Go attached a certified photocopy of the CENRO Certification dated January 29, 2008,[39] which this Court noted.[40] In the Resolution dated November 14, 2011, this Court informed the Spouses Go that the CENRO Certification was not the submission required of them.[41]

On June 20, 2012, the Spouses Go's counsel, Atty. Jose Amor M. Amorado, was ordered "to show cause why he should not be disciplinarily dealt with or held in contempt" for failure to

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

[34] *Id*. at 21.

[35] *Id*.

[36] *Id*. at 22.

[37] *Id*. at 70.

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

[39] *Id*. at 74.

[40] *Id*. at 76.

[41] *Id*.

comply with this Court's August 15, 2011 Resolution.[42] The Spouses Go manifested that they had already complied with this Court's Resolution through their September 25, 2011 Compliance.[43] They re-attached the CENRO Certification dated January 29, 2008.[44]

On September 24, 2012, this Court resolved[45] to require respondents to file their Comment. The Spouses Go failed to do so, which led this Court to again require[46] their counsel to show cause for their failure to comply with the September 24, 2012 Resolution.

In their Compliance[47] dated August 15, 2013, the Spouses Go informed this Court that they would dispense with the filing of their Comment.

For resolution before this Court is whether the Court of Appeals erred in issuing the Spouses Go a Decree of Registration over Lot No. 4699-B.

I

Any application for confirmation of title under Commonwealth Act No. 141[48] already concedes that the land is previously public.

For a person to perfect one's title to the land, he or she may apply with the proper court for the confirmation of the claim of ownership and the issuance of a certificate of title over the property.[49] This process is also known as judicial confirmation of title.[50]

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[42] *Id*. at 82.

[43] *Id.* at 83-86.

[44] *Id*. at 87.

[45] *Id*. at 89.

[46] *Id*. at 95.

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

[48] The Public Land Act (1936).

[49] *See* Com. Act No. 141, Sec. 48.

[50] *Heirs of Malabanan v. Republic,* 717 Phil. 141, 164 (2013) [Per *J*. Bersamin, *En Banc*].

Section 48(b) of Commonwealth Act No. 141, as amended[51] by Presidential Decree No. 1073,[52] states who can apply for judicial confirmation of title:

Section 48. The following described citizens of the Philippines, occupying *lands of the public domain* or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance [Regional Trial Court] of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

. . . .

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of *agricultural lands* of the public domain, under a bona fide claim of acquisition or ownership, except as against the government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. Those shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis supplied)

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[51] See *Republic v. Court of Appeals*, 489 Phil. 405, 417 (2005) [Per *J.* Tinga, Second Division]. This Court has explained:

When the Public Land Act was first promulgated in 1936, the period of possession deemed necessary to vest the right to register their title to agricultural lands of the public domain commenced from July 26, 1894. However, this period was amended by R.A. No. 1942, which provided that the *bona fide* claim of ownership must have been for at least thirty (30) years. Then in 1977, Section 48(b) of the Public Land Act was again amended, this time by P.D. No. 1073, which pegged the reckoning date on June 12, 1945.

[52] Pres. Decree No. 1073, Sec. 4 provides:

Section 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945.

Commonwealth Act No. 141 is a special law that applies to agricultural lands of the public domain, not to forests, mineral lands, and national parks.[53] The requisite period of possession and occupation is different from that of land classification.

In an application for judicial confirmation of title, an applicant already holds an imperfect title to an agricultural land of the public domain after having occupied it from June 12, 1945 or earlier.[54] Thus, for purposes of obtaining an imperfect title, the date it was classified is immaterial.[55]

Classifying a land of the public domain as agricultural is essential only to establish the applicant's "eligibility for land registration, not the ownership or title over it."[56] *Heirs of Malabanan v. Republic of the Philippines*[57] explained:

> [T]he applicant's imperfect or incomplete title is derived only from possession and occupation since June 12, 1945, or earlier. This means that the character of the property subject of the application as alienable and disposable agricultural land of the public domain determines its eligibility for land registration, not the ownership or title over it.[58]

In *Malabanan*, the Court *En Banc* affirmed that June 12, 1945 is the "reckoning point of the requisite *possession* and

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[53] In *Heirs of Malabanan v. Republic,* 717 Phil. 141, 164 (2013) [Per *J*. Bersamin, *En Banc*].

Note that Section 48(b) of the Public Land Act used the words "lands of the public domain" or "alienable and disposable lands of the public domain" to clearly signify that lands otherwise classified, *i.e.*, mineral, forest or timber, or national parks, and lands of patrimonial or private ownership, are outside the coverage of the Public Land Act. What the law does not include, it excludes. The use of the descriptive phrase "alienable and disposable" further limits the coverage of Section 48(b) to only the agricultural lands of the public domain as set forth in Article XII, Section 2 of the 1987 Constitution.

[54] *Id*.

[55] *Id*.

[56] *Id*. at 166.

[57] 717 Phil. 141 (2013) [Per *J*. Bersamin, *En Banc*].

[58] *Id*. at 166.

occupation" and not of the land classification as alienable and disposable:

> [T]he choice of *June 12, 1945* as the reckoning point of the requisite possession and occupation was the sole prerogative of Congress, the determination of which should best be left to the wisdom of the lawmakers. Except that said date qualified the *period of possession and occupation*, no other legislative intent appears to be associated with the fixing of the date of June 12, 1945. Accordingly, the Court should interpret only the plain and literal meaning of the law as written by the legislators.
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> [A]n examination of Section 48 (b) of the Public Land Act indicates that Congress prescribed no requirement that the land subject of the registration should have been classified as agricultural since June 12, 1945, or earlier.[59] (Emphasis supplied)

Thus, the land may be declared alienable and disposable at any time, not necessarily before June 12, 1945. The moment that the land is declared alienable and disposable, an applicant may then initiate the proceedings for the judicial confirmation of title.

On the other hand, for the requisite duration of possession, an applicant must have had possession of the property under a bona fide claim of ownership or acquisition, from June 12, 1945 or earlier. Such possession must have also been open, continuous, exclusive, and notorious.[60]

Under Section 11(4)(a) of Commonwealth Act No. 141, the judicial confirmation of imperfect or incomplete titles, which the law describes as "judicial legalization," allows for agricultural public lands to be disposed of by the State and acquired by Filipino citizens.[61]

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[59] *Id*. at 165.

[60] Com. Act No. 141, Sec. 48(b).

[61] Com. Act No. 141, Sec. 11 provides:

Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

(1) For homestead settlement;

(2) By sale;

Meanwhile, Section 14(1) of Presidential Decree No. 1529[62] provides for the procedure to register a title under the Torrens system:

> Section 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

Section 14(1) of Presidential Decree No. 1529 does not vest or create a title to a public land that has already existed or has been vested under Commonwealth Act No. 141.[63] The procedure of titling under Presidential Decree No. 1529 "simply recognizes and documents ownership and provides for the consequences of issuing paper titles."[64]

Thus, under Section 48(b) of Commonwealth Act No. 141, as amended, and Section 14(1) of Presidential Decree No. 1529, Filipino citizens applying for the judicial confirmation and

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(3) By lease; and

(4) By confirmation of imperfect or incomplete titles;

(a) By judicial legalization; or

(b) By administrative legalization (free patent).

[62] Property Registration Decree (1978).

[63] *Development Bank of the Phils. v. Court of Appeals*, 387 Phil. 283, 296 (2000) [Per *J.* Mendoza, Second Division]); Concurring and Dissenting Opinion of *J.* Leonen in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 207 (2013) [Per *J.* Bersamin, *En Banc*]; *Republic v. Bautista Jr.*, G.R. No. 166890, June 28, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/166890.pdf> 5 [Per *J.* Bersamin, First Division]).

[64] Concurring and Dissenting Opinion of *J.* Leonen in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 207 (2013) [Per *J.* Bersamin, *En Banc*].

registration of an imperfect title must prove several requisites. First, they must prove that they, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession of the property. Second, it must be settled that the applicants' occupation is under a *bona fide* claim of acquisition or ownership since June 12, 1945 or earlier, immediately before the application was filed. Third, it should be established that the land is an agricultural land of public domain. Finally, it has to be shown that the land has been declared alienable and disposable.[65]

The Spouses Go's possession, by themselves or through their predecessors-in-interest, does not meet the statutory requirements.

The evidence the Spouses Go submitted to prove their required length of possession consist of Anselmo's testimony, Cristina's sole Tax Declaration, and the Spouses Go's sole Tax Declaration. Other than these pieces of evidence, the Spouses Go could not support their claim of possession in the concept of an owner, by themselves or through their predecessors-in-interest, from June 12, 1945 or earlier.

The records do not show that the Spouses Go's predecessors-in-interest fenced the original 3,994-square-meter Lot No. 4699, claiming it as exclusively theirs or that they introduced improvements on it since June 12, 1945 or earlier. Cristina built a residential house on Lot No. 4699-B[66] when her parents died in the 1960s,[67] while Anselmo started living in the eastern portion of Lot No. 4699 in 1966 when he was 28 years old.[68] These events happened at least 15 years after 1945. Moreover,

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[65] *Republic v. Lualhati,* G.R. No. 183511, March 25, 2015, 757 Phil. 119, 129 (2015) [Per *J.* Peralta, Third Division]; *La Tondeña, Inc. v. Republic*, G.R. No. 194617, August 5, 2015, 765 SCRA 265, 283 (2015) [Per *J.* Leonen, Second Division].

[66] *Id*. at 56, RTC Decision.

[67] *Id*. at 56-57.

[68] *Id*. at 57.

the siblings could not produce any documentary proof of their alleged inheritance of this land from their parents.[69]

Apart from Cristina's single tax declaration and the Spouses Go's single tax declaration covering even Cristina's arrears from 1997 to 2000, nothing in the records shows that the Spouses Go's predecessors-in-interest religiously paid real property taxes. Payment of real property taxes is a "good indicia of the possession in the concept of owner for no one in his [or her] right mind would be paying taxes for a property that is not in his [or her] actual, or at the least constructive, possession."[70]

Anselmo only gave bare assertions that his parents paid the real property taxes during their lifetime.[71] Neither did the Spouses Go give any proof of the alleged tax payments of the Spouses de Torres or of Anselmo's grandparents, the Spouses Almero.

Although not adequate to establish ownership, a tax declaration may be a basis to infer possession.[72] This Court has highlighted that where tax declaration was presented, it must be the 1945 tax declaration because June 12, 1945 is material to the case.[73] The specific date must be ascertained; otherwise, applicants fail to comply with the requirements of the law.[74] In *Republic v. Manna Properties:*[75]

It is unascertainable whether the 1945 tax declaration was issued on, before or after 12 June 1945. Tax declarations are issued any time of the year. A tax declaration issued in 1945 may have been issued in December 1945. *Unless the date and month of issuance in*

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[69] *Id*. at 32, Court of Appeals Decision.

[70] *Republic v. Gielczyk,* 720 Phil. 385, 397 (2013) [Per *J*. Reyes, First Division].

[71] *Rollo,* p. 39, CA Decision.

[72] *Republic v. Manna Properties, Inc.,* 490 Phil. 654, 667-668 (2005) [Per *J*. Carpio, First Division].

[73] *Id*. at 668.

[74] *Id*.

[75] 490 Phil. 654 (2005) [Per *J*. Carpio, First Division].

1945 is stated, compliance with the reckoning date in [Commonwealth Act No.] 141 cannot be established.[76] (Emphasis in the original)

II

Even assuming that there is sufficient evidence to establish their claim of possession in the concept of an owner since June 12, 1945, the Spouses Go nevertheless failed to prove the alienable and disposable character of the land.

The 1987 Constitution declares that the State owns all public lands.[77] Public lands are classified into agricultural, mineral, timber or forest, and national parks. Of these four (4) types of public lands, only agricultural lands may be alienated. Article XII, Sections 2 and 3 of the Constitution provide:

Section 2. *All lands of the public domain*, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are *owned by the State*. With the exception of agricultural lands, all other natural resources shall not be alienated . . .

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses [to] which they may be devoted. *Alienable lands* of the public domain shall be *limited to agricultural lands* . . . (Emphasis supplied)

Thus, an applicant has the burden of proving that the public land has been classified as alienable and disposable.[78] To do this, the applicant must show a positive act from the government declassifying the land from the public domain[79] and converting

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[76] *Id*. at 668.

[77] *Republic v. Lualhati,* 757 Phil. 119, 129 (2015) [Per *J*. Peralta, Third Division].

[78] *Republic v. Lualhati,* 757 Phil. 119 (2015) [Per *J*. Peralta, Third Division].

[79] *Victoria v. Republic*, 666 Phil. 519, 525 (2011) [Per *J*. Abad, Second Division].

it into an alienable and disposable land.[80] "[T]he exclusive prerogative to classify public lands under existing laws is vested in the Executive Department."[81] In *Victoria v. Republic*:[82]

> To prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or statute. The applicant may secure a certification from the government that the lands applied for are alienable and disposable, but *the certification must show that the DENR Secretary had approved the land classification and released the land of the pub[l]ic domain as alienable and disposable*[.][83] (Emphasis supplied, citations omitted)

Section X(1)[84] of the DENR Administrative Order No. 1998-24 and Section IX(1)[85] of DENR Administrative Order No. 2000-11 affirm that the DENR Secretary is the approving authority for "[l]and classification and release of lands of the public domain as alienable and disposable." Section 4.6 of DENR Administrative Order No. 2007-20 defines land classification as follows:

> Land classification is the process of demarcating, segregating, delimiting and establishing the best category, kind, and uses of public lands. Article XII, Section 3 of the 1987 Constitution of the Philippines provides that lands of the public domain are to be classified into agricultural, forest or timber, mineral lands, and national parks.

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[80] *Ituralde v. Falcasantos*, 361 Phil. 245, 250 (1999) [Per *J*. Pardo, First Division]; *La Tondeña, Inc. v. Republic*, G.R. No. 194617, August 5, 2015, 765 SCRA 265, 285 [Per *J*. Leonen, Second Division].

[81] *Heirs of Malabanan v. Republic*, 717 Phil. 141, 162 (2013) [Per *J*. Bersamin, *En Banc*].

[82] 666 Phil. 519 (2011) [Per *J.* Abad, Second Division].

[83] *Id*. at 525.

[84] DENR Adm. Order No. 1998-24.

[85] Dated February 8, 2000, at 72.

These provisions, read with *Victoria v. Republic*,[86] establish the rule that before an inalienable land of the public domain becomes private land, the DENR Secretary must first approve the land classification into an agricultural land and release it as alienable and disposable.[87] The DENR Secretary's official acts "may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy."[88]

The CENRO or the Provincial Environment and Natural Resources Officer will then conduct a survey to verify that the land for original registration falls within the DENR Secretary-approved alienable and disposable zone.[89]

The CENRO certification is issued only to verify the DENR Secretary issuance through a survey. "Thus, the CENRO Certification should have been accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable."[90] A CENRO certification, by itself, is insufficient to prove the alienability and disposability of land sought to be registered.[91] In *Republic v. Lualhati*:[92]

[I]t has been repeatedly ruled that certifications issued by the CENRO, or specialists of the DENR, as well as Survey Plans prepared by the DENR containing annotations that the subject lots are alienable, *do*

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[86] 666 Phil. 519 (2011) [Per *J*. Abad, Second Division].

[87] *Republic v. Sese,* 735 Phil. 108, 121 (2014) [Per *J*. Mendoza, Third Division].

[88] *Republic v. T.A.N. Properties, Inc*., 578 Phil. 441, 453 (2008) [Per *J*. Carpio, First Division]; *see* RULES OF COURT, Rules 132, Sec. 19(a).

[89] *Republic v. Sese,* 735 Phil. 108, 121 (2014) [Per *J*. Mendoza, Third Division].

[90] *Republic v. Hanover Worldwide Trading Corp*., 636 Phil. 739, 752 (2010) [Per *J*. Peralta, Second Division].

[91] *Republic v. Local Superior of the Institute of the Sisters of the Sacred Heart of Jesus of Ragusa,* G.R. No. 185603, February 10, 2016, 783 SCRA 501, 514 [Per *J*. Reyes, Third Division].

[92] 757 Phil. 119 (2015) [Per *J*. Peralta, Third Division].

not constitute incontrovertible evidence to overcome the presumption that the property sought to be registered belongs to the inalienable public domain. Rather, this Court stressed the importance of proving alienability by presenting a copy of the original classification of the land approved by the DENR Secretary and certified as true copy by the legal custodian of the official records.[93] (Emphasis supplied)

Here, in its Decision[94] dated December 12, 2008, the Court of Appeals concluded that the January 29, 2008 CENRO Certification, which stated that Lot No. 4699-B was within alienable and disposable zone, was conclusive proof that this land applied for registration was alienable. This Court disagrees.

To establish that a land is indeed alienable and disposable, applicants must submit the application for original registration with the CENRO certification and a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[95]

Judicially entrenched[96] is the rule that it is the DENR Secretary who has the authority to approve land classification and release a land of public domain as alienable and disposable. In *Republic v. T.A.N. Properties*:[97]

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[93] *Id*. at 131.

[94] *Rollo*, pp. 54-59.

[95] *Republic v. Lualhati,* 757 Phil. 119, 132 (2015) [Per *J*. Peralta, Third Division].

[96] See *Republic v. T.A.N. Properties, Inc.,* 578 Phil. 441, 453 (2008) [Per *J*. Carpio, First Division], *Republic v. Hanover Worldwide Trading Corp.*, 636 Phil. 739, 752 (2010) [Per *J*. Peralta, Second Division], *Republic v. Sese*, 735 Phil. 108, 121 (2014) [Per *J*. Mendoza, Third Division], *Republic v. Vda. de Joson*, 728 Phil. 550, 562 (2014) [Per *J*. Bersamin, First Division], *Republic v. Lualhati,* 757 Phil. 119, 130-131 (2015) [Per *J*. Peralta, Third Division], *Republic v. Local Superior of the Institute of the Sisters of the Sacred Heart of Jesus of Ragusa*, G.R. No. 185603, February 10, 2016, 783 SCRA 501, 514 [Per *J*. Reyes, Third Division]; *Republic v. Vega,* 654 Phil. 511 (2011) [Per *J.* Sereno, Third Division].

[97] 578 Phil. 441 (2008) [Per *J*. Carpio, First Division].

[I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.[98]

Republic v. Hanover[99] ruled that a CENRO certification does not constitute incontrovertible proof that a piece of land is alienable and disposable. This is because "the CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring the alienability and disposability of public lands."[100] *Republic v. Vda. De Joson* explained:[101]

This doctrine unavoidably means that the mere certification issued by the CENRO or PENRO did not suffice to support the application for registration, because the applicant must also submit a copy of the original classification of the land as alienable and disposable as approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[102]

III

The pieces of evidence the Spouses Go adduced fall short of the requirements of the law.

First, the Spouses Go failed to present a certified true copy of the original classification of the DENR Secretary. This Court has given them enough chances to prove their claim. As a

[98] *Id*. at 452-453.

[99] 636 Phil. 739 (2010) [Per *J*. Peralta, Second Division].

[100] *Id*. at 752.

[101] *Republic v. Vda. de Joson*, 728 Phil. 550 (2014) [Per *J*. Bersamin, First Division].

[102] *Id.* at 562.

rule, this Court can only consider the evidence submitted before the trial court.[103] Nevertheless, this Court gave respondents the opportunity to submit "a certified true copy of the Presidential or Department of Environment and Natural Resources Secretary's issuance declaring the property alienable and disposable."[104] They failed to comply despite being given a show-cause order.[105]

This Court also required them to file their Comment on petitioner's opposition to their original registration.[106] Instead of complying, they asked that their Comment be dispensed with.[107]

Second, although the Spouses Go submitted a CENRO certification stating that the land was verified to be within alienable and disposable zone under Project No. 13, Land Classification Map No. 718, Maglinao, the person who issued the CENRO Certification, testified otherwise. She admitted in her testimony that she certified the lot only to determine "the point or monument of the entire or whole area" and not to identify its alienable character.[108]

The Spouses Go have the burden to show that the land for registration is alienable or disposable,[109] which they miserably failed to do so. Without the original land classification approved by the DENR Secretary, the Spouses Go's application for registration must be denied.[110] The land remains inalienable.

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[103] *Id*.

[104] *Rollo*, p. 70.

[105] *Id*. at 82.

[106] *Id*. at 89.

[107] *Id.* at 96.

[108] *Id*. at 21.

[109] *Republic v. Gomez,* 682 Phil. 631, 637 (2012) [Per *J*. Sereno, Second Division].

[110] *Republic v. Local Superior of the Institute of the Sisters of the Sacred Heart of Jesus of Ragusa*, G.R. No. 185603, February 10, 2016, 783 SCRA 501, 514 [Per *J*. Reyes, Third Division].

In sum, the Court of Appeals gravely erred in affirming the trial court's Decision that granted the Spouses Go's application for registration of Lot No. 4699-B. The Spouses Go failed to adequately prove their claim of possession in the concept of an owner since June 12, 1945. They likewise failed to establish that the land applied for registration is alienable and disposable. Thus, their occupation of this land, no matter how long, cannot ripen into ownership and cannot be registered as a title.[111]

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals Decision dated January 21, 2011 and Resolution dated June 6, 2011 in CA-G.R. CV No. 93000, which affirmed the Decision of the Municipal Trial Court in Cities dated December 12, 2008, are **REVERSED** and **SET ASIDE.** The application for registration of the Spouses Danilo Go and Amorlina Go of Lot No. 4699-B of Subdivision Plan Csd-04-022290-D is **DENIED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 199710. August 2, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PO3 JULIETO BORJA,** *accused-appellant.*

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[111] *Republic v. Vega,* 654 Phil. 511, 521 (2011) [Per *J.* Sereno, Third Division].

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; QUANTUM OF EVIDENCE REQUIRED IN CRIMINAL CASES IS PROOF BEYOND REASONABLE DOUBT.—** The quantum of evidence required in criminal cases is proof beyond reasonable doubt. This does not entail absolute certainty on the accused's guilt. It only requires moral certainty or "that degree of proof which produces conviction in an unprejudiced mind." The mind and consciousness of a magistrate must be able to rest at ease upon a guilty verdict.

2. **CRIMINAL LAW; KIDNAPPING; ELEMENTS.—** A conviction for the crime of kidnapping or serious illegal detention requires the concurrence of the following elements: 1. The offender is a private individual[;] 2. That individual kidnaps or detains another or in any other manner deprives the latter of liberty[;] 3. The act of detention or kidnapping is illegal[;] 4. In the commission of the offense, any of the following circumstances is present: a. The kidnapping or detention lasts for more than three days. b. It is committed by one who simulates public authority. c. Any serious physical injury is inflicted upon the person kidnapped or detained, or any threat to kill that person is made. d. The person kidnapped or detained is a minor, a female or a public officer. x x x The essence of the crime of kidnapping is "the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it." The deprivation of a person's liberty can be committed in different ways. It is not always necessary that the victim be imprisoned, The second element of the crime of kidnapping is met as long as there is a showing that the victim's liberty of movement is restricted.

3. **ID.; ID.; ID.; OFFENDER IS A PRIVATE INDIVIDUAL; PUBLIC OFFICIAL ACTING IN THEIR PRIVATE CAPACITY MAY BE PROSECUTED HERE.—** Although the crime of kidnapping can only be committed by a private individual, the fact that the accused is a public official does not automatically preclude the filing of an information for kidnapping against him. A public officer who detains a person for the purpose of extorting ransom cannot be said to be acting in an official capacity. In *People v. Santiano*, this Court explained

that public officials may be prosecuted under Article 267 of the Revised Penal Code if they act in their private capacity: x x x The burden is on the accused to prove that he or she acted in furtherance of his or her official functions. x x x Accused-appellant's membership in the Philippine National Police does not automatically preclude the filing of an information for kidnapping or serious illegal detention against him. He may be prosecuted under Article 267 of the Revised Penal Code if it is shown that he committed acts unrelated to the functions of his office.

4. **ID.; KIDNAPPING FOR RANSOM; PENALTY.—** All the elements of kidnapping were sufficiently proven by the prosecution, which cannot be overturned by accused-appellant's bare denial and alibi. x x x Although the penalty for kidnapping for ransom is death under Article 267 of the Revised Penal Code, Republic Act No. 9346 proscribed its imposition. In this regard, both the Regional Trial Court and the Court of Appeals correctly imposed the penalty of *reclusion perpetua*. However, in line with current jurisprudence, the civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 imposed by the Court of Appeals should be increased to ₱100,000.00 each. Exemplary damages of ₱100,000.00 should also be imposed.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Sagayo Law Offices for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

Extortion done by police themselves amounting to kidnapping with ransom undermines the government efforts to establish the rule of law in general and the proper prosecution against drug traffickers in particular. Even the subsequent prosecution of the victim of extortion does not negate the criminal liability of the accused for the crime the latter committed against the former.

This resolves the appeal to the March 14, 2011 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03998, finding PO3 Julieto Borja (PO3 Borja) guilty beyond reasonable doubt of kidnapping for ransom.

In the Information dated May 28, 2004, Borja was charged of kidnapping punished under Article 267[2] of the Revised Penal Code. The accusatory portion of the information read:

> That on or about May 26, 2004, at or about 10:10 in the morning, at the vicinity of Brgy. Central, Diliman, Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, with an unknown companion, conspiring and confederating with one another, mutually aiding and assisting one another, by the use of force, violence and intimidation and without authority of law, did then and there, willfully, unlawfully and feloniously kidnap and illegally detain victim/hostage RONALYN G. MANATAD, and thereafter demanded and received the ransom money in the amount

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[1] *Rollo*, pp. 2-23. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Special Fourteenth Division, Court of Appeals, Manila.

[2] REV. PENAL CODE, Art. 267 provides:

Article 267. *Kidnapping and serious illegal detention*. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusión perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

of ₱100,000.00 from Edwin G. Silvio, the victim's brother, for the release of said RONALYN G. MANATAD on same date.[3]

PO3 Borja entered a plea of not guilty during arraignment. Trial on the merits ensued.[4]

Based on the collective testimonies of its witnesses, the prosecution alleged that at about 10:00 a.m. on May 26, 2004, Ronalyn Manatad (Ronalyn) and her friend, Vicky Lusterio (Lusterio), were walking along Agham Road, Diliman, Quezon City.[5] Suddenly, a man who was later identified as PO3 Borja, grabbed Ronalyn by her right forearm and forcibly took her inside a gray van where three (3) other men were waiting.[6] Both Ronalyn and Lusterio shouted for help but no one came to their rescue. Lusterio managed to escape. She immediately reported the incident to Ronalyn's mother, Adelina Manatad (Adelina).[7]

Meanwhile, PO3 Borja and his companions drove the van around Quezon City.[8] One (1) of Ronalyn's abductors, a certain Major Clarito,[9] asked for her relatives' contact numbers.[10] Ronalyn gave the number of her brother, Edwin G. Silvio (Edwin).[11]

Adelina received a phone call from one (1) of the kidnappers, who demanded ₱200,000.00 in exchange for Ronalyn's liberty. Adelina informed him that their family could not afford to pay the ransom due to their financial condition. Suddenly, the caller

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[3] *Rollo*, p. 3.

[4] *Id.*

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

[6] *Id*. at 4.

[7] *Id*.

[8] *Id*.

[9] CA *rollo*, p. 26.

[10] *Rollo*, p. 4.

[11] *Id*.

hung up. Edwin thereafter arrived and negotiated for a reduced ransom when one (1) of the kidnappers called again. The kidnappers acceded and lowered their demand to ₱100,000.00.[12]

At this juncture, Ronalyn was transferred from the van to a car.[13]

Edwin sought assistance from Sergeant Abet Cordova (Sgt. Cordova) of the National Anti-Kidnapping Task Force (NAKTAF). Sgt. Cordova instructed Edwin to negotiate with his sister's abductors and to notify him of any developments. Sgt. Cordova then reported the incident to NAKTAF group commander, Major Santi Cababasay, who immediately mobilized his team for an entrapment operation.[14]

At around 12:00 noon, Edwin received a call from Ronalyn's abductors. They instructed him to place the money in an SM plastic bag and to proceed to the Wildlife Park along Quezon Avenue at 3:00 p.m. Edwin informed Sgt. Cordova about the payoff. The police operatives proceeded to the Wildlife Park and positioned themselves within the area.[15]

Edwin went to the Wildlife Park at 3:00 p.m. as planned. Shortly after, PO3 Borja approached Edwin and took the SM plastic bag containing the ransom money. Upon seeing the exchange, the police operatives arrested PO3 Borja and recovered the following items from him: (1) a 0.9 mm pistol, (2) a cellphone, (3) a wallet, and (4) the ₱100,000.00 ransom amount. PO3 Borja was then brought to the NAKTAF headquarters for investigation.[16]

Despite the successful entrapment operation, the authorities failed to rescue Ronalyn. While she was inside the van, Ronalyn

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[12] *Id*.

[13] *Id*. at 5.

[14] *Id*.

[15] *Id*. at 5.

[16] *Id*. at 6.

heard one (1) of her abductors say that PO3 Borja was entrapped.[17] The others cursed her and said, *"Putang ina, iyung kapatid mo. Tumawag ng taga-NAKTAF."*[18] Afterwards, she was taken by her captors to the Philippine Drug Enforcement Agency where she was charged with illegal sale of shabu.[19]

For his defense, PO3 Borja testified that on the day of the alleged incident, he was with PO2 Ding Tan at Branch 79, Regional Trial Court, Quezon City to testify as a witness in a criminal[20] case.[21] However, the hearing was postponed.[22] After securing a certificate of appearance, PO3 Borja decided to go home at 12:00 noon.[23]

At around 2:00 p.m., PO3 Borja received a phone call from an unknown person. The caller sought assistance to recover his sister who had been arrested. He instructed the caller to call back. On the second call, the caller told him to go to the Wildlife Park and meet a certain Edwin, who would be wearing a white T-shirt and a bull cap.[24]

PO3 Borja proceeded to the Wildlife Park and met Edwin, who told him that Ronalyn and Lusterio had been arrested earlier in a buy-bust operation. PO3 Borja advised Edwin to go with him to the police station and report the incident. However, Edwin said that he had to wait for his cousin to arrive.[25]

Half an hour later, Captain Frederick Obar (Capt. Obar), SPO3 Eric Orellaneda (SPO3 Orellaneda), and three (3) unidentified

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[17] CA *rollo*, p. 26.

[18] *Id*.

[19] *Rollo*, p. 6.

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

[21] CA *rollo*, p. 28.

[22] *Rollo*, p. 7.

[23] *Id*.

[24] *Id*.

[25] *Id*.

persons approached PO3 Borja. SPO3 Orellaneda shouted, *"Meron lang ditong nag-eextortion*" to which PO3 Borja replied, "*Wala naman akong alam.*" SPO3 Orellaneda confiscated PO3 Borja's wallet, cellphone, and firearm. Afterwards, Sgt. Cordova shouted, "*O, meron ditong ₱100,000.00 galing kay Borja*."[26] PO3 Borja was then arrested and was charged of kidnapping for ransom.[27]

In the Decision[28] dated October 20, 2008, the Regional Trial Court found PO3 Borja guilty beyond reasonable doubt of kidnapping for ransom.[29] Accordingly, he was sentenced to the penalty of *reclusion perpetua*:[30]

> WHEREFORE, finding the accused PO3 Julieto Borja GUILTY beyond reasonable doubt of the crime of kidnapping for ransom, defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act [No.] 7659, the Court hereby sentences him to suffer the penalty of *reclusion perpetua*. With costs against the accused.
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> SO ORDERED.[31]

PO3 Borja appealed the decision of the Regional Trial Court.[32] He argued that Ronalyn was not deprived of her liberty because she was lawfully arrested and charged with violation of Republic Act No. 9165.[33]

In the Decision[34] dated March 14, 2011, the Court of Appeals affirmed with modification the Decision dated October 20, 2008

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[26] CA *rollo*, p. 28.

[27] *Rollo,* p. 7.

[28] CA *rollo,* pp. 25-31. The Decision, docketed as Crim. Case No. Q-04-127167, was penned by Presiding Judge Alexander S. Balut of Branch 76, Regional Trial Court, Quezon City.

[29] *Id*. at 31.

[30] *Id*.

[31] *Id*.

[32] *Id*. at 32-34, Accused-Appellant's Notice of Appeal.

[33] *Id*. at 60, Manifestation.

[34] *Rollo,* pp. 2-23.

of the Regional Trial Court. PO3 Borja was ordered to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[35]

On August 18, 2011, PO3 Borja filed his Notice of Appeal,[36] which was given due course by the Court of Appeals in the Resolution[37] dated September 14, 2011.

On February 6, 2012, this Court noted the records forwarded by the Court of Appeals and required the Director of the Bureau of Corrections to confirm accused-appellant PO3 Borja's confinement.[38] In the Resolution[39] dated March 6, 2013, the parties were then required to file their respective supplemental briefs, should they so desired.

Accused-appellant filed his Supplemental Brief[40] on July 18, 2013. On the other hand, the People of the Philippines, through the Office of the Solicitor General, manifested that it would no longer file a supplemental brief.[41]

Accused-appellant anchors his arguments on the arrest and subsequent conviction of Ronalyn for the sale of *shabu*. He argues that it is absurd to convict him of kidnapping considering that the alleged victim was caught *in flagrante delicto* during a buy-bust operation on the day of the alleged incident.[42] Furthermore, Ronalyn was found guilty of violation of Republic Act No. 9165 by both the Court of Appeals[43] and

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[35] *Id*. at 22.

[36] *Id*. at 24-26.

[37] *Id*. at 27.

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

[39] *Id*. at 50.

[40] *Id*. at 66-75.

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

[42] *Id*. at 67.

[43] *Id*. at 69. The Decision dated December 15, 2010 in CA-G.R. CR-HC No. 03140 was penned by then Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser of

this Court.[44] She is now serving her sentence in the Women's Correctional in Mandaluyong.[45]

On the other hand, the Office of the Solicitor General asserts that the categorical and spontaneous testimonies of the prosecution's witnesses are sufficient to convict accused-appellant of kidnapping.[46] The Office of the Solicitor General argues that accused-appellant's defense of alibi does not deserve weight. It was not physically impossible for him to be at the place where the crime was committed since Quezon City Hall of Justice was just a few blocks away from where the victim was taken.[47]

The sole issue for this Court's resolution is whether accused-appellant PO3 Julieto Borja is guilty beyond reasonable doubt of kidnapping punished under Article 267 of the Revised Penal Code.

This Court affirms the conviction of accused-appellant. His arguments are unmeritorious.

Ronalyn's apprehension for violation of Republic Act No. 9165 does not automatically negate the criminal liability of accused-appellant. It also does not exclude the possibility of the commission of the crime with which accused-appellant is charged. The buy-bust operation carried out against Ronalyn and her kidnapping are events that can reasonably coexist.

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the Eleventh Division of the Court of Appeals, Manila. In her appeal, Ronalyn Manatad raised the defense that she was kidnapped. However, according to the Court of Appeals, there was enough evidence on record that a buy-bust operation was conducted against her. The Court of Appeals relied on the testimonies of the prosecution's witnesses, the pre-operation coordination sheet, and entries in the police log book.

[44] *Rollo*, p. 69, Supplemental Brief. In the Resolution dated February 1, 2012 this Court dismissed Ronalyn Manatad's appeal of the Decision of the Court of Appeals dated December 15, 2010.

[45] *Id*.

[46] CA *rollo,* pp. 150-151.

[47] *Id*. at 152.

Furthermore, a violation of Republic Act No. 9165 bears no direct or indirect relation to the crime of kidnapping. Ronalyn's arrest and conviction are immaterial to the determination of accused-appellant's criminal liability. In other words, Ronalyn's innocence or guilt would neither affirm nor negate the commission of the crime of kidnapping against her. Therefore, the resolution of this case will depend solely on whether the prosecution has established all the elements of kidnapping under Article 267 of the Revised Penal Code.

The quantum of evidence required in criminal cases is proof beyond reasonable doubt.[48] This does not entail absolute certainty on the accused's guilt. It only requires moral certainty or "that degree of proof which produces conviction in an unprejudiced mind."[49] The mind and consciousness of a magistrate must be able to rest at ease upon a guilty verdict.[50]

A conviction for the crime of kidnapping or serious illegal detention requires the concurrence of the following elements:

1. The offender is a private individual[;]
2. That individual kidnaps or detains another or in any other manner deprives the latter of liberty[;]
3. The act of detention or kidnapping is illegal[;]
4. In the commission of the offense, any of the following circumstances is present:
    a. The kidnapping or detention lasts for more than three days.

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[48] RULES OF COURT, Rule 133, Sec. 2 provides:

Section 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[49] RULES OF COURT, Rule 133, Sec. 2.

[50] *People v. Lumibao,* 465 Phil. 771, 781 (2004) [Per *J.* Quisumbing, Second Division].

b. It is committed by one who simulates public authority.

c. Any serious physical injury is inflicted upon the person kidnapped or detained, or any threat to kill that person is made.

d. The person kidnapped or detained is a minor, a female or a public officer.[51] (Citation omitted)

Although the crime of kidnapping can only be committed by a private individual,[52] the fact that the accused is a public official does not automatically preclude the filing of an information for kidnapping against him.

A public officer who detains a person for the purpose of extorting ransom cannot be said to be acting in an official capacity. In *People v. Santiano*,[53] this Court explained that public officials may be prosecuted under Article 267 of the Revised Penal Code if they act in their private capacity:

> The fact alone that appellant Pillueta is "an organic member of the NARCOM" and appellant Sandigan [is] "a regular member of the PNP" would not exempt them from the criminal liability for kidnapping. It is quite clear that in abducting and taking away the victim, appellants did so neither in furtherance of official function nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity, that they have acted in concert with their co-appellants Santiano and Chanco.[54] (Citation omitted)

The burden is on the accused to prove that he or she acted in furtherance of his or her official functions. In *People v. Trestiza,*[55] this Court noted:

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[51] *People v. Obeso*, 460 Phil. 625, 633 (2003) [Per *J*. Panganiban, Third Division].

[52] REV. PENAL CODE, Art. 267.

[53] 359 Phil. 928 (1998) [Per *J.* Vitug, First Division].

[54] *Id.* at 943.

[55] 676 Phil. 420 (2011) [Per *J*. Carpio, Second Division].

Before the present case was tried by the trial court, there was a significant amount of time spent in determining whether kidnapping for ransom was the proper crime charged against the accused, especially since Trestiza and Manrique were both police officers. Article 267 of the Revised Penal Code specifically stated that the crime should be committed by a private individual. The trial court settled the matter by citing our ruling in *People v. Santiano*[.]

. . . .

In the same order, the trial court asked for further evidence which support the defense's claim of holding a legitimate police operation. However, the trial court found as unreliable the Pre-Operation/ Coordination Sheet presented by the defense. The sheet was not authenticated, and the signatories were not presented to attest to its existence and authenticity.[56] (Citations omitted)

Accused-appellant's membership in the Philippine National Police does not automatically preclude the filing of an information for kidnapping or serious illegal detention against him. He may be prosecuted under Article 267 of the Revised Penal Code if it is shown that he committed acts unrelated to the functions of his office.

The essence of the crime of kidnapping is "the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it."[57] The deprivation of a person's liberty can be committed in different ways.[58] It is not always necessary that the victim be imprisoned.[59] The second element of the crime of kidnapping[60] is met as long as there is a showing that the victim's liberty of movement is restricted.[61]

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[56] *Id*. at 457-458.

[57] *People v. Mamantak*, 582 Phil. 294, 303 (2008) [Per *J*. Corona, *En Banc*].

[58] *Id.*

[59] *People v. Obeso*, 460 Phil. 625, 634 (2003) [Per *J.* Panganiban, Third Division].

[60] *Id*. at 633.

[61] *People v. Jacalne*, 674 Phil. 139, 147 (2011) [Per *J*. Peralta, Third Division].

In this case, Ronalyn was clearly deprived of her liberty. She was forcibly taken inside a vehicle by accused-appellant and his cohorts and was driven around Quezon City for at least five (5) hours.[62] The victim categorically testified on the manner and details of her detention,[63] thus:

Q: While you were, as you said, about to go out of your house on that morning of May 26, 2004, do you remember any untoward incident that transpired?

A: I was surprised when a male person suddenly grabbed me.

. . . .

Q: You said that a male person suddenly grabbed you, do you know that person?

A: No, ma'am.

Q: After that male person suddenly grabbed you, by the way, on what part of your body were you grabbed?

A: The right forearm, ma'am.

Q: After you were grabbed by your arm, what happened next?

A: I shouted.

. . . .

Q: Where were you b[r]ought?

A: I was loaded in a van.

Q: Do you remember what the van looked like?

A: Yes, ma'am.

Q: Could you describe it to the court?

A: It was big.

Q: What color was it?

A: Gray.

Q: Did you happen to see the plate number of the van?

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[62] *Rollo*, p. 18.

[63] *Id*. at 3-6.

A: No, ma'am.

Q: You said that you were suddenly grabbed by your arm and you were loaded inside a gray van, what happened thereafter?

A: They drove me to the Circle.

Q: You said they, so, there must be more than one person?

A: Yes, ma'am.

Q: How many were they in that van, including the male person who suddenly grabbed you?

A: About three, ma'am.

Q: Including the person who took you to the van?

A: He was the fourth.

. . . .

Q: After that conversation, what happened, if any?

A: I was transferred to another vehicle.

Q: And could you describe that car that you transferred to from that van?

A: It was a car.

Q: Do you know the color?

A: Gray.

. . . .

Q: What happened after you were transferred to that gray car?

A: We went to McDonald's at Quezon Avenue.

. . . .

Q: Where exactly were you taken after you were transferred to the gray car?

A: At the back of Sulo Hotel and then McDonald's and then the back of SSS and then in front of East Avenue Medical Center.

Q: Until what time were you in that car?

A: 3:00 o'clock in the afternoon, ma'am.[64]

The first two (2) and the last elements of the crime of kidnapping are present in this case. Ronalyn, a woman, was forcibly taken by accused-appellant and loaded in a van where she was detained for several hours. These acts are completely unrelated to accused-appellant's functions as a police officer, and as such, he may be prosecuted under Article 267 of the Revised Penal Code.

The third element of the crime of kidnapping is also present. Accused-appellant and his companions deprived the victim of her liberty to extort ransom from her family:

Q: You said you heard them calling your brother, what did you hear from them in their conversation?

A: They were asking for money.

Q: By the way, who was that person who called your brother?

. . . .

A: Major Clarito, ma'am.

. . . .

Q: You said that you heard Major Clarito telling your brother to prepare money, is that correct?

A: Yes, ma'am.

Q: What else did you hear from him?

A: They asked my brother to give ₱200,000.00 and then I would be released.

. . . .

Q: What else did you hear in that phone conversation?

. . . .

A: To prepare the ₱200,000.00 and to meet at Wildlife.[65]

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[64] *Id*. at 12-14.

[65] *Id*. at 13.

All the elements of kidnapping were sufficiently proven by the prosecution, which cannot be overturned by accused-appellant's bare denial and alibi. These two (2) defenses are inherently weak considering that they can be easily contrived.[66]

For the defense of alibi to prosper, there must be a showing that it was physically impossible for the accused "to have been at the scene of the crime at the time of its commission."[67] In the present case, accused-appellant failed to overcome this standard. Even if he attended the hearing in Quezon City Hall of Justice, there is no showing that it was physically impossible for him to be at Agham Road when the victim was forcibly taken. This Court takes judicial notice that Agham Road and the Quezon City Hall of Justice are just a few blocks away from each other. Accused-appellant could have easily slipped out of the city hall at any time.

Moreover, if this Court were to believe accused-appellant's version of the incident, it was highly irregular for a police officer to meet the victim's relative in a place other than the police station to discuss the incident reported to him. That he had to wait for 30 minutes for another person to arrive is also suspect. Moreover, as pointed out by the Office of the Solicitor General,[68] it is unusual for accused-appellant to interfere with an ongoing operation to which he was not assigned. All these irregularities point to the reasonable conclusion that accused-appellant's purpose in proceeding to the Wildlife Park was to extort money from the victim's family.

Although the penalty for kidnapping for ransom is death under Article 267 of the Revised Penal Code, Republic Act No. 9346[69]

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[66] *People v. Panlilio*, 325 Phil. 848, 857 (1996) [Per *J*. Bellosillo, First Division]; *People v. Enriquez, Jr.*, 503 Phil. 367, 376 (2005) [Per *J*. Puno, Second Division].

[67] *People v. Enriquez, Jr.*, 503 Phil. 367, 376 (2005) [Per *J*. Puno, Second Division].

[68] CA *rollo*, p. 153.

[69] An Act Prohibiting the Imposition of Death Penalty in the Philippines (2006).

proscribed its imposition. In this regard, both the Regional Trial Court and the Court of Appeals correctly imposed the penalty of *reclusion perpetua*.

However, in line with current jurisprudence, the civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 imposed by the Court of Appeals should be increased to ₱100,000.00 each. Exemplary damages of ₱100,000.00 should also be imposed.[70]

WHEREFORE, the Decision dated March 14, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03998 is **AFFIRMED** with **MODIFICATION**. Accused-appellant PO3 Julieto Borja is found guilty beyond reasonable doubt of kidnapping for ransom and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

Moreover, he is ordered to pay ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.[71]

SO ORDERED.

Carpio (Chairperson), *Bersamin,*[*] *Mendoza,* and *Martires, JJ.,* concur.

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[70] *People v. Gregorio*, G.R. No. 194235. June 8, 2016, 792 SCRA 469, 504 [Per *J*. Leonardo-De Castro, First Division]; *People v. Gambao*, 718 Phil. 507, 531-532 (2013) [Per *J*. Perez, *En Banc*].

[71] See *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 281-283 (2013) [Per *J*. Peralta, *En Banc*].

[*] Designated as additional member per raffle dated February 16, 2013.

FIRST DIVISION

[G.R. No. 206468. August 2, 2017]

JUDITH D. DARINES and JOYCE D. DARINES, *petitioners, vs.* **EDUARDO QUIÑONES and ROLANDO QUITAN,** *respondents.*

SYLLABUS

CIVIL LAW; COMMON CARRIAGE; BREACH OF CONTRACT; MORAL DAMAGES NOT PROPER IN THE ABSENCE OF FRAUD OR BAD FAITH OR GROSS NEGLIGENCE AMOUNTING TO BAD FAITH; EXEMPLARY DAMAGES AND ATTORNEY'S FEES ALSO NOT WARRANTED IN CASE AT BAR.— The principle that, in an action for breach of contract of carriage, moral damages may be awarded only in case (1) an accident results in the death of a passenger; or (2) the carrier is guilty of fraud or bad faith, is pursuant to Article 1764, in relation to Article 2206(3) of the Civil Code, and Article 2220 thereof, x x x The x x x concepts of fraud or bad faith and negligence are basic as they are distinctly differentiated by law. Specifically, fraud or bad faith connotes "deliberate or wanton wrong doing" or such deliberate disregard of contractual obligations while negligence amounts to sheer carelessness. More particularly, fraud includes "inducement through insidious machination." In turn, insidious machination refers to such deceitful strategy or such plan with an evil purpose. On the other hand, bad faith does not merely pertain to bad judgment or negligence but relates to a dishonest purpose, and a deliberate doing of a wrongful act. Bad faith involves "breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud." In *Viluan v. Court of Appeals*, and *Bulante v. Chu Liante*, the Court disallowed the recovery of moral damages in actions for breach of contract for lack of showing that the common carrier committed fraud or bad faith in performing its obligation. x x x Meanwhile, in *Gatchalian v. Delim*, and *Mr. & Mrs. Fabre, Jr. v. Court of Appeals*, the Court found the common carriers liable for breach of contract of carriage and awarded moral damages to the injured passengers on the ground that the common carrier committed *gross* negligence, which amounted to bad faith. x x x Clearly, unless it is fully established (and not just lightly

inferred) that negligence in an action for breach of contract is so gross as to amount to malice, then the claim of moral damages is without merit. x x x Pursuant to Articles 2229 and 2234 of the Civil Code, exemplary damages may be awarded only in addition to moral, temperate, liquidated, or compensatory damages. Since petitioners are not entitled to either moral, temperate, liquidated, or compensatory damages, then their claim for exemplary damages is bereft of merit. Finally, considering the absence of any of the circumstances under Article 2208 of the Civil Code where attorney's fees may be awarded, the same cannot be granted to petitioners.

APPEARANCES OF COUNSEL

Willibroth B. Managtag for petitioners.
Melissa L. Quitan-Corpuz for respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

This Petition for Review on *Certiorari* assails the October 29, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 95638, which reversed and set aside the July 14, 2010 Decision[2] of the Regional Trial Court (RTC) of Baguio City, Branch 3 in Civil Case No. 6363-R for "Breach of Contract of Carriage & Damages." Also challenged is the March 6, 2013 CA Resolution[3] denying the motion for reconsideration on the assailed Decision.

Factual Antecedents

Judith D. Darines (Judith) and her daughter, Joyce D. Darines (Joyce) (petitioners) alleged in their Complaint[4] that on December

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[1] CA *rollo*, Vol. III, pp. 69-74; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon and Socorro B. Inting.

[2] Records, pp. 410-423; penned by Presiding Judge Fernando Vil Pamintuan.

[3] CA *rollo*, Vol. III, pp. 124-125.

[4] Records, pp. 2-6.

31, 2005, they boarded the Amianan Bus Line with Plate No. ACM 497 and Body No. 808 as paying passengers enroute from Carmen, Rosales, Pangasinan to Baguio City. Respondent Rolando M. Quitan (Quitan) was driving the bus at that time. While travelling on Camp 3, Tuba, Benguet along Kennon Road, the bus crashed into a truck (with Plate No. XSE 578) which was parked on the shoulder of Kennon Road. As a result, both vehicles were damaged; two passengers of the bus died; and the other passengers, including petitioners, were injured. In particular, Joyce suffered cerebral concussion while Judith had an eye wound which required an operation.

Petitioners argued that Quitan and respondent Eduardo Quiñones (Quiñones), the operator of Amianan Bus Line, breached their contract of carriage as they failed to bring them safely to their destination. They also contended that Quitan's reckless and negligent driving caused the collision. Consequently, they prayed for actual, moral, exemplary and temperate damages, and costs of suit.

For their part, Quiñones and Quitan (respondents) countered in their Answer[5] that, during the December 31, 2005 incident, Quitan was driving in a careful, prudent, and dutiful manner at the normal speed of 40 kilometers per hour. According to them, the proximate cause of the incident was the negligence of the truck driver, Ronald C. Fernandez, who parked the truck at the roadside right after the curve without having installed any early warning device. They also claimed that Quiñones observed due diligence in the selection and supervision of his employees as he conducted seminars on road safety measures; and Quitan attended such seminars including those required by the government on traffic safety. They likewise averred that Quitan was a licensed professional driver who, in his 12 years as a public utility driver, had not figured in any incident like the one at hand.

During the trial, Judith testified that Quitan was driving at a very fast pace resulting in a collision with the truck parked at the shoulder of the road.[6] Consequently, the bone holding her right eye

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[5] *Id*. at 18-22.

[6] *Id*. at 342-344.

was fractured and had to be operated.[7] She claimed that, as a result of incident, she failed to report for work for two months.[8]

To prove the actual damages that she suffered, Judith presented receipts for medicine, and a summary of expenses, which included those incurred for the ritual *dao-is*. She explained that she and Joyce are Igorots, being members of *Ibaloi*, *Kankanay-ey*, an indigenous tribe;[9] and as their customary practice, when a member who meets an accident is released from the hospital, they butcher pigs to remove or prevent bad luck from returning to the family.[10]

Moreover, to support her claim for moral damages, Judith testified that she suffered sleepless nights since she worried about the result and possible effect of her operation.[11]

On the other hand, respondents presented Ernesto Benitez (Benitez), who, on behalf of respondents, testified that he bought the medicines and paid petitioners' hospitalization expenses, as evidenced by receipts he submitted in court.[12]

Ruling of the Regional Trial Court

On July 14, 2010, the RTC rendered its Decision ordering respondents to pay petitioners the following:

1. Moral Damages of One Hundred Thousand Pesos (₱100,000.00);
2. Exemplary Damages of Thirty Thousand Pesos (₱30,000.00);
3. Attorney's Fees of Fifteen Percent (15%) of the Damages, plus Total Appearance Fees of Sixteen Thousand Five Hundred Pesos (₱16,500.00); and
4. Costs of Suit.[13]

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[7] *Id*. at 345-346.

[8] *Id*. at 353.

[9] *Id*. at 365.

[10] *Id.* at 355-356.

[11] *Id*. at 357.

[12] *Id*. at 383-388.

[13] *Id*. at 423.

The RTC held that since the respondents already paid the actual damages relating to petitioners' medical and hospitalization expenses, then the only remaining matters for resolution were: whether respondents were liable to pay petitioners a) actual damages representing the expenses incurred during the *dao-is* ritual; and, Judith's alleged lost income; b) moral and exemplary damages; and, c) attorney's fees.

The RTC noted that petitioners did not present any receipt as regards the expenses they incurred during the *dao-is* ritual. As regards their claim for Judith's lost income, the RTC held that petitioners similarly failed to substantiate the same as there was no showing that Judith's failure to report for work for two months was because of the incident. Thus, the RTC did not award actual damages for lack of evidence.

However, the RTC awarded moral damages grounded on Judith's testimony regarding her pain and suffering. It likewise awarded exemplary damages by way of correction, and to serve as example to common carriers to be extraordinarily diligent in transporting passengers. It also granted petitioners attorney's fees plus costs of suit on the ground that petitioners were compelled to litigate the case.

Aggrieved, respondents appealed to the CA.

Ruling of the Court of Appeals

In its October 29, 2012 Decision, the CA reversed and set aside the RTC Decision.

The CA stressed that respondents did not dispute that they were liable for breach of contract of carriage; in fact, they paid for the medical and hospital expenses of petitioners. Nonetheless, the CA deleted the award of moral damages because petitioners failed to prove that respondents acted fraudulently or in bad faith, as shown by the fact that respondents paid petitioners' medical and hospitalization expenses. The CA held that, since no moral damages was awarded, then there was no basis to grant exemplary damages. Finally, it ruled that because moral and exemplary damages were not granted, then the award of attorney's fees must also be deleted.

On March 6, 2013, the CA denied petitioners' Motion for Reconsideration.

Issues

Hence, petitioners filed this Petition raising the issues as follows:

1. WHETHER OR NOT THE CASE OF PETITIONERS FALL[S] UNDER ARTICLES 20, 1157, 1759, 2176, 2180 AND 2219 OF THE CIVIL CODE THEREBY ENTITL[ING THEM] TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES;

2. WHETHER OR NOT THE X X X AWARD OF DAMAGES AND ATTORNEY'S FEES BY THE TRIAL COURT BECAME FINAL AND EXECUTORY SINCE HEREIN RESPONDENTS DID NOT QUESTION THE SAME IN THEIR APPEAL BUT MERELY QUESTIONED THE AMOUNTS OF AWARD [FOR BEING] EXORBITANT.[14]

Petitioners' Arguments

Petitioners maintain that respondents are liable to pay them moral and exemplary damages because the proximate cause of their injuries was the reckless driving of Quitan. As regards Quiñones, his fault is presumed considering that he did not offer proof that he exercised extraordinary diligence in the selection and supervision of his employees. They added that the negligence of respondents resulted in the latter's failure to transport them to their destination thereby constituting a breach of their contract of carriage. They also argued that the RTC's grant of damages and attorney's fees in their favor already attained finality because when respondents appealed to the CA, they only questioned the amounts given by the RTC for being exorbitant, but not the award itself.

Respondents' Arguments

Respondents, on their end, posit that they are not liable to pay moral damages because their acts were not attended by fraud or bad faith. They add that since petitioners are not entitled to moral damages, then it follows that they are also not entitled to exemplary

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[14] *Rollo*, p. 40.

damages; and same is true with regard to the grant of attorney's fees as the same necessitates the grant of moral and exemplary damages.

Our Ruling

The Court denies the Petition.

First of all, petitioners contend that the awards of moral and exemplary damages and attorney's fees by the RTC already attained finality because respondents did not dispute such grants when they appealed to the CA but only the fact that the amounts were exorbitant.

Such contention is without merit.

A plain reading of the assigned errors[15] and issues[16] in the Appellants' Brief of respondents with the CA reveals that they questioned the awards of moral and exemplary damages as well as attorney's fees made by the RTC to petitioners. Since respondents timely challenged the awards when they interposed an appeal to the CA, the same had not yet attained finality.

Going now to the main issue, the Court fully agrees with the CA ruling that in an action for breach of contract, moral damages may be recovered only when a) death of a passenger results; or b) the carrier was guilty of fraud and bad faith even if death does not result; and that neither of these circumstances were present in the case at bar. The CA correctly held that, since no moral damages was awarded then, there is no basis to grant exemplary damages and attorney's fees to petitioners.

To stress, this case is one for breach of contract of carriage (*culpa contractual*) where it is necessary to show the existence of the contract between the parties, and the failure of the common carrier to transport its passenger safely to his or her destination. An action for breach of contract differs from *quasi-delicts* (also referred as *culpa aquiliana* or *culpa extra contractual*) as the latter emanate from the negligence of the tort feasor[17] including such instance

[15] CA *rollo*, Vol. III, p. 30.

[16] *Id*. at 33.

[17] *Calalas v. Court of Appeals*, 388 Phil. 146, 150-151 (2000).

where a person is injured in a vehicular accident by a party other than the carrier where he is a passenger.

The principle that, in an action for breach of contract of carriage, moral damages may be awarded only in case (1) an accident results in the death of a passenger; or (2) the carrier is guilty of fraud or bad faith, is pursuant to Article 1764, in relation to Article 2206(3) of the Civil Code, and Article 2220 thereof,[18] as follows:

Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the **death of a passenger** caused by the breach of contract by a common carrier. (Emphasis supplied)

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

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(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

Article 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**. (Emphasis supplied)

The aforesaid concepts of fraud or bad faith and negligence are basic as they are distinctly differentiated by law. Specifically, fraud or bad faith connotes "deliberate or wanton wrong doing"[19] or such deliberate disregard of contractual obligations[20] while negligence amounts to sheer carelessness.[21]

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[18] *Id*. at 155.

[19] *Verzosa v. Baytan*, 107 Phil. 1010, 1017 (1960), citing *Fores v. Miranda,* 105 Phil. 266, 276 (1959).

[20] *Victory Liner, Inc. v. Gammad*, 486 Phil. 574, 593 (2004).

[21] *Verzosa v. Baytan*, *supra*.

More particularly, fraud includes "inducement through insidious machination."[22] In turn, insidious machination refers to such deceitful strategy or such plan with an evil purpose. On the other hand, bad faith does not merely pertain to bad judgment or negligence but relates to a dishonest purpose, and a deliberate doing of a wrongful act. Bad faith involves "breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[23]

In *Viluan v. Court of Appeals*,[24] and *Bulante v. Chu Liante*,[25] the Court disallowed the recovery of moral damages in actions for breach of contract for lack of showing that the common carrier committed fraud or bad faith in performing its obligation. Similarly, in *Verzosa v. Baytan*,[26] the Court did not also grant moral damages in an action for breach of contract as there was neither allegation nor proof that the common carrier committed fraud or bad faith.[27] The Court declared that "[t]o award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by [Article 2220 of the Civil Code], would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation."[28]

Meanwhile, in *Gatchalian v. Delim*,[29] and *Mr. & Mrs. Fabre, Jr. v. Court of Appeals*,[30] the Court found the common carriers liable for breach of contract of carriage and awarded moral damages to the injured passengers on the ground that the common carrier committed

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[22] *Cathay Pacific Airways, Ltd. v. Spouses Vazquez,* 447 Phil. 306, 321 (2003).

[23] *Id*. at 321-322.

[24] 123 Phil. 561 (1966).

[25] 132 Phil. 87 (1968).

[26] *Supra* note 19.

[27] *Id*. at 1015.

[28] *Id*. at 1016, citing *Fores v. Miranda*, *supra* note 19.

[29] 280 Phil. 137 (1991).

[30] 328 Phil. 774 (1996).

gross negligence, which amounted to bad faith. Particularly, in *Mr. & Mrs. Fabre, Jr.*, the gross negligence of the common carrier was determined from the fact that its driver was not engaged to drive long distance travels; he was also unfamiliar with the area where he detoured the bus as it was his first time to ply such route; the road was slippery because it was raining, yet the bus was running at 50 kilometers per hour resulting in its skidding to the left shoulder of the road; and the bus hit the steel brace on the road at past 11:30 p.m. The Court also noted that other than the imputation of gross negligence, the injured passengers therein pursued their claim not on the theory of breach of contract of carriage alone but also on *quasi-delicts*.

Clearly, unless it is fully established (and not just lightly inferred) that negligence in an action for breach of contract is so gross as to amount to malice, then the claim of moral damages is without merit.[31]

Here, petitioners impute negligence on the part of respondents when, as paying passengers, they sustained injuries when the bus owned and operated by respondent Quiñones, and driven by respondent Quitan, collided with another vehicle. Petitioners propounded on the negligence of respondents, but did not discuss or impute fraud or bad faith, or such gross negligence which would amount to bad faith, against respondents. There being neither allegation nor proof that respondents acted in fraud or in bad faith in performing their duties arising from their contract of carriage, they are then not liable for moral damages.

The Court also sustains the CA's finding that petitioners are not entitled to exemplary damages. Pursuant to Articles 2229 and 2234[32] of the Civil Code, exemplary damages may be awarded only in addition to moral, temperate, liquidated, or compensatory

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[31] *Verzosa v. Baytan, supra* note 19 at 1017-1018, citing *Fores v. Miranda, supra* note 19 at 276.

[32] 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.

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or

damages. Since petitioners are not entitled to either moral, temperate, liquidated, or compensatory damages, then their claim for exemplary damages is bereft of merit.

Finally, considering the absence of any of the circumstances under Article 2208[33] of the Civil Code where attorney's fees may be awarded, the same cannot be granted to petitioners.

All told, the CA correctly ruled that petitioners are not entitled to moral and exemplary damages as well as attorney's fees.

WHEREFORE, the Petition is **DENIED**. The October 29, 2012 Decision and March 6, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 95638 are **AFFIRMED**.

SO ORDERED.

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

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compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x

[33] Article 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;

(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 all cases, the attorney's fees and expenses of litigation must be reasonable.

SECOND DIVISION

[G.R. No. 208471. August 2, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNESTO SAGANA *y* DE GUZMAN**, *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS; IN BOTH CASES, THE ILLICIT DRUGS CONFISCATED COMPRISE THE *CORPUS DELECTI* OF CHARGES.—** For a plausible conviction under Article II, Section 5 of Republic Act No. 9165 or ***illegal sale*** of prohibited drugs, the prosecution must ascertain the following: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] ***object*** *is properly presented* as evidence in court *and is shown to be the same drugs seized from the accused*." On the other hand, the following elements must be proven in ***illegal possession*** of prohibited drugs: [1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs. In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the ***corpus delicti*** of the charges. "[I]t is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt." Its identity and integrity must be proven to have been safeguarded.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; ESSENTIAL TO BE ESTABLISHED IN BUY-BUST OPERATIONS.—** In compliance with the chain of custody, the prosecution must identify the persons involved in handling the seized articles from confiscation up to their presentation as evidence.

Concomitantly, the prosecution should also offer statements pertaining to each link of the chain "in such a way that every person who touched the illegal drugs would describe how and from whom they were received, where they were and what happened to them while in his or her possession, the condition in which he or she received them, and their condition upon delivery." x x x Thus, it is essential that the chain of custody is established in buy-bust operations. This includes: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

3. **ID.; ID.; ID.; INITIAL PROCEDURAL SAFEGUARD THEREOF IS MANDATORY AND FAILURE TO COMPLY REQUIRES JUSTIFIABLE GROUND.—** The initial procedural safeguard is provided for under Section 21, paragraph 1 of Republic Act No. 9165, which reads: x x x (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[.] x x x [This] is mandatory in nature, as reflected in the presence of the word "***shall***" in the provision. x x x To underscore, the prosecution "has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 . . . or that there was a justifiable ground for failing to do so."

APPEARANCES OF COUNSEL

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

DECISION

LEONEN, *J*.:

The miniscule quantity of confiscated illicit drugs heightens the importance of a more stringent conformity to Section 21 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.[1]

This Court resolves this appeal[2] filed by Ernesto Sagana y De Guzman (Sagana) from the Decision[3] of the Court of Appeals dated February 26, 2013 in CA-G.R. CR-H.C. No. 05154.

The Court of Appeals affirmed the Regional Trial Court's ruling[4] that Sagana was guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs.[5]

On July 22, 2010, two (2) Informations for violation of Article II, Sections 5[6] and 11[7] of Republic Act No. 9165 were filed

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[1] *People v. Holgado y Dela Cruz,* 741 Phil. 78, 81 (2014) [Per *J.* Leonen, Third Division].

[2] *Rollo,* pp. 19-21.

[3] *Id.* at 2-18. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio of the Eighth Division, Court of Appeals, Manila.

[4] CA *rollo,* pp. 16-23. The Decision, dated July 19, 2011, was penned by Judge Emma M. Torio of Branch 41, Regional Trial Court, Dagupan City.

[5] *Rollo*, p. 18, CA Decision.

[6] Rep. Act No. 9165, Sec. 5 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.

. . . .

[7] Rep. Act No. 9165, Sec. 11 provides:

against Sagana.[8] The charging portions of the Informations read:

Criminal Case No. 2010-0390-D

That on or about the 21st day of July 2010, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ERNESTO SAGANA Y DE GUZMAN @ Nestor,** did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride contained in one (1) heat[-]sealed plastic sachet, weighing more or less 0.12 gram in exchange for ₱500.00, without authority do so.

Contrary to Article II, Section 5, R.A. 9165.

Criminal Case No. 2010-0391-D

That on or about the 21st day of July 2010, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ERNESTO SAGANAY** [sic] **Y DE GUZMAN**

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:

. . . .

(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.

[8] *Rollo,* pp. 4-5.

@ **Nestor,** did then and there, willfully, unlawfully and criminally, have in his possession, custody and control Methamphetamine Hydrochloride (Shabu) contained in five (5) heat[-]sealed plastic sachets, weighing more or less 0.59 gram, without authority to possess the same.

Contrary to Article II, Section 11, R.A. 9165.[9] (Emphasis in the original)

Upon arraignment, Sagana pleaded not guilty to the charges.[10]

Trial on the merits ensued. The prosecution's version of the story is as follows:

On July 21, 2010 at around 2:20 p.m., police officers coordinated with the Philippine Drug Enforcement Agency to act on a tip by a confidential informant. P./Insp. Gerardo Macaraeg, Jr., PO3 Lucas Salonga (PO3 Salonga), PO3 Christian Carvajal (PO3 Carvajal), PO1 Allan Emerson Daus, and PO1 Ferdinand Lopez carried out a buy-bust operation in Sagana's residence at Muslim Tondaligan, Dagupan City.[11]

PO3 Salonga posted as the poseur-buyer. Five (5) ₱100.00 bills served as buy-bust money, marked with PO3 Salonga's initials, "LCS."[12]

Allegedly before the operation, PO3 Salonga had arranged the transaction through a phone call with Sagana, who set the meeting at his house.[13]

The operation ensued.

Upon arrival at Sagana's house, Sagana invited PO3 Salonga and PO3 Carvajal inside. Once inside, PO3 Salonga informed Sagana that he would purchase ₱500 worth of *shabu.*[14]

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[9] *Id*. at 5.

[10] *Id.*

[11] *Id*. at 3.

[12] *Id*.

[13] *Id*.

[14] *Id*.

When Sagana asked for the payment, PO3 Salonga gave him the marked money. After counting the money, Sagana handed him one (1) plastic sachet of *shabu*. Thereafter, PO3 Salonga confronted Sagana and introduced himself as a police officer. PO3 Carvajal apprehended Sagana's wife and another lady who also peddled him *shabu.*[15]

After a body search on Sagana, PO3 Salonga recovered the marked money and retrieved five (5) more plastic sachets of *shabu.*[16] PO3 Salonga marked the articles with his initals, "LCS."[17] Accordingly, he made the confiscation receipt before delivering Sagana to the police station.[18]

At the police station, the incident was entered in the police blotter. They took photos of Sagana and the confiscated items in the presence of a representative from the Department of Justice, media representatives, and an elected barangay official.[19]

Based on the chemistry reports of P/Sr. Insp. Myrna Malojo (P/Sr. Insp. Malojo), the heat-sealed plastic sachets were positive for methamphetamine hydrochloride.[20]

On the other hand, the defense posed frame-up and extortion[21] against the police officers in their version of the events as follows:

On July 21, 2010 at around 2:00 p.m., Sagana was allegedly washing the dishes by the deep well next to his house when he heard a commotion in the yard. He was then prompted to check out what it was. There, he purportedly saw an armed man attempting to destroy their fence. This man hurriedly approached

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[15] *Id.*

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

[17] *Id*. at 4.

[18] *Id*.

[19] *Id*.

[20] *Id*. In the CA Decision, they referred to *shabu* as "methylamphetamine hydrochloride."

[21] *Id*. at 16.

him, held his neck, and instructed him not to stand and to keep quiet because they were searching for someone.[22]

Allegedly, two (2) men barged inside his house. When the men went out, they commanded him to direct them to "the money." When Sagana asked about the money, one (1) of them supposedly hit his left side with a gun and was told that he would be brought to the police station. His family saw what the men did, which made his eldest child hysterical.[23]

Sagana and his wife were taken to the police station where he was asked if the items on top of the office table were his. Sagana answered in the negative which prompted the police officers to bring his wife to the investigating room.[24]

A police officer allegedly demanded ₱50,000.00 in exchange for not filing a case against Sagana, an amount open for bargain. However, when Sagana told them that they did not have that amount, he was detained and was taken to the prosecutor's office for inquest the following week.[25]

On July 19, 2011, the Regional Trial Court found Sagana guilty of the charges.[26] It ruled that Sagana "was caught in *flagrante delicto* selling *shabu* to a poseur buyer and possessing another five (5) plastic sachets of *shabu*."[27] It found that all the elements necessary to establish the illegal sale and illegal possession of drugs were proven by the prosecution.[28] The dispositive portion of the decision read:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Ernesto Sagana y de Guzman ***GUILTY*** beyond

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[22] *Id*. at 4.

[23] *Id*.

[24] *Id.*

[25] *Id.*

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

[27] *Id.* at 22.

[28] *Id*. at 21.

reasonable doubt in Criminal Case No. 2010-0390-D for selling and delivering shabu weighing 0.12 gram to a poseur buyer in violation of Section 5, Article II of Republic Act [No.] 9165, and pursuant to law, he is sentenced to suffer the penalty of life imprisonment and [a] fine of ₱500,000.00 and to pay the cost of suit.

In Criminal Case no. 2010-0391-D, the court likewise finds the accused Ernesto Sagana y de Guzman ***GUILTY*** beyond reasonable doubt for Possession of 0.59 gram of Shabu, a dangerous drug, in violation of Section 11, Article II of Republic Act [No.] 9165 and pursuant to law, he is sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and [a] fine of ₱400,000.00 and to pay the cost of suit.

SO ORDERED.[29] (Emphasis in the original)

On appeal,[30] Sagana asserted that the police officers failed to comply with Section 21 of Republic Act No. 9165 and its implementing rules.[31] He argued that the trial court allegedly erred in finding him guilty of the charges.[32]

On February 26, 2013, the Court of Appeals affirmed[33] the trial court's ruling. It held that failure to comply with Section 21 of Republic Act No. 9165 did not render Sagana's arrest illegal or the evidence confiscated inadmissible.[34] Strict compliance with the law can be dispensed with provided that "the integrity and the evidentiary value of the seized items [were] . . . preserved" by the law enforcers.[35]

Hence, this appeal before this Court.

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[29] *Id*. at 23.

[30] *Id*. at 24.

[31] *Rollo,* pp. 6-7.

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

[33] *Id*. at 18.

[34] *Id*. at 8.

[35] *Id*. at 9.

On August 28, 2013[36] the Court of Appeals elevated to this Court the records of this case pursuant to its Resolution[37] dated March 14, 2013. The Resolution gave due course to the Notice of Appeal[38] filed by Sagana.

In the Resolution dated September 30, 2013[39] this Court noted the records of this case forwarded by the Court of Appeals. The parties were then ordered to file their supplemental briefs, should they so desired, within 30 days from notice.

On November 18, 2013, the Office of the Solicitor General filed a Manifestation[40] on behalf of the People of the Philippines stating that it would no longer file a supplemental brief. A similar Manifestation[41] was filed by the Public Attorney's Office on behalf of Sagana.

For resolution before this Court is whether Ernesto Sagana's guilt was proven beyond reasonable doubt. Subsumed in the resolution of this issue is whether the police officers complied with Section 21 of Republic Act No. 9165 and its implementing rules in handling the alleged confiscated *shabu*.

Sagana insists that there are substantial gaps in the chain of custody presented by the prosecution.[42]

PO3 Salonga allegedly marked the six (6) sachets of *shabu* and conformably prepared the pertinent confiscation receipt.[43]

At the police station, the confiscated items were allegedly turned to the desk officer for the incident to be entered in the

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[36] *Id*. at 1.

[37] *Id*. at 22.

[38] *Id*. at 19-21.

[39] *Id*. at 24.

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

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

[42] CA *rollo,* p. 51.

[43] *Id*.

police blotter and for the investigator to prepare the corresponding request for examination. Thereafter, the articles were delivered to the crime laboratory and were received by P/Sr. Insp. Malojo.[44]

Given this sequence, Sagana underscores that there are three (3) key persons involved: an unnamed desk officer, an unnamed police investigator, and P/Sr. Insp. Malojo, the receiving officer at the crime laboratory. All of them had contact with the purportedly confiscated illicit drugs. However, they were not presented as witnesses by the prosecution, for no reasonable explanation.[45]

Sagana emphasizes that in spite of making P/Sr. Insp. Malojo's testimony a subject of stipulation, it does not cover either the circumstances under which the specimens were received at the laboratory for testing and analysis or the processes done to these items while in her possession and custody. He then surmises that there can be no guarantee that the alleged confiscated *shabu* were the same ones seized from the buy-bust operation.[46]

Moreover, Sagana asserts that the prosecution failed to show that the marking and preparation of the receipt were made in his presence.[47] Despite the signatures of an elected public official and representatives from the media and the Department of Justice on the receipt, there were still infirmities as these signatories were not present in the operation when the inventory was done.[48]

On the other hand, the Office of the Solicitor General contends that the prosecution was able to establish beyond reasonable doubt that all the essential elements of illegal sale and illegal possession of *shabu* were present.[49]

PO3 Salonga, as well as the other prosecution witnesses, recounted the circumstances of the contraband's sale that ended

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

[45] *Id*.

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

[47] *Id*. at 56.

[48] *Id*.

[49] *Id*. at 77-92, Appellee's Brief.

with Sagana's apprehension.[50] The narration made by other witnesses, who were also police officers, should be given weight with the presumption that they performed their duties in a regular manner, absent any evidence to the contrary.[51]

Furthermore, the Office of the Solicitor General asserts that the chain of custody was never broken and that the seized *shabu*'s integrity remained intact.[52] It avers that the drugs seized from Sagana were undoubtedly the exact specimens examined in the crime laboratory and presented and identified in court.[53]

This Court rules in favor of accused-appellant Sagana.

I

In a criminal case, this Court commences with the law's own standpoint on the standing of the accused that "in all criminal prosecutions, he is *presumed innocent of the charge* laid unless the contrary is proven beyond reasonable doubt."[54] The burden of proof lies with the prosecution.[55] Thus, it must depend "on the strength of its case rather than on the weakness of the case for the defense."[56]

Moreover, "[p]roof 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 necessary to surmount the presumption of innocence.[57]

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[50] *Id*. at 85.

[51] *Id*. at 86-87.

[52] *Id*. at 89.

[53] *Id.*

[54] *People v. Sanchez y Espiritu,* 590 Phil. 214, 229 (2008) [Per *J*. Brion, Second Division].

[55] *Id*. at 230.

[56] *Id*.

[57] *Id*.

For a plausible conviction under Article II, Section 5 of Republic Act No. 9165 or ***illegal sale*** of prohibited drugs, the prosecution must ascertain the following:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[58]

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] ***object*** *is properly presented* as evidence in court *and is shown to be the same drugs seized from the accused*."[59]

On the other hand, the following elements must be proven in ***illegal possession*** of prohibited drugs:

[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.[60]

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the ***corpus delicti*** of the charges.[61]

"[I]t is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt."[62] Its identity and integrity must be proven to have been safeguarded.[63] Aside from proving the elements of the charges, "the fact that the substance illegally possessed and sold [was] the same substance offered in court as exhibit must likewise

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[58] *People v. Ismael y Radang,* G.R. No. 208093, February 20, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/208093.pdf> 6 [Per *J.* Del Castillo, First Division].

[59] *Id.*

[60] *Id*.

[61] *Id.*

[62] *Lopez v. People,* 725 Phil. 499, 507 (2014) [Per *J*. Perez, Second Division].

[63] *Id.*

be established with the same degree of certitude as that needed to sustain a guilty verdict."[64] The ***chain of custody*** carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[65]

While the definition of chain of custody was not expressly provided for under Republic Act No. 9165,[66] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defined it as follows:

> b. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants 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 w[as] made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In compliance with the chain of custody, the prosecution must identify the persons involved in handling the seized articles from confiscation up to their presentation as evidence.[67] Concomitantly, the prosecution should also offer statements pertaining to each link of the chain "in such a way that every person who touched the illegal drugs would describe how and from whom they were received, where they were and what happened to them while in his or her possession, the condition

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[64] *People v. Lagahit,* 746 Phil. 896, 908 (2014) [Per *J.* Perez, First Division].

[65] *People v. Ismael y Radang,* G.R. No. 208093, February 20, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/208093.pdf > 6 [Per *J.* Del Castillo, First Division].

[66] *People v. Dahil,* 750 Phil. 212, 227 (2015) [Per *J.* Mendoza, Second Division].

[67] *People v. Goco y Ombrog,* G.R. No. 219584, October 17, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/219584.pdf> 7 [Per *J.* Perlas-Bernabe, First Division].

in which he or she received them, and their condition upon delivery."[68]

Mallillin v. People[69] explained the importance of acquiescence to the chain of custody due to the distinctive nature of narcotics.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. ***Hence, in authenticating the same, a standard 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.***[70] (Emphasis supplied)

The prosecution in this case offered testimonies corroborating the narration of the alleged sale of illicit drugs that paved the way for Sagana's arrest. However, there were apparent lapses in the chain of custody that cast doubt on the identity and integrity of the *corpus delicti.* Hence, the prosecution failed to establish that the miniscule amounts of 0.12 grams and 0.59 grams of dangerous drugs presented as evidence in court were the very same ones allegedly seized and retrieved from Sagana.

II

In this case, a buy-bust operation was conducted to validate the tip given by the confidential informant.[71] While a buy-

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[68] *Id*.

[69] 576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

[70] *Id*. at 588-589.

[71] *Rollo,* p. 3.

bust operation has been known to be useful in "flush[ing] out illegal transactions that are otherwise conducted covertly and in secrecy," it has its drawback "that has not escaped the attention of the framers of the law."[72] It is prone "to police abuse, the most notorious of which is its use as a tool for extortion."[73] In *People v. Tan,*[74] courts were urged to be more cautious in dealing with drug cases:

"[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."*** *Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.*[75] (Emphasis provided)

Thus, it is essential that the chain of custody is established in buy-bust operations. This includes:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[76] (Emphasis supplied, citation omitted)

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[72] *People v. Garcia y Ruiz,* 599 Phil. 416, 426-427 (2009) [Per *J*. Brion, Second Division].

[73] *Id*.

[74] 401 Phil. 259 (2000) [Per *J*. Melo, Third Division].

[75] *Id*. at 273.

[76] *People v. Casacop y De Castro,* 755 Phil. 265, 278 (2015) [Per *J*. Leonen, Second Division] citing *People v. Remigio*, 700 Phil. 452, 468 (2012) [Per *J*. Perez, Second Division] and *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per *J*. Brion, Second Division].

Section 21 of Republic Act No. 9165, the then[77] prevailing law, provides the manner in dealing with confiscated articles in drug cases. This mandated procedure emphasizes "the value of preserving the chain of custody in relation to the dangerous drugs."[78] Hence, the prosecution must prove compliance to establish the elements of the charges.[79]

The initial procedural safeguard[80] is provided for under Section 21, paragraph 1 of Republic Act No. 9165, which 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.* — 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)

This is further elucidated in its Implementing Rules and Regulations, which state:

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

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[77] Before the amendment by Rep. Act No. 10640 (2014).

[78] *People v. Alagarme y Citoy,* 754 Phil. 449, 459 (2015) [Per *J.* Bersamin, First Division].

[79] *People v. Garcia y Ruiz,* 599 Phil. 416, 426 (2009) [Per *J.* Brion, Second Division].

[80] *Id*. at 427.

Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. — . . .

(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 supplied)

The prosecution's narration of events reveals that the police officers did not to conform with the chain of custody. This is in contravention to Section 21 of Republic Act No. 9165, which is mandatory in nature, as reflected in the presence of the word ***"shall"***[81] in the provision.

According to the prosecution, the items were immediately marked and inventoried in Sagana's residence after confiscation.[82] However, it failed to offer any reason why the mandated photographing was not concurrently done with the inventory and was only made[83] when Sagana was already in the police station.

Similarly, none[84] of the required third-party representatives was present during the seizure and inventory of the dangerous

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[81] *People v. Sanchez y Espiritu,* 590 Phil. 214, 231 (2008) [Per *J*. Brion, Second Division].

[82] CA *rollo*, p. 17.

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

[84] *Id*. at 17.

articles. Their presence *in buy-bust operations and seizure of illicit articles* in the place of operation would supposedly guarantee "against planting of evidence and frame up."[85] In other words, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[86]

To underscore, the prosecution "has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 . . . or that there was a justifiable ground for failing to do so."[87] In this case, the records were bereft of any explanation why the third-party representatives were present only during the belated photographing[88] of the confiscated articles. Hence, the very purpose of their mandated presence is defeated.

While simple procedural irregularities in buy-bust operations are not *ipso facto* prejudicial to the claim of the prosecution, provided that the integrity and evidentiary worth of the confiscated articles were maintained, courts should still carefully assess and distinguish this kind of errors from those amounting to "gross, systematic, or deliberate disregard" of the protections set by law.[89] Considering that the law enforcers in this case conducted a briefing before the operation,[90] they had ample time to secure the presence of the needed third-party representatives before proceeding to Sagana's residence.

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[85] *People v. Reyes,* G.R. No. 199271, October 19, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/199271.pdf> 13 [Per *J*. Bersamin, First Division].

[86] *People v. Mendoza y Estrada,* 736 Phil. 749, 762 (2014) [Per *J*. Bersamin, First Division].

[87] *People v. Umipang y Abdul,* 686 Phil. 1024, 1053 (2012) [Per *C.J*. Sereno, Second Division].

[88] CA *rollo*, pp. 17-18.

[89] *People v. Umipang y Abdul,* 686 Phil. 1024, 1037-1038 (2012) [Per *C.J*. Sereno, Second Division].

[90] *Rollo,* p. 3.

Section 21 identifies "matters that are imperative."[91] Carrying out acts which are seemingly compliant but do not actually conform to the prerequisites laid down in Section 21 is insufficient.[92] "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."[93]

Furthermore, pursuant to "the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused," the failure of the police officers to observe the procedure in handling the seized items provided for under Republic Act No. 9165 and its implementing rules essentially prejudices the prosecution's claim.[94]

III

A perusal of PO3 Salonga's testimony shows that the prosecution failed to establish an unbroken chain of custody.

Q: When you signaled your other companions, what happened next?
A: I frisked them and I was able to confiscate around 5 plastic sachets of *shabu* from the said suspect, madam.

. . . .

Q: What ***markings*** did you place in the pieces of *shabu*?
A: My initial (sic) LCS, Madam.
Q: After you have placed [the] marking (sic) on the items, what did you do next?
A: I prepared the ***confiscation receipt***, madam.
Q: Where did you prepare the confiscation receipt?
A: In the area, madam.

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[91] *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].

[92] *Id*.

[93] *Id.*

[94] *People v. De la Cruz y Lizing,* 591 Phil. 259, 270 (2008) [Per *J*. Tinga, Second Division].

Q: What are you referring to?
A: At the place of the incident, madam.
Q: After you prepared the confiscation receipt, what did you do next?
A: We brought them in our office, madam.

. . . .

Q: Upon arrival at your office, what did you do next?
*A: We indorsed them to the **desk officer** for recording, madam.*
Q: Where was it recorded?
A: In the police blotter, Madam.
Q: After you have it recorded in the police blotter, what did you do next?
A: We prepared a request for examination, madam.
Q: Who prepared for (sic) the request for examination, what happened next?
*A: The **investigator**, madam.*
Q: After the preparation of the request for examination, what happened next?
A: I brought the same to the Crime Laboratory, madam.[95] (Emphasis supplied)

"Every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement."[96] In a number of drug cases,[97] this Court ruled that the failure of the prosecution to offer the testimonies of the persons who had direct contact with the confiscated items *without ample explanation* casts doubt on whether the allegedly seized *shabu* were the very same ones presented in court.

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[95] *Rollo,* p. 11.

[96] *People v. Ismael y Radang,* G.R. No. 208093, February 20, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/208093.pdf> 11 [Per *J.* Del Castillo, First Division].

[97] See *Carino v. People,* 600 Phil. 433 (2009) [Per *J.* Tinga, Second Division], *People v. Sanchez y Espiritu,* 590 Phil. 214 (2008) [Per *J.* Brion, Second Division], *Mallillin v. People*, 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

The prosecution has the "burden of establishing the identity of the seized items."[98] Considering the sequence of the people who have dealt with the confiscated articles, the prosecution failed to justify why three (3) other significant persons were not presented[99] as witnesses. These persons were the desk officer who supposedly recorded the incident in the police blotter, the investigator who prepared the request for examination, and the police officer who received the articles in the laboratory. "In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment."[100]

Furthermore, the prosecution cannot simply rely on the saving clause provided for under the Implementing Rules and Regulations of Republic Act No. 9165. While non-conformity with the strict directive of Section 21 is not essentially prejudicial to its claim, the lapses committed by the police officers "must be recognized and explained in terms of their ***justifiable grounds*** and the ***integrity and evidentiary value*** of the evidence seized must be shown to have been preserved."[101]

In this case, however, the prosecution failed to offer any justifiable reason why the police officers failed to strictly comply with Section 21. It also failed to prove that the integrity and evidentiary value of the confiscated items were maintained despite the failure to conform to the directives of the law. "The prosecution's sweeping guarantees as to the identity and integrity of the seized drugs . . . will not secure a conviction."[102]

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[98] *Mallillin v. People*, 576 Phil. 576, 586 (2008) [Per *J.* Tinga, Second Division].

[99] See *rollo*, p. 10.

[100] *Mallillin v. People*, 576 Phil. 576, 587-588 (2008) [Per *J.* Tinga, Second Division].

[101] *People v. Sanchez y Espiritu,* 590 Phil. 214, 234 (2008) [Per *J*. Brion, Second Division].

[102] *People v. Holgado y Dela Cruz,* 741 Phil. 78, 93 (2014) [Per *J*. Leonen, Third Division].

IV

To establish "whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the *details of the operation* are clearly and adequately laid out through relevant, material and competent evidence."[103] More so, as in this case where the seized quantities of *shabu* are merely 0.12 grams and 0.59 grams, it is important that all details are clear. Hence, the miniscule quantities of dangerous drugs allegedly confiscated magnify the uncertainties with regard their integrity.[104]

Further, the courts cannot solely depend "on but must apply with *studied restraint* the presumption of regularity in the performance of official duty by law enforcement agents."[105] This presumption cannot surmount the accused's presumption of innocence.[106]

Trial courts should thoroughly take into consideration "the factual intricacies of cases involving violations of Republic Act No. 9165."[107] Thus, "[c]ourts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving ***miniscule*** amounts of drugs [for] [t]hese can be readily planted and tampered."[108]

The miniscule quantity of confiscated illicit drugs heightens the importance of a more stringent conformity with Section

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[103] *People v. Ong y Li,* 476 Phil. 553, 571-572 (2004) [Per *J*. Puno, *En Banc*].

[104] *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].

[105] *People v. Ong y Li,* 476 Phil. 553, 572 (2004) [Per *J.* Puno, *En Banc*].

[106] *People v. Casacop y De Castro,* G.R. No. 208685, March 9, 2015, 755 Phil. 265, 284 [Per *J.* Leonen, Second Division].

[107] *Id*.

[108] *Id*.

21,[109] which the police officers in this case miserably failed to do so. The significant lapses committed, as well as their failure to explain their non-compliance with the directives of the law, cast doubt on the integrity of the *corpus delicti*. With these circumstances, this Court acquits accused-appellant Sagana as his guilt was not proven beyond reasonable doubt.

In closing, this Court is reminded of its words in *People v. Holgado*:[110]

> 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.[111]

WHEREFORE, premises considered, the February 26, 2013 Decision of the Court of Appeals in CA-G.R.CR-H.C. No. 05154 is **REVERSED** and **SET ASIDE**. Accused-appellant Ernesto Sagana y De Guzman 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. Let entry of final judgment be issued immediately.

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[109] *Id.*

[110] 748 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[111] *Id*. at 100.

Let a copy of this decision be furnished 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 within five days from receipt of this Decision the action he has taken. Copies shall also be furnished the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 218592. August 2, 2017]

CHRISTOPHER FIANZA *a.k.a.* "TOPEL," *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE (RPC); ARTICLE 336 ON ACTS OF LASCIVIOUSNESS; RULE WHERE THE VICTIM BELOW TWELVE (12) YEARS OF AGE IS SUBJECTED TO SEXUAL ABUSE THROUGH LASCIVIOUS CONDUCT; REQUISITES.—** In instances where the child subjected to sexual abuse through lascivious conduct is below twelve (12) years of age, the offender should be prosecuted under Article 336 of the RPC, but suffer the higher penalty of *reclusion temporal* in its medium period in accordance with Section 5 (b) [on Child Prostitution and Other Sexual Abuse], Article III of RA 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act),

x x x Pursuant thereof, before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for Acts of Lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse thereunder. The elements of Acts of Lasciviousness under Article 336 of the RPC are: (*a*) the offender commits any **act of lasciviousness or lewdness**; (*b*) the lascivious act is done under any of the following circumstances: (*i*) by using force or intimidation; (*ii*) when the offended party is deprived of reason or otherwise unconscious; or (*iii*) **when the offended party is under twelve (12) years of age**; and (c) the offended party is another person of either sex. On the other hand, sexual abuse, as defined under Section 5 (b), Article III of RA 7610 has three (3) elements: (*a*) the accused commits an act of sexual intercourse or **lascivious conduct**; (*b*) the said act is performed with a child exploited in prostitution or **subjected to other sexual abuse**; and (*c*) the child is below eighteen (18) years old.

2. ID.; ID.; ID.; LEWD AND LASCIVIOUS CONDUCT, DEFINED.— The term "***lewd***" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. **The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.** Hence, whether or not a particular conduct is lewd, by its very nature, cannot be pigeonholed into a precise definition. ***Lascivious conduct***, on the other hand, is defined under Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases) 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[.]

3. **ID.; RA 7610 ON SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT; SECTION 5 (b), ARTICLE III ON CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; WHEN A CHILD IS DEEMED SUBJECTED TO OTHER SEXUAL ABUSE.—** A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. Case law further clarifies that lascivious conduct under the coercion or influence of any adult exists when ***there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will***. *Corolla*ry thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that **sexual abuse involves the element of influence which manifests in a variety of forms**. It is defined as: [T]he employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children x x x The term "***influence***" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." On the other hand, "***coercion***" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it." x x x It is undisputed that AAA was only 11 years old at the time of the incidents, hence, considered a **child** under the law. x x x Case law states that a child, such as AAA in this case, is presumed to be incapable of giving rational consent to any lascivious act. x x x Records likewise indicate that Fianza was about 35 years old at the time of the commission of the offense, or 24 years older than AAA, more or less. The age disparity between them clearly placed Fianza in a stronger position over AAA which enabled him to wield his will on the latter.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF COMPLAINT OR INFORMATION AND SUFFICIENCY OF THE ALLEGATION ON THE DATE OF THE COMMISSION OF THE OFFENSE.—** Section 6, Rule 110 of the Rules of Court (Rules), lays down the guidelines in determining the sufficiency of a complaint or information x x x As to the sufficiency of the allegation on the date of the commission of the offense, Section 11, Rule 110 of the Rules adds: x x x **It**

is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. Conformably with these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged; thus, the complaint will be sustained if the proof shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action. In this case, Fianza had been fully apprised of the charges against him since the Informations stated the approximate date of the commission of the offense x x x Indeed, the precise date and time of the incidents are not among the elements of sexual abuse under Section 5 (b), Article III of RA 7610. It is likewise well-settled that it is sufficient that the acts or omissions constituting the offense be stated in the information in ordinary and concise language and not necessarily in the language used in the statute, albeit in terms sufficient to enable a person of common understanding to know what offense is being charged and for the court to pronounce judgment.

5. **CRIMINAL LAW; ACTS OF LASCIVIOUSNESS UNDER THE RPC AND CHILD SUBJECTED TO SEXUAL ABUSE UNDER RA 7610; FORCE OR INTIMIDATION; STANDARDS FOR EVALUATION.—** ***Force or intimidation*** in cases involving prosecutions for Rape and Acts of Lasciviousness is defined as "power, violence or constraint exerted upon or against a person." In *People v. Maceda*, the Court explained the standards for evaluating the force or intimidation employed in rape, which equally applies to Acts of Lasciviousness as well as violation of Section 5 (b), Article III of RA 7610: [I]t is not necessary that the force and intimidation employed in accomplishing it be so great or of such character as could not be resisted. **It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. The intimidation must be judged in the light of the victim's perception and judgment at the time of the commission of the crime, and not by any hard and fast rule.**

6. **ID.; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC IN RELATION TO SECTION 5(b) ARTICLE**

III OF RA 7610; PROPER PENALTY APPLYING THE INDETERMINATE SENTENCE LAW AND ABSENT ANY MITIGATING OR AGGRAVATING CIRCUMSTANCES.— [T]he Court finds the prosecution to have sufficiently established Fianza's guilt beyond reasonable doubt for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610. Applying the Indeterminate Sentence Law, and absent any mitigating or aggravating circumstances, he is hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period, as maximum. However, in line with recent jurisprudence, the Court modifies the awards of civil indemnity and moral damages, and hereby orders Fianza to pay the amounts of ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, and ₱15,000.00 as moral damages, *for each count*, plus legal interest thereon at the rate of six percent (6%) per annum from the finality of this judgment until full payment.

CAGUIOA, *J.*, *dissenting opinion*:

CRIMINAL LAW; ARTICLE 336 OF THE RPC IN RELATION TO SECTION 5(B), ARTICLE III OF RA 7610; A PERSON MAY ONLY BE CONVICTED THEREOF UPON ALLEGATION AND PROOF THAT THE CHILD IS EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE.— With due respect, I maintain my position as elucidated in my Dissenting Opinion in *Quimvel v. People*, that a person may only be convicted of a violation of Article 336 in relation to Section 5(b), Article III of R.A. 7610 upon allegation and proof of the unique circumstances of the child – that is, that the child is "exploited in prostitution or subject to other sexual abuse". x x x [T]he record is bereft of any allegation or proof that when the July 2010 incident took place, AAA was already a child "exploited in prostitution or subjected to other sexual abuse"; neither is there any fact from which inference can be made that the relationship between the Petitioner and the victim amounts to coercion or influence. Thus, I submit that the accused, in the first instance, should

only be held liable for acts of lasciviousness under Article 336 of the RPC.

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 November 24, 2014 and the Resolution[3] dated May 29, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35293, which upheld the Decision[4] dated September 6, 2012 of the Regional Trial Court of Tayug, Pangasinan, Branch 52 (RTC) in Criminal Case Nos. T-5144 and T-5145, finding petitioner Christopher Fianza a.k.a. "Topel" (Fianza) guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (b),[5]

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[1] *Rollo*, pp. 12-31.

[2] *Id*. at 35-44. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring.

[3] *Id*. at 46-47. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Jane Aurora C. Lantion and Ramon Paul L. Hernando concurring.

[4] *Id.* at 64-72. Penned by Presiding Judge Emma S. Ines-Parajas.

[5] Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse;

Article III of Republic Act No. (RA) 7610,[6] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

The Facts

Fianza was charged with two (2) counts of violation of Section 5 (b), Article III of RA 7610 under two (2) Informations[7] dated April 6, 2011 filed before the RTC.[8] The prosecution's version of the incidents are as follows:

Sometime in July 2010,[9] AAA,[10] who was then 11 years old, was called by Fianza to his house and thereupon, was asked to wash his clothes. After AAA was finished with the laundry, Fianza asked her to go with him to the *kamalig*. Thereat, they proceeded to the second floor where Fianza removed his pants and briefs, lied down, and ordered AAA to hold his penis and masturbate him. After ejaculating, Fianza put on his clothes, and gave ₱20.00 to AAA who, thereafter, went home.[11]

Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code [RPC], 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[.]

[6] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES" (approved on June 17, 1992).

[7] Not attached to the *rollo*. See *rollo*, p. 36.

[8] *Id*. at 64-65.

[9] *Id*. at 77.

[10] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, and Section 40 of A.M. No. 04-10-11-SC, known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 5, 2004). (See footnote 5 in *People v. Balcueva,* G.R. No. 214466, July 1, 2015.)

[11] *Rollo*, pp. 77-78.

On November 30, 2010, while AAA was home, Fianza called her to his house, and asked her to clean the same. After she was done sweeping the floor, they proceeded to the second floor of the *kamalig*. Thereat, Fianza again removed his pants and briefs, lied down, and ordered AAA to fondle his penis. After the deed, he gave ₱20.00 to AAA who, thereafter, went home.[12]

After the second incident, AAA related the matter to her cousin, CCC,[13] who, in turn, told BBB,[14] AAA's mother, who reported the matter to the police.[15]

For his part, Fianza interposed the defense of denial and alibi. He claimed that he lived with his uncle in Andalasi, Pangasinan (Andalasi), while the rest of his family resided in Sapinit, Pangasinan (Sapinit), and were neighbors with AAA. He averred that in July 2010, he went to Sapinit to gamble all night, and went to his parents' house the following morning to sleep before going home to Andalasi.[16] As for the November 30, 2010 incident, he maintained that he was in Andalasi drinking with his friends as he had just sold a carabao. The next day, he went to get the carabao that he sold, and bought more liquor. He proceeded to Sapinit to have another drinking session that lasted until December 4, 2010.[17]

The RTC Ruling

In a Decision[18] dated September 6, 2012, the RTC found Fianza guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (b), Article III of RA 7610, and sentenced

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[12] *Id*. at 78.

[13] See footnote 10.

[14] *Id*.

[15] *Rollo*, p. 66.

[16] *Id.* at 37.

[17] *Id*. at 37-38.

[18] *Id*. at 64-72.

him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum, and ordered him to pay AAA the amount of ₱30,000.00 as moral damages for each count.

The RTC held that for an accused to be convicted of child abuse through lascivious conduct on a minor below 12 years old, the requisites for acts of lasciviousness under Article 336[19] of the Revised Penal Code (RPC) must be met in addition to the requisites of sexual abuse under Section 5 of RA 7610,[20] which the prosecution was able to establish. It gave full faith and credence to the testimony of AAA who remained steadfast in her claim and who was not shown to have been impelled by any ill-motive to testify falsely against Fianza.[21] On the other hand, it declared that Fianza's actions showed that he took advantage of AAA's naiveté and innocence to satisfy his lewd designs.[22]

Aggrieved, Fianza elevated[23] his conviction to the CA, docketed as CA-G.R. CR No. 35293.

The CA Ruling

In a Decision[24] dated November 24, 2014, the CA upheld Fianza's conviction for two (2) counts of violation of Section 5 (b), Article III of RA 7610.

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[19] Art. 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

[20] *Rollo*, p. 70, citing *Cabila v. People*, 563 Phil. 1020, 1027 (2007), further citing *Amployo v. People*, 496 Phil. 747 (2005).

[21] *Id.* at 68.

[22] *Id*. at 71.

[23] See Brief for the Accused-Appellant dated June 3, 2013; *id*. at 48-63.

[24] *Id*. at 35-44.

The CA observed that while Fianza was charged with violations of Section 5 (b), Article III of RA 7610 (sexual abuse), the proper appellation of the crimes should be violations of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5 (b), Article III of RA 7610, and found that the prosecution was able to establish all the requisites for both Acts of Lasciviousness and sexual abuse. It declared that Fianza, a 35-year-old adult, had moral ascendancy over 11-year-old AAA; hence, his act of coercing AAA to engage in lascivious conduct falls within the meaning of the term sexual abuse.[25]

However, the CA reduced the award of moral damages to ₱25,000.00, and further ordered Fianza to pay a fine in the amount of ₱15,000.00 for each count of sexual abuse, with legal interest at the rate of six percent (6%) per annum on the amounts due from the finality of judgment until full payment.[26]

Dissatisfied, Fianza moved for reconsideration,[27] which was, however, denied in a Resolution[28] dated May 29, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly upheld Fianza's conviction.

The Court's Ruling

At the outset, the Court deems it appropriate to correct the appellation of the crime with which Fianza was charged to Acts of Lasciviousness under Article 336 of the RPC considering that the victim, AAA, was only 11 years old at the time of the incidents. In instances where the child subjected to sexual abuse through lascivious conduct is below twelve (12) years of age,

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[25] *Id*. at 40-42.

[26] *Id*. at 43.

[27] See motion for reconsideration dated December 15, 2014; *id*. at 96-99.

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

the offender should be prosecuted under Article 336 of the RPC, but suffer the higher penalty of *reclusion temporal* in its medium period in accordance with Section 5 (b), Article III of RA 7610, which pertinently reads:

SECTION 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse or lascivious conduct, **are deemed to be children exploited in** prostitution and **other sexual abuse.**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) **Those who commit** the act of sexual intercourse or **lascivious conduct with a child** exploited in prostitution or **subjected to other sexual abuse**; *Provided*, That **when the victims [sic] is under twelve (12) years of age, the perpetrators shall be prosecuted under** Article 335, paragraph 3, for rape and **Article 336 of** Act No. 3815, as amended, **the Revised Penal Code, for** rape or **lascivious conduct**, as the case may be; *Provided*, That **the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period** x x x. (Emphasis and underscoring supplied)

Pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for Acts of Lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse thereunder.[29]

The elements of Acts of Lasciviousness under Article 336 of the RPC are: (*a*) the offender commits any **act of lasciviousness or lewdness**; (*b*) the lascivious act is done under any of the following circumstances: (*i*) by using force or intimidation; (*ii*) when the offended party is deprived of reason

[29] *Amployo v. People*, *supra* note 20, at 755. See also *People v. Lomaque*, 710 Phil. 338, 357-358 (2013).

or otherwise unconscious; or (*iii*) **when the offended party is under twelve (12) years of age**; and (*c*) the offended party is another person of either sex.[30] On the other hand, sexual abuse, as defined under Section 5 (b), Article III of RA 7610 has three (3) elements: (*a*) the accused commits an act of sexual intercourse or **lascivious conduct**; (*b*) the said act is performed with a child exploited in prostitution or **subjected to other sexual abuse**; and (*c*) the child is below eighteen (18) years old.[31]

The term "***lewd***" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. **The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.** Hence, whether or not a particular conduct is lewd, by its very nature, cannot be pigeonholed into a precise definition.[32]

Lascivious conduct, on the other hand, is defined under Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases) 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;

In the present case, the existence of ***all*** the elements of Acts of Lasciviousness under Article 336 of the RPC, as well as the

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[30] *People v. Lomaque*, *id*.

[31] *People v. Baraga*, 735 Phil. 466, 473 (2014).

[32] *PO3 Sombilon*, *Jr. v. People*, 617 Phil. 187, 196 (2009), citing *Amployo v. People*, *supra* note 20, at 756.

first and ***third*** elements of sexual abuse under Section 5 (b), Article III of RA 7610, remains undisputed. Records disclose that on two (2) occasions in July 2010 and on November 30, 2010, Fianza induced AAA, an 11-year-old minor, to hold his penis and masturbate him. The only point of dispute is with regard to the existence of the ***second*** element of sexual abuse, *i.e.*, whether or not the lascivious conduct was performed on a child subjected to other sexual abuse.

A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. Case law further clarifies that lascivious conduct under the coercion or influence of any adult exists when ***there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will***.[33] Corollary thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that **sexual abuse involves the element of influence which manifests in a variety of forms**. It is defined as:

> [T]he employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children x x x

The term "***influence***" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." On the other hand, "***coercion***" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."[34]

With the foregoing parameters considered, the Court finds that Fianza's acts were attended by coercion or influence within the contemplation of Section 5 (b), Article III of RA 7610.

It is undisputed that AAA was only 11 years old at the time of the incidents, hence, considered a **child** under the law. Section 3 (a), Article I of RA 7610 defines children in this wise:

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[33] *Caballo v. People*, 710 Phil. 792, 803 and 805 (2013).

[34] *Id*. at 243.

(a) "*Children*" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]

Case law states that a child, such as AAA in this case, is presumed to be incapable of giving rational consent to any lascivious act. In *Malto v. People*,[35] the Court explained:

A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.

The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. (Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, **a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.**[36]

Records likewise indicate that Fianza was about 35 years old at the time of the commission of the offense,[37] or 24 years older than AAA, more or less. The age disparity between them clearly placed Fianza in a stronger position over AAA which enabled him to wield his will on the latter.[38]

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[35] 560 Phil. 119 (2007).

[36] *Id.* at 139-141.

[37] He was 37 years old when he testified on February 21, 2012; see Transcript of Stenographic Notes (TSN), February 21, 2012, p. 38.

[38] See *Caballo v. People*, *supra* note 33, at 245.

However, Fianza assails his conviction for the prosecution's failure: (*a*) to specify in the Information in Criminal Case No. T-5144 the date of the commission of the offense;[39] and (*b*) to indicate in the information in both cases that the complained acts were performed with a child exploited in prostitution or subjected to other sexual abuse[40] – in violation of his right to be informed of the nature and cause of the accusations against him.

In this relation, Section 6, Rule 110 of the Rules of Court (Rules), which lays down the guidelines in determining the sufficiency of a complaint or information, provides:

SEC. 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

x x x x x x x x x

As to the sufficiency of the allegation on the date of the commission of the offense, Section 11, Rule 110 of the Rules adds:

SEC. 11. *Date of commission of the offense*. — **It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense**. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (Emphasis and underscoring supplied)

Conformably with these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged; thus, the complaint will be sustained if the proof shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action.[41]

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[39] *Rollo*, p. 19.

[40] *Id.* at 24.

[41] *Zapanta v. People*, 707 Phil. 23, 30 (2013).

In this case, Fianza had been fully apprised of the charges against him since the Informations stated the approximate date of the commission of the offense to be "sometime during the month of July 2010." Indeed, the precise date and time of the incidents are not among the elements of sexual abuse under Section 5 (b), Article III of RA 7610.[42]

It is likewise well-settled that it is sufficient that the acts or omissions constituting the offense be stated in the information in ordinary and concise language and not necessarily in the language used in the statute, albeit in terms sufficient to enable a person of common understanding to know what offense is being charged and for the court to pronounce judgment.[43]

In the instant case, **the Informations not only referred to the specific section of RA 7610 that was violated, but also stated that: (*a*) AAA was an 11-year-old minor at the time of the offense; and (*b*) Fianza committed lascivious conduct by <u>forcing</u> AAA to masturbate his penis.**[44]

To reiterate, a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the **<u>coercion or intimidation</u>**,[45] or influence of any adult.[46]

Force or intimidation in cases involving prosecutions for Rape and Acts of Lasciviousness is defined as "power, violence or constraint exerted upon or against a person."[47] In *People v. Maceda*,[48] the Court explained the standards for evaluating the force or intimidation employed in rape, which equally applies

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[42] See *People v. Fragante*, 657 Phil. 577, 597 (2011).

[43] *Malto v. People*, *supra* note 35, at 132-133.

[44] *Rollo*, p. 36.

[45] *Amployo v. People*, *supra* note 20, at 759, citing *People v. Larin*, 357 Phil. 987, 998 (1998).

[46] *Caballo v. People*, *supra* note 33, at 242-243.

[47] See *People v. Balquedra*, 693 Phil. 125, 134 (2012).

[48] 405 Phil. 698 (2001).

to Acts of Lasciviousness[49] as well as violation of Section 5 (b), Article III of RA 7610:[50]

[I]t is not necessary that the force and intimidation employed in accomplishing it be so great or of such character as could not be resisted. **It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind**. **The intimidation must be judged in the light of the victim's perception and judgment at the time of the commission of the crime, and not by any hard and fast rule**.[51] (Emphasis and underscoring supplied)

The allegation that Fianza committed lascivious conduct by forcing AAA to masturbate his penis was sufficient to apprise him of the nature of the criminal act with which he was charged to enable him to prepare his defense. Contrary to his protestations, the Informations sufficiently alleged the second element of sexual abuse, albeit not employing the exact language of the law, *i.e.*, that the lewd acts being complained of were performed with a child exploited in prostitution or subjected to other sexual abuse.

Notably, Fianza failed to refute AAA's claim that she was compelled to do as he instructed because he threatened to humiliate her and her family.[52] In *Amployo v. People*,[53] a case involving a similar prosecution for lascivious conduct committed on an eight-year-old minor, the Court held that intimidation need not necessarily be irresistible, especially in the case of young girls, thus:

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[49] Under Article 336 of the RPC, the acts of lasciviousness must be committed under any of the circumstances mentioned in the definition of the crime of rape. See also LUIS B. REYES, *THE REVISED PENAL CODE: CRIMINAL LAW*, BOOK TWO 919 (2012 edition).

[50] See *People v. Abello*, 601 Phil. 373, 393 (2009).

[51] *People v. Maceda*, *supra* note 48, at 721, citing *People v. Moreno*, 356 Phil. 231 (1998).

[52] See AAA's Sworn Statement dated February 9, 2011 taken during the investigation before the San Nicolas Police Station, San Nicolas, Pangasinan (Records, Vol. I, pp. 4-5), the truth and veracity of which she confirmed before the RTC (see TSN, November 8, 2011, p. 22).

[53] *Supra* note 20, at 759.

[I]ntimidation need not necessarily be irresistible. **It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party**. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[54] (Emphasis supplied)

It is not hard to imagine 11-year-old AAA being intimidated and cowed into silence and submission by her neighbor, a full grown adult male old enough to be her parent,[55] with threat of humiliation, should she not give in to his dastardly desires. She is still a child not capable of fully understanding or knowing the import of her actions. Verily, in almost all cases of sexual abuse, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the persons involved can testify as to its occurrence. Hence, the Court accords a high degree of respect to the assessment of the trial court which is in the best position to observe the declarations and demeanor of the witnesses, and evaluate their credibility, even more so when the same is affirmed by the CA,[56] as in this case.

Accordingly, the Court finds the prosecution to have sufficiently established Fianza's guilt beyond reasonable doubt for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610. Applying the Indeterminate Sentence Law, and absent any mitigating or aggravating circumstances, he is hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period,

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[54] *Id.*

[55] There is a 24 year age gap between Fianza and AAA, more or less (see footnote 37). Fianza was ***37*** years old when he testified on February 21, 2012 (see TSN, February 21, 2012, p. 38), while AAA's mother was ***38*** when she testified on August 16, 2011 (see TSN, August 16, 2011, p. 4).

[56] See *People v. Subesa*, 676 Phil. 403, 414 (2011).

as maximum.[57] However, in line with recent jurisprudence, the Court modifies the awards of civil indemnity and moral damages, and hereby orders Fianza to pay the amounts of ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, and ₱15,000.00 as moral damages, *for each count*, plus legal interest thereon at the rate of six percent (6%) per annum from the finality of this judgment until full payment.[58]

WHEREFORE, the petition is **DENIED**. The Decision dated November 24, 2014 and the Resolution dated May 29, 2015 of the Court of Appeals in CA-G.R. CR No. 35293 are hereby **SET ASIDE** and a new one is entered finding petitioner Christopher Fianza a.k.a. "Topel" (Fianza) **GUILTY** beyond reasonable doubt of two (2) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b), Article III of Republic Act No. 7610. Fianza is sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal* in its medium period, as maximum, and is ordered to pay AAA the amounts of ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, and ₱15,000.00 as moral damages,

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[57] The penalty for violation of Section 5 (b), Article III of RA 7610 is *reclusion temporal* in its medium period which ranges from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from *reclusion temporal* in its minimum period, or anywhere from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, and the maximum should be *reclusion temporal* in its medium period. In relation thereto, Article 64 of the RPC provides that when the penalty prescribed by law contains three periods (such as *reclusion temporal*) and in the absence of aggravating or mitigating circumstances, the penalty shall be imposed in its medium period. See *Quimvel v. People*, G.R. No. 214497, April 18, 2017, citing *People v. Santos*, 753 Phil. 637 (2015).

[58] See *Imbo v. People*, G.R. No. 197712, April 20, 2015, citing *People v. Baraga*, *supra* note 31, at 302; *Roallos v. People*,723 Phil. 655, 672-673 (2013); *Garingarao v. People*, 669 Phil. 512, 524-525 (2011); *People v. Fragante*, *supra* note 42, at 602.

for each count, plus legal interest at the rate of six percent (6%) per annum from the finality of this judgment until full payment.

SO ORDERED.

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

Caguioa, J., see dissenting opinion.

DISSENTING OPINION

CAGUIOA, *J*.:

The People's evidence shows that one morning in July 2010, Petitioner called 11-year-old AAA and asked the latter to wash his clothes in the bathroom of his house. After AAA had done so, Petitioner invited her to go with him to the *kamalig*, and at the second floor of the *kamalig*, Petitioner removed his pants, lay down, and asked AAA to hold his penis and *"salsalen" (masturbate him)*. AAA did as instructed. After Petitioner ejaculated, he put on his pants and gave AAA ₱20.00. The same incident occurred on November 30, 2010, when Petitioner asked AAA to clean his house. After AAA cleaned Petitioner's house, the latter again asked AAA to go with him to the *kamalig*, where he again asked AAA to fondle his penis. After ejaculating, Petitioner again gave AAA ₱20.00. After the second incident, AAA reported the matter to her cousin CCC, who then told BBB, AAA's mother, of the incident.

Acting on two (2) Informations, each charging Petitioner with one violation of Section 5(b), Article III of Republic Act No. (R.A.) 7610, the RTC convicted Petitioner for two (2) counts of violation of Section 5(b), Article III of R.A. 7610, and sentenced him to suffer the penalty of imprisonment for an indeterminate period of 12 years and 1 day of *reclusion temporal* minimum, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal* medium, as maximum, as well as to pay AAA the amount of ₱30,000.00 in damages for each count. On appeal, the CA affirmed the conviction, albeit correcting the

appellation of the crime to "violations of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610," reduced the award of moral damages to ₱25,000.00 and ordered Petitioner to pay a fine in the amount of ₱15,000.00 for each count of sexual abuse.

With due respect, I maintain my position as elucidated in my Dissenting Opinion in *Quimvel v. People*,[1] that a person may only be convicted of a violation of Article 336 in relation to Section 5(b), Article III of R.A. 7610 upon allegation and proof of the unique circumstances of the child — that is, that the child is "exploited in prostitution or subject to other sexual abuse". Conversely, the higher penalty of *reclusion temporal*, in the range that the *ponencia* holds to be applicable in this case, is not automatically applicable and may only be justified if it is alleged and proved that the child indulges in sexual intercourse or lascivious conduct, for money, profit, or any other consideration.

Applying the foregoing standards, it is my position that insofar as the first Information (pertaining to the July 2010 incident against AAA) is concerned, Petitioner ***cannot*** be convicted for violation of Article 336 of the RPC in relation to Section 5(b), Article III of R.A. 7610 and consequently suffer a penalty of *reclusion temporal* as provided for in Section 5(b), Article III of R.A. 7610, precisely because, as illustrated in my Dissenting Opinion in *Quimvel*,[2] a first sexual affront, on its own, cannot be automatically considered a violation of Section 5(b), absent a showing that the child is already a child "exploited in prostitution or subjected to other sexual abuse" at the time the sexual intercourse or lascivious conduct was committed, or that the circumstances prior to or during the act of complained of already constitutes the first instance of sexual intercourse or lascivious conduct so as to convert the child into a child "exploited in prostitution or subjected to other sexual abuse."

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[1] G.R. No. 214497, April 18, 2017.

[2] *Id*.

Here, the record is bereft of any allegation or proof that when the July 2010 incident took place, AAA was already a child "exploited in prostitution or subjected to other sexual abuse"; neither is there any fact from which inference can be made that the relationship between the Petitioner and the victim amounts to coercion or influence. Thus, I submit that the accused, in the first instance, should only be held liable for acts of lasciviousness under Article 336 of the RPC.

Prescinding from the above considerations, Petitioner, for the second instance, was correctly charged and convicted for a violation of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610, because, this time, the child, at the time the act complained of was committed, already qualifies as one subjected to "other sexual abuse" — thereby furnishing the essential element for a conviction under Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610.

Considering that the specific class of lascivious conduct in Section 5(b) of R.A. 7610 requires allegation that the acts were performed with a child exploited in prostitution or subjected to other sexual abuse, I respectfully submit that insofar as the first incident of July 2010 is concerned, the facts of the case warrant Petitioner's conviction only for acts of lasciviousness under Article 336 of the RPC. Inasmuch as the child was already subjected to "other sexual abuse" at the time the second sexual affront occurred on November 30, 2010, I raise no objection to Petitioner's conviction for violation of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610, insofar as the second incident is concerned.

SECOND DIVISION

[G.R. No. 220002. August 2, 2017]

EUGENIO M. GOMEZ, *petitioner, vs.* **CROSSWORLD MARINE SERVICES, INC., GOLDEN SHIPPING COMPANY S.A., and ELEAZAR DIAZ,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; DISABILITY BENEFITS; POEA STANDARD EMPLOYMENT CONTRACT (POEA SEC); A TEMPORARY TOTAL DISABILITY ONLY BECOMES PERMANENT WHEN SO DECLARED BY THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE PERIODS HE/SHE IS ALLOWED TO DO SO, OR UPON THE EXPIRATION OF THE MAXIMUM 240-DAY MEDICAL TREATMENT PERIOD WITHOUT A DECLARATION OF EITHER FITNESS TO WORK OR THE EXISTENCE OF A PERMANENT DISABILITY.—** A temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In this case, the treatment of petitioner's injury required spine surgery and physical therapy which extended beyond the initial 120-day period into the maximum 240-day treatment period. The company-designated doctor's medical report dated September 11, 2017 (made 195 days from the time petitioner was injured on February 29, 2012) stated that petitioner failed the functional capacity test and recommended that petitioner continue therapy for two to three months. Petitioner filed his complaint on September 13, 2012 or 197 days from the date he was injured, and, therefore, before the lapse of the maximum 240-day treatment period within which the company-designated physician should assess the fitness of petitioner to return to work. Since the company-designated doctor has not declared that petitioner is not fit to work within the 240-day period, and the 240-day period has not lapsed when petitioner filed his complaint, the petitioner cannot be legally presumed as permanently and totally disabled to be entitled to permanent total disability.

2. **ID.; ID.; ID.; ID.; FACTUAL FINDING OF THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), AND THE COURT OF APPEALS THAT THE EMPLOYEE WAS DISABLED DUE TO A WORK-RELATED INJURY IS BINDING ON THE COURT.—** [C]onsidering that the Labor Arbiter, the NLRC, and the Court of Appeals all found petitioner Gomez to be disabled due to a work-related injury, this fact is now binding on the respondents and this Court. The Court concurs with the Court of Appeals' finding that petitioner suffers from a partial permanent disability grade of 8 given by the company-designated doctor based on the POEA SEC Schedule of Disability. The disability grade is in accordance with Section 20-A (6) of the POEA SEC, which states: "The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid."

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN THE INTEREST OF JUSTICE, THE COURT MAY CONSIDER AND RESOLVE ISSUES NOT RAISED BELOW IF IT IS NECESSARY FOR THE COMPLETE ADJUDICATION OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES, AND IT FALLS WITHIN THE ISSUES FOUND BY THE PARTIES.—** Petitioner should have raised the issue on the medical reports being hearsay evidence before the Labor Arbiter. As a general rule, points of law, theories, and arguments not brought below cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result. In the interest of justice, however, the Court may consider and resolve issues not raised below if it is necessary for the complete adjudication of the rights and obligations of the parties, and it falls within the issues found by the parties.

4. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; DISABILITY BENEFITS; CASE OF *KESTREL SHIPPING COMPANY, INC. V. MUNAR* (702 Phil. 717) IS INAPPLICABLE TO THE CASE AT BAR. —** Indeed, *Kestrel Shipping Company, Inc.* is inapplicable to this case. It involved a complaint for disability benefit for an injury that happened

in 2006. Hence, the Court applied the prevailing rule enunciated in *Crystal Shipping, Inc. v. Natividad*, promulgated on October 20, 2005, that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. *Crystal Shipping, Inc.* was promulgated almost three years before *Vergara* was promulgated on October 6, 2008. *Vergara* pronounced that a temporary total disability only becomes permanent when so declared by the company physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.

5. **ID.; ID.; ID.; PETITIONER'S DISABILITY BENEFIT SHOULD BE COMPUTED UNDER THE *ITF UNIFORM "TCC" COLLECTIVE BARGAINING AGREEMENT*.—**The Court of Appeals correctly found that the CBA that covers petitioner's employment is the *ITF Uniform "TCC" Collective Agreement*, which was admitted by respondents, agreed to by the Labor Arbiter and the NLRC, but the Labor Arbiter and the NLRC erroneously used the rate of compensation of the *ITF Standard Collective Agreement*, which is a different agreement. Hence, the Court of Appeals correctly computed petitioner's disability benefit under the *ITF Uniform TCC Collective Bargaining Agreement.*

6. **CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; DAMAGES; ATTORNEY'S FEES AND INTEREST; AWARDED.—** The Court of Appeals correctly awarded attorney's fees in favor or petitioner. Under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws. In addition, pursuant to the case of *Nacar v. Gallery Frames*, the Court imposes on the monetary award for permanent partial disability benefit an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo and Luna Law Office for petitioner.
Velicaria Egenias for respondents.

DECISION

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals[2] dated February 5, 2015 and its Resolution[3] dated August 7, 2015, declaring petitioner Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8 and ordering respondents Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay petitioner Gomez his disability compensation in the amount of US$30,527.26 or its peso equivalent at the exchange rate prevailing at the time of actual payment as well as attorney's fees equivalent to 10% of the said amount due.

The facts are as follows:

On October 12, 2011, Crossworld Marine Services, Inc., in behalf of its principal, Golden Union Shipping Company, hired petitioner Eugenio M. Gomez as an Ordinary Seaman in the vessel M/V Elena VE for a period of 11 months, with a basic monthly compensation of US$583.00. At the time of petitioner's employment, the employees of M/V Elena VE were covered by a special agreement known as *ITF UNIFORM "TCC" Collective Agreement* between the ship owner and the union.[4]

Before being hired by respondents, petitioner underwent the required pre-employment medical examination and he was declared fit to work. Petitioner, 42 years old then, joined respondents' vessel on October 30, 2011 in Belgium.[5]

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[1] *Rollo,* pp. 8-20.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Elihu A. Ybanez and Florito S. Macalino, concurring.

[3] *Id.* at 22-24.

[4] CA Decision, *rollo,* p. 9; Respondents' Position Paper, *rollo*, p. 140.

[5] Complainant's Position Paper, *rollo*, p. 89; records, p. 11.

On February 29, 2012, at about 8:00 a.m., the Chief Officer of the vessel told petitioner to remove the ice from the lower and upper decks of the ship. While performing this task, petitioner accidentally slipped and hit his lower back on the steel deck. Petitioner was immediately in pain, but thought it was just temporary. He rested a moment and then continued to work despite the pain. He reported the incident to his superior when he asked for pain relievers.[6]

After 15 days or on March 15, 2012, petitioner could no longer bear the pain on his back and went to the vessel's master and requested for medical examination. He was told to go to the hospital the next day.[7]

Petitioner was examined and treated in Belgium; x-ray was done, intravenous fluid was administered, and medicine was injected twice on his back. He was diagnosed with Lumbago. The doctor-in-charge recommended petitioner's repatriation for further treatment.[8] Petitioner was repatriated to the Philippines on March 18, 2012.[9]

Petitioner arrived in the Philippines on March 19, 2012. The next day, petitioner reported to respondents and requested for further medical examination and treatment.[10] Petitioner was referred to the company's accredited doctors at the International Health Aide Diagnostic Services, Inc. (*IHADS*) for medical evaluation. He underwent six sessions of physical therapy, but the pain in his lumbar area still persisted. On May 11, 2012, IHADS referred petitioner for magnetic resonance imaging (*MRI*) of his lumbosacral spine at the University Physicians Medical Center. The MRI yielded this result:

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[6] *Id*.

[7] *Id*. at 90.

[8] Records, "Annex "C", p. 45.

[9] Complainant's Position Paper, *rollo,* p. 90.

[10] *Id*.

IMPRESSION:

Multilevel discogenic and osteophytic central canal and bilateral foraminal stenosis as described, L4-L5 and L5-S1.
Disc dessication, L4-L5 and L5-S1[11]

On June 6, 2012, petitioner was hospitalized at the Medical Center Manila to undergo two surgical procedures: lumbar laminectomy[12] and foraminotomy[13] to address petitioner's herniated disc, as advised by the company doctor. The Record of Operation[14] dated June 7, 2012 showed the preoperative diagnosis: slipped disc, L4-L5, L5-S1. Petitioner was discharged from the hospital on June 13, 2012 with home medication.

Petitioner went to IHADS for a follow-up checkup on June 20, 2012; July 16, 2012 and August 17, 2012.[15]

On July 24, 2012, the company-designated doctor, Dr. Ma. Dolores Tay, submitted a medical report[16] to Captain Eleazar Diaz, president of respondent Crossworld Marine Services, Inc., stating that petitioner can walk without difficulty, but petitioner complained about a mild pain on the left buttock area on prolonged sitting or standing; mild activities are allowed; and the interim disability assessment is Grade 8 based on the POEA Contract Schedule of Disability.

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[11] *Rollo,* Annex "F", p. 112.

[12] A laminectomy is a surgical removal of the posterior arch of a vertebra. *(Webster's Third New International Dictionary*, 1993 edition.)

[13] It is a minimally invasive surgical procedure performed to expand the opening of the spinal column where the nerve roots exit the spinal canal. Its purpose is to relieve the pressure resulting from foraminal stenosis. This is a painful condition caused by a narrowing of the foramen, the opening within each of the spinal bone that allows nerve roots to pass through. Herniated discs and thickened ligaments and joints may also be the cause of the narrowing of the foramen. (As defined in the CA Decision taken from www.orthospineinst.com, *rollo*, p. 10.)

[14] Records, Annex "G", p. 134.

[15] Records, Annex "I", p. 136.

[16] *Rollo,* Annex "H", p. 534.

On August 18, 2012, Dr. Tay submitted another report[17] to the President of respondent Crossworld Marine Services, Inc., stating that petitioner still complained of mild low back discomfort; he was advised to maintain ideal weight; and the attending spine surgeon recommended rehabilitation for flexibility and strengthening.

Petitioner was referred to Dr. Emily P. Noche-Cabungcal for physical therapy. Petitioner completed six sessions of physical therapy, but he still complained of low back pain. On September 8, 2012, Dr. Noche-Cabungcal recommended the continuation of physical therapy.[18] Petitioner, however, stated that respondents already refused to shoulder further medical expenses.[19]

On September 11, 2012, Dr. Tay submitted another report on the condition of petitioner to the President of respondent Crossworld Marine Services, Inc., stating thus:

> PRESENT EXAMINATION:
>
> He still complains of mild low back discomfort although no neurologic deficits noted. **Functional capacity testing was done according to his job description which he did not pass due to back pain on certain motions**. He should continue flexibility and strength exercises through his physiatrist. Follow up is scheduled on October 11, 2012.
>
> DIAGNOSIS: Status post laminectomy L4L5-L5S1 and foraminotomy L4L5-L4S1. Ongoing physiotherapy.
>
> DISPOSITION: Prognosis is fair to good. His symptoms at present are subjective. If he will pass the functional capacity testing after adequate flexibility is attained, he can resume work at sea.
>
> This is seen in 2 to 3 more months. **Interim disability assessment is unchanged at Grade 8 based on the POEA Contract Schedule of Impediments**.[20] (Emphasis supplied.)

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[17] *Supra* note 15.

[18] Records, Annex "H", p. 52.

[19] Complainant's Position Paper, *rollo*, p. 92.

[20] CA *rollo*, Annex "M", p. 117.

Meantime, petitioner went to see another physician, Dr. Renato P. Runas, an orthopedic surgeon, for a second opinion regarding his low back pain. In a Medical Evaluation Report dated September 7, 2012,[21] Dr. Runas made this finding:

x x x x x x x x x

At present, Seaman Gomez is still incapacitated due to pain on the lower back with numbness of the left lower extremity. Lower back pain is triggered by exertion. He cannot tolerate prolonged walking and standing because of pain. Forward and backward trunk motion is limited because of pain. He has difficulty standing from a sitting position. x x x

Seaman Gomez is still saddled with persistent and chronic moderate to severe low back pain. The residual pain is secondary to the disc disease and osteoarthritis. This chronic residual low back pain proved to be refractory to medications and physiotherapy management. He is unable to carry and lift heavy objects due to stiffness and pain. It is also difficult for him to bend, pick up and carry objects from the floor because of the limitation of trunk motion. **The surgery has lessened the intensity of pain but he did not regain his physical capacity to work. As an Ordinary Seaman, he does strenuous and heavy jobs which are no longer possible after the surgery. He needs complete activity modification to avoid further damage to the spine. He is unfit for sea duty in whatever capacity with a permanent disability since he can no longer perform his work which he is previously engaged in**. (Emphasis supplied)

Petitioner asked respondents for payment of his disability benefits, but respondents refused. Efforts toward an amicable settlement was unsuccessful. Hence, on September 13, 2012, petitioner filed a complaint[22] before the Labor Arbiter, praying that his disability be declared as work-related, total and permanent, and that respondents be declared solidarily liable to pay him permanent total disability benefit, moral and exemplary damages and attorney's fees.

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[21] Records, Annex "I", p. 152.

[22] Docketed as NLRC-NCR-OFW-CASE No. (M) 09-13737-12.

In their Position Paper,[23] respondents stated that in view of the medical report of their accredited doctor dated September 11, 2012 stating that petitioner can eventually resume his sea duties, they declined petitioner's claim for permanent total disability benefit.

The Labor Arbiter's Ruling

In a Decision[24] dated November 22, 2013, the Labor Arbiter held that petitioner was permanently and totally disabled and that he could no longer resume sea duty. The Labor Arbiter cited the medical report dated September 11, 2012 of the company-designated physician, which stated that petitioner did not pass the functional capacity test done according to petitioner's job description and he should continue flexibility and strength exercises through his physiatrist. The Labor Arbiter found as unmeritorious respondent's contention that petitioner's resumption of work at sea is expected, because petitioner did not pass the functional capacity test and was required to continue physical therapy, and he was still suffering from disability and has not returned to his previous job for more than 120 days. The Labor Arbiter cited *Crystal Shipping, Inc. v. Natividad,*[25] which held that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

The Labor Arbiter stated that while the company-designated physicians did not state in categorical terms that petitioner was permanently disabled, they did not also state that he was already fit to work with disability Grade 8 and petitioner has not returned to his previous job for more than 120 days. The Labor Arbiter held that the findings of the company-designated physicians is not binding on the Labor Arbiter or the courts for the said reports would have to be evaluated on their inherent merit.

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[23] Records, p. 82.

[24] *Rollo,* pp. 233-244.

[25] 510 Phil. 332, 340 (2005).

The Labor Arbiter ruled that petitioner's employment was covered by the ITF Uniform "TCC" Collective Bargaining Agreement (*CBA*), and petitioner is entitled to disability compensation under Section 21 (a) and (b) thereof in the amount of US$156,816.00. The dispositive portion of the Decision reads:

> WHEREFORE, a Decision is hereby rendered ordering Respondents Crossworld Marine Services, Inc. and Golden Union Shipping Company, S.A. to jointly and severally pay complainant Eugenio M. Gomez permanent disability benefit Grade 1, in the amount of US$156,816 or its peso equivalent at the exchange rate prevailing at the time of actual payment plus 10% thereof as and by way of attorney's fees.[26]

Respondents appealed the Decision of the Labor Arbiter to the National Labor Relations Commission (*NLRC*).

The NLRC's Ruling

In a Decision[27] dated April 11, 2013, the NLRC affirmed the Decision of the Labor Arbiter. The NLRC stated that given the medical condition of petitioner as elaborated by petitioner's specialist of choice and with due regard to the observations of the company-designated doctors that complainant's back pain persisted despite surgery and rehabilitation for a period of six months, it was inclined to believe that petitioner was suffering from permanent total disability as he is already permanently impaired in his earning capacity as an Ordinary Seaman or in any other work of a similar nature. Permanent total disability does not mean absolute helplessness. It means disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do.[28]

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[26] *Rollo,* p. 244.

[27] *Id.* at 285-296.

[28] Citing *Philippine Transmarine Carriers v. National Labor Relations Commission*, 405 Phil. 487, 494 (2001).

The NLRC stated that as the vessel MV Elena VE was actually covered by the ITF TCC CBA when petitioner was engaged in the vessel in October 2011, it agreed with the Labor Arbiter's findings that petitioner is entitled to Disability 21(a) and (b) of the said CBA in the amount of US$156,816.00 as full disability benefit for ratings, including an ordinary seaman.

The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the appeal of the respondents is DENIED for lack of merit and the Labor Arbiter's Decision is hereby AFFIRMED in its entirety.[29]

The NLRC denied respondents' motion for reconsideration in a Resolution[30] dated June 20, 2013.

Respondents filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the award in favor of petitioner of full disability benefit in the amount of US$156,816.00 under the ITF Standard CBA.[31]

The Court of Appeals' Ruling

The Court of Appeals stated that the crux of the controversy is whether petitioner's injury is permanent total disability, in order to ascertain the rate of disability compensation that should be awarded to him.

The Court of Appeals found that the evidence clearly established that petitioner's injury rendered him permanently disabled, which hindered him from performing the work he was trained for or accustomed to do. Despite immediate and extensive medical treatment which lasted for six months or 180 days, the company-designated physician's assessment of petitioner's injury did not show remarkable progress. The surgical procedures (laminectomy and foraminotomy) performed to

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[29] *Rollo,* p. 295.

[30] *Id*. at 308-311.

[31] *Id*. at 13.

address petitioner's herniated discs did not entirely free him from low back pain. Although the company-designated physician, Dr. Tay, made a prognosis of "fair to good" on September 11, 2012, petitioner's disability with a Grade 8 impediment remained unchanged. Dr. Tay also noted that petitioner did not pass the functional capacity test that was tailored to petitioner's job description and recommended further therapy session for flexibility enhancement, and the therapy would take another two to three months.[32]

The Court of Appeals averred that although the provisions of the POEA Standard Employment Contract (POEASEC) and the applicable ITF TCC Collective Agreement state that it is the duty of the company- designated doctor to declare the employee's fitness or unfitness to resume sea duty, the said rule does not deprive the seaman to consult another doctor to make an independent evaluation of his medical condition. Moreover, if the doctor of the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be chosen jointly by the company and the seafarer, and the decision of the third doctor shall be final and binding on both parties. However, since the parties did not appoint a third physician, the Court of Appeals evaluated the findings of the company-designated doctor, Dr. Tay, and petitioner's private doctor, Dr. Runas, based on their inherent merit.[33]

The Court of Appeals found no genuine inconsistency between the findings of the two doctors.

x x x We reiterate that although Dr. Tay made no definitive findings as to the fitness of Gomez to resume his duties as Ordinary Seaman, she noted that the latter could not yet resume his work because he failed the functional capacity test; and that his disability with an impediment of Grade 8 shall continue up to three months. On the other, hand, while Dr. Tay's findings were vague and inconclusive, Dr. Runas was explicit in declaring that Gomez' injury is permanent because the same is resistant to physical therapy and treatment.

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[32] *Id*. at 15.

[33] *Id*. at 16.

Consistent with the findings of the company-designated physician, Dr. Runas observed that Gomez' low back pain is triggered by exertion, thus, limiting his forward and backward trunk motion. Dr. Runas opined that regardless of continuous medical intervention, Gomez could no longer perform strenuous and heavy work, making him "unfit for sea duty in whatever capacity x x x."[34]

As between Dr. Runas' express declaration that petitioner is suffering from permanent disability and Dr. Tay's more positive assessment, the Court of Appeals gave merit to Dr. Runas' assessment that petitioner is suffering from permanent disability thus:

> As between Dr. Runas' express declaration that Gomez is suffering from permanent disability and Dr. Tay's more positive assessment, We give merit to the former's findings. In *Abante v. KJGS Fleet Management Manila, et al.*, the Supreme Court recognized the propensity of the company-designated physicians, who are employed by the shipowner or the manning agency, to be more hopeful in their evaluation than that of a physician of the seafarer's choice. If We uphold the more positive outlook of the company-designated physician, the seaman would inevitably be denied of his right to disability compensation under Our labor laws and the parties' agreement. We should be cognizant of the social justice principle upon which Our labor laws are founded – that when there is doubt, the same should be resolved in favor of the working man x x x.[35]

However, the Court of Appeals stated that the issue of whether or not the injury of petitioner is total or partial is another matter as the NLRC failed to state the factual basis in declaring petitioner totally disabled. The findings of Dr. Runas was silent with respect to the disability grade of petitioner. It noted that petitioner's injury is not among those listed under Section 32 of the POEA SEC with Grade 1 impediment, which is considered as total disability.[36]

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

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

[36] *Id*. at 18.

Moreover, the Court of Appeals said that the Labor Arbiter's reliance on Article 192 of the Labor Code, which provides that temporary total disability lasting continuously for more than 120 days shall be deemed total and permanent, cannot be applied in this case. Prevailing jurisprudence[37] clarifies that when the seafarer who is suffering from an illness or injury needs further treatment in order to fully recover, the period of 120 days may be extended up to 240 days. It is only when the company-designated physician fails to arrive at a definite assessment of the seafarer's fitness to work or disability within the 240-day period that the seafarer shall be deemed permanently and totally disabled.[38]

The Court of Appeals held that in this case, the legal presumption of permanent total disability does not operate in favor of petitioner as he filed his complaint only on September 13, 2012 following his repatriation on March 19, 2012. Petitioner filed his complaint [179] days from the date of his repatriation or before the lapse of the 240-day period upon which Dr. Tay may make her final assessment of petitioner's medical condition.[39]

For these reasons, the Court of Appeals adopted the disability impediment of Grade 8 given by Dr. Tay. Grade 8 has an equivalent rating of 33.59% under the Schedule of Disability provided in Section 32 of the POEA SEC.[40]

The Court of Appeals held that it was undisputed that the vessel of petitioner was covered by the ITF TCC Collective Agreement.[41] Under Section 24.3 of the Agreement, the rate of

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[37] Citing *Kestrel Shipping Company, Inc. v. Munar*, 702 Phil. 717, 733 (2013), which cited *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

[38] *Rollo,* pp. 18-19.

[39] *Id.* at 19.

[40] *Id.*

[41] The complete title of the agreement is "ITF Uniform "TCC" Collective Agreement," Annex "B", Records, p. 100.

compensation for total permanent disability of an Ordinary Seaman like petitioner is USS90,882.00, and not US$156,816, which is the rate under the ITF Standard Contract,[42] as erroneously applied by the Labor Arbiter and the NLRC. The Court of Appeals computed petitioner's disability compensation in this manner: 33.59% (degree of disability) x US$90,882 = US$30,527.26.[43]

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the instant Petition for Certiorari is PARTIALLY GRANTED. The Decision dated April 11, 2013 and Resolution dated June 30, 2013 of the National Labor Relations Commission, Fourth Division (Formerly Seventh Division), rendered in NLRC LAC No. OFW (M) 01-000126-13, NLRC NCR Case No. 09-13737-11, are hereby MODIFIED as follows:

1. Declaring Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8;

2. Ordering the petitioners Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay Gomez his disability compensation in the amount of US$30,527.26 or its peso equivalent at the exchange rate prevailing at the time of actual payment as well as attorney's fees equivalent to 10% of the said amount due.[44]

Issues

Petitioner filed this petition for *certiorari* under Rule 45 of the Rules of Court, alleging that the Court of Appeals gravely abused its discretion amounting to lack or excess of jurisdiction when (1) it reversed the decision of the NLRC, which affirmed the decision of the Labor Arbiter; (2) it ruled that he is not

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[42] The complete title of the agreement is "ITF Standard Collective Agreement," Annex "J", *rollo*, p. 118.

[43] *Rollo*, p. 19.

[44] *Id*. at 20.

entitled to full disability benefits despite his factual medical condition; (3) it refused to apply to him the landmark case of *Kestrel Shipping Company, Inc. v. Francisco Munar* (G.R. No. 198501, January 30, 2013).[45]

Petitioner contends that the Court of Appeals gravely abused its discretion in refusing to follow the Labor Code's provision concerning total permanent disability as disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, and when it adopted the medical findings of the company-designated physician despite being hearsay, with absence of a categorical declaration of fitness to return to work.

The Court's Ruling

The main issue is the propriety of awarding disability benefits to petitioner Gomez considering that he was not declared fit to work within the period allowed by law.

A seafarer's right to disability benefits is a matter governed by law, contract and medical findings.[46] The material legal provisions are Articles 191 to 193[47] of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees' Compensation.[48] The relevant contracts are the POEA SEC and the CBA.

The provision on permanent total disability is contained in Article 192 of the Labor Code thus:

Article 192. Permanent total disability. — x x x

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

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[45] *Id*. at 44.

[46] *C.F. Sharp Crew Management, Inc. v. Tao,* 691 Phil. 521, 533 (2012).

[47] Under Chapter VI on Disability Benefits.

[48] *Vergara v. Hammonia Maritime Services, Inc.*, *supra* note 37, at 911.

x x x x x x x x x

The rule referred to by Article 192 (c) (1) of the Labor Code is Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code, which states:

> 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** **<u>except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability</u>** **in which case benefit for temporary total disability shall be paid**. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis supplied.)

Forming an integral part of petitioner's contract of employment[49] is the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships contained in POEA Memorandum Circular No. 10, Series of 2010, Section 20 of which states:

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 xxx treatment in a foreign port, the employer shall be liable for the full cost of such medical, xxx surgical and hospital treatment xxx 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

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[49] Records, p. 5.

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.

x x x x x x x x x

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 xxx. 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.

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is

under treatment or the number of days in which sickness allowance is paid.

7. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws, such as from the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-ibig Fund).

Vergara v. Hammonia Maritime Services, Inc.,[50] explained:

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 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.[51]

A temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.[52]

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[50] *Supra* note 37.

[51] *Vegara v. Hammonia, Maritime Services, Inc., id.* at 912.

[52] *Id*. at 913.

In this case, the treatment of petitioner's injury required spine surgery and physical therapy which extended beyond the initial 120-day period into the maximum 240-day treatment period. The company-designated doctor's medical report dated September 11, 2017 (made 195 days from the time petitioner was injured on February 29, 2012) stated that petitioner failed the functional capacity test and recommended that petitioner continue therapy for two to three months. Petitioner filed his complaint on September 13, 2012 or 197 days from the date he was injured, and, therefore, before the lapse of the maximum 240-day treatment period within which the company-designated physician should assess the fitness of petitioner to return to work. Since the company-designated doctor has not declared that petitioner is not fit to work within the 240-day period, and the 240-day period has not lapsed when petitioner filed his complaint, the petitioner cannot be legally presumed as permanently and totally disabled to be entitled to permanent total disability. To reiterate, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he/she fails to make such declaration.[53]

However, considering that the Labor Arbiter, the NLRC, and the Court of Appeals all found petitioner Gomez to be disabled due to a work-related injury, this fact is now binding on the respondents and this Court.[54] The Court concurs with the Court of Appeals' finding that petitioner suffers from a partial permanent disability grade of 8 given by the company-designated doctor based on the POEA SEC Schedule of Disability.[55] The disability grade is in accordance with Section 20-A (6) of the POEA SEC, which states: "The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid."

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[53] *Millan v. Wallem Maritime Services, Inc., et al.,* 698 Phil. 437, 445 (2012).

[54] *Pacific Ocean Manning, Inc. v. Penales,* 694 Phil. 239, 252 (2012).

[55] *Rollo,* Annex "J", p. 196.

Moreover, petitioner contends that the medical reports by the company-designated doctor, Dr. Tay, are mere hearsay evidence since she is only the medical coordinator of respondents at their company-designated clinic, but the actual medical findings of the spine surgeon were not presented in evidence.

Petitioner should have raised the issue on the medical reports being hearsay evidence before the Labor Arbiter. As a general rule, points of law, theories, and arguments not brought below cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result.[56] In the interest of justice, however, the Court may consider and resolve issues not raised below if it is necessary for the complete adjudication of the rights and obligations of the parties, and it falls within the issues found by the parties.[57]

The medical reports of Dr. Tay, referred to by petitioner, are the reports addressed to the President of respondent Crossworld Marine Services, Inc., informing him about the medical condition of petitioner. These medical reports on petitioner's series of medical treatments — from his referral to the company doctors for six sessions of physical therapy, MRI, two surgical procedures (laminectomy and foraminotomy) to address the slipped disc in petitioner's lumbar area, and six sessions of physical therapy after his operation - were not disputed by petitioner before the Labor Arbiter, NLRC and the Court of Appeals and he even confirmed the medical treatments contained in the said reports in his Complaint and his Petition before us. The report dated May 12, 2012 (Annex "E")[58] particularly referred to by petitioner states, among others, that the attending spine surgeon re-evaluated the condition of petitioner and "[s]urgery is indicated." Although the actual medical finding of the attending spine surgeon was not presented in evidence, yet, petitioner actually underwent the spine surgery recommended

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[56] *Figuera v. Ang,* G.R. No. 204264, June 29, 2016.

[57] *Id*.

[58] Records, p. 131.

by the attending spine surgeon to address the slipped disc of petitioner in the lumbar area. Apparently, Dr. Tay and the spine surgeon and other company-designated doctors who attended to petitioner worked closely with each other in monitoring the medical condition of petitioner and their findings are reflected in the medical reports of Dr. Tay. In the absence of substantial evidence from the petitioner that Dr. Tay did not have personal knowledge of the findings in the medical reports, the contention that the medical reports are hearsay is without basis and, therefore, unmeritorious.

As regards Dr. Tay's advice that petitioner should continue therapy for two to three months because he failed the functional capacity test, petitioner cited *Esguerra v. United Philippines Lines, Inc.*,[59] which held that the uncertain effect of further treatment intimates nothing more but that the injury sustained by the seafarer bars him from performing his customary and strenuous work as a seafarer/fitter. As such, he is considered permanently and totally disabled.

This case is different from *Esguerra*. In *Esguerra*, the Court found that the orthopedic surgeon designated by the respondents therein and the independent specialist of the petitioner therein were one in declaring that the petitioner therein was permanently unfit for sea duty. The petitioner's doctor categorically stated in a medical certificate that petitioner therein was permanently unfit for sea-faring duty, while the report of respondent's designated-surgeon conveyed a similar conclusion when he stated: "[f]urther treatment would probably be of some benefit but will not guarantee (the petitioner's) fitness to work." Hence, the Court held in *Esguerra*: "The uncertain effect of further treatment intimates nothing more but that the injury sustained by the petitioner bars him from performing his customary and strenuous work as a seafarer/fitter." "As such, he is considered permanently and totally disabled." In this case, the company-designated doctor's prognosis of petitioner's fitness to resume sea duty was fair to good, and she recommended that petitioner

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[59] 713 Phil. 487, 497 (2013).

should continue flexibility and strength exercises through his physiatrist.

Further, petitioner contends that the Court of Appeals committed grave abuse of discretion when it refused to apply to him the case of *Kestrel Shipping Company, Inc. v. Munar.*[60]

Indeed, *Kestrel Shipping Company, Inc*. is inapplicable to this case. It involved a complaint for disability benefit for an injury that happened in 2006. Hence, the Court applied the prevailing rule enunciated in *Crystal Shipping, Inc. v. Natividad*,[61] promulgated on October 20, 2005, that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. *Crystal Shipping, Inc*. was promulgated almost three years before *Vergara* was promulgated on October 6, 2008. *Vergara* pronounced that a temporary total disability only becomes permanent when so declared by the company physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.[62]

Kestrel Shipping Company, Inc. explained:

> This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.[63]

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[60] *Supra* note 37.

[61] *Supra* note 25, at 340.

[62] *Vergara v. Hammonia Maritime Services, Inc., supra* note 37, at 913.

[63] *Kestrel Shipping Company, Inc. v. Munar, supra* note 37, at 738.

The Court of Appeals correctly found that the CBA that covers petitioner's employment is the *ITF Uniform "TCC" Collective Agreement*, which was admitted by respondents, agreed to by the Labor Arbiter and the NLRC, but the Labor Arbiter and the NLRC erroneously used the rate of compensation of the *ITF Standard Collective Agreement*, which is a different agreement. Hence, the Court of Appeals correctly computed petitioner's disability benefit under the *ITF Uniform TCC Collective Bargaining Agreement* as follows:

Disability compensation = 33.59% (Grade 8 disability) x US$90,882
= US$30,527.26

The Court of Appeals correctly awarded attorney's fees in favor or petitioner. Under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws.[64]

In addition, pursuant to the case of *Nacar v. Gallery Frames*,[65] the Court imposes on the monetary award for permanent partial disability benefit an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.[66]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals dated February 5, 2015 and its Resolution dated August 7, 2015 in CA-G.R. SP No. 131729 are **AFFIRMED WITH MODIFICATION.** The Court declares petitioner Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8 and hereby orders the respondents Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay Gomez his disability compensation in the amount of US$30,527.26 or its peso

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[64] *Esquerra v. United Philippines Lines, Inc., supra* note 59, at 501.

[65] 716 Phil. 267 (2013).

[66] *Acomarit Phils. v. Dotimas*, G.R. No. 90984, August 19, 2015, 767 SCRA 490, 507.

equivalent at the exchange rate prevailing at the time of actual payment, **plus interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction**, and attorney's fees equivalent to ten percent (10%) of the said amount due.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 221493. August 2, 2017]

STERLING PAPER PRODUCTS ENTERPRISES, INC., *petitioner, vs.* **KMM-KATIPUNAN and RAYMOND Z. ESPONGA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY; RECANTATION; A TESTIMONY SOLEMNLY GIVEN IN COURT SHOULD NOT BE SET ASIDE AND DISREGARDED LIGHTLY, AND BEFORE THIS CAN BE DONE, BOTH THE PREVIOUS TESTIMONY AND THE SUBSEQUENT ONE SHOULD BE CAREFULLY COMPARED AND JUXTAPOSED, THE CIRCUMSTANCES UNDER WHICH EACH WAS MADE, CAREFULLY AND KEENLY SCRUTINIZED, AND THE REASONS AND MOTIVES FOR THE CHANGE DISCRIMINATELY ANALYSED. —** In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause. In support of its allegation, Sterling submitted the handwritten statement of Pesimo who witnessed the incident

between Esponga and Vinoya on June 26, 2010. Pesimo, however, recanted her statement. A recantation does not necessarily cancel an earlier declaration. The rule is settled that in cases where the previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons and motives for the change discriminately analysed. In this case, Pesimo's earlier statement was more credible as there was no proof, much less an allegation, that the same was made under force or intimidation. It must be noted that Pesimo's recantation was made only after Esponga came to see her. Nevertheless, in a text message she sent to Vinoya on January 24, 2011, Pesimo did not deny the contents of her earlier statement. She merely expressed concern over Esponga's discovery that she had executed a sworn statement corroborating Vinoya's narration of the incident. Thus, her earlier statement prevails over her subsequent recantation.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; MISCONDUCT; DEFINED; ELEMENTS TO BE A JUST CAUSE FOR DISMISSAL; PROVED.—** Under Article 282 (a) of the Labor Code, serious misconduct by the employee justifies the employer in terminating his or her employment. Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant. Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent. To summarize, for

misconduct or improper behavior to be a just cause for dismissal, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent. In the case at bench, the charge of serious misconduct is duly substantiated by the evidence on record.

3. **ID.; ID.; ID.; ID.; THE UTTERANCE OF OBSCENE, INSULTING OR OFFENSIVE WORDS AGAINST A SUPERIOR IS NOT ONLY DESTRUCTIVE OF THE MORALE OF HIS CO-EMPLOYEES AND A VIOLATION OF THE COMPANY RULES AND REGULATIONS, BUT ALSO CONSTITUTES GROSS MISCONDUCT.—** *Primarily*, in a number of cases, the Court has consistently ruled that the utterance of obscene, insulting or offensive words against a superior is not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also constitutes gross misconduct. In *de La Cruz v. National Labor Relations Commission*, the dismissed employee shouted, "*Sayang ang pagka-professional mo!*" and "*Putang ina mo*" at the company physician when the latter refused to give him a referral slip. Hence, it is well-settled that accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination.

4. **ID.; ID.; ID.; ID.; NO MATTER HOW THE EMPLOYEE DISLIKES HIS EMPLOYER PROFESSIONALLY, AND EVEN IF HE IS IN A CONFRONTATIONAL DISPOSITION, HE CANNOT AFFORD TO BE DISRESPECTFUL AND DARE TO TALK WITH AN UNGUARDED TONGUE AND/OR WITH A BALEFUL PEN.—** [E]sponga's assailed conduct was related to his work. Vinoya did not prohibit him from taking a nap. She merely reminded him that he could not do so on the sheeter machine for safety reasons. Esponga's acts reflect an unwillingness to comply with reasonable management directives. [C]ontrary to the CA's pronouncement, the Court finds that Esponga was motivated by wrongful intent. To reiterate, Vinoya prohibited Esponga from sleeping on the sheeter machine. Later on, when Vinoya was passing by, Esponga uttered "*Huwag maingay, puro bawal*." When she confronted him, he retorted "*Puro kayo bawal, bakit bawal ba magpahinga*?" Not contented, Esponga

gave her supervisor the "dirty finger" sign and said "*Wala ka pala eh, puro ka dakdak. Baka pag ako nagsalita hindi mo kayanin*." It must be noted that he committed all these acts in front of his co-employees, which evidently showed that he intended to disrespect and humiliate his supervisor. "An aggrieved employee who wants to unburden himself of his disappointments and frustrations in his job or relations with his immediate superior would normally approach said superior directly or otherwise ask some other officer possibly to mediate and discuss the problem with the end in view of settling their differences without causing ferocious conflicts. No matter how the employee dislikes his employer professionally, and even if he is in a confrontational disposition, he cannot afford to be disrespectful and dare to talk with an unguarded tongue and/ or with a baleful pen."

5. **ID.; ID.; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE; AS LONG AS THE COMPANY'S EXERCISE OF JUDGMENT IS IN GOOD FAITH TO ADVANCE ITS INTEREST AND NOT FOR THE PURPOSE OF DEFEATING OR CIRCUMVENTING THE RIGHTS OF EMPLOYEES UNDER THE LAWS OR VALID AGREEMENTS, SUCH EXERCISE WILL BE UPHELD.—** Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its affairs including the right to dismiss its erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes the employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.

APPEARANCES OF COUNSEL

Generosa R. Jacinto Law Firm for petitioner.

Legal Advocates for Workers' Interest (LAWIN) for respondents.

D E C I S I O N

MENDOZA, *J*.:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 22, 2014 Decision[1] and October 27, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 124596, which nullified the November 15, 2011 Decision[3] and March 2, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC CN. RAB-III-11-17024-10/ NLRC LAC No. 09-002429-11. The NLRC reversed and set aside the May 5, 2011 Decision[5] of the Labor Arbiter *(LA).*

<u>The Antecedents</u>

On July 29, 1998,[6] petitioner Sterling Paper Products Enterprises, Inc. *(Sterling)* hired respondent Raymond Z. Esponga *(Esponga),* as machine operator.

In June 2006, Sterling imposed a 20-day suspension on several employees including Esponga, for allegedly participating in a wildcat strike. The Notice of Disciplinary Action contained a warning that a repetition of a similar offense would compel the management to impose the maximum penalty of termination of services.[7]

Sterling averred that on June 26, 2010, their supervisor Mercy Vinoya *(Vinoya),* found Esponga and his co-employees about

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[1] Penned by Associate Justice Francisco P. Acosta with Associate Justice Fernanda Lampas Peralta and Associate Justice Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 50-58-A.

[2] *Id*. at 59.

[3] Penned by Presiding Commissioner Leonardo L. Leonida with Commissioner Dolores M. Peralta-Beley and Commissioner Mercedes R. Posada-Lacap, concurring; *id*. at 133-140.

[4] *Id*. at 142-145.

[5] Penned By Labor Arbiter Leandro M. Jose; *id*. at 86-95.

[6] January 29, 1999, as claimed by Sterling.

[7] *Rollo*, p. 87.

to take a nap on the sheeter machine. She called their attention and prohibited them from taking a nap thereon for safety reasons.[8]

Esponga and his co-employees then transferred to the mango tree near the staff house. When Vinoya passed by the staff house, she heard Esponga utter, *"Huwag maingay, puro bawal."* She then confronted Esponga, who responded in a loud and disrespectful tone, *"Puro kayo bawal, bakit bawal ba magpahinga?"*[9]

When Vinoya turned away, Esponga gave her the "dirty finger" sign in front of his co-employees and said *"Wala ka pala eh, puro ka dakdak. Baka pag ako nagsalita hindi mo kayanin."* The incident was witnessed by Mylene Pesimo *(Pesimo),* who executed a handwritten account thereon.[10]

Later that day, Esponga was found to have been not working as the machine assigned to him was not running from 2:20 to 4:30 in the afternoon. Instead, he was seen to be having a conversation with his co-employees, Bobby Dolor and Ruel Bertulfo. Additionally, he failed to submit his daily report from June 21 to June 29, 2010.[11]

Hence, a Notice to Explain, dated July 26, 2010, was served on Esponga on July 30, 2010, requiring him to submit his written explanation and to attend the administrative hearing scheduled on August 9, 2010.

On August 9, 2010, Esponga submitted his written explanation denying the charges against him. He claimed that he did not argue with Vinoya as he was not in the area where the incident reportedly took place. Esponga further reasoned that during the time when he was not seen operating the machine assigned to him, he was at the Engineering Department and then he proceeded to the comfort room.

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[8] *Id*. at 88.

[9] *Id*.

[10] *Id*. at 88-89.

[11] *Id*. at 89.

The July 26, 2010 Notice to Explain, however, indicated a wrong date when the incident allegedly happened. Thus, an amended Notice to Explain, dated August 16, 2010, was issued to Esponga requiring him to submit his written explanation and to attend the administrative hearing scheduled on August 23, 2010. Esponga, however, failed to submit his written explanation and he did not attend the hearing.

In view of Esponga's absence, the administrative hearing was rescheduled. The hearing was reset several more times because of his failure to appear. The hearing was finally set on October 4, 2010. Esponga and his counsel, however, still failed to attend.

Having found Esponga guilty of gross and serious misconduct, gross disrespect to superior and habitual negligence, Sterling sent a termination notice, dated November 15, 2010. This prompted Esponga and KMM-Katipunan *(respondents)* to file a complaint for illegal dismissal, unfair labor practice, damages, and attorney's fees against Sterling.

The LA Ruling

In its May 5, 2011 Decision, the LA ruled that Esponga was illegally dismissed. It held that Sterling failed to discharge the burden of proof for failure to submit in evidence the company's code of conduct, which was used as basis to dismiss Esponga. The *fallo* reads:

> WHEREFORE, premises considered, respondents are found to have failed to discharge their burden of proof, therefore, there is illegal dismissal.
>
> Consequently, respondent corporation is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges, with full backwages initially computed at this time at ₱51,148.36.
>
> The reinstatement aspect of this decision is immediately executory even as respondents are hereby enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof.
>
> Respondent corporation is likewise assessed 10% attorney's fee in favor of the complaint in the sum of ₱5,114,84.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[12]

Not in conformity, Sterling elevated an appeal before the NLRC.

The NLRC Ruling

In its November 15, 2011 Decision, the NLRC *reversed and set aside* the LA ruling. It declared that Esponga's dismissal was valid. The NLRC observed that as a result of the June 26, 2010 incident, Esponga no longer performed his duties and simply spent the remaining working hours talking with his co-workers. It opined that Esponga intentionally did all these infractions on the same day to show his defiance and displeasure with Vinoya, who prohibited him from sleeping on the sheeter machine. It concluded that these were all violations of the Company Code of Conduct and Discipline, and constituted a valid cause for termination of employment under the Labor Code. The NLRC disposed the case in this wise:

WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is REVERSED and SET ASIDE, and a new one issued DISMISSING the complaint.

SO ORDERED.[13]

Undeterred, respondents filed a motion for reconsideration. In its March 2, 2012 Resolution, the NLRC denied the same.

Aggrieved, the respondents filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed December 22, 2014 Decision, the CA *reinstated* the LA ruling. It held that the utterances and gesture did not constitute serious misconduct. The CA stated that Esponga may have committed an error of judgment in uttering disrespectful

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

[13] *Id.* at 140.

and provocative words against his superior and in making a lewd gesture, but it could not be said that his actuations were motivated by a wrongful intent. It adjudged that Esponga's utterances and gesture sprung from the earlier incident which he perceived as unfairly preventing him from taking a rest from work. As such, the CA ruled that Esponga's actuations could only be regarded as simple misconduct. The dispositive portion reads:

> WHEREFORE, the Petition is GRANTED. The Decision dated November 15, 2011 and Resolution dated March 2, 2012 of the National Labor Relations Commission are SET ASIDE. The Decision dated May 5, 2011 of LAbor Arbiter Leandro Jose is REINSTATED in full.
>
> SO ORDERED.[14]

Sterling moved for reconsideration, but the CA denied its motion in its assailed October 27, 2015 Resolution.

Hence, this petition for review.

ISSUE

WHETHER THE CAUSE OF ESPONGA'S DISMISSAL AMOUNTS TO SERIOUS MISCONDUCT

Sterling argues that Esponga's utterance of foul and abusive language against his supervisor, demonstrating a dirty finger, and defiance to perform his duties undeniably constitute serious misconduct. It added that Esponga's acts were not only serious, but they also related to the performance of his duties. Further, Sterling asserts that he was motivated by wrongful intent.

In his Comment,[15] dated September 30, 2016, Esponga replied that Sterling failed to establish the validity of his dismissal by clear and convincing evidence. He insisted that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the

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[14] *Id*. at 58.

[15] *Id*. at 153-158.

latter because the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.

In its Reply,[16] dated January 30, 2017, Sterling contended that Esponga's failure to participate in the administrative investigation conducted on his infraction was a clear manifestation of his lack of discipline. It asserted that the existence of just and valid cause for Esponga's dismissal and its compliance with the due process requirements had been proven by clear, convincing and substantial evidence on record. Sterling reasoned that an employer has free rein and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instil discipline in its employees and to impose penalties, including dismissal, upon erring employees.

The Court's Ruling

The petition is meritorious.

Pesimo's retraction has no probative value

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause.[17] In support of its allegation, Sterling submitted the handwritten statement of Pesimo who witnessed the incident between Esponga and Vinoya on June 26, 2010. Pesimo, however, recanted her statement.

A recantation does not necessarily cancel an earlier declaration.[18] The rule is settled that in cases where the previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly,

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[16] *Id*. at 167-181.

[17] *Ledesma, Jr. v. National Labor Relations Commission,* 562 Phil. 939, 951 (2007).

[18] *Santos v. People,* 443 Phil. 618, 626 (2003).

and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons and motives for the change discriminately analysed.[19]

In this case, Pesimo's earlier statement was more credible as there was no proof, much less an allegation, that the same was made under force or intimidation. It must be noted that Pesimo's recantation was made only after Esponga came to see her.[20] Nevertheless, in a text message she sent to Vinoya on January 24, 2011, Pesimo did not deny the contents of her earlier statement. She merely expressed concern over Esponga's discovery that she had executed a sworn statement corroborating Vinoya's narration of the incident.[21] Thus, her earlier statement prevails over her subsequent recantation.

Dismissal from employment on the ground of serious misconduct

Under Article 282 (a) of the Labor Code, serious misconduct by the employee justifies the employer in terminating his or her employment.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant.[22]

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[19] *Firaza v. People*, 547 Phil. 573, 584 (2007).

[20] *Rollo*, p. 137.

[21] *Id*. at 138.

[22] *Imasen Philippine Manufacturing Corp. v. Alcon,* G.R. No. 194884, October 22, 2014, 739 SCRA 186, 196-197.

Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer.[23] Further, and equally important and required, the act or conduct must have been performed with wrongful intent.[24]

To summarize, for misconduct or improper behavior to be a just cause for dismissal, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.[25]

In the case at bench, the charge of serious misconduct is duly substantiated by the evidence on record.

Primarily, in a number of cases, the Court has consistently ruled that the utterance of obscene, insulting or offensive words against a superior is not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also constitutes gross misconduct.[26]

In *de La Cruz v. National Labor Relations Commission*,[27] the dismissed employee shouted, "*Sayang ang pagka-professional mo*!" and "*Putang ina mo*" at the company physician when the latter refused to give him a referral slip.

Likewise, in *Autobus Workers' Union (AWU) v. National Labor Relations Commission*,[28] the dismissed employee told

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[23] *Tomada, Sr. v. RFM Corporation-Bakery Flour Division*, 615 Phil. 449, 459 (2009).

[24] *Echeverria v. Venutek Medika, Inc.*, 544 Phil. 763, 770 (2007).

[25] *Imasen Philippine Manufacturing Corp. v. Alcon, supra* note 22, at 197.

[26] *Autobus Workers' Union v. National Labor Relations Commission,* 353 Phil. 419, 428-429 (1998).

[27] 258 Phil. 432 (1989).

[28] *Supra* note 26, at 423.

his supervisor "*Gago ka*" and taunted the latter by saying, "*Bakit anong gusto mo, tang ina mo*."

Moreover, in *Asian Design and Manufacturing Corporation v. Deputy Minister of Labor*,[29] the dismissed employee made false and malicious statements against the foreman (his superior) by telling his co-employees: "If you don't give a goat to the foreman, you will be terminated. If you want to remain in this company, you have to give a goat." The dismissed employee therein likewise posted a notice in the comfort room of the company premises, which read: "Notice to all Sander — Those who want to remain in this company, you must give anything to your foreman."

In *Reynolds Philippines Corporation v. Eslava*,[30] the dismissed employee circulated several letters to the members of the company's board of directors calling the executive vice-president and general manager a "big fool," "anti-Filipino" and accusing him of "mismanagement, inefficiency, lack of planning and foresight, petty favoritism, dictatorial policies, one-man rule, contemptuous attitude to labor, anti-Filipino utterances and activities."

Hence, it is well-settled that accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination.[31]

Further, Esponga's assailed conduct was related to his work. Vinoya did not prohibit him from taking a nap. She merely reminded him that he could not do so on the sheeter machine for safety reasons. Esponga's acts reflect an unwillingness to comply with reasonable management directives.[32]

Finally, contrary to the CA's pronouncement, the Court finds that Esponga was motivated by wrongful intent. To reiterate,

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[29] 226 Phil. 20, 21 (1986).

[30] 221 Phil. 614 (1985).

[31] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011).

[32] *Punzal v. ETSI Technologies, Inc.,* 546 Phil. 704, 716 (2007).

Vinoya prohibited Esponga from sleeping on the sheeter machine. Later on, when Vinoya was passing by, Esponga uttered *"Huwag maingay, puro bawal."* When she confronted him, he retorted *"Puro kayo bawal, bakit bawal ba magpahinga?"* Not contented, Esponga gave her supervisor the "dirty finger" sign and said *"Wala ka pala eh, puro ka dakdak. Baka pag ako nagsalita hindi mo kayanin."* It must be noted that he committed all these acts in front of his co-employees, which evidently showed that he intended to disrespect and humiliate his supervisor.

"An aggrieved employee who wants to unburden himself of his disappointments and frustrations in his job or relations with his immediate superior would normally approach said superior directly or otherwise ask some other officer possibly to mediate and discuss the problem with the end in view of settling their differences without causing ferocious conflicts. No matter how the employee dislikes his employer professionally, and even if he is in a confrontational disposition, he cannot afford to be disrespectful and dare to talk with an unguarded tongue and/or with a baleful pen."[33]

Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its affairs including the right to dismiss its erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes the employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[34]

WHEREFORE, the petition is **GRANTED**. The December 22, 2014 Decision and the October 27, 2015 Resolution of the

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[33] *Philippines Today, Inc. v. National Labor Relations Commission,* 334 Phil. 854, 869 (1997).

[34] *Moya v. First Solid Rubber Industries, Inc.,* 718 Phil. 77, 86-87 (2013).

Court of Appeals in CA-G.R. SP No. 124596 are hereby **REVERSED** and **SET ASIDE**. The November 15, 2011 Decision and the March 2, 2012 Resolution of the National Labor Relations Commission is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), *Leonen, Jardeleza,*[*] and *Martires, JJ.*, concur.

SECOND DIVISION

[G.R. No. 226345. August 2, 2017]

PIONEER INSURANCE AND SURETY CORPORATION, *petitioner, vs.* **APL CO. PTE. LTD.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; CONTRACTS; INTERPRETATION OF CONTRACTS; IF THE TERMS OF A CONTRACT ARE CLEAR AND NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL; PLAIN MEANING RULE AND FOUR CORNERS RULE, DISTINGUISHED.—** It is elementary that a contract is the law between the parties and the obligations it carries must be complied with in good faith. In *Norton Resources and Development Corporation v. All Asia Bank Corporation*, the Court reiterated that when the terms of the contract are clear, its literal meaning shall control, to wit: **The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention**

[*] Per Raffle dated March 13, 2017.

of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. **Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law.** If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence. After a closer persual of the the Bill of Lading, the Court finds that its provisions are clear and unequivocal leaving no room for interpretation.

2. **COMMERCIAL LAW; CARRIAGE OF GOODS BY SEA ACT (COGSA); THE ONE-YEAR PRESCRIPTIVE PERIOD UNDER THE COGSA SHALL GOVERN THE LOSS OR DAMAGE OF GOODS OR CARGO; THE TERMS OF THE BILL OF LADING MUST BE APPLIED ACCORDING TO ITS PLAIN AND LITERAL MEANING.—** In the Bill of Lading, it was categorically stated that the carrier shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought in the proper forum within nine (9) months after delivery of the goods or the date when they should have been delivered. The same, however, is qualified in that when the said nine-month period is contrary to any law compulsory applicable, the period prescribed by the said law shall apply. The present case involves lost or damaged cargo. It has long been settled that in case of loss or damage of cargoes, the one-year prescriptive period under the COGSA applies. It is at this juncture where the parties are at odds, with Pioneer Insurance claiming that the one-year prescriptive period under the COGSA governs; whereas APL insists that the nine-month prescriptive period under the Bill of Lading applies. A reading

of the Bill of Lading between the parties reveals that the nine-month prescriptive period is not applicable in all actions or claims. As an exception, the nine-month period is inapplicable when there is a different period provided by a law for a particular claim or action—unlike in *Philippine American* where the Bill of Lading stipulated a prescriptive period for actions without exceptions. Thus, it is readily apparent that the exception under the Bill of Lading became operative because there was a compulsory law applicable which provides for a different prescriptive period. Hence, strictly applying the terms of the Bill of Lading, the one-year prescriptive period under the COGSA should govern because the present case involves loss of goods or cargo. In finding so, the Court does not construe the Bill of Lading any further but merely applies its terms according to its plain and literal meaning.

APPEARANCES OF COUNSEL

Astorga & Repol Law Offices for petitioner.
Montilla Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the May 26, 2016 Decision[1] and August 8, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 143912, which reversed the November 3, 2015 Decision[3] of the Regional Trial Court, Branch 137, Makati City *(RTC)*. The RTC affirmed in *toto* the March 9, 2015 Decision[4] of the Municipal Trial Court, Branch 65, Makati City *(MTC)*.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Melchor Quirino C. Sadang, concurring; *rollo*, pp.16-26.

[2] *Id*. at 27-31.

[3] Penned by Presiding Judge Ethel V. Mercado-Gutay; *id*. at 82-89.

[4] Penned by Presiding Judge Henry E. Laron; *id*. at 74-81.

On January 13, 2012, the shipper, Chillies Export House Limited, turned over to respondent APL Co. Pte. Ltd. *(APL)* 250 bags of chili pepper for transport from the port of Chennai, India, to Manila. The shipment, with a total declared value of $12,272.50, was loaded on board M/V Wan Hai 262. In turn, BSFIL Technologies, Inc. *(BSFIL)*, as consignee, insured the cargo with petitioner Pioneer Insurance and Surety Corporation *(Pioneer Insurance)*.[5]

On February 2, 2012, the shipment arrived at the port of Manila and was temporarily stored at North Harbor, Manila. On February 6, 2012, the bags of chili were withdrawn and delivered to BSFIL. Upon receipt thereof, it discovered that 76 bags were wet and heavily infested with molds. The shipment was declared unfit for human consumption and was eventually declared as a total loss.[6]

As a result, BSFIL made a formal claim against APL and Pioneer Insurance. The latter hired an independent insurance adjuster, which found that the shipment was wet because of the water which seeped inside the container van APL provided. Pioneer Insurance paid BSFIL ₱195,505.65 after evaluating the claim.[7]

Having been subrogated to all the rights and cause of action of BSFIL, Pioneer Insurance sought payment from APL, but the latter refused. This prompted Pioneer Insurance to file a complaint for sum of money against APL.

MTC Ruling

In its March 9, 2015 decision, the MTC granted the complaint and ordered APL to pay Pioneer Insurance the amount claimed plus six percent (6%) interest per *annum* from the filing of the complaint until fully paid, and ₱10,000.00 as attorney's fees. It explained that by paying BSFIL, Pioneer Insurance was

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[5] *Id*. at 6.

[6] *Id*.

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

subrogated to the rights of the insured and, as such, it may pursue all the remedies the insured may have against the party whose negligence or wrongful act caused the loss. The MTC declared that as a common carrier, APL was bound to observe extraordinary diligence. It noted that because the goods were damaged while it was in APL's custody, it was presumed that APL did not exercise extraordinary diligence, and that the latter failed to overcome such presumption. The dispositive portion reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering defendant APL Co. Pte Ltd. to pay plaintiff the amount of ₱195,505.65 plus 6% interest per annum from the filing of this case (01 February 2013) until the whole amount is fully paid and the amount of ₱10,000.00 as attorney's fees; and the costs.
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> SO ORDERED.[8]

Aggrieved, APL appealed to the RTC.

The RTC Ruling

In its November 3, 2015 decision, the RTC concurred with the MTC. It agreed that APL was presumed to have acted negligently because the goods were damaged while in its custody. In addition, the RTC stated that under the Carriage of Goods by Sea Act *(COGSA)*, lack of written notice shall not prejudice the right of the shipper to bring a suit within one year after delivery of the goods. Further, the trial court stated that the shorter prescriptive period set in the Bill of Lading could not apply because it is contrary to the provisions of the COGSA. It ruled:

> **WHEREFORE, PREMISES CONSIDERED**, the Decision dated March 9, 2015 of the Metropolitan Trial Court Branch 65, Makati City is hereby **AFFIRMED** *in toto*, with costs against defendant-appellant APL.
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> **SO ORDERED**.[9]

Undeterred, APL appealed before the CA.

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[8] *Id.* at 81.

[9] *Rollo*, p. 89.

The CA Ruling

In its May 26, 2016 decision, the CA *reversed* the decisions of the trial courts and ruled that the present action was barred by prescription. The appellate court noted that under Clause 8 of the Bill of Lading, the carrier shall be absolved from any liability unless a case is filed within nine (9) months after the delivery of the goods. It explained that a shorter prescriptive period may be stipulated upon, provided it is reasonable. The CA opined that the nine-month prescriptive period set out in the Bill of Lading was reasonable and provided a sufficient period of time within which an action to recover any loss or damage arising from the contract of carriage may be instituted.

The appellate court pointed out that as subrogee, Pioneer Insurance was bound by the stipulations of the Bill of Lading, including the shorter period to file an action. It stated that the contract had the force of law between the parties and so it could not countenance an interpretation which may undermine the stipulations freely agreed upon by the parties. The *fallo* reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated November 3, 2015 of the RTC, Branch 137, Makati City in Civil Case No. 15-403 is hereby **REVERSED** and **SET ASIDE**. Respondent Pioneer Insurance & Surety Corporation's Complaint is accordingly **DISMISSED.**
>
> **SO ORDERED**.[10]

Pioneer Insurance moved for reconsideration, but the CA denied its motion in its August 8, 2016 Resolution.

Hence, this petition.

ISSUES

I

WHETHER THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT PETITIONER'S

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[10] *Id*. at 26.

CLAIM AGAINST THE RESPONDENT IS ALREADY BARRED BY PRESCRIPTION; AND

II

WHETHER THE HONORABLE COURT OF APPEALS SERIOSULY ERRED IN HOLDING THAT THE ONE YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER THE CARRIAGE OF GOODS BY SEA ACT (COGSA) IS NOT APPLICABLE IN THE INSTANT CASE.[11]

Pioneer Insurance insists the action, which was filed on February 1, 2013, was within the one year prescriptive period under the COGSA after BSFIL received the goods on February 6, 2012. It argues that the nine-month period provided under the Bill of Lading was inapplicable because the Bill of Lading itself states that in the event that such time period is found to be contrary to any law compulsorily applicable, then the period prescribed by such law shall then apply. Pioneer Insurance is of the view that the stipulation in the Bill of Lading is subordinate to the COGSA. It asserts that while parties are free to stipulate the terms and conditions of their contract, the same should not be contrary to law, morals, good customs, public order, or public policy.

Further, Pioneer Insurance contends that it was not questioning the validity of the terms and conditions of the Bill of Lading as it was merely pointing out that the Bill of Lading itself provides that the nine-month prescriptive period is subservient to the one-year prescriptive period under the COGSA.

In its Comment,[12] dated November 3, 2016, APL countered that Pioneer Insurance erred in claiming that the nine-month period under the Bill of Lading applies only in the absence of an applicable law. It stressed that the nine-month period under the Bill of Lading applies, unless there is a law to the contrary. APL explained that "absence" differs from "contrary." It, thus,

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[11] *Id*. at 8.

[12] *Id*. at 94-99.

argued that the nine-month period was applicable because it is not contrary to any applicable law.

In its Reply,[13] dated February 23, 2017, Pioneer Insurance averred that the nine-month period shall be applied only if there is no law to the contrary. It noted that the COGSA was clearly contrary to the provisions of the Bill of Lading because it provides for a different prescriptive period. For said reason, Pioneer Insurance believed that the prescriptive period under the COGSA should be controlling.

The Court's Ruling

The petition is meritorious.

It is true that in *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc. (Philippine American)*,[14] the Court recognized that stipulated prescriptive periods shorter than their statutory counterparts are generally valid because they do not affect the liability of the carrier but merely affects the shipper's remedy. The CA, nevertheless, erred in applying *Philippine American* in the case at bench as it does not fall squarely with the present circumstances.

It is elementary that a contract is the law between the parties and the obligations it carries must be complied with in good faith.[15] In *Norton Resources and Development Corporation v. All Asia Bank Corporation*,[16] the Court reiterated that when the terms of the contract are clear, its literal meaning shall control, to wit:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention

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[13] *Id*. at 103-105.

[14] 287 Phil. 212 (1992).

[15] *Morla v. Belmonte, et al.*, 678 Phil. 102, 117 (2011).

[16] 620 Phil. 381 (2009), citing *Benguet Corporation v. Cabildo*, 585 Phil. 23 (2008).

of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement". It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. **Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law**. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[17] [Emphases supplied]

After a closer persual of the the Bill of Lading, the Court finds that its provisions are clear and unequivocal leaving no room for interpretation.

In the Bill of Lading, it was categorically stated that the carrier shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought in the proper forum within nine (9) months after delivery of the goods or the date when they should have been delivered. The same, however, is qualified in that when the said nine-month period is contrary to any law compulsory applicable, the period prescribed by the said law shall apply.

The present case involves lost or damaged cargo. It has long been settled that in case of loss or damage of cargoes, the one-year prescriptive period under the COGSA applies.[18] It is at

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[17] *Id*. at 388.

[18] *Mitsui O.S.K. Lines Ltd. v. CA,* 350 Phil. 813, 817-818 (1998); *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*, 432 Phil. 567, 585 (2002); *Asian Terminals, Inc. v. Philam Insurance Co., Inc.*, 715 Phil. 78, 98 (2013).

this juncture where the parties are at odds, with Pioneer Insurance claiming that the one-year prescriptive period under the COGSA governs; whereas APL insists that the nine-month prescriptive period under the Bill of Lading applies.

A reading of the Bill of Lading between the parties reveals that the nine-month prescriptive period is not applicable in all actions or claims. As an exception, the nine-month period is inapplicable when there is a different period provided by a law for a particular claim or action—unlike in *Philippine American* where the Bill of Lading stipulated a prescriptive period for actions without exceptions. Thus, it is readily apparent that the exception under the Bill of Lading became operative because there was a compulsory law applicable which provides for a different prescriptive period. Hence, strictly applying the terms of the Bill of Lading, the one-year prescriptive period under the COGSA should govern because the present case involves loss of goods or cargo. In finding so, the Court does not construe the Bill of Lading any further but merely applies its terms according to its plain and literal meaning.

WHEREFORE, the petition is **GRANTED**. The November 3, 2015 Decision of the Regional Trial Court, Branch 137, Makati City in Civil Case No. 15-403 is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 228887. August 2, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINADOR UDTOHAN *y* JOSE,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATORY ACT (R.A. No. 7610); SECTION 5 (b) THEREOF; WHEN THE VICTIM OF RAPE OR ACTS OF LASCIVIOUSNESS IS BELOW TWELVE (12) YEARS OLD, THE OFFENDER SHALL BE PROSECUTED UNDER THE REVISED PENAL CODE, PROVIDED THAT THE PENALTY FOR LASCIVIOUS CONDUCT SHALL BE *RECLUSION TEMPORAL* IN ITS MEDIUM PERIOD; STATUTORY RAPE, HOW COMMITTED.—** As stated (in Section 5 (b) of R.A. No. 7610), when the victim of rape or acts of lasciviousness is below twelve (12) years old, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period. Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.

2. **ID.; REVISED PENAL CODE; QUALIFIED RAPE AND ACTS OF LASCIVIOUSNESS; ELEMENTS.—** (U)nder Article 266-B of the RPC, there is qualified rape when the victim is below 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. On the other hand, acts of lasciviousness under the RPC has the following elements: that the offender commits any act of lasciviousness or lewdness; that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party

is under 12 years of age; and that the offended party is another person of either sex. After a judicious scrutiny of the records, the Court finds that accused-appellant is guilty of qualified rape and acts of lasciviousness under the RPC in relation to Section 5 (b) of R.A. No. 7610.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONY OF THE VICTIM DO NOT NECESSARILY RENDER SUCH TESTIMONY INCREDIBLE, AS MINOR INCONSISTENCIES STRENGTHEN THE CREDIBILITY OF THE WITNESS AND THE TESTIMONY, BECAUSE OF A SHOWING THAT SUCH CHARGES ARE NOT FABRICATED.—** The testimony of AAA showed that the she was able to establish with clear and candid detail her age at the time of the incident, the identity of accused-appellant, her relationship with him, and the specific bestial acts committed by him x x x. The Court does not give credence to accused-appellant's argument that AAA's testimony was incredible because there were inconsistent statements regarding the frequency of the abuses. Inconsistencies in the testimony of the victim do not necessarily render such testimony incredible. In fact, minor inconsistencies strengthen the credibility of the witness and the testimony, because of a showing that such charges are not fabricated. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.

4. **ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY ON THE CREDIBILITY OF THE RAPE VICTIM, ARE ACCORDED GREAT WEIGHT AND RESPECT AND WILL NOT BE DISTURBED ON APPEAL. —** Testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence. It is a well-settled rule that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.

5. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; THE SLIGHTEST PENETRATION OF THE LABIA OF THE FEMALE VICTIM'S GENITALIA CONSUMMATES THE CRIME OF RAPE. —** [T]he medico-legal report corroborated the testimony of AAA. It showed the presence of

deep-healed lacerations at the 3, 6 and 9 o'clock positions in AAA's hymen, showing blunt penetrating trauma. Time and again, the Court held that the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape.

6. **ID.; ID.; ID.; COMMITTED WHEN THE VICTIM IS BELOW 18 YEARS OF AGE AND THE OFFENDER IS AN ASCENDANT OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE THIRD CIVIL DEGREE. —** [T]he crime committed by accused-appellant must be qualified under Article 266-B of the RPC. It was indicated in the Informations that accused-appellant was the paternal uncle of AAA. Also, during trial, AAA positively identified accused-appellant as her uncle and she established that it was her uncle who raped her. There is qualified rape when the victim is below 18 years of age and the offender is an ascendant or relative by consanguinity or affinity within the third civil degree. In this case, accused-appellant, the paternal uncle of AAA, was a relative by consanguinity within the third civil degree. Hence, the crime of qualified rape was committed by accused-appellant.

7. **ID.; ID.; ACTS OF LASCIVIOUSNESS; LASCIVIOUS CONDUCT, DEFINED; WHEN THE VICTIM IS UNDER 12 YEARS OF AGE, THE PERPETRATORS SHALL BE PROSECUTED UNDER THE REVISED PENAL CODE, BUT THE PENALTY SHALL BE THAT PROVIDED IN R.A. NO. 7610.—** Section 5 Article III of R.A. No. 7610 provides that when the victim is under 12 years of age, the perpetrators shall be prosecuted under the RPC, but the penalty shall be that provided in R.A. No. 7610. Lascivious conduct is defined 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." In this case, the conduct of accused-appellant in intentionally touching and caressing the genitals of AAA constituted an act of lasciviousness. He must be punished under the prescribed penalty of R.A. No. 7610 as AAA was below 12 years of age at the time of the incident. The aggravating circumstance of relationship must also be taken into consideration.

8. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; AN INHERENTLY WEAK DEFENSE AND CONSTITUTES SELF-SERVING NEGATIVE EVIDENCE, WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION BY A CREDIBLE WITNESS.—** Accused-appellant interposed a defense of denial by vehemently denying the accusations against him. It is an established rule, however, that denial is an inherently weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness. Indeed, the positive testimony of AAA outweighs the denial proffered by accused-appellant. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.

9. **ID.; ID.; CREDIBILITY OF WITNESSES; MOTIVES SUCH AS RESENTMENT, HATRED OR REVENGE HAVE NEVER SWAYED THE COURT FROM GIVING FULL CREDENCE TO THE TESTIMONY OF A MINOR RAPE VICTIM .—** [A]ccused-appellant's assertion that the charges were merely instituted by BBB because she was mad or angry with DDD, his brother, was utterly unsubstantiated. Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim. Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.

10. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE AND ACTS OF LASCIVIOUSNESS; PROPER IMPOSABLE PENALTY.—** In Criminal Case No. 146314, the crime committed was qualified rape under Paragraph 6(1), Article 266-B of the RPC and the imposable penalty is death. With the enactment of R.A. No, 9346, however, the imposition of the death penalty is prohibited and the proper penalty would be *reclusion perpetua* without the benefit of parole. In Criminal Case No. 146315, the crime committed was acts of lasciviousness. As the victim was below 12 years of age, the penalty provided under Section 5 (b) of R.A. No. 7610, *reclusion temporal* in

its medium period, must be imposed. Further, the aggravating circumstance of relationship between the accused-appellant and AAA is present. Thus, the Court finds that the proper imposable penalty is 12 years and 1 day of *reclusion temporal* in its minimum period, as minimum, to 16 years, 5 months and 10 days of *reclusion temporal* in its medium period, as maximum.

11. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to the awards of damages in qualified rape, *People v. Jugueta* provides the following awards of damages: ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages. In acts of lasciviousness, *People v. Aycardo* enumerates the following awards of damages: ₱20,000.00 as civil indemnity; ₱15,000 as moral damages; and ₱15,000.00 as exemplary damages. As properly held by the CA, the amounts of damages awarded shall earn an interest of 6% *per annum* from the date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J*.:

On appeal is the May 30, 2016 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06944, which affirmed the June 26, 2014 Decision[2] of the Regional Trial Court, Branch 69, Taguig City *(RTC)* in Criminal Case Nos. 146314-15, finding accused-appellant Dominador Udtohan *y* Jose *(accused-appellant)* guilty beyond reasonable doubt of the crimes of Statutory Rape under Article 266-A (1) (d) of the Revised Penal

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[1] Penned by Associate Justice Sesinando E. Villon with Associate Justice Rodil V. Zalameda and Associate Justice Pedro B. Corales, concurring; *rollo*, pp. 2-23.

[2] Penned by Judge Loriel Lacap Pahimna; CA *rollo,* pp. 15-24.

Code *(RPC)* and Violation of Section 5 (b) of Republic Act *(R.A.)* No. 7610.

In two (2) Informations,[3] dated September 13, 2011, accused-appellant was charged as follows:

CRIMINAL CASE NO. 146314

That, in the month of April 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the paternal uncle of AAA, a minor, 11 years old, by means of violence and intimidation and with lewd designs and intent to gratify his sexual desire, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with said victim against her will and consent, to her damages and prejudice.

CONTRARY TO LAW.

CRIMINAL CASE NO. 146315

That, on or about the 11th day of September 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the paternal uncle of AAA, a minor, 11 years old, by means of violence and intimidation and with lewd designs and with intent to gratify his sexual desire, did, then and there wilfully, unlawfully and feloniously commit lascivious conduct with said victim, against her will and consent, by then and there inserting his finger inside her vagina, which are acts prejudicial to the normal growth and development as a child.

CONTRARY TO LAW.[4]

On October 18, 2011, accused-appellant was arraigned and he pleaded "not guilty." Thereafter, trial ensued.

Evidence of the Prosecution

The testimonies of the prosecution's witnesses tended to establish that AAA, who was then eleven (11) years old, together with her mother, BBB, and two (2) siblings, stayed for free in the house of her paternal uncle, accused-appellant herein, located

[3] *Id*. at 11-14.

[4] *Id*. at 54-55.

at Block 5, XXX Street, Sitio XXX, Western XXX, XXX. Because AAA's father, DDD, was in jail for murder, accused-appellant helped BBB in taking care of her children.

Sometime in April 2011, AAA went with accused-appellant, whom she called CCC, to the YYY Camp, Sitio XXX, to buy some bananas. Accused-appellant would buy bananas everyday and AAA helped him in selling banana cue as she was still on vacation from school.

While on their way to the YYY Camp, accused-appellant suddenly dragged AAA towards the grassy portion of a vacant lot. Then and there, he had carnal knowledge with AAA by inserting his penis inside her vagina. After satisfying his lust, accused-appellant pushed AAA out of the road and proceeded to buy some bananas. He threatened AAA that should she tell anyone about the incident, he would eject her family from his house and he would not feed them. Subsequently, accused-appellant would sexually abuse AAA almost every day at the same place.

Later, on September 11, 2011, at around 10:00 o'clock in the evening, at the house of accused-appellant, he molested AAA by caressing and touching her vagina. AAA did not tell anyone about accused-appellant's bestial acts against her because she was afraid that the latter would evict them and kill her.

On the following day, when AAA was at school, she revealed her ordeal to her teacher who was then suspicious of her odd behavior. On that same day, accused-appellant's live-in-partner disclosed to BBB that she saw him insert his finger into AAA's vagina. BBB immediately went to AAA's school to verify the information. Thereat, BBB sought the help of AAA's teacher and they went to the *barangay* to lodge a complaint. The *barangay* referred them to the police station.

Thereafter, they proceeded to the PNP Crime Laboratory in Camp Crame wherein PCI Shane Lore Detaballi *(PCI Detaballi)* conducted a genital examination and found the presence of deep-healed lacerations at the 3, 6 and 9 o'clock positions in AAA's hymen, showing blunt penetrating trauma. AAA then gave her

sworn statement before the Women and Children Protection Desk to confirm the veracity of her allegations.

Evidence of the Defense

On the other hand, the defense presented accused-appellant as its sole witness. He vehemently denied the accusations against him. Instead, he claimed that the charges were fabricated by BBB, AAA's mother, because she was mad and angry at DDD, her husband and brother of accused-appellant. He also added that BBB was coaching her children to testify against him and that she threatened to physically harm them should they refuse to follow her.

The RTC Ruling

In a Decision, dated June 26, 2014, the RTC found accused-appellant guilty beyond reasonable doubt of statutory rape under Article 266-A (1) (d) of the RPC and violation of Section 5 (b) of R.A. No. 7610. It found that AAA was born on October 7, 1999, as shown by in her birth certificate, and that she was eleven (11) years old when the two separate sexual abuses occurred. The trial court held that the testimony of AAA was clear, candid, straightforward, and convincing regarding the sexual abuses she suffered at the hands of her uncle. The RTC also ruled that the medico-legal certificate corroborated the testimony of AAA. The RTC disposed the case in this wise:

> WHEREFORE, finding Dominador Udtohan y Jose guilty beyond reasonable doubt of Statutory Rape and violation of Sec. 5(b) R.A. 7610, this court hereby sentences him as follows:
>
> In Crim. Case No. 146314 to suffer the penalty of Reclusion Perpetua and to pay AAA Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages; and
>
> In Crim. Case No. 146315 to suffer the penalty of 12 years and 1 day of Reclusion Temporal in its minimum period, as minimum, to 15 years and 6 months of Reclusion Temporal in its medium period, as maximum; and to pay AAA Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages.

SO ORDERED.[5]

Aggrieved, accused-appellant elevated an appeal to the CA. He argued that the testimony of AAA was not credible because there were diverging statements regarding the number of incidents of rape he allegedly committed.

The CA Ruling

In its assailed Decision, dated May 30, 2016, the CA denied the appeal. It held that the testimony of AAA regarding the two sexual abuses was clear and convincing. The CA underscored that AAA was able to describe each incident of rape and sexual abuse committed by her uncle, accused-appellant. Also, it did not give weight to the self-serving denial of accused-appellant and his claim that AAA's mother, who was mad at his brother, initiated the charges. The CA added that accused-appellant miserably failed to establish the ill-will or motive of AAA or her mother. The *fallo* reads:

WHEREFORE, the appeal is **DENIED.** The Decision dated June 26, 2014 of the Regional Trial Court of XXX City, Branch 69, is hereby **AFFIRMED** with the **MODIFICATION** in that, interest at the legal rate of six percent (6%) per annum, shall be imposed on the total monetary awards in the appealed decision until the same are fully paid.

SO ORDERED.[6]

Hence, this appeal.

ISSUES

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

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[5] *Id*. at 24.

[6] *Rollo,* p. 23.

DOUBT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[7]

In a Resolution,[8] dated February 27, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in Lieu of Supplemental Brief,[9] dated April 5, 2017, accused-appellant manifested that he was adopting his appellant's brief filed before the CA as his supplemental brief. In its Manifestation in Lieu of Supplemental Brief,[10] dated April 12, 2017, the Office of the Solicitor General *(OSG)* stated that it was no longer filing a supplemental brief, there being no significant transaction, occurrence or event that happened since the filing of the appellee's brief.

The Court's Ruling

The appeal lacks merit.

Section 5 (b) of R.A. No. 7610 provides:

> (b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; ***Provided,*** **That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be:** ***Provided,*** **That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be** ***reclusion temporal*** **in its medium period;** [Emphasis supplied]

As stated above, when the victim of rape or acts of lasciviousness is below twelve (12) years old, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period.

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[7] CA *rollo,* p. 44.

[8] *Rollo,* p. 29.

[9] *Id*. at 33-35.

[10] *Id*. at 30-32.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.[11] Moreover, under Article 266-B of the RPC, there is qualified rape when the victim is below 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.[12]

On the other hand, acts of lasciviousness under the RPC has the following elements: that the offender commits any act of lasciviousness or lewdness; that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and that the offended party is another person of either sex.[13]

After a judicious scrutiny of the records, the Court finds that accused-appellant is guilty of qualified rape and acts of lasciviousness under the RPC in relation to Section 5 (b) of R.A. No. 7610.

The testimony of AAA showed that the she was able to establish with clear and candid detail her age at the time of the incident, the identity of accused-appellant, her relationship with him, and the specific bestial acts committed by him, to wit:

Q: Who are you complaining against?
A: Tito CCC, Sir.

Q: Do you see Tito CCC in the premises?
A: None, Sir.

Q: If you will go out, will you be able to identify him?

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[11] *People v. Cadano, Jr.,* 729 Phil. 576, 584 (2014).

[12] *People v. Traigo,* 734 Phil. 726, 731 (2014).

[13] *People v. Aycardo,* G.R. No. 218114, June 5, 2017.

A: Yes, Sir.

Q: Please go out?
A: Witness pointed to a male man wearing yellow t-shirt when asked for his name, he answered CCC.

Q: AAA, why are you suing Tito CCC?
A: Kasi po ni-rape po niya ako.

Q: You said you were rape (sic), how many times?
A: Two po.

Q: AAA, when was the first time?
A: April 2011, Sir.

Q: About what time?
A: 3:00 P.M.

Q: Where did this happen?
A: At the YYY Camp, Sir.

Q: What were you doing at YYY Camp, Sitio XXX at that time?
A: We were about to buy bananas, Sir.

Q: You said "kami" who was with you?
A: Tito CCC, sir.

Q: So what happened while you were going out to buy bananas?
A: He pulled me in the grassy portion, Sir.

x x x x x x x x x

Q: AAA you said that you were rape? (sic)
A: Opo

Q: What happened to your private parts if any?
A: Nasira po.

Q: Ipinakita ko sa iyo ito ay…ano ang tingin mo dito manika?
A: Opo.

Q: Ngayon, ito ay manika at ang nirerepresent ng manika na ito ay…ano ba ang tingin mo dito mukha ba siyang lalaki or babae?
A: Lalaki po.

Q: So itong lalaki na ito may mukha, may kamay at paa, meron ding siyang katulad noong nasa lalaki…maari mo bang ituro sa amin kung ano ang ginamit niya?

AAA pointed to the private part of the anatomically correct doll.

PROSECUTOR DE DIOS:

Your Honor, can I unbare?

COURT:

Yes pero dahan-dahan lang baka magulat si AAA.

Q: AAA, this doll is representing a male person. Now a male person has its own private parts. I'd like to show to you a depiction of such private part, is that okay with you?
A: Opo.

Q: I'd like to show to you this portion of the doll, now what do you know about this portion? Ano ito?

COURT:

Q: Ano ba ang alam mo na tawag sa ganyan? Alam mo ba?
A: Opo.

Q: Ano ang tawag diyan, alam mo ba?
A: Witness just pointed the private parts of the anatomical (sic) correct doll

PROSECUTOR DE DIOS:

Q: AAA, am I correct to say that this was the part of the body used by Tito CCC in raping you?
A: Opo.

Q: Now, on September 11, 2011, you also said that you were molested by Tito CCC, what time?
A: 10:00 P.M.

Q: Where did this happen?
A: Sa bahay po.

Q: Now, AAA you said that you were molested, how were you molested by Tito CCC exactly?
COURT:

Q: Gusto mo bang gamitin ulit or ituro…bibigay ko ulit ang doll kay Prosec…dito mo na lang ituro kung ano ang ginamit sa iyo o may ginamit o anong parte ng katawan?

PROSECUTOR DE DIOS:

Q: May ginamit ba si Tito CCC anong parte ng…katawan?
A: Kamay po.

Q: So what did he do with his hands to your persons?
A: Hinipo niya ako.

Q: AAA, with the use of Tito CCC's hands, where did he touch you?
A: Sa ari ko po.

x x x x x x x x x

Q: Do you have any proof AAA to show us that you were indeed born on October 7, 1999?
A: Opo.

Q: I'd like to show to you certificate of live birth, is this your certificate of live birth?
A: Opo.

x x x x x x x x x

Q: I noticed the first molestation was on (sic) April 2011 and the second was on (sic) September 2011, from April up to September why did you not tell anyone that you were subject of the molestation?
A: Natakot po ako.

Q: Who are you afraid of?
A: Kay Tito CCC po.

Q: So why are you afraid of Tito CCC?
A: Baka po kasi palayasin kami at patayin ako.

Q: You said "baka" why did you say that you might be evicted or killed? Why do you say that?
A: Kasi iyon po ang sinabi niya sa akin. xxx[14]

Qualified Rape

It is apparent from the testimony of AAA that she suffered sexual abuses at the hands of accused-appellant, her own uncle. The first instance occurred in April 2011, on their way to Camp

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[14] *Rollo,* pp. 11-15; TSN dated April 16, 2012, pp. 4-37.

YYY to buy bananas when accused-appellant pushed AAA to the grassy portion and raped her. Despite her tender age and traumatizing experience, AAA was able to describe in open court, through an anatomically correct doll, that accused-appellant used and inserted his penis in her vagina which caused her tremendous pain and injuries.

After satisfying his lust, accused-appellant warned her not to relate the incident to anybody, otherwise, he would evict her family and he would kill her. Evidently, accused-appellant used threats and intimidation against AAA, which caused her to suffer silently in fear until she finally disclosed her ordeal to her teacher. Further, AAA was only eleven (11) years old at the time of the rape incident, as evidenced by her birth certificate.

The Court does not give credence to accused-appellant's argument that AAA's testimony was incredible because there were inconsistent statements regarding the frequency of the abuses. Inconsistencies in the testimony of the victim do not necessarily render such testimony incredible. In fact, minor inconsistencies strengthen the credibility of the witness and the testimony, because of a showing that such charges are not fabricated. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.[15]

Testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.[16] It is a well-settled rule that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[17]

Moreover, the medico-legal report corroborated the testimony of AAA. It showed the presence of deep-healed lacerations at

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[15] *People v. Cabigting,* 397 Phil. 944, 982 (2000).

[16] *People v. Baraga y Arcilla*, G.R. No. 208761, June 4, 2014, 725 SCRA 293, 298-299.

[17] *People v. Buclao,* G.R. No. 208173, June 11, 2014, 726 SCRA 365, 377.

the 3, 6 and 9 o'clock positions in AAA's hymen, showing blunt penetrating trauma. Time and again, the Court held that the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape.[18]

Nevertheless, the crime committed by accused-appellant must be qualified under Article 266-B of the RPC. It was indicated in the Informations that accused-appellant was the paternal uncle of AAA. Also, during trial, AAA positively identified accused-appellant as her uncle and she established that it was her uncle who raped her. There is qualified rape when the victim is below 18 years of age and the offender is an ascendant or relative by consanguinity or affinity within the third civil degree. In this case, accused-appellant, the paternal uncle of AAA, was a relative by consanguinity within the third civil degree. Hence, the crime of qualified rape was committed by accused-appellant.

Acts of Lasciviousness

Aside from the qualified rape committed by accused-appellant, AAA testified positively that he also sexually molested her. She stated that on September 11, 2011, at his house, around 10:00 o'clock in the evening, the accused-appellant touched and caressed her genitals. This was confirmed by his live-in-partner when she reported the incident to BBB.

Section 5 Article III of R.A. No. 7610 provides that when the victim is under 12 years of age, the perpetrators shall be prosecuted under the RPC, but the penalty shall be that provided in R.A. No. 7610.[19] Lascivious conduct is defined 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

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[18] *People v. Reyes*, 714 Phil. 300, 309 (2013).

[19] *Imbo y Gamores v. People*, G.R. No. 197712, April 20, 2015, 756 SCRA 196, 204.

sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."[20]

In this case, the conduct of accused-appellant in intentionally touching and caressing the genitals of AAA constituted an act of lasciviousness. He must be punished under the prescribed penalty of R.A. No. 7610 as AAA was below 12 years of age at the time of the incident. The aggravating circumstance of relationship must also be taken into consideration.

Denial is a weak defense

Accused-appellant interposed a defense of denial by vehemently denying the accusations against him. It is an established rule, however, that denial is an inherently weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.[21]

Indeed, the positive testimony of AAA outweighs the denial proffered by accused-appellant. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.[22]

Moreover, accused-appellant's assertion that the charges were merely instituted by BBB because she was mad or angry with DDD, his brother, was utterly unsubstantiated. Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[23] Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has

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[20] Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610.

[21] *Garingarao v. People,* 669 Phil. 512, 522 (2011).

[22] *People v. Amaro*, G.R. No. 199100, July 18, 2014, 730 SCRA 190, 199.

[23] *People v. Pareja y Cruz,* 724 Phil. 759, 786 (2014).

not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.[24]

Penalties

In Criminal Case No. 146314, the crime committed was qualified rape under Paragraph 6(1), Article 266-B of the RPC and the imposable penalty is death. With the enactment of R.A. No. 9346, however, the imposition of the death penalty is prohibited and the proper penalty would be *reclusion perpetua* without the benefit of parole.

In Criminal Case No. 146315, the crime committed was acts of lasciviousness. As the victim was below 12 years of age, the penalty provided under Section 5 (b) of R.A. No. 7610, *reclusion temporal* in its medium period, must be imposed. Further, the aggravating circumstance of relationship between the accused-appellant and AAA is present. Thus, the Court finds that the proper imposable penalty is 12 years and 1 day of *reclusion temporal* in its minimum period, as minimum, to 16 years, 5 months and 10 days of *reclusion temporal* in its medium period, as maximum.[25]

As to the awards of damages in qualified rape, *People v. Jugueta*[26] provides the following awards of damages: ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages. In acts of lasciviousness, *People v. Aycardo*[27] enumerates the following awards of damages: ₱20,000.00 as civil indemnity; ₱15,000 as moral damages; and ₱15,000.00 as exemplary damages. As properly held by the CA, the amounts of damages awarded shall earn an interest of 6% *per annum* from the date of finality of judgment until fully paid.

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[24] *People v. Manuel,* 358 Phil. 664, 674 (1998).

[25] See *People v. Aycardo, supra* note 13, where the Court also imposed the same penalty to the crime of acts of lasciviousness and the victim was below 12 years of age with the aggravating circumstance of relationship.

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

[27] *Supra* note 13.

WHEREFORE, the June 26, 2014 Decision of the Regional Trial Court, Branch 69, Taguig City, in Criminal Case Nos. 146314-15, is **AFFIRMED** with the following **MODIFICATIONS:**

WHEREFORE, in Criminal Case No. 146314, finding accused Dominador Udtohan *y* Jose **GUILTY** beyond reasonable doubt of **QUALIFIED RAPE** under Article 266-A (1) (d) and penalized under Article 266-B of the Revised Penal Code, the Court sentences him to suffer the penalty of *reclusion perpetua,* without eligibility for parole; and to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

In Criminal Case No. 146315, finding accused Dominador Udtohan *y* Jose **GUILTY** beyond reasonable doubt of **ACTS OF LASCIVIOUSNESS** under Article 336 of the Revised Penal Code and penalized under Section 5 (b), Article III of R.A. No. 7610, the Court sentences him to suffer the penalty of 12 years and 1 day of *reclusion temporal* in its minimum period, as minimum, to 16 years, 5 months and 10 days of *reclusion temporal* in its medium period, as maximum; and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages.

In both cases, the amounts of damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-16-3424. August 7, 2017]
(Formerly OCA I.P.I. No. 11-3666-P)

GLORIA SERDONCILLO, *complainant, vs.* **SHERIFF NESTOR M. LANZADERAS, Regional Trial Court, Branch 37, General Santos City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; ANY ACT DEVIATING FROM THE PROCEDURES LAID DOWN BY THE RULES IS MISCONDUCT THAT WARRANTS DISCIPLINARY ACTION.—** [I]t is undisputed that Lanzaderas miserably failed to comply with the x x x requirements of Sections 9 and 10 [of the Rules of Court, as amended]. He admitted that a sum total of ₱172,600.00 was given to him by the complainant. Indeed, while Lanzaderas complied with the preparation of an estimate of expenses and in obtaining the court's approval for such, he, however, willfully disregarded the rules in so far as his collection and receipt of the monies which should have been deposited with the Clerk of Court, and the subsequent liquidation of his expenses. The acquiescence or consent of the plaintiffs to such arrangement, does not absolve the sheriff for failure to comply with the afore-mentioned rules. Compulsory observance of the rules under the circumstances is also underscored by the use of the word *shall* in the above Sections. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

2. **ID.; ID.; ID.; ID.; IN THE EXECUTION OF WRITS, DIRECT PAYMENT OF SHERIFF EXPENSES FROM THE INTERESTED PARTY TO THE SHERIFF IS NOT ALLOWED; A SHERIFF'S FAILURE TO FAITHFULLY COMPLY WITH THE PROVISIONS OF RULE 141 OF THE RULES OF COURT WARRANTS THE IMPOSITION OF DISCIPLINARY MEASURES.—** [T]he rule requires that the sheriff executing the writs shall provide an estimate of the expenses to be incurred that shall be approved by the court.

Upon the court's approval, the interested party shall then deposit the amount with the clerk of court and *ex-officio* sheriff. Thereafter, the expenses shall then be disbursed to the assigned deputy sheriff who shall execute the writ subject to the latter's liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party. The rule does not allow direct payment of sheriff expenses from the interested party to the sheriff. Thus, Lanzaderas' failure to faithfully comply with the provisions of Rule 141 of the Rules of Court warrants the imposition of disciplinary measures.

3. **ID.; ID.; ID.; ID.; SHERIFFS ARE NOT ALLOWED TO RECEIVE ANY VOLUNTARY PAYMENTS FROM PARTIES IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES, NEITHER CAN THEY UNILATERALLY DEMAND SUMS OF MONEY FROM A PARTY-LITIGANT WITHOUT OBSERVING THE PROPER PROCEDURAL STEPS, OTHERWISE, IT WOULD AMOUNT TO DISHONESTY OR EXTORTION.—** [O]nly payment of sheriffs fees may be received by sheriffs. Even assuming that the payments were offered to him by complainant to defray expenses of the demolition is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes. Sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion.

4. **ID.; ID.; ID.; ID.; REPEATED COLLECTION AND RECEIPT OF SUMS OF MONEY FROM A PARTY-LITIGANT PURPORTEDLY TO DEFRAY EXPENSES OF THE DEMOLITION WITHOUT RENDERING AN ACCOUNTING AND LIQUIDATION THEREOF, NOT ONLY IS A VIOLATION OF THE RULES BUT ALSO IN EFFECT**

CONSTITUTED MISCONDUCT.— Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs. They are required to live up to the strict standards of honesty and integrity in public service. Their conduct must at all times be characterized by honesty and openness and must constantly be above suspicion. Lanzadera's repeated collection and receipt of sums of money from a party-litigant purportedly to defray expenses of the demolition without rendering an accounting and liquidation thereof, not only is a violation of the rules but also in effect constituted misconduct. That conduct, therefore, fell too far short of the required standards of public service. Such conduct is threatening to the very existence of the system of the administration of justice.

5. **ID.; ID.; ID.; ID.; AN EMPLOYEE CANNOT BE HELD LIABLE FOR GRAVE MISCONDUCT ABSENT SUBSTANTIAL EVIDENCE SHOWING THAT THE ACTS COMPLAINED OF WERE CORRUPT OR INSPIRED BY AN INTENTION TO VIOLATE THE LAW OR WERE IN PERSISTENT DISREGARD OF WELL-KNOWN LEGAL RULES.—** The circumstances show without doubt that the respondent is liable for simple misconduct, defined as a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer. He cannot be held liable for grave misconduct since this offense requires substantial evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules. In the instant case, there is lack of evidence showing that Lanzaderas' actuations were motivated by any corrupt interest or were done intentionally or willfully to violate the law and the established rules.

6. **ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT IS CLASSIFIED AS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE; PENALTY OF FINE IMPOSED INSTEAD OF SUSPENSION IN CASE AT BAR.—** Section 52(B)(2) of the Revised Rules on Administrative Cases in the Civil Service classifies simple

misconduct as a less grave offense punishable by suspension of one month and one day to six months for the first offense. Considering that this is respondent sheriffs first offense, suspension of one month and one day is appropriate. However, while the appropriate penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Instead of suspension, We impose a fine equivalent to his one-month salary, so that he can still continue to perform his duties in his office.

D E C I S I O N

PERALTA, *J*.:

Before us is an administrative complaint[1] filed by Gloria Serdoncillo, in her capacity as the representative of Ms. Petra D. Sismaet, against Nestor M. Lanzaderas (*Lanzaderas*), Sheriff of Branch 37, Regional Trial Court, General Santos City, for grave misconduct and incompetence relative to Civil Case No. 6677 entitled "*Petra Vda. de Sismaet, in her personal capacity and the Heirs of the late Angeles Sismaet, et al. v. Regino Getis, et al.*

Complainant alleged that sometime in February 2011, after the implementation of the demolition order against the illegal occupants of the property subject of Civil Case No. 6677, Lanzaderas went to her office and in an arrogant manner, accused her and her staff of stealing steel bars/trusses recovered from the demolition site. She denied that they participated in the recovery of said steel bars/trusses as in fact it was a certain Mr. Serrano's laborers who handled it. Complainant, however, claimed that she was puzzled by Lanzaderas' reactions and interest in the recovery of the steel bars which was actually taken by its owners.

On January 21, 2011, in the subject Civil Case No. 6677, due to the contradicting claims of the parties as to the boundaries

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[1] *Rollo*, pp. 1-4.

of the subject property, the court directed the sheriff of the court to hold any action on the house of intervenors until the correct and exact boundaries are determined.[2]

However, complainant alleged that Lanzaderas misled the other occupants of the subject property by making it appear that the Order dated January 21, 2011 was in the nature of a temporary restraining order when it was merely a directive by the court to conduct a joint survey to determine the true and correct extent of the boundaries of the area. In fact, complainant averred that after their compliance of the requirements of the Court, an Order for Further Demolition[3] dated April 13, 2011 was issued by the court.

Complainant added that even after they have requested the court to order Lanzaderas to desist from further enforcing the demolition, Lanzaderas still visited the subject property on several occasions and informed the occupants that his first enforcement of demolition was the correct one and that the order that follows was erroneous. Complainant lamented that said actions of Lanzaderas would cause havoc and stir unrest from the illegal occupants considering that he is an officer of the court.

Finally, complainant claimed that Lanzaderas charged them exorbitant fees amounting to Php172,600.00 when it was plaintiff Sismaet who personally paid for the labor cost and other provisions for the demolition team. As evidence, complainant submitted copies of the vouchers showing Lanzaderas' receipt of said amount.[4] Complainant further averred that Lanzaderas failed to account said amount. Thus, complainant requested that Lanzaderas be ordered to liquidate all his expenditures, and prayed that appropriate sanctions be meted upon Lanzaderas for his unethical conduct.

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[2] *Id*. at 5.

[3] *Id*. at 6.

[4] *Id*. at 7-16.

On June 21, 2011, the Office of the Court Administrator (*OCA*) directed Lanzaderas to submit his comment on the charges against him.[5]

In his Comment[6] dated August 12, 2011, Lanzaderas categorically denied all the allegations against him. For starters, he questioned the personality of the complainant to file the instant administrative case against him as he alleged that there is no evidence that complainant is the attorney-in-fact of the plaintiffs in the subject case.

Lanzaderas claimed that complainant's motive in filing the case was to compel him to inflate the expenses incurred in the demolition in order to make a profit. He asserted that although he did go to complainant's office, this was only to inquire about the missing items as he felt it was his duty to act on the information sent to him by a certain Ms. Elma Ruiz whose house was among those torn down.[7]

He further insisted that he did not mislead the occupants into believing that the Order dated January 21, 2011 was a TRO. He averred that he merely informed them that there was an order from the court directing him to desist from demolishing the house of certain intervenors whose properties were situated meters away from the subject area. He admitted that while he might have frequented the area, it was only because he was doing his job since he did not receive any request from the complainant or any order from the court directing him to stop from executing the demolition.[8]

Lanzaderas likewise denied that he charged exorbitant fees for the demolition conducted. He explained that the plaintiffs in Civil Case No. 6677 agreed to the amount stipulated in the budget which was included in the estimate of expenses submitted to the court. The estimate of expenses amounting to ₱222,600.00

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[5] *Id*. at 34.

[6] *Id*. at 38-48.

[7] *Id*.

[8] *Id*.

was also duly approved by the court. However, he added that the estimate of expenses failed to include provisions for financial assistance to the informal settlers who earlier signified their willingness to knock down their houses on their own.[9]

Lanzaderas further claimed that he requested the plaintiffs to deposit said amount with the Clerk of Court and *Ex-Officio* Sheriff, however, because plaintiffs' counsel wanted the demolition to be effected immediately, they requested that instead of depositing the money to the Clerk of Court, they be allowed to give the amount directly to him on installment basis to avoid the hassle of withdrawing the amount from the Clerk of Court, who may not be available all the time. Out of *delicadeza*, he admitted to have agreed on said arrangement.[10]

In his Reply/Rejoinder[11] dated September 21, 2011, complainant reiterated that Lanzaderas: (1) in a loud and arrogant manner, falsely accused them of stealing the steel bars recovered from the demolished properties; (2) misled the other occupants as to the nature of the Order dated January 21, 2011 which resulted in confusion and commotion among the occupants and demolition team; (3) did not inform them that they should deposit the amount with the Clerk of Court, as in fact he was given thirty thousand pesos (Php30,000) per day for the alleged expenses; (4) did not give any financial assistance to the informal settlers, as in fact it was the plaintiffs who did so. Complainant surmised that Lanzaderas, in alleging that he spent some of the money to give assistance to the informal settlers, was just trying to cover-up a portion of the money which he utilized for his personal benefit.

On August 25, 2015, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter and that Lanzaderas be fined in the amount of Two Thousand Pesos (Php2,000.00) for having been found guilty of Simple Neglect of Duty.[12]

[9] *Id*.

[10] *Id*.

[11] *Id*. at 129-135.

[12] *Id*. at 182-186.

We adopt the findings of the OCA, except as to the recommended penalty.

Section 10, Rule 141 of the Rules of Court, as amended reads:

Sec. 10. *Sheriffs, process servers and other persons serving processes.* With regard to sheriffs expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. **Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor.** (Emphasis supplied)

Moreover, the deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court:

SEC. 9. Sheriffs and other persons serving processes.

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In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary; incidental, or final, shall pay the sheriffs expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards fees, warehousing and similar charges, in an amount estimated by the sheriff subject to the approval of the court. Upon approval of said estimated expenses, **the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor.** (Emphasis supplied)

In the instant case, it is undisputed that Lanzaderas miserably failed to comply with the above-requirements of Sections 9 and 10. He admitted that a sum total of ₱172,600.00 was given to him by the complainant.[13] Indeed, while Lanzaderas complied with the preparation of an estimate of expenses and in obtaining the court's approval for such, he, however, willfully disregarded the rules in so far as his collection and receipt of the monies which should have been deposited with the Clerk of Court, and the subsequent liquidation of his expenses. The acquiescence or consent of the plaintiffs to such arrangement, does not absolve the sheriff for failure to comply with the afore-mentioned rules. Compulsory observance of the rules under the circumstances is also underscored by the use of the word *shall* in the above Sections.[14] Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.[15]

To reiterate, the rule requires that the sheriff executing the writs shall provide an estimate of the expenses to be incurred that shall be approved by the court. Upon the court's approval, the interested party shall then deposit the amount with the clerk of court and *ex-officio* sheriff. Thereafter, the expenses shall then be disbursed to the assigned deputy sheriff who shall execute the writ subject to the latter's liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party. The rule does not allow direct payment of sheriff expenses from the interested party to the sheriff. Thus, Lanzaderas' failure to faithfully comply with the provisions of Rule 141 of the Rules of Court warrants the imposition of disciplinary measures.

Needless to say, only payment of sheriff's fees may be received by sheriffs. Even assuming that the payments were offered to him by complainant to defray expenses of the demolition is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the

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[13] *Id*. at 15.

[14] *Garcia v. Montejar*, 648 Phil. 231, 236 (2010).

[15] See *Atty. Zamora v. Villanueva*, 582 Phil. 29, 37 (2008).

writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes.[16] Sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion.[17]

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs.[18] They are required to live up to the strict standards of honesty and integrity in public service. Their conduct must at all times be characterized by honesty and openness and must constantly be above suspicion. Lanzadera's repeated collection and receipt of sums of money from a party-litigant purportedly to defray expenses of the demolition without rendering an accounting and liquidation thereof, not only is a violation of the rules but also in effect constituted misconduct. That conduct, therefore, fell too far short of the required standards of public service. Such conduct is threatening to the very existence of the system of the administration of justice.[19]

These circumstances show without doubt that the respondent is liable for simple misconduct, defined as a transgression of some established rule of action, an unlawful behavior, or

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[16] See *Mariñas v. Florendo*, 598 Phil. 322, 330 (2009).

[17] *Tan v. Paredes*, 502 Phil. 305, 313 (2005).

[18] *Lopez v. Ramos*, 500 Phil. 408, 416 (2005).

[19] See *Ong v. Meregildo*, A.M. No. P-93-935, July 5, 1994, 233 SCRA 632-645.

negligence committed by a public officer.[20] He cannot be held liable for grave misconduct since this offense requires substantial evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules.[21] In the instant case, there is lack of evidence showing that Lanzaderas' actuations were motivated by any corrupt interest or were done intentionally or willfully to violate the law and the established rules.

It must be emphasized anew as held in *Spouses Villa, et al. v. Judge Ayco, et al.*[22] the important role of sheriffs in the administration of justice, thus:

> The Court recognizes the fact that sheriffs play a vital role in the administration of justice. In view of their important position, their conduct should always be geared towards maintaining the prestige and integrity of the court. In *Escobar Vda. de Lopez v. Luna*, the Court explained that sheriffs have the obligation to perform the duties of their office honestly, faithfully and to the best of their abilities. They must always hold inviolate and revitalize the principle that a public office is a public trust. As court personnel, their conduct must be beyond reproach and free from any doubt that may infect the judiciary. They must be careful and proper in their behavior. They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. They are ranking officers of the court entrusted with a fiduciary role. They perform an important piece in the administration of justice and they are required to discharge their duties with integrity, reasonable dispatch, due care, and circumspection. Anything below the standard is unacceptable. This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of

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[20] *China Banking Corp. v. Janolo, Jr.*, 577 Phil. 176, 181 (2008).

[21] *Areola v. Patag,* 594 Phil. 416, 419 (2008).

[22] 669 Phil. 148, 157-158 (2011). (Citation omitted)

justice is necessarily echoed in the conduct, official or otherwise, of the people who work thereat, from the judge to the least and lowest of the ranks.

Section 52(B)(2) of the Revised Rules on Administrative Cases in the Civil Service[23] classifies simple misconduct as a less grave offense punishable by suspension of one month and one day to six months for the first offense. Considering that this is respondent sheriff's first offense, suspension of one month and one day is appropriate. However, while the appropriate penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Instead of suspension, We impose a fine equivalent to his one-month salary, so that he can still continue to perform his duties in his office.

WHEREFORE, premises considered, respondent Sheriff Nestor M. Lanzaderas, Regional Trial Court, Branch 37, General Santos City, is found guilty of simple misconduct, and a **FINE** equivalent to his one-month salary is hereby imposed upon him. He is, likewise, sternly warned that the commission of the same offense or a similar act in the future will be dealt with more severely.

SO ORDERED.

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

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[23] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

FIRST DIVISION

[G.R. No. 191049. August 7, 2017]

TOMAS P. ATIENZA, *petitioner, vs.* **OROPHIL SHIPPING INTERNATIONAL CO., INC., ENGINEER TOMAS N. OROLA and/or HAKUHO KISEN CO., LTD.,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (2000 POEA-SEC); ILLNESSES NOT LISTED IN SECTION 32 THEREOF ARE DISPUTABLY PRESUMED AS WORK RELATED; TO OVERCOME THE LEGAL PRESUMPTION OF WORK-RELATEDNESS, SUBSTANTIAL EVIDENCE IS NECESSARY.—** Under the 2000 POEA-SEC, "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" is deemed to be a "work-related illness." On the other hand, Section 20 (B) (4) of the 2000 POEA-SEC declares that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that **the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits**. Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail." Thus, in *Racelis v. United Philippine Lines, Inc.* and *David v. OSG Shipmanagement Manila, Inc.*, the Court held that **the legal presumption of work-relatedness of a non-listed**

illness should be overturned only when the employer's refutation is found to be supported by substantial evidence, which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."

2. **ID.; ID.; ID.; NO LEGAL PRESUMPTION OF COMPENSABILITY IS ACCORDED IN FAVOR OF THE SEAFARER; THE FOUR CONDITIONS UNDER SECTION 32-A OF THE 2000 POEA-SEC MUST BE PROVED BY SUBSTANTIAL EVIDENCE TO ESTABLISH COMPENSABILITY OF DISPUTABLY PRESUMED DISEASES.—** As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer. As such, he bears the burden of proving that these conditions are met. Thus, in *Tagle v. Anglo-Eastern Crew Management, Phils., Inc*., the Court ruled that while work-relatedness is indeed presumed, "**the legal presumption in Section 20 (B) (4) of the [2000] POEA-SEC should be read together with the requirements specified by Section 32-A of the same contract**." Similarly, in *Licayan v. Seacrest Maritime Management, Inc.*, it was explicated that the disputable presumption does not signify an automatic grant of compensation and/or benefits claim, and that while the law disputably presumes an illness not found in Section 32-A to be also work-related, the seafarer/claimant nonetheless is burdened to present substantial evidence that his *work conditions caused or at least increased the risk of contracting the disease* and only a reasonable proof of work-connection, not direct causal relation is required **to establish its compensability**. The proof of work conditions referred thereto effectively equates with the conditions for compensability imposed under Section 32-A of the 2000 POEA-SEC. In *Jebsen Maritime, Inc. v. Ravena* it was likewise elucidated that there is a need to satisfactorily show the four (4) conditions under Section 32-A of the 2000 POEA-SEC in order for the disputably presumed disease resulting in disability to be compensable.

3. **ID.; LABOR CODE AND AMENDED RULES ON EMPLOYEES' COMPENSATION; TOTAL AND PERMANENT DISABILITY; A TEMPORARY TOTAL DISABILITY IS A SICKNESS OR ILLNESS LASTING**

CONTINUOUSLY FOR MORE THAN 120 DAYS EXCEPT WHEN THE SICKNESS STILL REQUIRES MEDICAL ATTENDANCE BEYOND THE 120 DAYS BUT NOT TO EXCEED 240 DAYS.— In this case, petitioner claims entitlement to total and permanent disability benefits. Under Article 198 (c) (1) of the Labor Code, as amended, in relation to Rule VII, Section 2 (b) and Rule X, Section 2 (a) of the Amended Rules on Employees' Compensation (AREC), the following disabilities shall be deemed as total and permanent: Art. 198. Permanent Total Disability. - x x x. x x x x (c) **The following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules**[.] Rule VII Benefits Sec. 2. Disability - 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.** Rule X Temporary Total Disability x x x x Sec. 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.** Based on the foregoing provisions, the seafarer is declared to be on ***temporary total disability*** during the 120-day period within which he is unable to work. However, a temporary total disability lasting continuously for more than 120 days, **except** as otherwise provided in the Rules, is considered as a ***total and permanent disability***. This exception pertains to a situation when the sickness "***still requires medical attendance beyond the 120 days but not to exceed 240 days,***" in which case, the temporary total disability period is extended up to a maximum of 240 days.

4. ID.; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT

CONTRACT (2000 POEA-SEC); THE PRE-EXISTING NATURE OF THE SEAFARER'S ILLNESS DOES NOT BAR COMPENSATION IF THE SAME WAS AGGRAVATED DUE TO HIS WORKING CONDITIONS; CASE AT BAR.— In the case at bar, petitioner was found by both the company-designated and independent physicians to have THS during the term of his employment contract that caused his eventual repatriation on February 4, 2005. THS is a rare neurologic disorder characterized by severe headache and pain often preceding weakness and painful paralysis of certain **eye muscles**. Its exact cause was unknown but the disease was thought to be associated **with inflammation of the area behind the eyes.** A possible risk factor for THS is a recent viral infection. Records show that petitioner, as an Able Seaman, was **called to keep watch at sea during navigation, and to observe and record weather and sea conditions, among others**. It was also not disputed that in the performance of his duties, **petitioner was constantly exposed to cold, heat, and other elements of nature**. **It was likewise in the exercise of his functions that he experienced major symptoms of THS, namely, severe headache, nausea, and double vision**. Clearly, while the exact cause of THS is unknown, it is reasonable to conclude that petitioner's illness was most probably aggravated due to the peculiar nature of his work that required him to be on-call twenty-four (24) hours a day to **observe** and keep track of weather conditions and **keep watch** at sea during navigation. These activities necessarily entail **the use of eye muscles that can cause an eye strain as in fact, he experienced headache, nausea, and double vision that worsened when he looked at his right side**. Considering further his constant exposure to different temperature and unpredictable weather conditions that accompanied his work on board an ocean-going vessel, the likelihood to suffer a viral infection - a possible risk factor - is not far from impossible, more so when no less than petitioner's independent physician, Dr. Pasco, diagnosed him to be suffering from *cavernous sinus inflammation*. Accordingly, it is apparent that while petitioner's illness appears to have been pre-existing, his work exposed him to the risk of aggravating the same. Further, it is also shown that the disease was contracted within a period of exposure and under such other factors necessary to contract it. x x x Moreover, there was no notorious negligence on the part of the seafarer. These findings square with the conditions

of compensability under Section 32-A of the 2000 POEA-SEC, and hence, all appear to attend to this case.

5. **ID.; LABOR CODE; FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO ISSUE A FINAL ASSESSMENT WITHIN THE 120-DAY PERIOD GAVE RISE TO A CONCLUSIVE PRESUMPTION THAT PETITIONER'S DISABILITY IS TOTAL AND PERMANENT; ENTITLEMENT OF SEAFARER TO THE MAXIMUM DISABILITY BENEFIT UNDER POEA-SEC, WARRANTED IN CASE AT BAR.—** At any rate, records show that it was only on June 28, 2005 that the company-designated physician issued a Medical Certificate declaring petitioner fit to work, which was 144 days after petitioner's repatriation on February 4, 2005. Considering that petitioner's complaint was filed on March 29, 2006, during which time the 120-day rule pronounced in *Crystal Shipping* was the prevailing doctrine, the failure of the company-designated physician to issue a final assessment within the 120-day period gave rise to a **conclusive presumption that petitioner's disability is total and permanent.** In this case, the NLRC failed to account for the foregoing rules on seafarers' compensation and instead, cavalierly dismissed petitioner's claim on the supposition that petitioner failed to show a reasonable connection between his illness and his work as an Able Seaman, even if the records show otherwise. **More significantly, the NLRC did not account for the employer's failure to comply with the 120 day-rule, by virtue of which the law conclusively presumes the seafarer's disability to be total and permanent.** Thus, for these reasons, the Court finds that the NLRC's ruling is tainted with grave abuse of discretion and hence, should have been corrected by the CA through *certiorari*. Accordingly, the CA's ruling must be reversed and set aside. In fine, petitioner should be paid by respondent Orophil Shipping International Co., Inc. (his employer) the maximum disability amount of US$60,000.00 under the 2000 POEA-SEC, or its peso equivalent at the time of payment, as prayed for in his Position Paper and pursuant to existing jurisprudence.

6. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARDED WHEN AN EMPLOYEE IS FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT HIS RIGHT AND**

INTEREST.— The Court likewise grants petitioner attorney's fees of US$6,000.00, or its peso equivalent at the time of payment, since he was forced to litigate to protect his valid claim. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."

SERENO, *C.J.*, *dissenting opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 45; FACTUAL FINDINGS OF BOTH THE CA AND AND THE NLRC ARE ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL; CASE AT BAR.—** It must be emphasized that the Petition before us was filed under Rule 45 of the Rules of Court. As such, it may raise only questions of law. Questions of fact or those involving the reevaluation of evidence are generally beyond the scope of our review. x x x In this case, the principal issue raised by petitioner pertains to the existence of a reasonable connection between his alleged illness, Tolosa Hunt Syndrome, and his work conditions while on board *M/V Cape Apricot*. x x x In my opinion, there is no reason to deviate from the factual determinations of the CA and the NLRC. As earlier explained, whether the illness suffered by the seafarer is related to his work on board the vessel is a question of fact. The findings of the NLRC on this point, as affirmed by the CA, are therefore beyond the scope of our review in a Rule 45 proceeding. In general, we only review its findings when these are relevant to our determination of whether or not the CA was correct in finding no grave abuse of discretion on the part of the NLRC. To emphasize, both the CA and the NLRC found no substantial evidence to prove that the illness suffered by petitioner had a reasonable connection with his work as an Able Seaman. The LA, on the other hand, did not have any specific finding on the issue of work-relatedness. Given these premises, I find it proper to accord great weight and deference to the factual conclusions of the CA and the NLRC; in particular, their observation that no sufficient evidence was presented by petitioner.
2. **LABOR AND SOCIAL LEGISLATION; 2000 STANDARD TERMS AND CONDITIONS GOVERNING THE**

EMPLOYMENT OF FILIPINO SEAFARERS ON OCEAN GOING VESSELS (STANDARD TERMS AND CONDITIONS); ENTITLEMENT TO DISABILITY BENEFITS; THE SEAFARER MUST PROVE THAT HE SUFFERED A WORK-RELATED INJURY OR ILLNESS DURING THE TERM OF HIS CONTRACT.— Pursuant to Section 20(B) of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Oceangoing Vessels (Standard Terms and Conditions), a seafarer is entitled to disability benefits if he suffers "work-related injury or illness during the term of his contract." In turn, a "work-related illness" is defined in the Standard Terms and Conditions 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." Based on these two provisions, seafarers are only entitled to disability compensation once they prove that (a) they suffered from an injury or illness during the term of their employment contract; (b) their injury or illness is considered "work-related" under the Standard Terms and Conditions; i.e., their illness is consistent with the conditions in Section 32-A. When applicable, other procedural requirements must also be complied with.

3. **ID.; ID.; ID.; ID.; FOR OTHER ILLNESSES NOT LISTED, FOUR GENERAL REQUIREMENTS UNDER SECTION 32-A MUST BE MET FOR DISABILITY BENEFITS TO BE AWARDED; CASE AT BAR.—** Jurisprudence has expanded the definition of "work-related illness" to include other illnesses that are not listed, but are proven to have been caused or at least aggravated by the particular working conditions involved. Accordingly, a claimant suffering from an illness that is not included in the enumeration in Section 32-A may be granted disability benefits for as long as the conditions in that provision are met. While specific conditions are set forth for certain enumerated illnesses, four general requirements must be met for all other illnesses in order for disability benefits to be awarded to the claimant. Section 32-A states: 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 2) to the described risks; (3) The disease was contracted within a period

of exposure and under such other factors necessary to contract it; (4) there was no notorious negligence on the part of the seafarer. At its core, the four general requisites in Section 32-A boil down to the requirement of proof of a reasonable connection between the injury or illness suffered by the seafarer and his activities while on board; i.e., proof of the risks presented by his duties and his exposure to these risks. As claimants before the courts, seafarers are obligated to prove these conditions by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Here, the CA and the NLRC both concluded that petitioner failed to present substantial evidence that his illness (Tolosa Hunt Syndrome) was compensable under Section 32-A. My own examination of the records reveals that he only presented general allegations about his "strenuous job assignments," "heavy workload," and "exposure to cold, heat and other elements of nature." However, he failed to make an effort to explain how his working conditions as an Able Seaman actually caused or aggravated his illness.

4. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARDED ONLY IN CASES WHERE CLAIMANTS WERE FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT THEIR RIGHTS AND INTERESTS; CLAIM FOR ATTORNEY'S FEES, NO BASIS IN CASE AT BAR.—** In seafarers' claims for disability benefits, this Court has awarded attorney's fees only in cases where claimants were forced to litigate and incur expenses to protect their rights and interests. In light of my conclusion that petitioner has no right to be paid disability benefits, I find no basis to grant his claim for attorney's fees.

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Del Rosario & Del Rosario Law Offices for respondents.

DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 30, 2009 and the Resolution[3] dated January 22, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106186, which affirmed the Decision[4] dated April 22, 2008 and the Resolution[5] dated August 26, 2008 of the National Labor Relations Commission in NLRC NCR OFW M-06-03-01004-00 / NLRC NCR CA No. 052872-07, dismissing petitioner Tomas P. Atienza's (petitioner) complaint for disability benefits.

The Facts

Petitioner was employed as an Able Seaman by respondent Orophil Shipping International Co., Inc. (Orophil) on behalf of its principal, respondent Hakuho Kisen Co., Ltd. (Hakuho), and was assigned at the M/V Cape Apricot.[6] In the course of his employment contract, petitioner complained of severe headaches, nausea, and double vision which the foreign port doctors diagnosed to be right cavernous sinus inflammation or Tolosa Hunt Syndrome (THS).[7] As a result, petitioner was repatriated on February 4, 2005 and referred to a company-designated physician, Doctor Nicomedes G. Cruz (Dr. Cruz), who confirmed the findings and advised him to continue the

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[1] *Rollo*, pp. 13-45.

[2] *Id.* at 61-74. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Andres B. Reyes, Jr. and Vicente S.E. Veloso concurring.

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

[4] *Id*. at 153-157. Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[5] *Id*. at 159-160.

[6] See Contract of Employment dated April 6, 2004; *id*. at 97.

[7] See Medical Report dated February 4, 2005; *id*. at 99 and 139-140.

medication prescribed by the foreign doctors.[8] On June 28, 2005, Dr. Cruz issued a certification[9] declaring petitioner fit to resume work.[10] Dissatisfied, petitioner consulted an independent physician, Dr. Paul Matthew D. Pasco (Dr. Pasco), who, on the other hand, assessed his illness as a Grade IV disability and declared him unfit for sea duty.[11] Consequently, petitioner filed a complaint[12] against Orophil, Engineer Tomas N. Orola, and Hakuho (respondents) before the NLRC for payment of disability benefits, reimbursement of medical expenses, damages, and attorney's fees, docketed as NLRC NCR OFW M-06-03-01004-00.

For their part, respondents opposed the claim for disability benefits, asserting that petitioner was declared fit to work by the company-designated physician and that his illness is not work-related, adding too that he maliciously concealed the fact that he had previously suffered from THS that effectively barred him from claiming disability benefits under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).[13] They likewise contended that petitioner had been paid his sickness allowance, while the claims for damages and benefits are without basis.[14]

The Labor Arbiter's Ruling

In a Decision[15] dated April 30, 2007, the Labor Arbiter (LA) ordered respondents to pay petitioner the amount equivalent to US$34,330.00 for his Grade IV disability and ten percent (10%) attorney's fees, while the rest of the claims were denied

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[8] See *id*. at 62-63.

[9] *Id*. at 135.

[10] *Id*.

[11] *Id.* at 101.

[12] *Id*. at 102.

[13] *Id*. at 63.

[14] See *id*. at 148.

[15] *Id*. at 143-152.

for lack of basis.[16] The LA found petitioner's illness to be work-related and that he cannot be faulted for not declaring his previous treatment for the same illness given that it had occurred way back in 1996 and has not recurred despite several contracts.[17] The LA did not give merit to the company-designated physician's finding of fitness to work, noting that petitioner was subsequently declared unfit for sea duty in a medical certificate dated March 14, 2006.[18]

Dissatisfied, both parties appealed the case to the NLRC.[19]

The NLRC Ruling

In a Decision[20] dated April 22, 2008, the NLRC set aside the LA's Decision and dismissed the complaint for petitioner's failure to establish that his illness is work-related.[21] In so ruling, it did not give credence to the certificate issued by Dr. Pasco as the finding of petitioner's unfitness to resume work was not supported by any explanation.[22]

His motion for reconsideration[23] having been denied by the NLRC in a Resolution[24] dated August 26, 2008, petitioner elevated his case to the CA via a petition for *certiorari*, docketed as CA-G.R. SP No. 106186.[25]

The CA Ruling

In a Decision[26] dated September 30, 2009, the CA affirmed the NLRC, finding no grave abuse of discretion on the latter's

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[16] *Id*. at 152.

[17] *Id*. at 150.

[18] *Id*. at 151.

[19] See *id*. at 26-27.

[20] *Id*. at 153-157.

[21] *Id*. at 155.

[22] *Id*. at 156.

[23] See *id*. at 27.

[24] *Id*. at 159-160.

[25] *Id*. at 27.

[26] *Id*. at 61-74.

part in dismissing petitioner's complaint for disability benefits, allowances, and damages. It held that petitioner failed to prove that his illness was caused or aggravated by his employment conditions.[27] Further, the CA pointed out that petitioner was also declared fit to work by the company-designated physician and that while his independent physician found otherwise, the said assessment was made after the lapse of a considerable period of time.[28]

Aggrieved, petitioner filed a motion for reconsideration, which was, however, denied in a Resolution[29] dated January 22, 2010; hence, this petition.

The Issue Before the Court

The main issue in this case is whether or not petitioner is entitled to total and permanent disability benefits pursuant to the 2000 POEA-SEC.

The Court's Ruling

The petition has merit.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it.

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevance evidence which a reasonable mind might accept as adequate to justify a conclusion.[30] Likewise, grave abuse of discretion arises

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[27] See *id*. at 70-71.

[28] *Id*. at 71-72.

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

[30] *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014, 740 SCRA 330, 340.

when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[31]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in dismissing petitioner's *certiorari* petition since the NLRC gravely abused its discretion in holding that petitioner is not entitled to total and permanent disability benefits.

Under the 2000 POEA-SEC, "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" is deemed to be a "work-related illness."[32] On the other hand, Section 20 (B) (4) of the 2000 POEA-SEC declares that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that **the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits**.[33] Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail."[34]

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[31] *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 (2013).

[32] See Item 12, Definition of Terms, 2000 POEA-SEC.

[33] See *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 387-388 (2014).

[34] *Bautista v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206032, August 19, 2015, 767 SCRA 657, 669-670.

Thus, in *Racelis v. United Philippine Lines, Inc.*[35] and *David v. OSG Shipmanagement Manila, Inc.*,[36] the Court held that **the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence**, which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."[37]

Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. It **does not cover and extend to *compensability***. **In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability**. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:

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;

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[35] G.R. No. 198408, November 12, 2014, 740 SCRA 122, 133.

[36] 695 Phil. 906, 921 (2012).

[37] See Section 5, Rule 133 of the Rules of Court.

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4. There was no notorious negligence on the part of the seafarer. (Emphasis and underscoring supplied)

As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer. As such, he bears the burden of proving that these conditions are met.

Thus, in *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*,[38] the Court ruled that while work-relatedness is indeed presumed, "**the legal presumption in Section 20 (B) (4) of the [2000] POEA-SEC should be read together with the requirements specified by Section 32-A of the same contract**."[39]

Similarly, in *Licayan v. Seacrest Maritime Management, Inc.*,[40] it was explicated that the disputable presumption does not signify an automatic grant of compensation and/or benefits claim, and that while the law disputably presumes an illness not found in Section 32-A to be also work-related, the seafarer/claimant nonetheless is burdened to present substantial evidence that his *work conditions caused or at least increased the risk of contracting the disease* and only a reasonable proof of work-connection, not direct causal relation is required **to establish its compensability**.[41] The proof of work conditions referred thereto effectively equates with the conditions for compensability imposed under Section 32-A of the 2000 POEA-SEC.

In *Jebsen Maritime, Inc. v. Ravena*,[42] it was likewise elucidated that there is a need to satisfactorily show the four (4) conditions

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[38] 738 Phil. 871 (2014).

[39] *Id*. at 888, citing *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 96 (2010); emphasis and underscoring supplied

[40] G.R. No. 213679, November 25, 2015, 775 SCRA 586.

[41] *Id*. at 597.

[42] *Supra* note 33.

under Section 32-A of the 2000 POEA-SEC in order for the disputably presumed disease resulting in disability to be compensable.[43]

To note, while Section 32-A of the 2000 POEA-SEC refers to conditions for compensability of an occupational disease and the resulting disability or death, it should be pointed out that the conditions stated therein **should also apply to non-listed illnesses** given that: (***a***) the legal presumption under Section 20 (B) (4) accorded to the latter is limited only to "work-relatedness"; and (***b***) for its compensability, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must be shown.[44]

The absurdity of not requiring the seafarer to prove compliance with compensability for non-listed illnesses, when proof of compliance is required for listed illnesses, was pointed out by the Court in *Casomo v. Career Philippines Shipmanagement, Inc.*,[45] to wit:

A quick perusal of Section 32 of the [2000 POEA-SEC], in particular the Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted, and the List of Occupational Diseases, easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified.

We are hard pressed to adhere to Casomo's position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the [2000 POEA-SEC] which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the conditions mentioned in Section 32-A of the [2000 POEA-SEC]. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

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

[44] See *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292, 308-311.

[45] 692 Phil. 326 (2012).

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Government Service Insurance System (GSIS) v. Cuntapay [576 Phil. 482, 492 (2008)] iterates that the burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder:

> The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.[46] (Emphasis supplied)

Therefore, it is apparent that for both listed occupational disease and a non-listed illness and their resulting injury to be compensable, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.

At this juncture, it is significant to point out that the delineation between work-relatedness and compensability in relation to the legal presumption under Section 20 (B) (4) has been often overlooked in our jurisprudence. **This gave rise to the confusion that despite the presumption of work-relatedness already accorded by law, certain cases confound that the seafarer still has the burden of proof to show that his illness, as well as the resulting disability is work-related**.

Among these cases is *Quizora v. Denholm Crew Management (Phils.), Inc.*,[47] wherein this Court failed to discern that the presumption of work-relatedness *did not extend or equate to presumption of compensability*, and concomitantly, that the

[46] *Id*. at 339-350, citations omitted.

[47] 676 Phil. 313 (2011).

burden of proof required from the seafarer was to establish its compensability not the work-relatedness of the illness:

At any rate, granting that the provision of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. **He has to prove that the illness he suffered was work-related and that it must have existed during the term of his contract**. He cannot simply argue that the burden of proof belongs to the respondent company.[48] (Emphasis and underscoring supplied)

Later, in *Magsaysay Maritime Services v. Laurel*,[49] Section 20 (B) (4) (which pertains to a presumption of work-relatedness) was mischaracterized as a *presumption of compensability* which stands absent contrary proof:

Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work-related and compensable. Their posture does not persuade the Court.

True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20(B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this contract are disputably presumed work-related." The said provision explicitly establishes a **presumption of compensability** although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[50] (Emphasis and underscoring supplied)

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[48] *Id*. at 327.

[49] 707 Phil. 210 (2013).

[50] *Id*. at 227-228.

Similarly, in *DOHLE-Philman Manning Agency, Inc. v. Gazzingan*,[51] a "presumption of compensability" was declared for illnesses not listed as an occupational disease:

> More importantly, the 2000 POEA-SEC has created a ***presumption of compensability*** for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.[52] (Emphasis supplied)

To address this apparent confusion, the Court thus clarifies that there lies a technical demarcation between work-relatedness and compensability relative to how these concepts operate in the realm of disability compensation. As discussed, work-relatedness of an illness is presumed; hence, the seafarer does not bear the initial burden of proving the same. Rather, it is the employer who bears the burden of disputing this presumption. If the employer successfully proves that the illness suffered by the seafarer was contracted outside of his work (meaning, the illness is pre-existing), or that although the illness is pre-existing, none of the conditions of his work affected the risk of contracting or aggravating such illness, then there is no need to go into the matter of whether or not said illness is compensable. As the name itself implies, work-relatedness means that the seafarer's illness has a *possible* connection to one's work, and thus, allows the seafarer to claim disability benefits therefor, albeit the same is not listed as an occupational disease.

The established work-relatedness of an illness does not, however, mean that the resulting disability is automatically

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[51] G.R. No. 199568, June 17, 2015, 759 SCRA 209.

[52] *Id*. at 226.

compensable. As also discussed, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under Section 32-A of the 2000 POEA-SEC. Failure to do so will result in the dismissal of his claim.

Notably, it must be pointed out that the seafarer will, in all instances, have to prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer:

On the one hand, when an employer attempts to discharge the burden of disputing the presumption of work-relatedness (*i.e.*, by either claiming that the illness is pre-existing or, even if pre-existing, that the risk of contracting or aggravating the same has nothing do with his work), the burden of evidence now shifts to the seafarer to prove otherwise (*i.e.*, that the illness was not pre-existing, or even if pre-existing, that his work affected the risk of contracting or aggravating the illness.) In so doing, the seafarer *effectively* discharges his own burden of proving compliance with the first three conditions of compensability under Section 32-A of the 2000 POEA-SEC, *i.e.*, that (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; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it. Thus, when the presumption of work-relatedness is contested by the employer, the factors which the seafarer needs to prove to rebut the employer's contestation would **necessarily overlap** with some of the conditions which the seafarer needs to prove to establish the compensability of his illness and the resulting disability. **In this regard, the seafarer, therefore, addresses the refutation of the employer against the work-relatedness of his illness and, at the same time, discharges his burden of proving compliance with certain conditions of compensability**.

On the other hand, when an employer does not attempt to discharge the burden of disputing the presumption of work-relatedness, the seafarer must still discharge his own burden

of proving compliance with the conditions of compensability, which does not only include the three (3) conditions abovementioned, but also, the distinct fourth condition, *i.e.*, that there was no notorious negligence on the part of the seafarer. Thereafter, the burden of evidence shifts to the employer to now disprove the veracity of the information presented by the seafarer. The employer may also raise any other affirmative defense which may preclude compensation, such as concealment under Section 20 (E)[53] of the 2000 POEA-SEC or failure to comply with the third-doctor referral provision under Section 20 (B) (3)[54] of the same Contract.

Subsequently, if the work-relatedness of the seafarer's illness is not successfully disputed by the employer, and the seafarer is then able to establish compliance with the conditions of compensability, the matter now shifts to a determination of the nature (*i.e.*, permanent and total or temporary and total) and in turn, the amount of disability benefits to be paid to the seafarer.

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[53] E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

[54] B. Compensation and Benefits for Injury and Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory

In this case, petitioner claims entitlement to total and permanent disability benefits. Under Article 198 (c) (1)[55] of the Labor Code, as amended, in relation to Rule VII, Section 2 (b) and Rule X, Section 2 (a) of the Amended Rules on Employees' Compensation[56] (AREC), the following disabilities shall be deemed as total and permanent:

Art. 198. Permanent Total Disability. – x x x.

x x x x x x x x x

(c) **The following disabilities shall be deemed total and permanent:**

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

Rule VII
Benefits

Sec. 2. Disability – x x x.

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.

Rule X
Temporary Total Disability

x x x x x x x x x

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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.

[55] Formerly Article 192. See Department Advisory No. 01, Series of 2015, entitled "Renumbering of the Labor Code of the Philippines, As Amended" dated July 21, 2015.

[56] (June 1, 1987).

Sec. 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**. (Emphases supplied)

Based on the foregoing provisions, the seafarer is declared to be on ***temporary total disability*** during the 120-day period within which he is unable to work. However, a temporary total disability lasting continuously for more than 120 days, **except** as otherwise provided in the Rules, is considered as a ***total and permanent disability***.[57] This exception pertains to a situation when the sickness "***still requires medical attendance beyond the 120 days but not to exceed 240 days***," in which case, the temporary total disability period is extended up to a maximum of 240 days.[58]

It should be pointed out that these provisions are to be read hand in hand with the 2000 POEA-SEC, whose Section 20 (3) reads:

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.[59]

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[57] See Article 198 (c) (1) of the LABOR CODE, and Section 2 (b), Rule VII of the AREC.

[58] See *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 911-912 (2008).

[59] See *id*. at 912.

In *Vergara v. Hammonia Maritime Services, Inc.* (*Vergara*),[60] the Court explained how the provisions of the Labor Code/AREC and the 2000 POEA-SEC harmoniously operate:

> 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 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.[61]

Note, however, that prior to the promulgation of *Vergara* on October 6, 2008, the rule which was followed was the doctrine laid down in *Crystal Shipping, Inc. v. Natividad* (*Crystal Shipping*).[62] Essentially, *Crystal Shipping* holds that "**[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body,**"[63] and "[w]hat is important is that [the seafarer] was unable to perform his customary work for more than 120 days which constitutes permanent total disability."[64]

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[60] *Id*.

[61] *Id*.

[62] 510 Phil. 332 (2005).

[63] *Id*. at 340; emphasis supplied.

[64] *Id*. at 341.

The apparent conflict between *Crystal Shipping* (120-day rule) and *Vergara* (120/240-day rule) was later clarified in the case of *Kestrel Shipping Co., Inc. v. Munar* (*Kestrel*),[65] wherein the Court held that if the seafarer's complaint was filed prior to the promulgation of *Vergara* on October 6, 2008, the *Crystal Shipping* doctrine should be applied, *viz.*:

This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed-off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.

Nonetheless, *Vergara* was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that Vergara should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.[66]

In the case at bar, petitioner was found by both the company-designated and independent physicians to have THS during the term of his employment contract that caused his eventual repatriation on February 4, 2005. THS is a rare neurologic disorder characterized by severe headache and pain often preceding weakness and painful paralysis of certain **eye muscles**. Its exact cause was unknown but the disease was thought to be associated **with inflammation of the area behind**

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[65] 702 Phil. 717 (2013).

[66] *Id*. at 738.

the eyes.[67] A possible risk factor for THS is a recent viral infection.[68]

Records show that petitioner, as an Able Seaman, was **called to keep watch at sea during navigation, and to observe and record weather and sea conditions, among others**.[69] It was also not disputed that in the performance of his duties, **petitioner was constantly exposed to cold, heat, and other elements of nature**.[70] **It was likewise in the exercise of his functions that he experienced major symptoms of THS, namely, severe headache, nausea, and double vision**.[71] Clearly, while the exact cause of THS is unknown, it is reasonable to conclude that petitioner's illness was most probably aggravated due to the peculiar nature of his work that required him to be on-call twenty-four (24) hours a day to **observe** and keep track of weather conditions and **keep watch** at sea during navigation. These activities necessarily entail **the use of eye muscles that can cause an eye strain as in fact, he experienced headache, nausea, and double vision that worsened when he looked at his right side**. Considering further his constant exposure to different temperature and unpredictable weather conditions that accompanied his work on board an ocean-going vessel, the likelihood to suffer a viral infection – a possible risk factor – is not far from impossible, more so when no less than petitioner's independent physician, Dr. Pasco, diagnosed him to be suffering from *cavernous sinus inflammation*.[72]

Accordingly, it is apparent that while petitioner's illness appears to have been pre-existing, his work exposed him to

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[67] *Rollo*, p. 136.

[68] <http://eyewiki.aao.org/Tolosa-Hunt_syndrome> (last visited August 25, 2017).

[69] *Rollo*, p. 81.

[70] *Id*.

[71] *Id*. at 82.

[72] *Id*. at 101.

the risk of aggravating the same. Further, it is also shown that the disease was contracted within a period of exposure and under such other factors necessary to contract it. As the LA aptly observed:

Respondents further argued that [petitioner] failed to disclose that he suffered from frequent headaches, stiffness, and eye trouble before he boarded the vessel.

[Petitioner] cannot be faulted in answering so when called to answer whether he suffered those conditions because it is possible that indeed he did not suffer from said conditions before boarding the [vessel, because] the history of his illness was way back in 1996 and **has not recurred despite his several contracts with the respondents. It is only during his last contract that he experienced the said illness and it is unavoidable that his illness called "Right cavernous Sinus Inflammation" was aggravated by his working conditions on board including the lifestyle on board the vessel**.[73](Emphasis and underscoring supplied)

Moreover, there was no notorious negligence on the part of the seafarer. These findings square with the conditions of compensability under Section 32-A of the 2000 POEA-SEC, and hence, all appear to attend to this case. By and large, the tasks performed by petitioner and his constant exposure to the varying elements of nature have contributed to the development or aggravation of his illness while on board the *M/V Cape Apricot* and therefore, rendered his illness and resulting disability compensable. In *Canuel v. Magsaysay Maritime Corporation*,[74] it was held that the pre-existing nature of the seafarer's illness does not bar compensation if the same was aggravated due to his working conditions:

Compensability x x x does not depend on whether the injury or disease was pre-existing at the time of the employment but rather if the disease or injury is work-related or aggravated his condition. It is indeed safe to presume that, at the very least, the

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[73] *Id*. at 150.

[74] 745 Phil. 252 (2014).

arduous nature of [the seafarer's] employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be free from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury independent of any pre-existing weakness or disease.[75] (Emphasis and underscoring supplied).

At any rate, records show that it was only on June 28, 2005[76] that the company-designated physician issued a Medical Certificate declaring petitioner fit to work, which was 144 days after petitioner's repatriation on February 4, 2005. Considering that petitioner's complaint was filed on March 29, 2006, during which time the 120-day rule pronounced in *Crystal Shipping* was the prevailing doctrine, the failure of the company-designated physician to issue a final assessment within the 120-day period gave rise to a **conclusive presumption that petitioner's disability is total and permanent**.

In this case, the NLRC failed to account for the foregoing rules on seafarers' compensation and instead, cavalierly dismissed petitioner's claim on the supposition that petitioner failed to show a reasonable connection between his illness and his work as an Able Seaman, even if the records show otherwise. **More significantly, the NLRC did not account for the employer's failure to comply with the 120 day-rule, by virtue of which the law conclusively presumes the seafarer's**

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[75] *Id*. at 264-265, citing *More Maritime Agencies, Inc. v. NLRC*, 366 Phil. 646, 654-655 (1999).

[76] *Rollo*, p. 135.

disability to be total and permanent. Thus, for these reasons, the Court finds that the NLRC's ruling is tainted with grave abuse of discretion and hence, should have been corrected by the CA through *certiorari*. Accordingly, the CA's ruling must be reversed and set aside.

In fine, petitioner should be paid by respondent Orophil Shipping International Co., Inc. (his employer) the maximum disability amount of US$60,000.00 under the 2000 POEA-SEC, or its peso equivalent at the time of payment, as prayed for in his Position Paper[77] and pursuant to existing jurisprudence:

> Pursuant to the ruling in *Crystal Shipping*, the fact that the assessment was made beyond the 120-day period prescribed in the Labor Code is sufficient basis to declare that respondent suffered permanent total disability. **This condition entitles him to the maximum disability benefit of USD 60,000 under the POEA-SEC**.[78] (Emphasis and underscoring supplied)

The Court likewise grants petitioner attorney's fees of US$6,000.00, or its peso equivalent at the time of payment, since he was forced to litigate to protect his valid claim. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."[79]

On the other hand, as the LA ruled, all other claims in petitioner's Position Paper are dismissed for lack of merit.[80]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 30, 2009 and the Resolution dated

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[77] See *id*. at 91.

[78] *C.F. Sharp Crew Management, Inc. v. Obligado*, 770 Phil. 240, 249 (2015), citing Section 32 of the 2000 POEA-SEC.

[79] *United Phils. Lines, Inc. v. Sibug*, G.R. No. 201072, April 2, 2014, 720 SCRA 546, 556, citing *Fil-Pride Shipping Company, Inc. v. Balasta*, 728 Phil. 297, 314 (2014).

[80] *Rollo*, p. 152.

January 22, 2010 of the Court of Appeals in CA-G.R. SP No. 106186 are hereby **REVERSED** and **SET ASIDE**. A new one is **ENTERED** ordering respondent Orophil Shipping International Co., Inc. to pay petitioner Tomas P. Atienza the aggregate amount of US$66,000.00, or its peso equivalent at the time of payment. On the other hand, all other claims are dismissed for lack of merit.

SO ORDERED.

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

Sereno, C.J., see dissenting opinion.

DISSENTING OPINION

SERENO, *C.J.*:

To claim disability compensation, seafarers must establish that they suffered from a work-related injury or illness during the term of their contract.[1] Substantial evidence must be presented by claimants to prove a reasonable connection between their sickness and their occupation; that is, a link to show that the sickness was caused or aggravated by their working conditions.[2]

In my view, petitioner Tomas P. Atienza failed to prove a connection between his work as an Able Seaman and his alleged illness. Consequently, I am compelled to register my dissent and vote for the denial of the Petition for Review on Certiorari.[3]

FACTS

On 20 April 2004, petitioner was employed as an Able Seaman by respondent Orophil Shipping International Co., Inc. (Orophil)

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[1] *Ceriola v. Naess Shipping Philippines, Inc.,* G.R. No. 193101, 20 April 2015.

[2] *Doehle-Philman Manning Agency, Inc. v. Haro*, G.R. No. 206522, 18 April 2016.

[3] *Rollo,* pp. 13-49; Petition for Review on *Certiorari* dated 26 February 2010.

on behalf of its principal, respondent Hakuho Kisen Co., Ltd. (Hakuho).[4] He left the Philippines for deployment on 19 May 2004 to board his assigned ship, *M/V Cape Apricot*.[5]

On 19 January 2005, while the vessel was on its way to Japan, petitioner experienced severe headaches, nausea and double vision. He was brought to Kawasaki Shiritsu Kawasaki Hospital and to Higashiogishima Clinic, where he underwent various medical tests to ascertain his condition.[6] He was eventually diagnosed with right cavernous sinus inflammation, otherwise known as Tolosa Hunt Syndrome.[7]

Because of his illness, petitioner was repatriated on 4 February 2005.[8] He reported to Orophil one day after his arrival and was referred to the company-designated physician at the Manila Medical Center.[9] Petitioner was advised to continue the medication prescribed by his doctors in Japan.[10]

On 28 June 2005, Dr. Nicomedes G. Cruz issued a Certification declaring petitioner fit to resume work as a seafarer.[11]

Unsatisfied with the assessment made by Dr. Cruz, petitioner claimed that although he had continued with his medication as suggested by the company-designated physician, the symptoms persisted. Consequently, he went to another neurologist, Dr. Paul Matthew D. Pasco of the UP-PGH Medical Center for

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[4] *Id*. at 97; Contract of Employment dated 6 April 2004.

[5] *Id*. at 95; Certificate of Service dated 16 March 2006.

[6] *Id*. at 99; Medical Report dated 4 February 2005.

[7] *Id*. at 39; Referral dated 4 February 2005.

[8] *Id*. at 61-74; Decision dated 30 September 2009; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Andres B. Reyes, Jr. (now a Member of this Court) and Vicente S.E. Veloso.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 63; also *see* Fit-to-Work Certificate issued by Dr. Nicomedes G. Cruz, *rollo*, p. 135.

consultation and assessment. After examining petitioners, Dr. Pasco stated in a Medical Certificate[12] dated 15 March 2006 that (a) petitioner was suffering from Tolosa Hunt Syndrome; and (b) this condition was classified as a Grade IV disability, which rendered the latter unfit for sea duty.

On 29 March 2006, petitioner filed a Complaint[13] against respondents before the National Labor Relations Commission (NLRC). He claimed that he was entitled to a reimbursement of medical expenses, permanent disability benefits, damages and attorney's fees because of his illness.[14] In his Position Paper,[15] he asserted that his employment as an Able Seaman involved strenuous assignments, heavy work load, exposure to the elements and irregular mealtimes.[16] This situation allegedly caused him to develop Tolosa Hunt Syndrome, which rendered him unfit for sea duty.[17]

Respondents opposed the claims of petitioner and denied his allegation that he was permanently disabled.[18] They instead agreed that (a) he had already been declared fit to work by the company-designated physician;[19] and (b) his illness, if any, was not work-related.[20] Respondents also contended that he maliciously concealed the fact that he had previously suffered from Tolosa Hunt Syndrome.[21] This misrepresentation supposedly barred him from claiming benefits under the

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[12] *Id*. at 101; Certification issued by Dr. Paul Matthew D. Pasco.

[13] *Id*. at 102; Complaint.

[14] *Id.*

[15] *Id*. at 78-93; Position Paper for the Complainant.

[16] *Id*. at 81-82.

[17] *Id*. at 83.

[18] *Id*. at 103-104; Position Paper for the Respondents.

[19] *Id*. at 111-117.

[20] *Id*. at 119-123.

[21] *Id*. at 123-126.

Philippine Overseas Employment Administration (POEA) Contract.[22] Anent the claim for reimbursement of medical expenses, they alleged that they had paid for his treatment until he was finally declared fit for employment; hence, he could no longer claim compensation for these costs.[23] They also rejected his claim for damages and attorney's fees for lack of factual and legal basis.

RULING OF THE LABOR ARBITER

In a Decision[24] dated 30 April 2007, Labor Arbiter (LA) Lilia S. Savari ordered respondents to pay petitioner (a) permanent disability benefits for Grade IV disability, equivalent to USD 34,330; and (b) 10% of the award as attorney's fees.[25] All of his other claims were dismissed.[26]

LA Savari found sufficient proof that petitioner had incurred a work-related illness while on board *M/V Cape Apricot*.[27] In ruling in his favor, she explained:

> It is a fact and established by records that complainant incurred an illness while on board and during the effectivity of his contract and was repatriated for medical reasons.
>
> The contentions of the Respondents are without merit. On the defense that the illness is pre-existing and not work-related, the following jurisprudence finds application:
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>> We have already recognized that any kind of work or labor produces stress and strain normally resulting in the wear and tear of the human body. It is not required that the occupation be the only cause of the disease as it is enough that the

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[22] *Id*.

[23] *Id*. at 107.

[24] Decision dated 30 April 2007; penned by Labor Arbiter Lilia S. Savari; *rollo*, pp. 143-152.

[25] *Id*. at 152.

[26] *Id*.

[27] *Id*. at 149.

employment contributed even in a small degree to its development.[28] (Citations omitted)

Both parties appealed the LA Decision to the NLRC.

RULING OF THE NLRC

The NLRC set aside the Decision of the LA and granted the appeal of respondents.[29] It ordered the dismissal of the Complaint upon finding that petitioner had failed to establish that his illness was work-related and to explain why he was incapacitated or unfit for sea duty.[30] He sought reconsideration of the Decision, but his motion was denied.[31] The denial prompted him to file a Petition for Certiorari with the CA to question the NLRC ruling.

RULING OF THE CA

In a Decision[32] dated 30 September 2009, the CA denied the Petition for Certiorari. It concluded that the NLRC did not act with grave abuse of discretion when the latter dismissed the Complaint of petitioner for disability benefits, allowances and damages. To the appellate court, it was evident that he failed to present proof that his illness was caused or aggravated by his employment conditions.[33]

The CA likewise emphasized that petitioner had been declared fit to work by the company-designated physician. Although petitioner eventually challenged that finding through the Medical Certificates issued by his personal doctors, the appellate court noted that he had been examined by these physicians only after

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[28] *Id*. at 149-150.

[29] Decision dated 22 April 2008; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go; *id*. at 153-157.

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

[31] *Id*. at 159.

[32] *Supra* note 8 at 61-74.

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

a considerable lapse of time. Consequently, it accorded little weight to their evaluation of his condition.

Petitioner's Motion for Reconsideration of the Decision was denied by the CA on 22 January 2010. [34]

PROCEEDINGS BEFORE THIS COURT

Petitioner now comes to this Court[35] arguing that the CA erred in ruling that (a) his illness was not caused or aggravated by work;[36] (b) the medical assessment made by his personal doctors was unreliable and could not prevail over the company-designated physician's report;[37] and (c) he was not entitled to attorney's fees.[38] Petitioner also reiterates that he lost his capacity to work as a seafarer because of the illness he had sustained; and that he was only declared fit to work on 28 June 2005, or 144 days after his repatriation.[39] He claims that these circumstances entitle him to permanent disability benefits.[40]

In their Comment,[41] respondents assert that the arguments raised in the Petition involve factual issues that have already been resolved by the lower courts. They point out that both the NLRC and the CA confirmed that petitioner was not entitled to disability benefits, since he had not been able to establish that his illness was work-related.

I vote to **DENY** the Petition.

I find no reversible error on the part of the CA that would warrant the reversal of the assailed ruling. The failure of petitioner

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[34] Resolution dated 22 January 2010; *rollo*, pp. 76-77.

[35] *See* Petition for Review on *Certiorari*, *supra* note 2.

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

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

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

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

[40] *Id*. at 42.

[41] *Id.* at 168-180.

to prove that his illness was caused or at least aggravated by his work as an Able Seaman is fatal to his claims for disability benefits and attorney's fees.

Petitioner failed to present evidence that his illness was caused or at least aggravated by the conditions of his work as an Able Seaman.

At the outset, it must be emphasized that the Petition before us was filed under Rule 45 of the Rules of Court. As such, it may raise only questions of law.[42] Questions of fact or those involving the reevaluation of evidence are generally beyond the scope of our review. In S*arocam v. Interorient Maritime Ent., Inc.,*[43] we explained our mandate when it comes to labor disputes elevated to us under Rule 45:

> It must be stressed that in a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised. The Court is not a trier of facts and is not to reassess the credibility and probative weight of the evidence of the parties and the findings and conclusions of the Labor Arbiter and the NLRC as affirmed by the appellate court. Moreover, the factual findings of the Labor Arbiter and the NLRC are accorded respect and finality when supported by substantial evidence, which means such evidence as that which a reasonable mind might accept as adequate to support a conclusion. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[44]

In this case, the principal issue raised by petitioner pertains to the existence of a reasonable connection between his alleged illness, Tolosa Hunt Syndrome, and his work conditions while on board *M/V Cape Apricot.* As explained in *Montoya v. Transmed Manila Corp.,*[45] this issue is, at its core, a question of fact:

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[42] Rules of Court, Rule 45, Section 1.

[43] 526 Phil. 448 (2006).

[44] *Id*. at 454.

[45] 613 Phil. 696 (2009).

2. As framed by Montoya, the petition before us involves mixed questions of fact and law, with the core issue being one of fact. This issue — from which the other issues spring — is whether the tuberculosis afflicting the petitioner is work-related. Stated otherwise, can this illness be reasonably linked to, or reasonably be said to be caused by, Montoya's work as a seaman, his working environment, or incidents at work; or, is it an illness that Montoya contracted outside of his work, or because of genetic predisposition, or from another illness contracted out of work but which led to the tuberculosis? **As a question of fact, this question of linkage or causation is an issue we cannot touch under Rule 45, except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating this factual issue.**

Whether Montoya is entitled to disability [compensation] or to attorney's fees are issues that require the consideration and application of provisions of law and are essentially questions of law. In the context of this case, however, these are legal questions that spring from and cannot be resolved without the definitive resolution of the factual issue mentioned above. [46] (Emphasis supplied and italics omitted)

On this particular question of fact, the tribunals in this case reached different conclusions.

LA Savari did not expressly resolve the question of whether or not the illness was related to the activities of petitioner while on board the vessel.[47] Nevertheless, she reached a conclusion in his favor based on her finding that he had "incurred an illness while on board and during the effectivity of his contract and was repatriated for medical reasons."[48]

On appeal, the NLRC reviewed the record and reached the opposite result.[49] It noted the absence of (a) substantial evidence showing at least a reasonable connection between the illness of petitioner and his work as an Able Seaman; and (b) a credible

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[46] *Id*. at 707-708.

[47] Decision dated 30 April 2007, *supra* note 24.

[48] *Id*. at 149.

[49] Decision dated 22 April 2008, *supra* note 29.

reason why he was considered unfit for sea duty. The NLRC declared:

In the present case, **We find no credible evidence presented by the complainant to show the existence, at least, a reasonable connection between his illness and his work as an Able Seaman. While his employment as a sea man entails the exertion of some physical and mental calisthenics, complainant has omitted to show how or in what manner has his work (sic) contributed to the development of Tolosa Hunt Syndrome. Apparently, complainant relies solely on his bare allegations which, unfortunately, cannot be given the same evidentiary weight of evidence.**

It is also noted that the record is bereft of any showing of how or in what manner is the complainant incapacitated or unfit for sea duty. While complainant may have been certified by Dr. Paul Matthew D. Pasco of the UP-PGH Medical Center to be unfit for sea duty, there is no accompanying explanation or memorandum which enlightens Us of the conditions which makes complainant unfit for sea duty. All that there is, is a one line phrase that declares complainant unfit for sea duty.[50] (Emphasis supplied)

In the assailed Decision and Resolution, the CA also observed the dearth of evidence that the illness of petitioner was reasonably connected with his work. This scarcity of proof prompted the appellate court to affirm the findings of the NLRC:

Except for his allegation, petitioner did not present proof that his illness was caused or aggravated by his employment. The underlying circumstances of the case show that petitioner has first incurred his illness way back in 1996 and it has not recurred during his previous contracts with private respondents. It was only during his last contract that his illness has manifested or has recurred.

The evidence available before the Labor Arbiter and public respondent are totally bare of essential facts on how petitioner contracted or developed such disease for the second time and on how and why his working conditions increased the risk of contracting the same. The Court found no substantiation that the progression of petitioner's ailment was brought about largely

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

by the conditions of his job as an able seaman. His medical history and/or records prior to his deployment as able seaman with M/V Cape Apricot were neither presented nor alluded to in order to demonstrate that the working conditions on board said vessel increased the risk of contracting the same. Whilst the Court agrees with the petitioner that the exact cause of Tolosa Hunt Syndrome is not known, such fact does not abandon the primordial duty of petitioner to prove the reasonable connection between his illness and his employment. Having failed to do so, the element that the injury or illness must be work-related cannot exist in this case. Hence, the fact that petitioner's illness recurred during his contract with the private respondents cannot alone entitle him for (sic) his claims.[51] (Emphases supplied)

In my opinion, there is no reason to deviate from the factual determinations of the CA and the NLRC.

As earlier explained, whether the illness suffered by the seafarer is related to his work on board the vessel is a question of fact. The findings of the NLRC on this point, as affirmed by the CA, are therefore beyond the scope of our review in a Rule 45 proceeding. In general, we only review its findings when these are relevant to our determination of whether or not the CA was correct in finding no grave abuse of discretion on the part of the NLRC.

To emphasize, both the CA and the NLRC found no substantial evidence to prove that the illness suffered by petitioner had a reasonable connection with his work as an Able Seaman. The LA, on the other hand, did not have any specific finding on the issue of work-relatedness. Given these premises, I find it proper to accord great weight and deference to the factual conclusions of the CA and the NLRC; in particular, their observation that no sufficient evidence was presented by petitioner.

Considering the failure of petitioner to prove that his illness was work-related, his disability is not compensable.

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

Pursuant to Section 20(B) of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Oceangoing Vessels[52] (Standard Terms and Conditions), a seafarer is entitled to disability benefits if he suffers "work-related injury or illness during the term of his contract." In turn, a "work-related illness" is defined in the Standard Terms and Conditions 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."[53]

Based on these two provisions, seafarers are only entitled to disability compensation once they prove that (a) they suffered from an injury or illness during the term of their employment contract; (b) their injury or illness is considered "work-related" under the Standard Terms and Conditions; i.e., their illness is consistent with the conditions in Section 32-A. When applicable, other procedural requirements must also be complied with.

Jurisprudence has expanded the definition of "work-related illness" to include other illnesses that are not listed, but are proven to have been caused or at least aggravated by the particular working conditions involved.[54] Accordingly, a claimant suffering from an illness that is not included in the enumeration in Section 32-A may be granted disability benefits for as long as the conditions in that provision are met. While specific conditions are set forth for certain enumerated illnesses,[55] four general requirements must be met for all other illnesses in order for disability benefits to be awarded to the claimant. Section 32-A states:

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[52] Annex A, POEA Memorandum Circular No. 09, Series of 2000. This circular was in effect at the time of petitioner's employment with Orophil Shipping International Co.

[53] *Id.* Definition of Terms.

[54] In *Licayan v. Seacrest Maritime Management, Inc.,* G.R. No. 213679, 25 November 2015, the Court stated:

It must be borne in mind, however, that the list of illness/diseases in Section 32-A does not exclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties.

[55] See Section 32-A (1) to (21).

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The seafarer's work must involve the risks described herein;

(2) The disease was contracted as a result of the seafarer's exposure to the described risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4) There was no notorious negligence on the part of the seafarer.

At its core, the four general requisites in Section 32-A boil down to the requirement of proof of a reasonable connection between the injury or illness suffered by the seafarer and his activities while on board; i.e., proof of the risks presented by his duties and his exposure to these risks.[56] As claimants before the courts, seafarers are obligated to prove these conditions by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Here, the CA and the NLRC both concluded that petitioner failed to present substantial evidence that his illness (Tolosa Hunt Syndrome) was compensable under Section 32-A. My own examination of the records reveals that he only presented general allegations about his "strenuous job assignments," "heavy workload," and "exposure to cold, heat and other elements of nature." However, he failed to make an effort to explain how his working conditions as an Able Seaman actually caused or aggravated his illness. The nature and causes of the disease were never established; in fact, the only evidence on record describing it is a Medical Certificate[57]attesting to the fact that the exact cause of Tolosa Hunt Syndrome is unknown, and that its symptoms recur without distinct pattern. The physician thus concluded that the "illness is of inflammatory nature and considered not work-related."[58]

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[56] *Phil. Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, 16 September 2015.

[57] *See* Medical Certificate dated 16 February 2006, *rollo*, p. 136.

[58] *Id*.

More important, the general statements made by petitioner remain uncorroborated by evidence. In fact, the Medical Certificate[59] issued by his own physician, Dr. Pasco, does not state that the sickness suffered by the former was caused or aggravated by, or was even merely related to, his work. The doctor only provided his diagnosis of petitioner's illness and a disability rating. For obvious reasons, the Medical Certificate cannot be considered evidence that the illness was contracted as a result of the exposure of the seafarer to certain risks in the course of his work.

While only probability and not absolute and direct connection is required, it must be emphasized that "[p]robability of work-connection must at least be anchored on credible information and not on self-serving allegations."[60] Here, petitioner has failed to provide the required credible information upon which the Court could have based its assessment of the probability of his claim. He alleges that he underwent physical exertion while on duty, and that he was on call 24 hours a day to keep track of weather conditions. His allegations are insufficient, since the records are bereft of any proof that these risks caused or aggravated his specific illness.

I also note that petitioner has not denied the allegation that he suffered from the same illness in 1996,[61] prior to his employment as a seafarer on board the vessels operated by respondents in 1999.[62] There is likewise medical evidence that Tolosa Hunt Syndrome recurs randomly or without any distinct pattern.[63] This fact further militates against his claim that his disease had a reasonable connection with his work.

Given the failure of petitioner to discharge his evidentiary burden under Section 32-A, it is evident that his disability cannot

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[59] *Rollo*, p. 101.

[60] See *Licayan v. Seacrest Maritime Management, Inc., supra* note 56.

[61] Referral dated 4 February 2005, *supra* note 7.

[62] *See* Certificate of Service dated 16 March 2006, *rollo,* p. 95.

[63] *See* Medical Certificate dated 16 February, *supra* note 57.

be considered compensable. The NLRC therefore acted in accordance with law and jurisprudence when it denied his claim for disability benefits. In so ruling, it cannot be said to have acted with grave abuse of discretion. Consequently, it was only proper for the CA to dismiss the Petition for Certiorari.

My conclusion that petitioner has failed to prove that his illness is compensable renders it unnecessary to resolve his assertion regarding the failure of the company physician to issue a disability rating within 120 days from the date of his repatriation. On this point, suffice it to state that absent any finding of work-relatedness, the issue concerning the degree of disability does not even arise.[64]

The CA correctly declared that petitioner was not entitled to attorney's fees.

In seafarers' claims for disability benefits, this Court has awarded attorney's fees only in cases where claimants were forced to litigate and incur expenses to protect their rights and interests.[65] In light of my conclusion that petitioner has no right to be paid disability benefits, I find no basis to grant his claim for attorney's fees.

WHEREFORE, I vote to **DENY** the Petition for Review and **AFFIRM** the Court of Appeals Decision dated 30 September 2009 and Resolution dated 22 January 2010.

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[64] For a discussion on how the Court first resolved whether an illness was work-related before determining the degree of disability involved, see *Kestrel Shipping Co., Inc. v. Munar,* 702 Phil. 717 (2013); *Magsaysay Maritime Corp. v. Mazaredo,* G.R. No. 201359, 23 September 2015; *Ico v. STI, Inc.,* 738 Phil. 641 (2014); and *Magsaysay Maritime Corp. v. National Labor Relations Commission,* 711 Phil. 614 (2013).

[65] *C.F. Sharp Crew Management, Inc. v. Perez*, G.R. No. 194865, 26 January 2015, 748 SCRA 232; *Fil-Pride Shipping Co., Inc. v. Balasta*, G.R. No. 193047, 3 March 2014, 717 SCRA 624.

FIRST DIVISION

[G.R. No. 196564. August 7, 2017]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **ALBERT M. VELASCO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHERE THE ELEMENTS OF *LITIS PENDENTIA* ARE NOT PRESENT OR WHERE A FINAL JUDGMENT IN ONE CASE WILL NOT AMOUNT TO *RES JUDICATA* IN THE OTHER, THERE IS NO FORUM SHOPPING; CASE AT BAR.—** According to jurisprudence, forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or special civil action of *certiorari,* or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court might look with favor upon the party. Where the elements of *litis pendentia* are not present or where a final judgment in one case will not amount to *res judicata* in the other, there is no forum shopping. Based on the facts on record, we see no reason to disturb the Court of Appeals' ruling that respondent Velasco was not guilty of forum shopping as succinctly explained in its November 30, 2010 Decision: In the case at bar, although petitioner filed a petition for prohibition before the RTC and, thereafter, filed substantially the same petition before this Court, the fact remains that before filing the instant petition, he first filed a **notice of withdrawal** of his Motion for Reconsideration with the RTC which was granted. It is also worthy to note that while both petitions filed by petitioner before the RTC and this Court **assail his reassignment Order to Zamboanga,** the petition before US differs because petitioner is, **in addition, assailing the formal charges against him as well as his severance from employment.** Hence, petitioner could not be said to have resorted to two different courts for the purpose of obtaining the same relief.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS; CASE AT BAR.—** The exceptions to the doctrine of exhaustion of administrative remedies, according to *Province of Zamboanga del Norte v. Court of Appeals,* are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

3. **ID.; ID.; ID.; ID.; ID.; IMMEDIATE RECOURSE TO THE COURTS PROPER WHERE THE ASSAILED OFFICIAL ACTS ARE PATENTLY ILLEGAL AND IRREGULARITIES SO BLATANT; CASE AT BAR.—**In the present case, the Court of Appeals found, after due proceedings, that respondent duly proved his factual allegations while petitioner failed to refute the evidence presented against it. There is no cause for the dissent to assert that petitioner was denied due process for it had every opportunity before the Court of Appeals to submit its countervailing evidence but petitioner chose to present purely technical objections to respondent's petition and pinned its defense on the presumptions of good faith and of regularity in the performance of official duty which are both rebuttable by proof. This Court cannot accept the proposition that a mere allegation of good faith by the issuers of the assailed official acts **automatically** takes the disputed action out of its being patently illegal and thereby necessitates

the application of the doctrine of exhaustion of administrative remedies. Bad faith and irregularities can be evident from the assailed acts themselves, in which case the courts should not simply turn a blind eye on the ground that it is the administrative agencies which must take the first look. It is precisely in cases when the bad faith and irregularity are so blatant that immediate recourse to the courts is necessary in order to nullify a capricious and whimsical exercise of authority. This Court finds no reversible error on the part of the Court of Appeals in making a finding of illegality and bad faith in the GSIS's actions against Velasco based on **the undisputed facts** on record.

4. **ID.; ID.; ID.; ID.; ID.; ID.; DROPPING FROM THE ROLLS OF EMPLOYEES DUE TO ABSENCE WITHOUT AUTHORIZED LEAVE; NOT WARRANTED IN CASE AT BAR.—** The Court cannot fault respondent for claiming that his separation from the service was without valid ground and done without due process. Furthermore, this Court fully agrees with the Court of Appeals that Velasco's dropping from the rolls was unwarranted when he did not abandon his post. Petitioner GSIS did not dispute the fact that Velasco continued to report at the Head Office while he was seeking clarification from the GSIS regarding its conflicting memoranda and while various contentious issues between the parties were pending before the courts and the PSL-MC. The records bear out that correspondence and memoranda were personally served on Velasco by the GSIS, including the notice of his dropping from the rolls, since he could be readily found at his work station in the Head Office. On the other hand, the records are bereft of proof that the GSIS in good faith gave notice to Velasco that he would be considered absent without authorized leave for his failure to report for duty in the Mindanao field offices. Significantly, the GSIS itself narrated in the petition that Velasco was able to secure from the RTC a 72-hour TRO on July 20, 2004 that was extended for another 20 days, giving him additional justification to defer taking up his Mindanao posting while his standing disputes with management were pending litigation.

SERENO, *C.J., dissenting opinion*:

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; PERSONNEL ACTIONS**

ORDERING REASSIGNMENT AND DROPPING FROM THE GSIS ROLL OF EMPLOYEES; PROPER REMEDY IS TO APPEAL TO THE CIVIL SERVICE COMMISSION, NOT TO THE COURT OF APPEALS ON A RULE 65 PETITION; CASE AT BAR.— Notably, when respondent was dropped from the GSIS roll of employees for being AWOL, he proceeded to the CA on a Rule 65 petition claiming that his dropping, as well as the reassignment order and formal charges, were null and void. His thesis was that the GSIS officials, under the leadership of then GSIS President and General Manager Winston Garcia, prompted by respondent's having been elected president of a union, resorted to a scheme to pave the way for his dismissal from the GSIS, starting with the re-assignment order and ending in his being dropped from the GSIS roll of employees. It can be seen from this theory that respondent was actually making a case for constructive dismissal, a situation in which an employee quits work because of the agency head's unreasonable, humiliating, or demeaning actuations that render continued work impossible. Considering that his cause of action is constructive dismissal, respondent should have initially filed an appeal with the Civil Service Commission (CSC). Section 71 of the Uniform Rules on Administrative Cases in the Civil Service (the Uniform Rules) specifically provides that appeal is the proper remedy in cases involving personnel actions, such as reassignment and dropping an employee from the rolls for being AWOL. Section 4 of the Uniform Rules also allows the CSC to review decisions and actions of the offices and agencies falling under its jurisdiction. Hence, after receiving notice that he was dropped from the GSIS roll of employees, respondent should have initially filed an appeal with the CSC as required by the doctrine of exhaustion of administrative remedies. In contravention of the doctrine, respondent proceeded immediately and directly to the CA by way of certiorari under Rule 65.

2. **ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS; PATENT ILLEGALITY OF THE ASSAILED ADMINISTRATIVE ACTION, NOT ESTABLISHED IN CASE AT BAR.—** This doctrine holds that when the law provides for a remedy against a certain administrative action, the litigant can seek relief from the courts only after exhaustion of the remedy; otherwise, when there is a failure to exhaust administrative remedies, a complaint is

dismissible for lack of cause of action. x x x True, the rule is not absolute. One of the recognized exceptions to the doctrine is when the administrative action is patently illegal. In this case, the CA justified respondent's failure to exhaust administrative remedies on the ground of the patent illegality of the assailed GSIS actions. For reasons to be discussed below, I find no patent illegality in the assailed acts of petitioner that would justify a relaxation of the doctrine of exhaustion of administrative remedies. x x x [T]he test is whether there exists a factual issue to be resolved in order to arrive at a conclusion of illegality. In other words, the illegality must be patent on the face of the assailed act. In the case at bench, the CA failed to reckon with the fact that there was a factual matter requiring resolution to get to the conclusion that the assailed acts of petitioner constituted constructive dismissal. By its nature, constructive dismissal involves an imputation of bad faith on the part of the administrative officer performing the assailed act. The default rule, however, is the presumption of good faith. Bad faith is never presumed; it is a conclusion to be drawn from facts. In this light, determination is a question of fact and is evidentiary. Indeed, to counter the theory of constructive dismissal, petitioner claimed that the assailed reassignment order was a good-faith exercise of management prerogative. It further said that it was merely performing its duty when it instituted formal charges against respondent and subsequently dropped him from the GSIS roll of employees for being AWOL. Consequently, contrary to the ruling of the CA, there is a factual issue that must be resolved in order to reach the conclusion that the assailed acts were illegal.

3. **ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF REGULARITY OF OFFICIAL ACTS NEGATE THE NOTION OF PATENT ILLEGALITY UNLESS REBUTTED BY AFFIRMATIVE EVIDENCE OF IRREGULARITY OR FAILURE TO PERFORM A DUTY.—** Petitioner's acts are clothed with presumptive regularity. Under Section 3(m), Rule 131 of the Rules of Court, it is disputably presumed that an official duty has been regularly performed, absent any contradiction or other evidence to the contrary. We have held that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty." In the case at bench, petitioner's acts of reassigning respondent, filing the formal charges against him, and dropping him from the

roll of employees were all done in the performance of official duties. With respect to the assailed formal charges, these were instituted by PGM Garcia, who, as president and general manager, was duly authorized to do so under Section 45, Republic Act No. 8291, otherwise known as the GSIS Act of 1997. This legal provision expressly grants the president and general manager of GSIS powers of administration, among others, and specifically vests the latter with authority and responsibility to remove, suspend or otherwise discipline GSIS personnel. Moreover, Section 15 of the Uniform Rules grants to the disciplining authority – who, in this case, is the GSIS president and general manager, the power to issue a formal charge. As for GSIS Human Resources Vice-President Campana who dropped respondent from the rolls on the ground of AWOL, and Chief Legal Counsel and SVP Bautista who issued the assailed Reassignment Order, they derive their authority from Section 44 of the GSIS Act of 1997. Hence, considering that these acts were done in the performance of official duties, the presumption of regularity attaches to them, thereby defeating the claim of patent illegality.

4. **ID.; ID.; ID.; ID.; ID.; REASSIGNMENT IS A RECOGNIZED MANAGEMENT PREROGATIVE PROVIDED IT DOES NOT INVOLVE A REDUCTION IN RANK, STATUS AND SALARY AS IN CASE AT BAR.—** Section 26(7), Book V, Title I, Subtitle A of the 1987 Revised Administrative Code recognizes reassignment as a management prerogative, provided it does not involve a reduction in rank, status and salary. In this case, OSVP Office Order No. 04-04 reassigning respondent to Zamboanga appears on its face to be a valid exercise of a management prerogative. x x x There is nothing in the Order to indicate that respondent suffered a diminution in rank, status and salary. On the other hand, the Order stated that respondent was "allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations." Further, the Order specifically stated that the reassignment was temporary. It even contained a definite duration of reassignment – 90 days. Hence, on its face, the Order complies with the requisites of a valid re-assignment order and may not be considered a floating assignment resulting in a diminution in rank.

5. **ID.; ID.; ID.; ID.; RIGHT OF AN EMPLOYEE TO DUE PROCESS, NOT VIOLATED IN CASE AT BAR.—** The

ponencia also relies on *Batangas State University v. Bonifacio(BSU).* In that case, a teacher was dropped from the rolls by the petitioner state university for failure to immediately report to his new detail at the office of the university president; instead, he continued to fulfill his duties as teacher and coach of the basketball team. The Court held that the right of the employee to due process was denied when he was not given the opportunity to explain his absences and was thereafter peremptorily dropped from the rolls. x x x It must be understood that in *BSU,* the Court came to such conclusion because there was a finding of bad faith on the part of the school and its officials: x x x In this case, there was no intent at all on the part of respondent Velasco to immediately report to the Mindanao offices. It must be stressed that, as previously discussed, he even wrote a letter that conveyed his resistance to the reassignment order. On the other hand, the GSIS had in fact issued a Memorandum on 9 July 2004 directing respondent to explain his refusal to comply with the reassignment order, which shows good faith on the part of the GSIS. Also, in *BSU,* the Court arrived at the conclusion of bad faith on the part of the school and the latter's officials only after the presentation of evidence by both parties before the CSC. In this case, there was no presentation of evidence at all before the CSC, precisely because Velasco skipped that agency and directly resorted to judicial remedies.

6. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WRIT OF *CERTIORARI* MAY BE ISSUED ONLY IF THERE IS GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, NOT ESTABLISHED IN CASE AT BAR.—** A special civil action for *certiorari* requires, among other things, that there be no appeal or any plain, speedy and adequate remedy in the ordinary course of law. As previously discussed, respondent had the remedy of appeal to the CSC from his dismissal. *Certiorari* was therefore not available to him. Undoubtedly, his bare allegation that an appeal to the CSC was not adequate did not justify an immediate resort to *certiorari*. A writ of *certiorari* may be issued only if there is grave abuse of discretion tantamount to lack or excess of jurisdiction. In this case, not only was an appeal available to respondent as a remedy from the dropping of his name from the GSIS roll of employees, he

also failed to sufficiently establish grave abuse of discretion on the part of petitioner that would justify his immediate resort to *certiorari* in lieu of an appeal.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
Barbers Molina & Molina for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

A government employer must exercise its management prerogatives and its authority to discipline employees in good faith and in accordance with the principles of fair play as expected of all employers.

Shortly after having been perpetually restrained by the Court of Appeals[1] from hearing and investigating the pending administrative cases against union president Albert M. Velasco (Velasco) and his colleague Mario I. Molina (Molina), then Government Service Insurance System (GSIS) President and General Manager Winston F. Garcia (PGM Garcia) dropped respondent Velasco from the roll of employees anyway following a new set of formal charges: the first charging him for **Gross Discourtesy** for doing his duty as president of the employee's union of asserting a contractual right under the Collective Negotiation Agreement (CNA), and second for **Insubordination** for seeking clarification with regard to two conflicting memoranda: one declaring him ineligible to remain as GSIS Attorney during his term as union president and another reassigning him as GSIS Attorney to the GSIS Zamboanga, Iligan and Cotabato field offices (where he clearly cannot perform his duties as union president). **Velasco was dropped from the roll of employees neither for the charge of Gross Discourtesy**

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[1] Later affirmed by this Court with finality; *Garcia v. Molina,* 642 Phil. 6 (2010).

nor the charge of Insubordination but for a different basis altogether, *i.e.,* being supposedly absent without approved leave for more than thirty (30) days despite his reporting for work in the Head Office instead of the Zamboanga, Iligan and Cotabato field offices.

In this Petition for Review on *Certiorari,* petitioner GSIS assails the Court of Appeals Decision[2] in CA-G.R. SP No. 86365 dated November 30, 2010. The Court of Appeals, acting on a Petition for *Certiorari* and Prohibition (with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction) filed by herein respondent Velasco against the officers of petitioner GSIS, declared the following void:

1) GSIS OSVP Office Order No. 04-04 dated July 1, 2004 reassigning Velasco from the head office of the GSIS in Pasay City to its field offices in Zamboanga, Iligan and Cotabato;

2) The Formal Charge docketed as Adm. Case No. 04-010 against Velasco for Insubordination;

3) The Formal Charge docketed as Adm. Case No. 04-009 against Velasco for Gross Discourtesy in the Course of Official Duty; and

4) The dropping of Velasco from the GSIS roll of employees.

The Court of Appeals also directed the GSIS to effect the reinstatement of Velasco to his former position or, if it is no longer feasible, to another position of equivalent rank and compensation. The GSIS was likewise ordered to pay Velasco his back salaries pertaining to the period during which he was unlawfully dropped from the roll of employees.

FACTUAL AND PROCEDURAL ANTECEDENTS

(1) Our Ruling in G.R. Nos. 157383 and 174137 mentioned by the Court of Appeals in its Decision

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[2] *Rollo,* pp. 34-60; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Manuel M. Barrios concurring.

PGM Garcia filed administrative charges against Velasco and Molina, who both held the position of Attorney V in the GSIS. Velasco and Molina allegedly committed grave misconduct for helping disgruntled employees to conduct concerted protest actions against PGM Garcia and the GSIS management. PGM Garcia ordered the immediate preventive suspension of Velasco and Molina for a period of ninety (90) days without pay. A committee was constituted to investigate the charges against Velasco and Molina.

Velasco and Molina filed with the Civil Service Commission (CSC) a "Petition to Transfer Investigation to [the] Commission, with an Urgent Motion to Lift Preventive Suspension Order."

The CSC failed to resolve Velasco and Molina's Urgent Motion, leading them to file with the Court of Appeals on October 10, 2002 a Petition for *Certiorari* and Prohibition with prayer for a Temporary Restraining Order (TRO). The Petition, docketed as **CA-G.R. SP No. 73170,** sought to set aside the order of PGM Garcia directing them to submit to the jurisdiction of the committee created to investigate the administrative cases filed against them.

On **January 2, 2003,** the Court of Appeals rendered its Decision granting Velasco and Molina's petition. The dispositive portion of the Decision reads:

> ACCORDINGLY, the petition is hereby GRANTED. Public respondents are hereby PERPETUALLY RESTRAINED from hearing and investigating the administrative case against petitioners, without prejudice to pursuing the same with the Civil Service Commission or any other agency of government as may be allowed x x x by law.[3]

PGM Garcia filed with this Court a Petition for Review on *Certiorari* assailing the Decision of the Court of Appeals. The Petition was docketed as G.R. No. 157383.

Finally, acting on Velasco and Molina's Petition to Transfer Investigation to the Commission, the CSC issued its Resolution

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[3] *Garcia v. Molina, supra* note 1 at 14.

No. 03-0278 on February 27, 2003, the dispositive portion of which states:

WHEREFORE, the Commission hereby rules that:

1. The Urgent Petition to Lift the Order of Preventive Suspension is hereby DENIED for having become moot and academic.

2. The Petition to Transfer Investigation to the Commission is likewise DENIED for lack of merit. Accordingly, GSIS President and General Manager Winston F. Garcia is directed to continue the conduct of the formal investigation of the charges against respondents-petitioners Albert Velasco and Mario I. Molina.[4]

The CSC ruled that since the period of the preventive suspension has lapsed, the issue has become moot. The Petition to Transfer Investigation to the Commission was denied on the ground that the fact that the GSIS acted as complainant, prosecutor, and judge in the administrative cases does not necessarily mean that it will not be impartial.

Velasco and Molina assailed the CSC Resolution in a Petition for Review with the Court of Appeals, which was docketed as **CA-G.R. SP No. 75973**. On **December 7, 2005,** the Court of Appeals rendered its Decision reversing the CSC Resolution, and holding that the lack of the requisite preliminary investigation rendered the formal charges against Velasco and Molina void. The Court of Appeals likewise ruled that the propriety of the preventive suspension has *not* become moot. Since the preventive suspension emanated from void formal charges, Velasco and Molina are entitled to back salaries. The dispositive portion of the Decision reads:

PREMISES CONSIDERED, the petition is hereby **GRANTED.** The formal charges filed by the President and General Manager of the GSIS against petitioners, and necessarily, the order of preventive suspension emanating therefrom, are declared **NULL AND VOID.** The GSIS is hereby directed to pay petitioners' back salaries

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[4] *Id.* at 15.

pertaining to the period during which they were unlawfully suspended. x x x.[5]

PGM Garcia filed a Petition for *Certiorari* with this Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 75973. The petition was docketed as G.R. No. 174137, which was consolidated with G.R. No. 157383.

This Court rendered its Decision on the consolidated petitions on August 10, 2010. The dispositive portion of this Court's Decision reads:

> WHEREFORE, premises considered, the petition in G.R. No. 157383 is DENIED while the petition in G.R. No. 174137 is DISMISSED, for lack of merit.[6]

This Court held that although the President and General Manager of the GSIS is vested with authority and responsibility to remove, suspend or otherwise discipline GSIS personnel for cause, such power is not without limitations and must be exercised in accordance with Civil Service Rules, which PGM Garcia neglected to do. This Court explained:

> Indeed, the CSC Rules does not specifically provide that a formal charge without the requisite preliminary investigation is null and void. However, as clearly outlined above, upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three days from receipt. The use of the word "shall" quite obviously indicates that it is mandatory for the disciplining authority to conduct a preliminary investigation or at least respondent should be given the opportunity to comment and explain his side. As can be gleaned from the procedure set forth above, this is done prior to the issuance of the formal charge and the comment required therein is different from the answer that may later be filed by respondents. Contrary to petitioner's claim, no exception is provided for in the CSC Rules. Not even an indictment *in flagrante* as claimed by petitioner.

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[5] *Id.* at 16.

[6] *Id.* at 24.

This is true even if the complainant is the disciplining authority himself, as in the present case. To comply with such requirement, he could have issued a memorandum requiring respondents to explain why no disciplinary action should be taken against them instead of immediately issuing formal charges. With respondents' comments, petitioner would have properly evaluated both sides of the controversy before making a conclusion that there was a *prima facie* case against respondents, leading to the issuance of the questioned formal charges. It is noteworthy that the very acts subject of the administrative cases stemmed from an event that took place the day before the formal charges were issued. It appears, therefore, that the formal charges were issued after the sole determination by the petitioner as the disciplining authority that there was a *prima facie* case against respondents.

To condone this would give the disciplining authority an unrestricted power to judge by himself the nature of the act complained of as well as the gravity of the charges. We, therefore, conclude that respondents were denied due process of law. Not even the fact that the charges against them are serious and evidence of their guilt is — in the opinion of their superior — strong can compensate for the procedural shortcut undertaken by petitioner which is evident in the record of this case. The filing by petitioner of formal charges against the respondents without complying with the mandated preliminary investigation or at least give the respondents the opportunity to comment **violated the latter's right to due process. Hence, the formal charges are void *ab initio* and may be assailed directly or indirectly at anytime.**[7] (Emphasis supplied; citations omitted.)

On PGM Garcia's argument that Velasco and Molina waived their right to a preliminary investigation for failure to raise the matter before the GSIS, this Court ruled that a decision held without due process is void *ab initio* and may be attacked anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked. Moreover, Velasco and Molina questioned the validity of their preventive suspension in the CSC on the ground of lack of preliminary investigation.

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

This Court concluded that since Velasco and Molina were preventively suspended in the same formal charges that were declared void, **their preventive suspension is likewise invalid.**

(2) Two Conflicting Memoranda

In the meantime, **after the January 2, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 73170** perpetually restraining PGM Garcia and the GSIS from hearing and investigating the administrative cases against Velasco and Molina, **but before said restraining order was affirmed by this Court on August 10, 2010,** the GSIS issued two conflicting Memoranda to Velasco:

(a) On June 29, 2004, GSIS Senior Vice-President-Administration Group Concepcion L. Madarang issued a Memorandum informing Velasco (who was elected President of the Kapisanan ng mga Manggagawa sa GSIS or KMG in May 2004) that **he could no longer hold the position of GSIS Attorney because of conflict of interest and he should either seek a transfer to another position or go on extended leave of absence for the duration of his term as union president;** and

(b) A mere two days later or on July 1, 2004, the GSIS Chief Legal Counsel issued OSVP Office Order No. 04-04, which provided:

Upon request by the SVP, FOG, as required by the exigencies of the service, and in view of the technical supervision and control of the Chief Legal Counsel over Field Operations Attorneys and Lawyers of the System, ATTY. ALBERT M. VELASCO, considering his legal expertise on the System's operations, is temporarily **assigned for a period of ninety (90) days to the Zamboanga, Iligan and Cotabato FODs to augment the legal officers in the said FODs** due to the surmounting number of legal cases therein and shall conduct legal due diligence of cases pertaining to the System's operating concerns specifically involving housing loan defaults, collection of arrearages, foreclosure proceedings, and other matters requiring legal attention.

He shall submit written reports, with proper recommendation/s, if needed, to the Field Office Manager concerned to whom he shall report directly and who shall sign his Daily Attendance Record (DAR).

Atty. Velasco is allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations.

This Order shall take effect immediately and shall remain effective until further notice.[8] (Emphases supplied.)

This second Memorandum did not state that the transfer was because of conflict of interest. On the contrary, it specified Velasco's legal expertise as the reason for the transfer. The Memorandum likewise stated that "(t)his Order shall take effect immediately and shall remain effective until further notice" which contradicts the statement in the very same memorandum that the reassignment is for a fixed period of ninety (90) days.[9] In other words, the duration of the reassignment cannot be said to be definite.

Velasco wrote the GSIS informing the latter of the unmistakable conflict between the two memoranda he received: unless the Memorandum disqualifying him as GSIS Legal Counsel is withdrawn, he cannot assume the Mindanao posting as GSIS Legal Counsel.

In response to Velasco's request for clarification, Lutgardo B. Barbo[10] issued a Memorandum[11] to him on July 9, 2004 stating that "Your reply appears to stonewall or countermand [OSVP Office Order No. 04-04]. It may also show in no uncertain terms your defiance, refusal and deliberate failure to comply with an otherwise lawful order." The Memorandum required Velasco to explain why he should not be administratively dealt with for Insubordination, Misconduct, Conduct Prejudicial to the Best Interest of the Service and/or Refusal to Perform Official

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[8] CA *rollo,* p. 24.

[9] *Id*.

[10] Manager, Investigation Unit, Office of the President and General Manager.

[11] *Rollo,* p. 67.

Duty. Without clarifying the commencement and the term of Velasco's reassignment other than the vague statement in the July 1, 2004 Order that it "shall take effect immediately and shall remain effective until further notice," the GSIS immediately treated the letter as a defiance warranting an administrative charge.

Notably, the reassignment order was issued despite the fact that the GSIS chief legal counsel had earlier issued a Memorandum[12] dated June 7, 2004 urgently requesting PGM Garcia for the appointment of litigation lawyers in the Legal Services Group (LSG) since three lawyers at the Head Office had either resigned or were promoted. To quote from said Memorandum which was issued less than a month prior to Velasco's reassignment:

We respectfully refer to your kind attention the above-captioned request for the appointment of litigation lawyers for the Legal Services Group (LSG). As you are of course aware, **the Litigation Department of the LSG had been operating shorthanded** since the resignation of two (2) lawyers handling a substantial amount of litigation work. These are Attys. Michael Miranda, of the Litigation Department, and Gabriel Silvera, of the Corporate Business Department, who resigned at different times last year.

Since the resignation of the said lawyers, the remaining lawyers of [the] Litigation Department have had to bear all the work of these resigned lawyers on top of their already overburdened workload. Please allow me to say sir that **the remaining litigation lawyers superbly performed their work, despite their being overworked,** without rancor or reproach.

However, with the impending transfer of one of the lawyers of the Litigation Department, Atty. Douglas Marigomen, to the Tagbilaran Branch where he has been appointed as Branch Manager, the Litigation Department will be **unable to function to the point of being crippled. The remaining litigation lawyers will, to be sure, be unable to cope with the workload of Atty. Marigomen, which will be apportioned among them.** Moreover, there has been an influx of

[12] CA *rollo,* pp. 44-45.

new cases filed against GSIS which require immediate and urgent attention.

In view of the foregoing, **we respectfully entreat you to accede to our request for the immediate appointment of two (2) lawyers for the Litigation Department** to fill up the slot or item of Atty. Miranda and that to be vacated by Atty. Marigomen. We sincerely hope for your kind attention on this matter. (Emphases supplied.)

Even further highlighting the fact that Velasco's July 1, 2004 reassignment to the Mindanao field offices was effected despite a continued shortage of lawyers in the GSIS main office is OSVP Order No. 05-04[13] issued on July 5, 2004 by the chief legal counsel detailing one of the field lawyers to the main office. The pertinent portion of said Order reads:

In the exigency of the service arising from the extreme lack of manpower in the LSG due to the resignation of Attys. Michael Miranda and Gabriel Silvera, as well as the promotion of Attys. Douglas Marigomen and Lourdes Dorado as Branch Managers of the Tagbilaran and Batangas Branches, respectively, and the impending retirement of Atty. Julita Aningat, **ATTY. PEACHY ANNE V. TIONGSON-DUMLAO,** is hereby temporarily detailed at the Litigation Department in order to perform the duties and responsibilities appurtenant to the position of the abovementioned lawyers.

The Order shall take effect immediately and shall remain effective until the permanent litigation lawyers are duly appointed by the President and General Manager. (Underscoring supplied.)

(3) Velasco's allegedly Grossly Discourteous Memorandum

Velasco, acting as president of the KMG, issued a memorandum dated June 28, 2004 to GSIS SVP Leticia P. Sagcal with reference to her memorandum prohibiting employees from participating in any "UNION ACTIVITIES during office hours." Citing the Collective Negotiation Agreement between the GSIS and the KMG which provides that "(t)he GSIS Management agrees and hereby authorizes the duly elected executive and legislative assembly officers of the KMG, including the

[13] *Id*. at 43.

chairpersons of KMG standing committees to perform the functions related to KMG activities on official time," Velasco demanded the recall of the Memorandum of SVP Sagcal.

In response, the GSIS issued a memorandum requiring Velasco to "submit your Counter-Affidavit/Comment under Oath within three (3) days from receipt hereof explaining why you should not be administratively dealt with for misconduct, discourtesy, insubordination and/or conduct prejudicial to the best interest of the service."[14] Velasco issued his reply stressing that he wrote the letter as a duly elected union representative asserting a contractual right.

(4) RTC Case / Formal Charges / Removal from the Rolls

In connection with the two conflicting memoranda disqualifying Velasco as GSIS Legal Counsel and assigning him as GSIS Legal Counsel in Mindanao, Velasco filed with the Regional Trial Court (RTC) of Manila a Petition for *Certiorari* and Prohibition seeking to prohibit the GSIS from enforcing the following: (1) OSVP Order No. 04-04 dated July 1, 2004 assigning him to the Zamboanga, Iligan, Cotabato field offices; (2) July 7, 2004 Memorandum directing him to explain his letter-reply to SVP Sagcal; and (3) July 9, 2004 Memorandum directing him to explain his failure to comply with the Reassignment Order.

The RTC of Manila initially issued a 72-hour TRO which was later extended to twenty days. However, the Petition was eventually dismissed by the RTC of Manila on the ground of improper venue, said court ratiocinating that the case should be filed with the RTC of Pasay City where the principal office of the GSIS is located. During the pendency of said case, the GSIS nonetheless initiated the two assailed Formal Charges against Velasco:

(1) The Formal Charge dated August 10, 2004 signed by PGM Garcia, docketed as ADM. Case No. 04-009 for Gross

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[14] *Rollo,* p. 68.

Discourtesy in the Course of Official Duty in connection with Velasco's letter to SVP Sagcal;[15] and

(2) The Formal Charge dated August 13, 2004 signed by PGM Garcia, docketed as ADM. Case No. 04-010 for Refusal to Perform Official Duty; Insubordination; Misconduct; Conduct Prejudicial to the Best Interest of the Service in connection with the two conflicting Memoranda.[16]

During the pendency of Velasco's Motion for Reconsideration of the RTC Resolution dismissing the Petition for improper venue, and while Velasco continued to report to his post in the Head Office, the GSIS issued the assailed September 1, 2004 letter[17] to Velasco dropping him from the rolls of the GSIS on the claim that allegedly he has been continuously absent without leave (AWOL) for thirty (30) days.

5) Petition for Certiorari with the Court of Appeals

On September 13, 2004, Velasco withdrew his Motion for Reconsideration before the RTC of Manila which favorably acted on said withdrawal in an Order[18] dated September 14, 2004. On September 15, 2004, Velasco thereafter filed a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction with the Court of Appeals, assailing GSIS OSVP Office Order No. 04-04 reassigning him to Zamboanga City; the Formal Charge docketed as Adm. Case No. 04-010 for Insubordination; the Formal Charge docketed as Adm. Case No. 04-009 for Gross Discourtesy in the Course of Official Duty; and the letter dated September 1, 2004 dropping Velasco from the GSIS roll of employees.

On September 17, 2004, the Court of Appeals issued a Resolution[19] granting Velasco's prayer for a 60-day TRO

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[15] *CA rollo,* pp. 28-29.

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

[17] *Id*. at 27.

[18] *Id*. at 117.

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

enjoining the GSIS from further implementing the assailed acts. Petitioner GSIS however refused to implement the TRO and asserted that, with Velasco's dropping from the rolls, injunction was improper to restrain acts that had become *fait accompli.*

On November 30, 2010, the Court of Appeals issued the assailed Decision, the dispositive portion of which read:

> **WHEREFORE,** premises considered, the petition is hereby **GRANTED.** The Order issued reassigning petitioner to Zamboanga; the administrative charges filed against petitioner docketed as Adm. Case No. 04-010 for Refusal to Perform Official Duty, etc. and Adm. Case No. 04-009 for Gross Discourtesy in the Course of Official Duty; and the dropping of petitioner from the GSIS roll of employees are hereby declared void. Accordingly, the GSIS is hereby directed to effect the reinstatement of petitioner to his former position or, if it is no longer feasible, to another position of equivalent rank and compensation. It is likewise ordered to pay petitioner his back salaries pertaining to the period during which he was unlawfully dropped from employees' roll.[20]

The GSIS filed a Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution dated April 1, 2011.

The GSIS then filed the present Petition for Review on *Certiorari,* raising the following grounds for the allowance of the same: (a) that Velasco is guilty of forum shopping; (b) that the non-exhaustion of administrative remedies is fatal to Velasco's Petition for *Certiorari* before the Court of Appeals; and (c) that petitioner is allegedly justified in its actions against Velasco since GSIS lawyers are precluded from joining the employees' organization or union according to a ruling issued by the Public Sector Labor-Management Council (PSL-MC).[21]

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[20] *Rollo,* p. 60.

[21] The Public Sector Labor-Management Council (PSL-MC) was created by virtue of Executive Order No. 180 (June 1, 1987) and is composed of the Chairperson of the Civil Service Commission and the Secretaries of the Department of Labor and Employment, the Department of Finance, the Department of Justice, and the Department of Budget and Management.

THIS COURT'S RULING

Forum Shopping

Petitioner alleged that Velasco is guilty of forum shopping for filing a Petition for *Certiorari* with the Court of Appeals (a) while his motion for reconsideration in Civil Case No. 04110451 was still pending before the RTC of Manila, Branch 22; and (b) during the pendency of CA-G.R. SP No. 86130 with another division of the appellate court.

According to jurisprudence, forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or special civil action of *certiorari,* or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court might look with favor upon the party. Where the elements of *litis pendentia* are not present or where a final judgment in one case will not amount to *res judicata* in the other, there is no forum shopping.[22]

Based on the facts on record, we see no reason to disturb the Court of Appeals' ruling that respondent Velasco was not guilty of forum shopping as succinctly explained in its November 30, 2010 Decision:

> In the case at bar, although petitioner filed a petition for prohibition before the RTC and, thereafter, filed substantially the same petition before this Court, the fact remains that before filing the instant petition, he first filed a **notice of withdrawal** of his Motion for Reconsideration with the RTC which was granted. It is also worthy to note that while both petitions filed by petitioner before the RTC and this Court **assail his reassignment Order to Zamboanga,** the petition before US differs because petitioner is, **in addition, assailing the formal charges against him as well as his severance from employment.** Hence, petitioner could not be said to have resorted to two different courts for the purpose of obtaining the same relief.

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[22] *Bangko Silangan Development Bank v. Court of Appeals,* 412 Phil. 755, 770-771 (2001).

To further bolster their allegation that petitioner is guilty of forum shopping, respondents aver that a similar case was also filed by [Velasco] against respondent Garcia in this Court docketed as CA-G.R. SP No. 86130 which was already dismissed on September 17, 2004.

WE perused the September 17, 2004 Resolution of this Court in CA-G.R. SP No. 86130 and found that the cause of action and relief prayed for by herein petitioner in that case were not the same as in this petition. In this case, petitioner prays to declare OSVP Order No. 04-04 transferring petitioner to Zamboanga; the formal charges against petitioner dated August 10, 2004 and August 13, 2004; and the letter informing petitioner that he is already dropped from GSIS roll of employment as void and illegal. On the other hand, the objective of the action in CA-G.R. SP No. 86130 was to declare as illegal and void respondent Garcia's Office Order dated June 25, 2004 by which the respondent allegedly usurped the petitioner's power under the law and the collective negotiation agreement to choose a representative to the GSIS Personnel Selection and Promotion Board and to prohibit the respondent from convening said Boards from transacting business without the legitimate union representative.[23] (Emphases supplied.)

We have held that what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by different *fora* upon the same issues.[24] In this instance, there was no danger that two different fora might render conflicting decisions as the petition before the Court of Appeals was the only case pending which involved the specific issues raised therein.

Exhaustion of Administrative Remedies and the Alleged Illegality of Velasco's Union Involvement

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[23] *Rollo,* pp. 48-49.

[24] *Kapisanang Pangkaunlaran ng Kababaihang Potrero, Inc. v. Barreno,* 710 Phil. 654, 660 (2013).

We discuss the second and third issues raised by petitioner jointly as the resolution of the procedural issue of exhaustion of administrative remedies hinges on the substantive issue of whether or not petitioner's actions and issuances involving respondent Velasco were patently illegal and/or tainted with bad faith.

Petitioner claims that Velasco violated the doctrine of exhaustion of administrative remedies by filing a Petition for *Certiorari* and Prohibition with the Court of Appeals instead of assailing his dismissal with the CSC. The Court of Appeals ruled that the assailed GSIS issuances were **patently illegal** and, hence, the case falls within at least one of several exceptions to the doctrine on exhaustion of administrative remedies. The exceptions, according to *Province of Zamboanga del Norte v. Court of Appeals,*[25] are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

After a judicious examination of the records, we uphold the Court of Appeals' ruling that the present case falls within the recognized exceptions to the rule regarding exhaustion of

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[25] 396 Phil. 709, 718-719 (2000).

administrative remedies. Before going into the merits of the case, we dispel the procedural concerns raised in the dissent.

The Dissenting Opinion submits, citing *Merida Water District v. Bacarro,*[26] that the test to determine whether or not there is patent illegality is "whether there exists a factual issue to be resolved to arrive at the conclusion of illegality."[27]Accordingly, the notion of patent illegality in the case at bar is negated by the presumption of good faith on the part of the GSIS officers involved, and the presumption of regularity of official acts. Determination of bad faith and irregularity are questions of fact, which should allegedly bar direct recourse before the courts in a special civil action.

The Court's decision in *Republic of the Philippines v. Lacap*[28] explained the rationale behind the doctrine of exhaustion of administrative remedies in this wise:

> The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, **where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.** (Emphasis supplied, citations omitted.)

In *Merida,* the factual question involved was the determination of the current water rate from which the allowable 60% increase

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[26] 588 Phil. 505 (2008).

[27] Dissenting Opinion, p. 4.

[28] 546 Phil. 87, 96-97 (2007).

can be computed in accordance with existing rules and regulations. Obviously, that was a highly technical matter that required the special knowledge and expertise of the proper administrative agency to resolve. The issue of whether petitioner GSIS's memoranda and issuances against respondent Velasco were attended by bad faith is hardly the kind of "technical and intricate" factual matter that requires prior resolution by an administrative body with special expertise or knowledge. To be sure, in *Department of Finance v. Dela Cruz, Jr.,*[29] we held that a case that assails the mass detail and reassignment of DOF employees as "patently illegal, arbitrary, and oppressive" falls among the exceptions to the doctrine of exhaustion of administrative remedies and thus, we upheld said employees' direct recourse to the courts as there was no need to resort to remedies with the CSC. In another example of bitterly contested litigation between the parties in the case at bar, *The Board of Trustees of the Government Service Insurance System v. Velasco,*[30] we held that the RTC, not the CSC, had jurisdiction over a petition for prohibition with prayer for writ of preliminary injunction even if it involved a civil service matter. Verily, the principle that all personnel actions must first be referred to the CSC is not an iron-clad rule.

The dissent's reliance on *Corsiga v. Defensor*[31] is misplaced as no court therein issued a judgment on the merits. What was appealed to the Court was a preliminary order denying a motion to dismiss on jurisdictional grounds. Even more importantly, the Court in *Corsiga* expressly stated that the employee failed

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[29] 767 Phil. 611, 619-620 (2015).

[30] 656 Phil. 385, 395-396 (2011). In said case, Velasco and Molina assailed before the RTC the resolutions of the GSIS **disqualifying them from receiving their step increment benefits** during the pendency of their administrative cases beyond the period of their preventive suspension (which arose from the same incident that was the subject matter of G.R. Nos. 157383 and 174137). The Court affirmed the RTC decision declaring these resolutions null and void.

[31] 439 Phil. 875 (2002); Dissenting Opinion, p. 7.

to present evidence of the invalidity of his reassignment and for that reason the reassignment was presumed regular. In the present case, the Court of Appeals found, after due proceedings, that respondent duly proved his factual allegations while petitioner failed to refute the evidence presented against it. There is no cause for the dissent to assert that petitioner was denied due process for it had every opportunity before the Court of Appeals to submit its countervailing evidence but petitioner chose to present purely technical objections to respondent's petition and pinned its defense on the presumptions of good faith and of regularity in the performance of official duty which are both rebuttable by proof.

This Court cannot accept the proposition that a mere allegation of good faith by the issuers of the assailed official acts **automatically** takes the disputed action out of its being patently illegal and thereby necessitates the application of the doctrine of exhaustion of administrative remedies. Bad faith and irregularities can be evident from the assailed acts themselves, in which case the courts should not simply tum a blind eye on the ground that it is the administrative agencies which must take the first look. It is precisely in cases when the bad faith and irregularity are so blatant that immediate recourse to the courts is necessary in order to nullify a capricious and whimsical exercise of authority.

This Court finds no reversible error on the part of the Court of Appeals in making a finding of illegality and bad faith in the GSIS's actions against Velasco based on **the undisputed facts** on record.

Petitioner alleged that "the Court of Appeals failed to consider that in all the cases filed by respondent, his basic allegation stemmed from just one single act, *i.e.,* his illegal activities as union president of the KMG which led to the GSIS's taking of necessary measures to protect its interest."[32]

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[32] *Rollo,* p. 17.

Interestingly, in the decision of the Court of Appeals in CA-G.R. SP No. 73170, which was affirmed by this Court in the consolidated cases, G.R. Nos. 157383 and 174137, the GSIS's officers were perpetually restrained from hearing and investigating the administrative case against Velasco and Molina for acts allegedly in betrayal of the confidential nature of their positions and in defiance of the Rules and Regulations on Public Sector Unionism, without prejudice to pursuing the same with the CSC or any other agency of the government as may be allowed by law. Even then the appellate court recognized that the investigation should not be done by the GSIS but by the CSC or any other impartial and disinterested tribunal. Yet, the GSIS undertook to investigate Velasco on new formal charges in this case, springing from essentially similar grounds of breach of confidentiality of position and union activities. We now examine these new formal charges.

On the issue of the validity of the reassignment order, upon which the charge of Insubordination depends, we sustain the Court of Appeals' factual finding that the GSIS never denied, much less refuted, the various memoranda presented by Velasco proving that there was a dire shortage of lawyers in the Manila Head Office at the time of his reassignment to the Mindanao field offices. There is nothing in the records to show that other lawyers from the Head Office were also sent out to augment the legal staff in the field offices. On the contrary, Velasco demonstrated that due to the extreme lack of manpower in the Head Office a lawyer from the one of the field offices was temporarily detailed in the Head Office until the vacancies therein were filled. Although the first paragraph of the reassignment order stated that it was for a period of ninety (90) days, the last paragraph states that the order shall take effect immediately and shall remain effective until further notice. What is indubitable from the records was that Velasco was being singled out for indefinite reassignment due to his election as union president. In all, this Court concurs with the appellate court that there was "no valid cause for the reassignment" and "the reassignment order was issued to prevent [Velasco] from actually and aggressively leading the union['s] activities and in the process

weaken unionism in [the] GSIS main office."[33] As Velasco's reassignment is invalid, there was no cause to charge him with Insubordination.

As for the second formal charge, the difficulty of finding an actionable case of gross discourtesy from the following letter can be considered by the courts in determining whether there is gross abuse of authority on the part of petitioner:

1 July 2004

SVP LETICIA P. SAGCAL
GSIS Social Insurance Group

Re: Memorandum dated 28 June 2004.

Dear SVP Sagcal,

In behalf of the Kapisanan ng mga Manggagawa sa GSIS (KMG), we bring to your attention the above subject memorandum which prohibits employees from "participation in any UNION ACTIVITIES".

Please be reminded that under Section 3 of the GSIS-KMG Collective Negotiation Agreement for 2002-2005 it is provided as follows:

> Section 3. Authorized KMG Activities on Official Time. <u>The GSIS Management agrees and hereby authorizes the duly elected executive and legislative assembly officers of the KMG, including the chairpersons of KMG standing committees to perform the functions related to KMG activities on official time</u>, subject to the following conditions:
>
> a. Only those authorized in writing from time to time by the KMG President or his duly authorized representatives shall enjoy the privilege; and
>
> b. The GSIS Management likewise agrees that attendance by duly authorized union representatives to workers' education, seminars, meetings, conventions, conferences shall be allowed on Official Time, subject also to the said two (2) conditions. x x x

Additionally, our CNA likewise states, and we quote the pertinent part:

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[33] *Id*. at 56.

ARTICLE
NO STRIKE NO LOCKOUT

> GSIS Management shall also respect the rights of the employees to air out their sentiments through peaceful concerted activities during allowable hours, subject to reasonable office rules and regulations on the use of office premises.

Clearly, your memorandum absolutely prohibiting participation of union members, including duly elected executive, legislative officers, and chairpersons of standing committees, from participating in union activities is a gross and patent violation of our CNA. Peaceful concerted activities is also [permissible], subject only to **reasonable** office rules and regulations, and is not absolutely prohibited by law, and neither can you prohibit the same.

We demand that your (sic) recall within two (2) days your unlawful memorandum dated 28 June 2004. Your failure to do so will compel us to file the corresponding administrative and criminal complaints against you before the appropriate body.[34]

Even without the presentation of evidence before an administrative body, the existence of bad faith and the arbitrary and despotic abuse of power can easily be gleaned from an administrative case of gross discourtesy ensuing from the mere issuance of the above letter by a union president. The exercise of even a statutorily enshrined power when done in a whimsical and capricious manner amounting to lack of jurisdiction is properly assailed in a special civil action under Rule 65 before the courts.

In any event, the merits of the formal charges of Insubordination and Gross Discourtesy against Velasco need not even be scrutinized by the Court. Despite initiating administrative investigations in relation to the Formal Charge docketed as Adm. Case No. 04-010 (for Insubordination, *etc.)* and the Formal Charge docketed as 04-009 (for Gross Discourtesy), the **GSIS never issued a decision or ruling in these administrative cases. In the end, Velasco was dropped**

[34] CA *rollo,* pp. 39-40.

from the rolls for his purported 30 days continuous absence without authorized leave, a separate and distinct matter, not included in the charges stated in the two formal charges pending investigation.

The Court cannot fault respondent for claiming that his separation from the service was without valid ground and done without due process. Furthermore, this Court fully agrees with the Court of Appeals that Velasco's dropping from the rolls was unwarranted when he did not abandon his post.

Petitioner GSIS did not dispute the fact that Velasco continued to report at the Head Office while he was seeking clarification from the GSIS regarding its conflicting memoranda and while various contentious issues between the parties were pending before the courts and the PSL-MC. The records bear out that correspondence and memoranda were personally served on Velasco by the GSIS, including the notice of his dropping from the rolls, since he could be readily found at his work station in the Head Office. On the other hand, the records are bereft of proof that the GSIS in good faith gave notice to Velasco that he would be considered absent without authorized leave for his failure to report for duty in the Mindanao field offices. Significantly, the GSIS itself narrated in the petition that Velasco was able to secure from the RTC a 72-hour TRO on July 20, 2004 that was extended for another 20 days, giving him additional justification to defer taking up his Mindanao posting while his standing disputes with management were pending litigation.

In *Batangas State University v. Bonifacio,*[35] a teacher was dropped from the rolls by the petitioner state university for failure to immediately report to his new detail at the office of the university president and instead he continued to fulfill his duties as a teacher and coach of the basketball team. We held that where there is no abandonment or clear proof of the intention to sever the employer-employee relationship, an employee cannot be dropped from the rolls. Furthermore, despite the proviso in

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[35] 514 Phil. 335 (2005).

Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations that an employee continuously absent without approved leave for at least thirty (30) days may be dropped from the rolls without prior notice, we ruled that there was bad faith on the part of the employer and a violation of an employee's rights to security of tenure and due process when the employer ignored the employee's presence in the school, did not give him the opportunity to explain his purported absences and thereafter peremptorily dropped him from the rolls.

Certainly, the gross violation of Velasco's due process rights in the matter of his dropping from the rolls not only contribute to the patent illegality of his separation from the service but is in itself a recognized exception to the rule on exhaustion of administrative remedies.[36]

The Dissenting Opinion rejects the applicability of *Batangas State University,* and argued, echoing the words of petitioner, that while there was good faith on the part of the employee in *BSU* to report to his new detail, Velasco showed bad faith when he "wrote a letter conveying his resistance to the assignment order." The Court should not adopt petitioner's arrogant stance of treating a mere clarificatory letter as an act of defiance and gross discourtesy. The despotic notion that an employee may not even ask for clarification of inconsistent orders precisely manifests the grave abuse of discretion on the part of petitioner. It shows very clearly that petitioner is bent on dismissing Velasco for whatever imagined wrong it can throw at him, and force. him to file a case for each new accusation.

Be that as it may, the Dissenting Opinion misreads the significance of *BSU,* which is cited to emphasize that an employee who reports for work cannot be summarily dropped from the rolls for being "continuously absent without approved leave for at least 30 calendar days." *BSU* held that ignoring said employee instead of summoning him to explain his alleged absences does not only show bad faith, but is itself a violation

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[36] *Province of Zamboanga del Norte v. Court of Appeals, supra* note 25.

of the constitutional guarantees of security of tenure and due process. Violation of due process is the first and foremost exception to the doctrine of exhaustion of administrative remedies in settled jurisprudence other than *BSU,* making it entirely irrelevant that there was prior resort to the CSC in *BSU.*

The dissent asserts that bad faith is never presumed; it is a conclusion to be *drawn from the facts.*[37] However, intent, being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts.[38] Consequently, when the facts – namely the **acts from which bad faith can be inferred** – already appears on record and are uncontroverted, the *legal consequence of such acts* becomes a question of law which falls under the exceptions to the rule on exhaustion of administrative remedies as well. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[39]

Petitioner's improper motive in its actions and issuances against respondent is plainly apparent even in its submissions to this Court. In the petition, the GSIS averred it "lost all faith and confidence in respondent when he ran for and was elected KMG President"[40] and that it was Velasco's purported "illegal activities as union president of the KMG which led to the GSIS's taking of necessary measures to protect its interest."[41] Indeed, this history of antagonism between Velasco and the GSIS's previous leadership is a matter of record not only in this case

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[37] Dissenting Opinion, p. 4.

[38] *Feeder International Line, Pte., Ltd. v. Court of Appeals,* 274 Phil. 1143, 1152-1153 (1991).

[39] *Alfornon v. Delos Santos,* G.R. No. 203657, July 11, 2016, 796 SCRA 194, 201; *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.,* 501 Phil. 516, 526 (2005), citing *Republic v. Sandiganbayan,* 425 Phil. 752, 765 (2002).

[40] *Rollo,* p. 29.

[41] *Id.* at 17.

but also in G.R. Nos. 157383 and 174137, which arose from the charges of misconduct against Velasco for participating and/or leading protests against management and former GSIS President Winston F. Garcia for alleged corruption.

As the GSIS admits in the petition, it was Velasco himself who submitted the issue of his eligibility to hold the position of union president for resolution by the PSL-MC to settle his dispute with management.[42] However, the GSIS **pre-empted**the ruling of the PSL-MC and issued the reassignment order, the formal charges of Insubordination and Gross Discourtesy and the order dropping Velasco from the rolls long before the PSL-MC could dispose of the matter in its Resolution No. 02, s. 2005 dated May 4, 2005, now being cited by the GSIS as its main basis for the legality of its actions against Velasco. It is the height of injustice and absurdity to allow the GSIS to now rely on this issuance when it did not even exist in 2004 when the GSIS issued the assailed memoranda and orders that are the subject matter of this case.

It bears repeating as well that the PSL-MC merely ruled that lawyers of the GSIS Legal Services Group are ineligible to join and hold elective positions in the union.[43] There was no statement in PSL-MC Resolution No. 02, s. 2005 that the holding of a position in the union was a ground to discipline or dismiss Velasco. Even in the GSIS's Memorandum dated June 29, 2004 advising Velasco of his ineligibility to hold the position of GSIS Attorney while serving as union president on the ground of

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[42] *Id*. at 23; *See also* PSL-MC Resolution No. 02, s. 2005.

[43] Parenthetically, in the early case of *GSIS v. GSIS Supervisor's Union* (160-A Phil. 1066, 1083-1084 [1975]), the Court held that the legal staff of different government owned or controlled corporations although under the Government Corporate Counsel and embraced within the Civil Service Law are not absolutely prohibited from membership in labor unions as long as such labor unions do not impose the obligation to strike or join strikes on its members. However, as the validity of PSL-MC Resolution No. 02, s. 2005 is not an issue in this case, we refrain from passing upon the correctness of its legal reasoning in declaring lawyers of the GSIS Legal Services Group as ineligible to join the union.

conflict of interest, there was no mention of any disciplinary action to be taken but only that Velasco was given the options to either (a) seek a transfer to another position not covered by the prohibition or (b) go on extended leave of absence for the term of his office, subject to existing office rules and regulations. Yet, despite the fact that the GSIS did not see fit to discipline or sanction Velasco for his union activities in the June 29, 2004 Memorandum, it nonetheless engaged in a series of actions to harass Velasco, to keep him away from the Head Office (by inducing him to seek a transfer or to take a leave and, failing in that, reassigning him) and to eventually cause Velasco's separation from the service on whatever ground and by whatever means it could conceive.

Petitioner's assertion that the new formal charges against Velasco and his dismissal from the service are measures to protect the interests of the GSIS from Velasco's purportedly illegal activities as union president likewise violate Velasco's right to due process as he is being indirectly charged for something not mentioned in the Formal Charges. To reiterate, Velasco was never administratively charged for what the GSIS termed as his "illegal" service as union president and therefore, Velasco could not have been validly dismissed from the service on that ground. Moreover, the GSIS could not have possibly relied on the aforementioned PSL-MC Resolution to justify Velasco's dismissal or separation from the service as the same was issued **more than eight (8) months after Velasco had already been dropped from the rolls.**

Prior to the resolution by the PSL-MC of the question of Velasco's eligibility to join the union and serve as union president, the GSIS had no basis to act against Velasco on that ground other than the opinion of its own chief legal counsel. For this reason, the GSIS was bound to respect in good faith Velasco's election as union president of the KMG until the PSL-MC could issue its opinion on the grievance raised by Velasco. As the Court of Appeals correctly emphasized, "[t]he right to unionize or to form organizations is now explicitly recognized and granted to employees in both the governmental

and private sectors"[44] and that the Bill of Rights itself demands that such right shall not be abridged.[45]

In the private sector, the Court has held that the reassignment of an employee is illegal if it is used as a subterfuge by the employer to rid himself of an undesirable worker or when the real reason is to penalize an employee for his union activities and when there is no genuine business urgency that necessitated the transfer.[46] Neither does the Court condone a reassignment done by a private employer on the pretext of eventually removing an employee with whom the employer felt "uncomfortable" because it doubted the employee's loyalty.[47] This Court will not be induced into setting a precedent that a government employer can hide behind the presumption of regularity in the performance of official duty in spite of evidence of illegal, discriminatory and oppressive acts against labor extant in the records.

In closing, it is worth recalling that the non-exhaustion of administrative remedies is a procedural matter that, time and again, this Court has held should be set aside in the interest of substantial justice.[48] This is particularly true in this case when the application of said doctrine would in effect deny respondent reliefs despite his meritorious claim. The insistence in the Dissenting Opinion that the Court of Appeals should have ignored petitioner's manifest display of arrogance and disregard of court

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[44] *Rollo,* p. 56, citing *Trade Unions of the Philippines and Allied Services v. National Housing Corporation,* 255 Phil. 33, 39 (1989).

[45] *Id.*, citing Section 8, Article III of the 1987 Constitution which provides that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

[46] See *Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment,* 264 Phil. 338, 341-342 (1990).

[47] See *Pocketbell Philippines, Inc. v. National Labor Relations Commission,* 310 Phil. 379, 390 (1995).

[48] See, for example, *Paje v. Casiño,* 752 Phil. 498, 544 (2015); *Silva v. Mationg,* 531 Phil. 324, 336 (2006).

orders on the ground that *bad faith is a factual issue* misses the basic principle that the Court of Appeals, unlike this Court, is mandated to rule on questions of fact.[49] The Dissenting Opinion's proposed reversal of the factual findings and the judgment on the merits of the Court of Appeals on the ground of a supposed procedural misstep is unjust and unduly burdens a party already aggrieved by a whimsical, capricious, and despotic abuse of power with a circuitous and ineffectual remedy. Accordingly, this Court holds that the Court of Appeals properly decided the substantive issues when the evidence it needed to resolve the same was already before it.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The Court of Appeals Decision dated November 30, 2010 and Resolution dated April 1, 2011 in CA-G.R. SP No. 86365 are **AFFIRMED.**

SO ORDERED.

Del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Sereno, C.J. (Chairperson), see dissenting opinion.

DISSENTING OPINION

SERENO, *C.J.*:

Considering the records and pleadings in this case, I register my dissent from the *ponencia.* Contrary to the *ponencia's* conclusion, I find that respondent violated the doctrine of exhaustion of administrative remedies.

In sum, my objection to the majority opinion is impelled by at least two doctrinal and policy considerations:

1. The *ponencia* goes against the jurisprudential grain by unduly expanding the concept of patent illegality as an exception to the doctrine of exhaustion of administrative remedies. The notion of patent illegality now covers

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[49] *Carpio v. Sulu Resources Development Corp.,* 435 Phil. 836, 845 (2002).

what is not patent, as the *ponencia* permits fact-intensive analysis through a consideration of the documents presented, their relation to each other, and the surrounding circumstances.

2. The *ponencia* denies efficacy to the exercise of a management prerogative in that a reassignment order valid on its face is stripped of the presumption of regularity otherwise accorded to it.

I.
Since respondent was making a case for illegal dismissal, his remedy was to appeal to the CSC, as required by the doctrine of exhaustion of administrative remedies.

Notably, when respondent was dropped from the GSIS roll of employees for being AWOL, he proceeded to the CA on a Rule 65 petition claiming that his dropping, as well as the reassignment order and formal charges, were null and void. His thesis was that the GSIS officials, under the leadership of then GSIS President and General Manager Winston Garcia, prompted by respondent's having been elected president of a union, resorted to a scheme to pave the way for his dismissal from the GSIS, starting with the re-assignment order and ending in his being dropped from the GSIS roll of employees. It can be seen from this theory that respondent was actually making a case for constructive dismissal, a situation in which an employee quits work because of the agency head's unreasonable, humiliating, or demeaning actuations that render continued work impossible.[1]

Considering that his cause of action is constructive dismissal, respondent should have initially filed an appeal with the Civil Service Commission (CSC).[2] Section 71 of the Uniform Rules

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[1] Civil Service Commission Memorandum Circular No. 40 (1998) Rule III, Section 6 (a).

[2] Article IX-B, Section 2(1) of the 1987 Constitution reads: "The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations

on Administrative Cases in the Civil Service[3] (the Uniform Rules) specifically provides that appeal is the proper remedy in cases involving personnel actions, such as reassignment and dropping an employee from the rolls for being AWOL.[4] Section 4 of the Uniform Rules also allows the CSC to review decisions and actions of the offices and agencies falling under its jurisdiction.[5]

Hence, after receiving notice that he was dropped from the GSIS roll of employees, respondent should have initially filed an appeal with the CSC as required by the doctrine of exhaustion of administrative remedies. In contravention of the doctrine, respondent proceeded immediately and directly to the CA by way of certiorari under Rule 65.

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with original charters." GSIS, which was created under Commonwealth Act No. 186, and passed on 14 November 1936, and later amended under R.A. No. 8291 dated 30 May 1997, is therefore a government-owned and controlled corporation (GOCC) with an original charter. As such, it is included in the civil service and, therefore, the provisions of the Civil Service Law and its Rules and Regulations apply.

[3] Civil Service Commission Resolution No. 99-1936 (1999).

[4] Section 71 reads:

Section 71. ***Complaint or Appeal to the Commission.*** – Other personnel actions, such as, but not limited to, separation from the service due to unsatisfactory conduct or want of capacity during probationary period, dropping from the rolls due to Absence Without Official Leave (AWOL), physically and mentally unfit, and unsatisfactory or poor performance, action on appointments (disapproval, invalidation, recall, and revocation), reassignment, transfer, detail, secondment, demotion, or termination of services, may be brought to the Commission, by way of an appeal.

[5] Section 4 reads:

Section 4. *Jurisdiction of the Civil Service Commission.* – The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

This doctrine holds that when the law provides for a remedy against a certain administrative action, the litigant can seek relief from the courts only after exhaustion of the remedy; otherwise, when there is a failure to exhaust administrative remedies, a complaint is dismissible for lack of cause of action.[6]

There was no patent illegality that would take the case out of the ambit of the doctrine of exhaustion of administrative remedies.

True, the rule is not absolute.[7] One of the recognized exceptions to the doctrine is when the administrative action is patently illegal.[8] In this case, the CA justified respondent's failure to exhaust administrative remedies on the ground of the patent illegality of the assailed GSIS actions.

For reasons to be discussed below, I find no patent illegality in the assailed acts of petitioner that would justify a relaxation of the doctrine of exhaustion of administrative remedies.

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[6] *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.,* 686 Phil. 2012.

[7] *Province of Zamboanga del Norte v. Court of Appeals,* 396 Phil. 709 (2000), as cited in *SSS v. CA,* 482 Phil. 449 (2004). The case enumerated the following exceptions to the doctrine of exhaustion of administrative remedies: (1) when there is a violation of due process; (2) when the issue involved is a purely legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bear the implied and assumed approval of the latter; (7) when requiring exhaustion of administrative remedies would be unreasonable; (8) when such remedies would amount to the nullification of a claim; (9) when the subject matter is private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) when the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

[8] *Id*.

In *Merida Water District v. Bacarro,*[9] this Court had occasion to expound on the concept of patent illegality of an assailed action. In that case, this Court faced the issue of whether or not the rate increase implemented by the Merida Water District was patently illegal and, therefore, the doctrine of exhaustion of administrative remedies need not be observed.

This Court reasoned as follows:

The argument of patent illegality is without merit. The first paragraph of LOI No. 700 provides that the LWUA shall:

(f) Ensure that the water rates are not abruptly increased beyond the water users' ability to pay, seeing to it that each increase if warranted, does not exceed 60% of the current rate.

The non-observance of the doctrine of exhaustion has been upheld in cases when the patent illegality of the assailed act is clear, undisputed, and more importantly, evident outright. In these cases, **the assailed act did not require the consideration of the existence and relevancy of specific surrounding circumstances and their relation to each other for the Court to conclude that the act was indeed patently illegal.** In the case at bar, certain facts need to be resolved first, to determine whether petitioner's increase of the water rate is [a] patently illegal act.

The determination of the current rate from which to compute the allowable increase of 60% is a question of fact that cannot be properly threshed out before this Court. The NWRB must be given an opportunity to make a factual finding with respect to this question. This Court accords the factual findings of administrative agencies with utmost consideration because of the special knowledge and expertise gained by these quasi-judicial tribunals from handling specific matters falling under their jurisdiction. Considering that the LWUA confirmed the Rate Schedule of Approved Water Rates for Merida Water District, a schedule that contains different rates that gradually increase, the determination of whether the computation of the percentage increase complies with the 60% limitation is a factual matter best left to the competence of the NWRB.[10]

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[9] 588 Phil. 505 (2008).

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

Hence, the test is whether there exists a factual issue to be resolved in order to arrive at a conclusion of illegality. In other words, the illegality must be patent on the face of the assailed act.

In the case at bench, the CA failed to reckon with the fact that there was a factual matter requiring resolution to get to the conclusion that the assailed acts of petitioner constituted constructive dismissal.

By its nature, constructive dismissal involves an imputation of bad faith on the part of the administrative officer performing the assailed act. The default rule, however, is the presumption of good faith. Bad faith is never presumed; it is a conclusion to be drawn from facts. In this light, determination is a question of fact and is evidentiary.[11]

Indeed, to counter the theory of constructive dismissal, petitioner claimed that the assailed reassignment order was a good-faith exercise of management prerogative. It further said that it was merely performing its duty when it instituted formal charges against respondent and subsequently dropped him from the GSIS roll of employees for being AWOL.

Consequently, contrary to the ruling of the CA, there is a factual issue that must be resolved in order to reach the conclusion that the assailed acts were illegal.

From the foregoing, it is clear that neither factual nor legal basis was established for the ruling of patent illegality issued by the CA. Indeed, in making that ruling, it made a determination of bad faith to arrive at the conclusion that the assailed reassignment order, formal charges, and the dropping of respondent from the rolls were all intended to harass him and eventually force him out of the GSIS.

Notably, the CA held that the alleged exigencies of the service as reason for respondent's reassignment was belied by Legal Counsel Bautista's Memorandum dated 7 June 2004. That

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[11] *Magaling v. Ong,* 584 Phil. 151 (2008).

Memorandum urgently requested the appointment by PGM Garcia of litigation lawyers in the LSG.

The CA also considered the failure of Chief Legal Counsel Bautista to refute the assertion of respondent. The latter had argued that since three of their lawyers at the Head Office resigned or were promoted, he was needed there more than in Zamboanga.[12] Clearly, the CA was already venturing into factual issues by taking those circumstances into consideration.

The *ponencia* states that bad faith and irregularities may be evident in the disputed act *per se*[13] based on the following "undisputed facts on record":[14]

(1) The GSIS had been perpetually restrained from hearing and investigating administrative cases against Velasco.[15] (The *ponente* refers to administrative charges of grave misconduct allegedly committed by respondent Velasco and Mario Molina, also an Attorney V of the GSIS, when they helped disgruntled employees stage concerted protest actions against Garcia and the GSIS management. These are charges based on events occurring prior to the incidents subject of this case. It was the CA that had perpetually restrained the GSIS from hearing the administrative cases. The charges were subsequently declared void by this Court for lack of preliminary investigation.)

(2) There is a history of antagonism between the parties.[16]

(3) Despite the injunction, and after the election of respondent as union president, the GSIS let loose two more formal charges against the latter: one charging respondent for gross discourtesy for writing a letter asserting a contractual right

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[12] *Rollo,* p. 58, CA Decision in CA-G.R. SP No. 86365, p. 25.

[13] *Id*. at 12.

[14] *Ponencia,* p. 14.

[15] *Id*. at 15.

[16] *Id*. at 19.

under a CNA and insubordination for writing a letter seeking a clarification of two supposedly conflicting Memoranda.[17]

(4) The GSIS never denied that there was a shortage of lawyers in the Manila Office at the time of the reassignment of respondent to Zamboanga.[18]

(5) Respondent continued to report to the head office while seeking a clarification from the GSIS regarding its conflicting memoranda. In fact, he was in the GSIS premises when he personally received the letter removing him from the rolls.[19]

(6) The records do not bear out the fact that other lawyers from the head office were also sent out to augment the legal staff in the field offices.[20]

(7) Respondent demonstrated that a lawyer from a field office had been sent to augment the head office.[21]

(8) The GSIS never issued a decision on the administrative cases that became the subject of this case.[22]

(9) Petitioner's improper motive is "plainly apparent even in its submissions to this Court. In the petition, the GSIS averred it 'lost all faith and confidence in respondent when he ran for and was elected KMG President' and that it was Velasco's purported 'illegal activities as union president of the KMG which led to the GSIS's taking of necessary measures to protect its interest.'"[23]

The *ponencia* then concludes that respondent was singled out for reassignment due to his participation as union president; that the reassignment order, as well as the subsequent dropping

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[17] *Id*. at 15.

[18] *Id*.

[19] *Id*. at 17.

[20] *Id*. at 15.

[21] *Id*.

[22] *Id*. at 17.

[23] *Id*. at 19.

of respondent from the rolls, was invalid; that since the charge of insubordination depended on the validity of the reassignment order, the former was likewise invalid; that there is no actionable case of gross discourtesy given the letter of respondent to SVP Sagcal, which shows gross abuse of authority on the part of the GSIS; and that in any event, the formal charges of Insubordination and Gross discourtesy need not even be scrutinized because the GSIS never issued a decision or ruling in these cases.

The analysis, however, is what *Merida* precisely prohibits, as it involves a consideration of the documents presented and their relation to each other and the surrounding circumstances. To reach the conclusion that petitioner resorted to a ploy to undermine the leadership of respondent as president of the KMG and ultimately to weaken unionism in the GSIS, the *ponente* had to piece together the issuance of the two formal charges, the reassignment order, and the dropping of respondent's name from the rolls of the GSIS. She linked them with surrounding circumstances, such as dismissal of administrative charges, distinct from the charges involved in the present case, that were previously filed and were subsequently declared void by this Court for lack of preliminary investigation. Undoubtedly, to reach the conclusion of patent illegality, the *ponencia* had to launch a fact-intensive analysis, which has become absurd. The very fact that it had to go to a fact-heavy interpretation only shows that the supposed illegality involved in this case is not patent at all.

Ultimately, the *ponencia's* stand violates the *Merida* doctrine, and consequently clashes with the principle of *stare decisis.* [24] The doctrine requires that, for purposes of judicial stability and consistency, we must stand by the decisions already promulgated and not unsettle what is already established.[25]

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[24] *Commissioner of Internal Revenue v. Insular Life Assurance Co. Ltd.,* G.R. No. 197192, 4 June 2014. 725 SCRA 94.

[25] *Commissioner of Internal Revenue v. Insular Life Assurance Co. Ltd., supra.*

The *ponencia* next relies on *Republic v. Lacap,*[26] in which the Court states that courts do not have primary jurisdiction over an issue that is within the jurisdiction of an administrative tribunal and the question demands the exercise of sound discretion requiring special knowledge to resolve technical and intricate matters of fact. The *ponencia* then refers to *Merida,* which it says figures in the determination of the current water rate, from which the allowable 60% increase can be computed in accordance with existing regulations. According to the *ponencia,* the question in *Merida* was a highly technical matter, while that in the present case – whether the issuances of the GSIS were attended by bad faith – can hardly qualify as highly technical.

Suffice it to state that this Court has repeatedly ruled that prior resort to the CSC is mandatory when it comes to cases of dismissal alleged to have been made in bad faith.[27]

Take the case of *Corsiga v. Defensor,*[28] the Regional Irrigation Manager of the National Irrigation Administration (NIA), Region VI, issued a Regional Office Memorandum reassigning respondent to Aganan-Sta. Barbara River Irrigation System. Respondent sought exemption from the Memorandum Circular, but his request was denied. He then filed with the regional trial court a Complaint for prohibition and injunction with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. He claimed that the Regional Irrigation Manager was guilty of bad faith, as the latter's real objective was to assign someone close to him to replace private respondent.[29]

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[26] 546 Phil. 87 (2007).

[27] *Ulup v. Angeles,* G.R. No. 157441, 11 February 2015; *Ejera v. Merto,* 725 Phil. 180 (2014); *Cabungcal v. Lorenzo,* 623 Phil. 329 (2009); *Carale v. Abarintos,* 336 Phil. 126 (1997); *Teotico v. Agda,* 274 Phil. 960 (1991); *Department of Education, Culture and Sports v. Court of Appeals,* 262 Phil. 608 (1990).

[28] 439 Phil. 875-887 (2002).

[29] *Id*. at 879-880, 885.

The Court held that respondent should have first complained to the NIA Administrator and, if necessary, appeal to the CSC; otherwise, the doctrine of exhaustion of administrative remedies would be violated. The Court also stressed that he had failed to reckon with the fact that the issue involved factual questions.[30]

The *ponencia* states, however, that there is a substantial distinction between the two cases: there was no judgment on the merits in *Corsiga.* What was brought to the Court was a preliminary order denying a motion to dismiss on jurisdictional grounds; in this case, however, the CA found after due proceedings that respondent had proved his factual allegations.

The distinction offered by the *ponencia* is not real. It must be pointed out that in this case, the CA made an exception by utilizing the doctrine of patent illegality, which took the case out of the general rule on the doctrine of exhaustion of administrative remedies. But for reasons already discussed, there is no patent illegality in this case. Accordingly, it cannot be said that the CA properly found that respondent proved his factual allegations. In other words, there was no "due proceedings" to speak of.

As it stands, the *Corsiga* doctrine is good case law and may be properly invoked in this case. On the other hand, the *ponencia's* stance sets a dangerous precedent – direct resort to the courts in cases of illegal dismissal involving a question of bad faith opens the floodgates to an avalanche of cases that would unnecessarily clog our court dockets.

Bad faith or irregularity cannot be inferred from the documents presented

Further, the *ponencia* refers to the letter-reply of respondent to the Memorandum issued by SVP Sagcal on 28 June 2004. It supposedly shows the difficulty "of finding an actionable

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[30] *Id.* at 884-885.

case of gross discourtesy."[31] The Memorandum dated 28 June 2004 prohibited GSIS employees from participation in union activities during office hours on the ground of "exigency of the service."[32]

The pertinent portions of the letter state:

1 July 2004

SVP LETICIA P. SAGCAL
GSIS Social Insurance Group
Re: Memorandum dated 28 June 2004

Dear SVP Sagcal,

In behalf of the Kapisanan ng mga Manggagawa sa GSIS (KMG), we bring to your attention the above subject memorandum which prohibits employees from "participation in any UNION ACTIVITIES".

Please be reminded that under Section 3 of the GSIS-KMG Collective Negotiation Agreement for 2002-2005 it is provided as follows:

> **Section 3. Authorized KMG Activities on Official Time**. The GSIS Management agrees and hereby authorizes the duly elected executive and legislative assembly officers of the KMG, including the chairpersons of KMG standing committees to perform the functions related to KMG activities on official time, subject to the following conditions.

x x x x x x x x x

Clearly, your memorandum absolutely prohibiting participation of union members, including duly elected executive, legislative officers, and chairpersons of standing committees, from participating in union activities is a gross and patent violation of our CNA. Peaceful concerted activities is also permissible, subject only to reasonable office rules and regulations, and is not absolutely prohibited by law, and neither can you prohibit the same.

We demand that your recall within two (2) days your unlawful memorandum dated 28 June 2004. Your failure to do so will compel

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[31] *Ponencia,* p. 15.

[32] *Rollo,* p. 64.

us to file the corresponding administrative and criminal complaints against you before the appropriate body. (Emphasis in the Original)[33]

The alleged patent illegality cannot be inferred from the above letter, which was annexed to the formal charge for gross discourtesy.[34] It is noteworthy that the letter is practically a demand letter written by respondent on behalf of the KMG as its president.

What stands out is the fact that respondent is an Attorney V at the GSIS at the LSG, in-house counsel of the GSIS.[35] It must be remembered that an attorney-client relationship imposes upon the lawyer the fiduciary duty of loyalty to the principal.[36] His letter, however, clearly indicates that he assumed a position inconsistent with his duties to the GSIS: he assailed the legality of the Memorandum when he had the duty to defend its validity.[37] This is a clear case of disloyalty and, consequently, gross

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[33] CA *rollo,* pp. 39-40

[34] See Annex J, p. 2; *Rollo,* p. 73.

[35] Section 47 of R.A. No. 8291 states:

SEC. 47 – *Legal Counsel.*- The Government Corporate Counsel shall be the legal adviser and consultant of the GSIS, but the GSIS may assign to the Office of the Government Corporate Counsel (OGCC) cases for legal action or trial, issue for legal opinions, preparation and review of contracts/ agreements and others, as the GSIS may decide or determine from time to time; *Provided, however,* That the present legal services group in the GSIS shall serve as its in-house legal counsel.

[36] *Heirs of Falame v. Baguio,* 571 Phil. 428 (2008). Canon 15 of the Code of Professional Responsibility states that "[a]ll lawyers shall observe candor, fairness and loyalty in all his dealings and transactions with his client. Canon 17 also provides that [a] lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."

[37] A conflict of interest arises when "a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter. *(Diongzon v. Mirano,* A.C. No. 2404, 17 August 2016).

discourtesy against respondent. As a public officer, he is expected to observe courtesy, civility, and self-restraint in his dealings with others.[38]

On the formal charge for insubordination, misconduct, and conduct prejudicial to the best interest of the service against respondent, the letter sent by respondent to Chief Legal Counsel Elmer Bautista reveals respondent's refusal to accede to the reassignment order on the ground that there is no real urgency for his transfer to Zamboanga. He cited the following as reasons for the refusal: that there was a GSIS Memorandum urgently requesting the appointment of litigation lawyers in the LSG; and that since three of their lawyers at the Head Office resigned or were promoted, he was needed in the Head Office more than in Zamboanga.[39] Respondent also stated that he could not assume the Zamboanga post, unless the memorandum disqualifying him to be GSIS legal counsel in view of his election as union president was withdrawn.[40]

It is clear from the foregoing that the letters provide ground for insubordination. The term "insubordination" signifies "a willful or intentional disregard of the lawful and reasonable instructions of the employer."[41] In this case, the letters uneqivocally express respondent's refusal to abide by the reassignment order, which, as will be discussed later, appears to be a valid exercise of management prerogative. He even provided reasons for the refusal. It must be stressed that respondent had a remedy at this juncture, which was to file an appeal to the CSC.[42] He, however, did not immediately pursue this recourse. Instead, he chose to write a letter conveying his resistance to the reassignment order.

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[38] *Sison v. Morales-Malaca,* 571 Phil. 566 (2008).

[39] *Rollo,* p. 58, CA Decision in CA-G.R. SP No. 86365, p. 25.

[40] *Id.*

[41] *Civil Service Commission v. Arandia,* 731 Phil. 639 (2014).

[42] *Supra* note 4.

Therefore, it cannot be said that bad faith on the part of the GSIS can be inferred from the letters. On the other hand, it all the more shows that the GSIS had reasonable grounds to support the charges it filed against Velasco.

The presumption of regularity and the concept of management prerogative negate the notion of patent illegality.

Petitioner's acts are clothed with presumptive regularity. Under Section 3(m), Rule 131 of the Rules of Court, it is disputably presumed that an official duty has been regularly performed, absent any contradiction or other evidence to the contrary. We have held that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty."[43]

In the case at bench, petitioner's acts of reassigning respondent, filing the formal charges against him, and dropping him from the roll of employees were all done in the performance of official duties.

With respect to the assailed formal charges, these were instituted by PGM Garcia, who, as president and general manager, was duly authorized to do so under Section 45, Republic Act No. 8291, otherwise known as the GSIS Act of 1997.[44] This legal provision expressly grants the president and general

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[43] *Bustillo v. People,* 634 Phil. 547, 556 (2010).

[44] This law specifies the powers and duties of the president and general manager, *viz:*

SECTION 45. Powers and Duties of the President and General Manager. — The President and General Manager of the GSIS shall among others, execute and *administer* the policies and resolutions approved by the board and direct and supervise the administration and operations of the GSIS. The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, *remove,* suspend or *otherwise discipline* them for cause, in accordance with existing Civil Service rules and regulations, and prescribe their duties and qualifications to the end that only competent persons may be employed.

manager of GSIS powers of administration, among others, and specifically vests the latter with authority and responsibility to remove, suspend or otherwise discipline GSIS personnel. Moreover, Section 15 of the Uniform Rules grants to the disciplining authority – who, in this case, is the GSIS president and general manager, the power to issue a formal charge.[45]

As for GSIS Human Resources Vice-President Campaña who dropped respondent from the rolls on the ground of AWOL, and Chief Legal Counsel and SVP Bautista who issued the assailed Reassignment Order, they derive their authority from Section 44 of the GSIS Act of 1997.[46]

Hence, considering that these acts were done in the performance of official duties, the presumption of regularity attaches to them, thereby defeating the claim of patent illegality. Of course, the presumption of regularity, much like that of the presumption of good faith, is merely *prima facie* and can be rebutted by clear and convincing evidence. One must present proof before the CSC prior to seeking relief from the courts.

Further, Section 26(7), Book V, Title I, Subtitle A of the 1987 Revised Administrative Code recognizes reassignment as a management prerogative, provided it does not involve a

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[45] Section 15, Uniform Rules on Administrative Cases in the Civil Service.

[46] The provision reads:

SECTION 44. Appointment, Qualifications, and Compensation of the President and General Manager and of Other Personnel. — The President and General Manager of the GSIS shall be its Chief Executive Officer and shall be appointed by the President of the Philippines. He shall be a person with management and investments expertise necessary for the effective performance of his duties and functions under this Act.

The GSIS President and General Manager shall be assisted **by one or more executive vice-presidents, senior vice-presidents, vice-presidents and managers in addition to the usual supervisory and rank and file positions** who shall be appointed and removed by the President and General Manager with the approval of the Board, in accordance with the existing Civil Service rules and regulations. (Emphasis Ours)

reduction in rank, status and salary.[47] In this case, OSVP Office Order No. 04-04 reassigning respondent to Zamboanga appears on its face to be a valid exercise of a management prerogative:

> Upon request by the SVP, FOG, as required by the exigencies of the service, and in view of the technical supervision and control of the Chief Legal Counsel over Field Operations Attorneys and Lawyers of the System, ATTY. ALBERT M. VELASCO, considering his legal expertise on the System's Operations, **is temporarily assigned for a period of ninety (90) days** to the Zamboanga, Iligan and Cotabato FODs to augment the legal officers in the said FODs due to the surmounting number of legal cases therein and shall conduct legal due diligence of cases pertaining to the System's operating concerns specifically involving housing loan defaults, collection of arrearages, foreclosure proceedings, and other matters requiring legal attention."

He shall submit written reports, with proper recommendation/s, if needed, to the Field Office Manager concerned to whom he shall report directly and who shall sign his Daily Attendance Record (DAR).

Atty. Velasco is allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations.

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[47] The provision states:

Sec. 26. Personnel Actions. — . . .

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As used in this Title, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, re-instatement, re-employment, detail, **reassignment,** demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.

x x x x x x x x x

(7) Reassignment. An employee may be re-assigned from one organizational unit to another in the same agency; Provided, That such re-assignment shall not involve a reduction in rank status and salary. (Emphasis supplied)

See also *Fernandez v. Sto. Tomas,* 312 Phil. 235 (1995).

This Order shall take effect immediately and shall remain effective until further notice.[48] (Emphases Supplied)

There is nothing in the Order to indicate that respondent suffered a diminution in rank, status and salary. On the other hand, the Order stated that respondent was "allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations."[49] Further, the Order specifically stated that the reassignment was temporary. It even contained a definite duration of reassignment – 90 days. Hence, on its face, the Order complies with the requisites of a valid re-assignment order and may not be considered a floating assignment resulting in a diminution in rank.[50]

The *ponencia,* however, makes much of the clause in the Order, which provides that it "shall take effect immediately and shall remain effective until further notice." Supposedly, the duration of the reassignment cannot be considered definite because of this clause. Plainly, the statement relates only to the effectivity of the Order. It clarifies that the Order will take effect immediately and not at a future time and that its effectivity can be withdrawn by notice. In other words, it is nothing but a mere effectivity clause that has nothing to do with the 90-day period.

Concededly, the rule on management prerogative is not absolute: it is limited by "law, collective bargaining agreements, and general principles of fair play and justice."[51] Nonetheless, in this case, the prerogative of management cannot be tainted with bad faith or any irregularity at this juncture. A reassignment is presumed to be regular as well as made in the interest of public service.[52]

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[48] *Rollo,* p. 66.

[49] *Id*.

[50] *Padolina v. Fernandez,* 396 Phil. 615 (2000).

[51] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar,* 646 Phil. 587, 608 (2010).

[52] *Nieves v. Blanco,* 688 Phil. 282 (2012).

The CA erred in concluding that there was patent illegality in the issuance of the assailed orders.

It was therefore an error for the CA to conclude that there was patent illegality in the case at bench and to nullify the assailed acts on this ground. Respondent's theory of constructive dismissal is a mere conclusion not evident from the reassignment order, formal charges and the dropping of respondent from the rolls.

The *ponencia,* however, relies on *Department of Finance v. Dela Cruz, Jr*.[53] *(DOF),* which held that a case assailing the mass detail and reassignment of DOF employees for being "patently illegal, arbitrary, and oppressive" was among the exceptions to the doctrine of exhaustion of administrative remedies.[54] That case, however, involved an Order that did not provide for a definite period of reassignment, making the detail indefinite. Hence, the Order patently lacked a requisite for a valid reassignment. In this case, though, the reassignment order provided for a definite period. More important, the illegality in *DOF* can be seen from the reassignment order itself. In other words, *DOF* was a clear case of patent illegality. On the other hand, the reassignment order in this case appears to be perfectly legal on its face, for reasons previously discussed.

The foregoing considered, it is the general rule on the doctrine of exhaustion of administrative remedies, and not the exception, that should apply. Thus, the issue of constructive dismissal was a question that could not be properly threshed out before the CA. It should have been initially resolved by the CSC, which has the appropriate technical knowledge and experience, the central personnel agency of the government.[55]

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[53] G.R. No. 209331, 24 August 2015, 768 SCRA 73.

[54] *Id*. at 86-87.

[55] *Civil Service Commission v. Court of Appeals,* 696 Phil. 230 (2012).

For seeking judicial recourse without first exhausting proper administrative remedies, the Petition was dismissible for lack of cause of action. In this light, the CA erred in not dismissing the Petition filed before it by respondent.

The doctrine of exhaustion of administrative remedies should not be ignored. It is a cornerstone of our judicial system[56] founded on sound public policy and practical considerations. The theory is that administrative authorities are in a better position to resolve questions that properly belong to their particular expertise. This doctrine gives superiors an opportunity to review and rectify errors committed by their subordinates.[57] Likewise, it relieves the courts of a considerable number of cases, thereby decongesting their already heavily loaded dockets.[58]

Here, the doctrine assumes greater significance inasmuch as the CA ruling effectively violated petitioner's right to due process. The CA's finding of bad faith on the part of petitioner and the consequent nullification of the assailed acts denied petitioner's right to a hearing, which includes the right to present its case and submit evidence in support thereof.[59] In other words, the CA condemned petitioner without a full-blown hearing. It cannot be overemphasized that the violation of a party's right to due process raises a serious jurisdictional issue that cannot be disregarded.[60]

II

There is no violation of the due process rights of Velasco that would warrant the application of the exception to the rule on exhaustion of administrative remedies.

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[56] *Go v. Distinction Properties Development,* 686 Phil. 160 (2012).

[57] *Merida Water District v. Bacarro, supra* note 36.

[58] *Id*. at 209.

[59] *Ang Tibay v. CIR,* 69 Phil. 635 (1940).

[60] *Garcia v. Molina,* 642 Phil. 6 (2010).

The *ponencia* also relies on *Batangas State University v. Bonifacio(BSU).*[61] In that case, a teacher was dropped from the rolls by the petitioner state university for failure to immediately report to his new detail at the office of the university president; instead, he continued to fulfill his duties as teacher and coach of the basketball team.[62] The Court held that the right of the employee to due process was denied when he was not given the opportunity to explain his absences and was thereafter peremptorily dropped from the rolls.[63] Justice De Castro explains that the due process rights of Velasco was grossly violated by the failure of GSIS to notify him that he would be considered absent without authorized leave for his failure to report to the Mindanao offices, as well as by its failure to give him an opportunity to be heard. For this reason, she considers the present case as falling under a recognized exception to the rule on exhaustion of administrative remedies.

I cannot subscribe to her point of view.

It must be understood that in *BSU,* the Court came to such conclusion because there was a finding of bad faith on the part of the school and its officials:

> Our examination of the records tells us that the CSC did not give due consideration to the petitioner's **detailed and credible explanations to the effect that he actually reported to Dr. De Chavez upon receiving the memorandum of reassignment from Dr. Lontok but Dr. De Chavez allowed him to report after October 17, 1994 so that he could finish his teaching duties for the term;** that he later on reported to Dr. De Chavez but the latter treated him with condescension and hostility, making sure that the petitioner was aware that he would soon be dismissed; and that the petitioner went several more times to the Office of the President to inquire about his DTRs but he was given the run-around. PBMIT did not refute the petitioner's explanations about reporting to Dr. De Chavez and about the latter's harsh and angry attitude towards him on several occasions.

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[61] 514 Phil. 335 (2005).

[62] *Id.* at 337-338.

[63] *Id*. at 342.

It is unfortunate that the CSC sided with PBMIT only because the DTRs were not signed and approved by the petitioner's immediate superior, who was the chief of staff of the Office of the President. In doing so, the CSC put a higher value to form rather than to substance. That, to us, is unacceptable for it goes against the clear equities of the situation. The CSC thereby committed serious reversible error, particularly since the records undeniably showed that the approval of the DTRs was deliberately withheld due to the hostility of Dr. De Chavez towards the petitioner. Without doubt, PBMIT and its officials, starting with Dr. De Chavez, were guilty of evident bad faith in dealing with the petitioner on the matter of his DTRs.

We agree with the Court of Appeals.

Petitioner's bad faith becomes more apparent when De Chavez ignored respondent's presence in the school, allowed 30 calendar days to lapse and thereafter immediately caused the termination, instead of summoning him to explain his alleged absences. Clearly, the detail of respondent in the office of the president was meant to embarrass him and the subsequent termination of employment was part of the dubious scheme to rid of respcndent's presence in the school in direct violation of respondent's right to work and unduly dilutes the constitutional guarantees of security of tenure and due process. As held in *Bentain v. Court of Appeals:*

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or is a scheme to lure him away from his permanent position, or designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service....[64] (Emphasis supplied, citations omitted)

The above-quoted discussion shows that there was a *bona fide* intent on the part of the employee to report to his new detail upon receiving the memorandum of reassignment, and that Dr. De Chavez, the president of the university, allowed

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[64] *Id*. at 342-343.

the former to report to the Office of the President at a later time so that he could finish his teaching duties for the term. In this case, there was no intent at all on the part of respondent Velasco to immediately report to the Mindanao offices. It must be stressed that, as previously discussed, he even wrote a letter that conveyed his resistance to the reassignment order. On the other hand, the GSIS had in fact issued a Memorandum[65] on 9 July 2004 directing respondent to explain his refusal to comply with the reassignment order, which shows good faith on the part of the GSIS.

Also, in *BSU,* the Court arrived at the conclusion of bad faith on the part of the school and the latter's officials only after the presentation of evidence by both parties before the CSC. In this case, there was no presentation of evidence at all before the CSC, precisely because Velasco skipped that agency and directly resorted to judicial remedies.

Respondent's direct resort to judicial remedies bring us to another important distinction. The legality of respondent's dismissal is tackled in relation to the question of whether there was a violation of the doctrine of exhaustion of administrative remedies. In, *BSU,* the doctrine of exhaustion of administrative remedies was not an issue at all since the CSC already had the opportunity to resolve that question.

However, the *ponencia* states that *BSU* is significant as it emphasizes that an employee who *reports for work* cannot be summarily dropped from the rolls for "being continuously absent without approved leave for at least 30 calendar days." It also relies on BSU's holding that ignoring, instead of summoning, the employee to explain his purported absences, is not only indicative of bad faith, but is by itself a violation of the constitutionally guaranteed security of tenure and due process.

The *ponencia* fails to appreciate *BSU* correctly. As can be seen from the previously quoted discussion therein, the Court considered *other* factors that showed bad faith on the part of

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[65] *Rollo,* p. 67.

the school and the latter's officials, such as the good-faith attempt of the employee to report for work at his new place of assignment. In other words, the fact that he reported for work, although not in the place to which he had been detailed, and that he was not summoned to explain his absences should not be the only points of comparison in order for *BSU* to apply to this case. Besides, as already mentioned, the GSIS in fact issued a Memorandum[66] on 9 July 2004 directing respondent to explain his refusal to comply with the reassignment order. No one can say, therefore, that it ignored respondent.

Moreover, the finding of violation of due process in *BSU* was a mere consequence of the finding of bad faith on the part of the school and its officials. Such bad faith indicated that the school had unduly employed Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, to justify the dropping of the employee from the rolls without prior notice. In other words, the finding of bad faith triggered the non-application of the legal provision and, subsequently, the need for notice and the opportunity to be heard. In this case, there is nothing in the assailed issuances that would show that Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, was used as a scheme to indirectly dismiss respondent.

Therefore, *BSU* may not be properly invoked in this case.

III.
Respondent could not properly avail of Certiorari under Rule 65.

A special civil action for certiorari requires, among other things, that there be no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[67] As previously discussed, respondent had the remedy of appeal to the CSC from his

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[66] *Rollo,* p. 67.

[67] Pertinent portion of Sec. 1, Rule 65 of the 1997 Rules of Civil Procedure, provides:

dismissal. Certiorari was therefore not available to him. Undoubtedly, his bare allegation that an appeal to the CSC was not adequate did not justify an immediate resort to certiorari.

A writ of certiorari may be issued only if there is grave abuse of discretion tantamount to lack or excess of jurisdiction.[68]In this case, not only was an appeal available to respondent as a remedy from the dropping of his name from the GSIS roll of employees, he also failed to sufficiently establish grave abuse of discretion on the part of petitioner that would justify his immediate resort to certiorari in lieu of an appeal. As previously discussed, the assailed acts of petitioner are clothed with the presumption of regularity in the performance of official functions. The presumption stands in this case until the same is overcome by presentation of clear and convincing evidence at the CSC level.

IV.
There is no basis to excuse the non-exhaustion of administrative remedies on the ground of substantial justice.

According to the *ponencia,* the "Dissenting Opinion's proposed reversal of the factual findings and the judgment on the merits of the Court of Appeals on the ground of a supposed procedural misstep is unjust and unduly burdens a party already aggrieved by a whimsical, capricious, and despotic abuse of power with a circuitous and ineffectual remedy."[69]

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 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.

[68] *Lagua v. CA,* 689 Phil. 452 (2012).

[69] *Ponencia,* p. 21.

This statement is inaccurate. The dissent did not make any finding of fact, but only analyzed the failure to apply the doctrine of exhaustion of administrative remedies. Indeed, it is an established rule that failure to exhaust administrative remedies is a procedural matter that may be dispensed with in the name of substantial justice,[70] I see no basis for the application of this doctrine, contrary to the *ponencia's* view that there is.

Worse, by accusing the GSIS of abusing its power as cited above, the *ponencia* effectively determined *motu proprio* that the former had resorted to a scheme to undennine the leadership of respondent as president of the KMG and ultimately to weaken unionism in the GSIS. In doing so, the *ponencia* went beyond the four corners of each of the assailed issuances. That determination clearly went beyond the parameters set by *Merida.* Lest it be forgotten, no less than the CSC remains a constitutionally created, independent, central personnel agency of the government.[71] As such, it is "the sole arbiter of controversies relating to the civil service."[72]

Therefore, at this juncture, we cannot validly make that premature conclusion.

WHEREFORE, I vote to **GRANT** the Petition.

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[70] *R.P. Dinglasan Construction v. Atienza,* 477 Phil. 305 (2004).

[71] CONSTITUTION, Art. IX-A, Sec. 1.

[72] *Catipon, Jr. v. Japson,* G.R. No. 191787, 22 June 2015, 759 SCRA 557; *Cabungcal v. Lorenzo,* 623 Phil. 329 (2009).

FIRST DIVISION

[G.R. No. 207306. August 7, 2017]

BEAUMONT HOLDINGS CORPORATION[1] as represented by REY DAVID LACSON, *petitioner, vs.* **ATTYS. ROSARIO V.E. REYES, WILFREDO C. VILLAR, FRANCISCO T. ENDRIGA, ATTY. SHEILAH F.P. ELBINIAS-UYBOCO and MARK ANTHONY M. LITONJUA,** *respondents.*

SYLLABUS

1. **TAXATION; LOCAL GOVERNMENT CODE; REAL PROPERTY TAXATION; ACTION ASSAILING VALIDITY OF TAX SALE; PRECONDITION FOR OPERATION OF SECTION 267 THEREOF IS THE REALTY TAX DELINQUENCY OF THE PROPERTY.—** As worded, Section 267 operates only within the purview of real property taxation (Title II). The pertinent tax involved is only real property tax or realty tax. Thus, the reason for the "sale at public auction of the real property or rights therein" in Section 267 is obviously because of non-payment of realty tax and no other. Accordingly, the precondition for the operation of Section 267 is the realty tax delinquency of the property. If the property is current in its realty tax or not realty tax delinquent, then it should not be the subject of a sale at public auction as contemplated in Section 267. The "taxpayer" referred to in the Section is none other than the declarant of the property in a real property tax declaration, who is generally its owner, and his declared property is realty tax delinquent. The "taxpayer" in Section 267 refers to no other person.

2. **ID.; ID.; ID.; ID.; DEPOSIT; A JURISDICTIONAL REQUIREMENT TO ENSURE AND GUARANTEE THE COLLECTION AND SATISFACTION OF TAX DELINQUENCY; DEPOSIT, NOT APPLICABLE IN CASE AT BAR.—** [T]he Court explained the reason for the deposit

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[1] Also referred to as Beaumont Holding Corporation elsewhere in the *rollo*.

requirement in Section 267, *viz.*: As is apparent from a reading of the foregoing provision, a deposit x x x is a condition - a "prerequisite," x x x - which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. This is evident from the use of the word "shall" in the first sentence of Section 267. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action. x x x As expressed in Section 267 itself, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. **The deposit**, equivalent to the value for which the real property was sold plus interest, **is essentially meant to reimburse the purchaser of the amount he had paid at the auction sale should the court declare the sale invalid**. Clearly, **the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale**. Thus, the requirement is not applicable if the plaintiff is the government or any of its agencies as it is presumed to be solvent, and more so where the tax exempt status of such plaintiff as basis of the suit is acknowledged. x x x Perforce, the bond mandated in Section 267, whose **purpose** it is to **ensure the collection of the tax delinquency** should not be required of NHA before it can bring suit assailing the validity of the auction sale. Indeed, the *ratio* behind the deposit requirement as succinctly espoused in *NHA* is to ensure and guarantee the collection and satisfaction of the tax delinquency. In the present case, the very issue raised in the Petition is the invalidity of the auction sales *on the ground that the subject properties are **not** tax delinquent*. On the assumption that the subject two lots are ***not*** tax delinquent, then there is no need for the deposit requirement under Section 267 because the realty taxes due on the subject two lots have already been paid and there are no tax delinquencies to be collected or satisfied.

SERENO, *C.J., dissenting opinion*:

1. TAXATION; LOCAL GOVERNMENT CODE; REAL PROPERTY TAXATION; ACTION ASSAILING VALIDITY

OF TAX SALE; DEPOSIT REQUIREMENT; A JURISDICTIONAL REQUIREMENT THE NONPAYMENT OF WHICH WARRANTS THE DISMISSAL OF THE ACTION; ELUCIDATED.— Section 267 of the LGC prevents a court from entertaining a suit for the annulment of a tax sale, unless the taxpayer who brought the suit pays an amount equivalent to the purchase price paid at public auction plus two percent (2%) interest per month from the date of the sale up to the time of the institution of the action. Failure to comply with this prerequisite deprives a court of jurisdiction and is deemed a sufficient ground for the outright dismissal of the action. In *National Housing Authority (NHA) v. Iloilo City* , this Court explained that the plain and unequivocal language of Section 267 admits of no other interpretation: As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition — a "prerequisite," to borrow the term used by the acknowledged father of the Local Government Code — which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. **The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made.** This is evident from the use of the word "shall" in the first sentence of Section 267. **Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.**

2. **ID.; ID.; ID.; ID.; ID.; PURPOSE; CONSIDERED APPLICABLE TO ALL INITIATORY ACTIONS ASSAILING THE VALIDITY OF TAX SALES.—** The deposit in Section 267 is an "ingenious legal device" through which the law ensures that purchasers can be reimbursed for the price they have paid at the auction sale should the court declare the sale invalid. In this way, the local government unit is able to retain the bid price regardless of the final outcome of the suit, thereby ensuring the satisfaction of the tax delinquency. Consistent with this ultimate purpose, the deposit requirement has been considered applicable to *all* "initiatory actions assailing the validity of tax sales." The use of the terms "entertain" and "institution" in the first paragraph of Section 267 supports this broad interpretation.

3. **ID.; ID.; ID.; ID.; ID.; APPLIES TO ALL TAXPAYERS SEEKING THE ANNULMENT OF A TAX SALE UNDER BOOK III, TITLE II OF THE LOCAL GOVERNMENT CODE; EXPLAINED.—** The plain language of the provision reveals that the law does not support petitioner's proposed interpretation. To begin with, the first paragraph of Section 267 speaks only of a "taxpayer" who brings an action to annul a tax sale conducted under Book III, Title II of the LGC, on real property taxation. By definition, a "taxpayer" is "one who pays or is subject to a tax." Since the term is used in its general sense without qualification, the Court must consider it as referring to *any person* who (a) is subject to real property taxes under the LGC; and (b) seeks to challenge the validity of the sale at public auction of real property or rights. There is nothing in the provision to indicate that its application is limited to delinquent taxpayers. *Ubi lex non distinguit nec nos distinguere debemos*. Where the law does not distinguish, the court should not distinguish. Further, it is an established principle of statutory construction that the legislature is presumed to have known the meaning of the words in the statute and to have used these words advisedly to express its true intent. Where general words are used, their natural meaning cannot be restricted by other words, unless the legislative intention to do so is clear and manifest. In this case, the general and encompassing term "taxpayer" must be held to embrace all those subject to tax under Section 267, unless there is proof that the legislature intended to limit the application of this provision to a certain type of taxpayer. However, other than the use of the phrase "delinquent owner" in the second paragraph of Section 267, petitioner has failed to present proof of that intent. Accordingly, this Court should not have gone beyond the plain meaning of the provision.

APPEARANCES OF COUNSEL

Augusto P. Jimenez, Jr. for petitioner.

Fatima A. Alconcel-Relente for respondents Atty. Rosario V.E. Reyes, *et al.*

Benedict A. Litonjua for respondent Mark Anthony M. Litonjua.

DECISION

CAGUIOA, *J.*:

This case calls for the interpretation and application of Section 267, Title II (Real Property Taxation), Book II of the Local Government Code[2] (LGC), to wit:

> SEC. 267. *Action Assailing Validity of Tax Sale.* – No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein ***under this Title*** until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.
>
> Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired. (Underscoring and emphasis supplied)

This petition for review on certiorari[3] (Petition) under Rule 45 of the Rules of Court assails the Decision[4] of the Court of Appeals[5] (CA) dated November 29, 2012 (Decision) in CA-G.R. CV No. 96858, denying the appeal filed by petitioner Beaumont Holdings Corporation (BHC) and the Resolution[6] dated May 28, 2013, denying the Motion for Reconsideration

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[2] Republic Act No. 7160, as amended.

[3] *Rollo*, pp. 9-19 (exclusive of Annexes). The petition is captioned " Petition with Manifestation."

[4] *Id*. at 166-174. Penned by Associate Justice Franchito N. Diamante, with Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang concurring.

[5] Fifteenth (15th) Division.

[6] *Rollo*, pp. 180-181.

filed by BHC. The CA affirmed the Resolution[7] of the Regional Trial Court, Branch 271, Pasig City (RTC) dated September 30, 2010 in Civil Case No. 72506-TG, which dismissed the Complaint[8] filed by BHC.

Facts and Antecedent Proceedings

BHC is the registered owner of two parcels of land located in Fort Bonifacio, Taguig City,[9] which are covered by Transfer Certificates of Title Nos. (TCT) 1033-P[10] and 1034-P[11] (subject two lots). The total assessed market value of the subject two lots is ₱13,692,000.00 (₱6,870,000.00 for the first lot and ₱6,822,000.00 for the second lot) as shown in their tax declarations.[12]

The City Government of Taguig (Taguig City) sent two letters dated November 6, 2007 to BHC, requiring the settlement of real property taxes on the subject two lots for the years 2005, 2006, and the 4th quarter of 2007 in the amounts of ₱414,132.18 and ₱411,238.68 within the month of November 2007 to avoid penalties of 2% per month based on the Statements of Accounts for the month of November 2007 that were processed on November 5, 2007, reviewed by Teodoro S. Cruz, Head, Land Tax Division and approved by Atty. Rosario V.E. Reyes, OIC City Treasurer.[13]

BHC paid ₱825,370.86 to the City Treasurer's Office of Taguig City for which Official Receipt No. 8625735 V[14] dated November 29, 2007 was issued.[15]

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[7] *Id*. at 71-77. Penned by Presiding Judge Paz Esperanza M. Cortes.

[8] *Id*. at 21-25 (exclusive of Annexes).

[9] CA Decision, p. 2, *id*. at 167.

[10] *Rollo*, pp. 26-27.

[11] *Id*. at 28-29.

[12] *Id*. at 21, 30-33.

[13] *Id*. at 34-39.

[14] *Id*. at 40.

[15] CA Decision, p. 2, *id*. at 167.

However, even prior to the November 6, 2007 letters, the subject two lots had already been declared delinquent pursuant to a Notice of Delinquency posted on October 22, 2007,[16] levied upon through a Warrant of Levy on September 26, 2007,[17] advertised for sale on November 5, 2007 and November 12, 2007 by public auction to satisfy the taxes, penalties due and costs of sale in the amounts of ₱224,670.48 and ₱223,100.73 for the subject two lots, respectively,[18] and were sold at public auction to respondent Mark Anthony M. Litonjua (Litonjua) on November 15, 2007 for ₱6,901,523.00 and ₱10,601,523.00, respectively.[19]

In a letter dated December 7, 2007, the City Treasurer informed BHC of the sale of the subject two lots, acknowledged the receipt of the payment of ₱825,370.86 ("per OR # 86255735"), and indicated that there remained a balance of ₱353,106.92, representing the reimbursement of costs of sale and 2% interest per month on the bid price and that the said amount be remitted to enable the City Treasurer to issue a Certificate of Redemption.[20]

Pursuant to the billing with the Statement of Account for the month of January 2009, BHC paid the amount of ₱370,753.69 to the Office of the City Treasurer for which Official Receipt No. 0044247 dated January 30, 2009 was issued to BHC.[21]

Subsequently, the City Treasurer sent two letters dated February 8, 2008[22] and August 4, 2008[23] to BHC with updated

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[16] Final Bills of Sale, p. 1, *id*. at 42 and 45.

[17] *Id*.

[18] *Id*.

[19] Certificates of Sale of Delinquent Property to Purchaser, *id.* at 48-49; CA Decision, pp. 2-3, *id*. at 167-168.

[20] *Rollo*, p. 58.

[21] See *id*. at 41, 168.

[22] *Id*. at 53, 59.

[23] *Id*. at 60.

computations of the amounts due in connection with the total redemption payment of BHC.

Final Bills of Sale[24] dated February 6, 2009 were issued by the City Treasurer conveying the subject two lots to Litonjua by reason of BHC's failure to redeem them within one year from the date of the auction sale.

On May 25, 2010, BHC filed a Complaint[25] before the RTC against Atty. Rosario V.E. Reyes, OIC City Treasurer and chairperson of the Committee on Auction Sale of Taguig City, Wilfredo C. Villar, City Administrator, Francisco T. Endriga, City Assessor, Atty. Shielah F.P. Elbinias-Uyboco, City Assessment Department Head, and Litonjua. BHC alleged that there was no valid justification to sell the subject two lots at public auction given the fact that it had paid and settled the required real property taxes within the month of November 2007 pursuant to the letters sent by Taguig City.[26] BHC prayed for a judgment: (1) nullifying the public auction sale of the subject two lots held on November 15, 2007 and all other proceedings taken pursuant thereto; (2) enjoining the Register of Deeds of Taguig City from cancelling its land titles, consolidating ownership thereof in Litonjua's favor and issuing new TCTs in the name of Litonjua; and (3) ordering respondents to compensate BHC actual damages in the amount of ₱2 million.[27]

Respondent city officials filed an Answer[28] dated July 2, 2010, seeking the dismissal of the Complaint for lack of merit. They alleged that the subject two lots were validly sold at auction because of BHC's failure to settle the delinquent real property taxes due thereon despite several reminders and to redeem them

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[24] *Id*. at 42-47.

[25] *Id*. at 21-25.

[26] *Id*. at 22.

[27] *Id*. at 23.

[28] *Id*. at 50-56 (exclusive of Annexes).

by paying the correct amount.[29] They also alleged that BHC failed to comply with Section 267 of the LGC.[30]

Litonjua filed a Motion to Dismiss[31] dated June 16, 2010 wherein he sought the dismissal of the Complaint for lack of jurisdiction for non-compliance with the requirements for an action to assail the validity of a tax delinquency sale under Section 267.[32]

BHC filed a Reply to Answer[33] dated July 26, 2010 and a Comment/Opposition to the Motion to Dismiss[34] dated July 15, 2010. BHC contended that Section 267 is not applicable because BHC was not a delinquent taxpayer, having paid its real property taxes within the month of November 2007 pursuant to the letters of Taguig City.[35]

The Ruling of the RTC

In a Resolution dated September 30, 2010,[36] the RTC dismissed the Complaint for lack of jurisdiction, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the Motion to Dismiss is hereby **GRANTED**.
>
> Let the case be **DISMISSED**.
>
> **SO ORDERED**.[37]

The RTC Resolution explained that:

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

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

[31] *Id*. at 61-64.

[32] *Id*. at 61-63.

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

[34] *Id*. at 67-69.

[35] *Id*. at 68.

[36] *Id*. at 71-77.

[37] *Id*. at 77.

x x x [W]hether or not the plaintiff is a delinquent taxpayer is of no moment in determining whether Section 267 is applicable herein. So long as the plaintiff assails the validity of the tax sale at public auction then Section 267 is applicable. As such, the plaintiff must deposit with the Court the amount for which the real property was sold together with interest of Two Percent (2%) per month from the date of sale to the time of the institution of the action. This had been so required by the Supreme Court in the case of *National Housing Authority vs[.] Iloilo City, et al*. x x x

x x x x x x x x x

The plaintiff, by arguing that Section 267 is not applicable to them because they are not delinquent taxpayer [sic], implicitly admits that they had not complied with Section 267. Thus, the Motion to Dismiss is meritorious.[38]

BHC filed a Motion for Reconsideration,[39] which Litonjua opposed.[40] The RTC denied the Motion for Reconsideration in a Resolution[41] dated February 17, 2011.

The Ruling of the CA

On April 1, 2011, BHC appealed to the CA the RTC Resolution dated September 30, 2010, dismissing the Complaint, and Resolution dated February 17, 2011, denying the Motion for Reconsideration. The CA, in a Decision[42] dated November 29, 2012, affirmed the ruling of the RTC, the dispositive portion of which states:

WHEREFORE, premises considered, the present appeal is hereby **DENIED**. The September 30, 2010 and February 17, 2011 Resolutions of the Regional Trial Court, Branch 271, Pasig City, in Civil Case No. 72506-TG are **AFFIRMED**. No costs.

SO ORDERED.[43]

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[38] *Id*. at 75-77.

[39] *Id*. at 78-80.

[40] Opposition to the Motion for Reconsideration, *id.* at 81-83.

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

[42] *Id*. at 166-174.

[43] *Id*. at 173.

The CA explained that the deposit required in Section 267 is a jurisdictional requirement, the non-payment of which warrants the dismissal of the action assailing the validity of the tax sale.[44]

On May 28, 2013, BHC's Motion for Reconsideration[45] was denied by the CA in a Resolution[46] dated May 28, 2013.

Hence, this Petition.

Litonjua filed his Comment[47] dated December 7, 2013. Respondent city officials filed their Comment[48] dated February 4, 2014.

The Issue

Whether the CA erred in rendering the assailed Decision and Resolution.

The Ruling of the Court

The Petition is meritorious.

To reiterate, Section 267 of the LGC provides:

> SEC. 267. *Action Assailing Validity of Tax Sale*. – No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein ***under this Title*** until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.
>
> Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or

[44] *Id*.

[45] *Id*. at 175-178.

[46] *Id*. at 180-181.

[47] *Id*. at 206-211.

[48] *Id*. at 241-246.

the person having legal interest therein have been impaired. (Underscoring and emphasis supplied)

As worded, Section 267 operates only within the purview of real property taxation (Title II). The pertinent tax involved is only real property tax or realty tax. Thus, the reason for the "sale at public auction of the real property or rights therein" in Section 267 is obviously because of non-payment of realty tax and no other. Accordingly, the precondition for the operation of Section 267 is the realty tax delinquency of the property. If the property is current in its realty tax or not realty tax delinquent, then it should not be the subject of a sale at public auction as contemplated in Section 267. The "taxpayer" referred to in the Section is none other than the declarant of the property in a real property tax declaration, who is generally its owner, and his declared property is realty tax delinquent. The "taxpayer" in Section 267 refers to no other person.

National Housing Authority (NHA) v. Iloilo City,[49] *Gamilla v. Burgundy Realty Corporation*[50] and *Spouses Wong v. City of Iloilo*[51] deal with realty tax delinquency sale. Their import to this case requires a review of their factual backdrops.

In *Gamilla*, the auction sale was questioned because of the procedural lapses in the failure of the local government unit (LGU) concerned to comply with Sections 176[52] and 178[53] of the LGC. There was no issue on the realty tax delinquency status of the property subject of the case.

In *Spouses Wong*, the auction sale was questioned for non-compliance with Section 73[54] of Presidential Decree No. 464.[55]

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[49] 584 Phil. 604 (2008).

[50] 761 Phil. 549 (2015).

[51] 609 Phil. 300 (2009).

[52] Levy on Real Property.

[53] Advertisement and Sale.

[54] Advertisement of sale of real property at public auction.

[55] REAL PROPERTY TAX CODE (1974).

There was also no dispute that the property subject of the case was tax delinquent.

The tax status of the property subject of *NHA* is different. While the LGU declared the property delinquent for non-payment of realty tax and sold it in a public auction sale, the validity of the auction sale was questioned by NHA for lack of notice to NHA as its registered owner and because NHA is a tax-exempt agency of the government.

In *NHA*, a motion to dismiss NHA's complaint was filed by the defendants therein on the basis of Section 267 for the failure of NHA (*i.e.*, the taxpayer) to make the deposit with the court. The motion to dismiss was granted by the lower court. The CA affirmed the order of dismissal. In its petition for review on certiorari before the Court, NHA argued that Section 267, requiring the taxpayer to deposit with the court the amount specified therein, should not apply to NHA and even assuming it did apply to NHA, it was not necessary given the fact that the government is always presumed to be solvent. While admitting that NHA is a tax-exempt entity, the issue posed and addressed by the Court was whether NHA's tax-exempt status vests it with immunity as well from the deposit requirement under Section 267. In resolving this, the Court explained the reason for the deposit requirement in Section 267, *viz.*:

> As is apparent from a reading of the foregoing provision, a deposit x x x is a condition – a "prerequisite," x x x – which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. This is evident from the use of the word "shall" in the first sentence of Section 267. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.
>
> x x x As expressed in Section 267 itself, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. **The deposit**, equivalent to the value for which the real property was sold plus interest, **is essentially meant to reimburse the purchaser of the**

amount he had paid at the auction sale should the court declare the sale invalid.

Clearly, **the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale**. Thus, the requirement is not applicable if the plaintiff is the government or any of its agencies as it is presumed to be solvent, and more so where the tax exempt status of such plaintiff as basis of the suit is acknowledged. x x x Perforce, the bond mandated in Section 267, whose **purpose** it is to **ensure the collection of the tax delinquency** should not be required of NHA before it can bring suit assailing the validity of the auction sale.[56] (Underscoring and emphasis supplied)

Indeed, the *ratio* behind the deposit requirement as succinctly espoused in *NHA* is to ensure and guarantee the collection and satisfaction of the tax delinquency.

In the present case, the very issue raised in the Petition is the invalidity of the auction sales *on the ground that the subject properties are **not** tax delinquent*. On the assumption that the subject two lots are ***not*** tax delinquent, then there is no need for the deposit requirement under Section 267 because the realty taxes due on the subject two lots have already been paid and there are no tax delinquencies to be collected or satisfied.

The unfairness of the deposit requirement as it is applied in this case is clear. There were two lots of BHC that were sold at public auction. Per the first Final Bill of Sale,[57] the lot with an area of 1,145 square meters located in Fort Bonifacio, Taguig City, with an assessed value of ₱3,435,000.00, was advertised for sale at public auction to satisfy "all taxes and penalties due and the costs of sale in the amount of **₱224,670.48**"[58] by reason that the real property tax accrued for the years 4th quarter 2005 – 2007 had not been paid and remained delinquent. At the public

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[56] *National Housing Authority v. Iloilo City*, *supra* note 49, at 610-611.

[57] *Rollo*, pp. 42-44.

[58] *Id*. at 42; emphasis supplied.

auction held on November 15, 2007, Litonjua was declared the highest bidder, with a bid amount of ₱6,901,523.00.

Per the second Final Bill of Sale,[59] the lot with an area of 1,137 square meters, also located in Fort Bonifacio, Taguig City with an assessed value of ₱3,411,000.00, was also advertised for sale at public auction to satisfy "all taxes and penalties due and the costs of sale in the amount of **₱223,100.73**"[60] by reason that the real property tax accrued for the years 4th quarter 2005 – 2007 had not been paid and remained delinquent. At the public auction held on November 15, 2007, Litonjua was declared the highest bidder, with a bid amount of ₱10,601,523.50.

For the first property, the deposit amount required under Section 267, if followed, is "the amount for which the real property was sold" – ₱6,901,523.00, "together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action" – ₱4,140,913.80. Interest per month is ₱138,030.46 or 2% of ₱6,901,523.00. ₱138,030.46 multiplied by 30 months[61] is ₱4,140,913.80, the interest component of the deposit. Thus, the required deposit is a staggering **₱11,042,436.80** or **49 times the tax delinquency, penalty and costs of sale**.

For the second property, the deposit being required is so much more. Given that the bid amount is ₱10,601,523.50, the 2% interest per month amounts to ₱212,030.47. Total interest for 30 months is ₱6,360,914.10. Thus, the required deposit under Section 267 is a more staggering amount of **₱16,962,437.60** or **76 times the tax delinquency, penalty and costs of sale**.

For both properties, the deposit being required from BHC is **₱28,004,874.40**.

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[59] *Id*. at 45-47.

[60] *Id*. at 45; emphasis supplied.

[61] The period from the sale held on November 15, 2007 to the filing of the complaint on May 25, 2010 is approximately two years and six months or a total of 30 months.

As illustrated above, Section 267 can indeed provide a lucrative business – a disguised legislated "usury" law. The guaranteed return to the highest bidder for his investment is not small, by any measure. In real terms, Litonjua's investment had earned more than ₱10.5 million in two and a half years.

The required deposit under Section 267 becomes jurisdictional **only if** there is no dispute that the real property is tax delinquent. In that instance, the deposit will serve its intended purpose. However, where the property sold at a public auction sale is not tax delinquent, then the envisioned purpose becomes irrelevant, if not oppressive.

In support of BHC's contention that the subject two lots are not real property tax delinquent, it specifically made the following averments in its Complaint:

> 4. Per letters dated November 6, 2007, the City Government of Taguig billed plaintiff, the basic taxes due on subject properties, for the years 2005 to 2006 and the 4th Quarter of 2007, **for settlement within the month of November 2007** to avoid penalties of 2% per month, in the amounts of Php 414,132.18 and Php 411,238.68 based on the Statements of Accounts processed on November 5, 2007, reviewed by Teodoro S. Cruz, Head, Land Tax Division and approved by Atty. Rosario V.E. Reyes, OIC City Treasurer (copies of each are attached hereto as Annexes "E"[62] and "F"[63]);
>
> 5. Conformably, plaintiff paid the City Treasurer's Office of Taguig City, the total amount of Php 825,370.86 for which Official Receipt No. 8625735 V dated November 29, 2007 was issued (copy attached hereto as Annex "G"[64]).[65]

In fine, the realty taxes due on the subject two lots appear to have been paid – with the Official Receipts issued by the City of Taguig having been appended to the Complaint. Why

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[62] *Rollo*, pp. 34-36.

[63] *Id*. at 37-39.

[64] *Id*. at 40.

[65] *Id*. at 22.

should the tax declarant, BHC, thus be penalized for the LGU's wrongful action?

The Court ruled in *NHA*:

NHA cannot be declared delinquent in the payment of real property tax obligations which, by reason of its tax-exempt status, cannot even accrue in the first place. Nonetheless, because respondent Iloilo City filed a motion to dismiss NHA's Complaint x x x and not an answer, it is both proper and prudent to remand the case to the trial court in order to afford respondent Iloilo City full opportunity to be heard on the matters [on the nullity of the proceedings undertaken by respondent Iloilo City which eventually led to the public auction sale of its property] raised in the complaint.[66] (Underscoring supplied)

Again, BHC alleged that it settled its unpaid real property tax through the payment of ₱825,370.86 with the City Treasurer's Office of Taguig City as evidenced by **Official Receipt** No. 8625735 V dated November 29, 2007.[67] Per letters dated November 6, 2007, the Taguig City billed BHC the basic taxes due on the subject properties **for settlement within the month of November 2007** in the amounts of ₱414,132.18 and ₱411,238.68.[68]

It must be emphasized that the November 6, 2007 letters of Taguig City explicitly state:

Attached herewith is your Statement of Account for Real Property Tax from year 2005 to 2006 and the 4th Quarter of 2007, amounting to **Php 414,132.18**. Please settle this amount within the **month of November** to avoid penalties of 2% per month. This applies to current accounts only.[69]

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[66] *National Housing Authority v. Iloilo City*, *supra* note 49, at 611-12.

[67] *Rollo*, p. 15 (with respect to the allegation); p. 40 (with respect to the receipt).

[68] *Id*. at 34-39.

[69] *Id*. at 34.

Attached herewith is your Statement of Account for Real Property Tax from year 2005 to 2006 and the 4th Quarter of 2007, amounting to **Php 411,238.68**. Please settle this amount within the **month of November** to avoid penalties of 2% per month. This applies to current accounts only.[70] (Emphasis and underscoring supplied)

Given the fact that BHC was given the month of November 2007 to settle its "real property taxes (BASIC & SEF) including penalties thereof,"[71] it is highly suspicious and questionable why the subject two lots were then sold at public auction on November 15, 2007[72] or even before the lapse of the settlement period indicated in the letters of Taguig City.

It must also be noted that the billing letters dated November 6, 2007 mention "Real Property Tax from year 2005 to 2006 and the 4th Quarter of 2007"[73] and the Final Bills of Sale refer to "the real property tax x x x accrued for the years 4th Qtr. 2005-2007 and has not been paid and remained delinquent."[74] **The payment was made by BHC on November 29, 2007**[75] **which was well within the due date for the payment of the installment for the 4th quarter of 2007 pursuant to Section 250 of the LGC**, which states:

SEC. 250. *Payment of Real Property Taxes in Installments.* — The owner of the real property or the person having legal interest therein may pay the basic real property tax and the additional tax for the [Special Education Fund (SEF)] due thereon without interest in four (4) equal installments: the first installment to be due and payable on or before the thirty-first (31st) of March; the second installment, on or before the thirtieth (30th) of June; the third installment, on or

[70] *Id*. at 37.

[71] Statement of Accounts for the month of November 2007 issued by the Office of the Treasurer, Land Tax Division, *id*. at 35-36 and 38-39.

[72] Certificates of Sale of Delinquent Property to Purchaser, *id*. at 48-49; CA Decision, pp. 2-3, *id*. at 167-168.

[73] *Rollo*, pp. 34, 37.

[74] *Id*. at 42, 45.

[75] *Id*. at 40.

before the thirtieth (30th) of September; and the last installment on or before the thirty-first (31st) of December, except the special levy the payment of which shall be governed by ordinance of the sanggunian concerned.

Given the foregoing, it is the LGU which should be faulted for sending the billing letters to BHC without indicating therein the tax delinquent status of the subject two lots and their having been previously auctioned in a tax delinquency sale, and for accepting BHC's payment to update its realty tax liability when it had already declared the subject two lots tax delinquent and had already conducted a tax delinquency auction thereof. These acts of Taguig City clearly amount to bad faith. Thus, putting the blame on BHC for its purported failure to redeem the properties is not only belied by the documents on record, but is overwhelming proof of utter bad faith.

With the presentation of the Official Receipts, showing payment of the unpaid realty taxes within the period prescribed, the delinquent status of the subject two lots is negated. Thus, Section 267 is not being circumvented, and that, in this case, is **inapplicable** because there appears to be **no tax delinquency**.

Following the Court's ruling in *NHA*, the case must be remanded to the RTC for further proceedings to afford Taguig City the opportunity to dispute BHC's claim that it is not a delinquent taxpayer in relation to the subject two lots.

Thus, the position taken by the RTC, as affirmed by the CA, that "[s]o long as the plaintiff assails the validity of the tax sale at public auction then Section 267 is applicable"[76] is unjustified for it disregards the intended purpose of the deposit requirement, the reason for the sale at public auction of the subject real property, its realty tax status and the kind of "taxpayer" contemplated therein. **<u>If there is competent evidence that the realty tax due on the property subject of the tax sale has been seasonably and fully paid, then the deposit requirement under Section 267 does not serve its intended purpose and ceases to be jurisdictional</u>**.

[76] *Id*. at 75, 170.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated November 29, 2012 and Resolution dated May 28, 2013 in CA-G.R. CV No. 96858 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court, Branch 271, Pasig City for further proceedings, to determine whether the subject two lots are delinquent in real property taxes and afford Taguig City the opportunity to dispute BHC's claim that it is not a delinquent taxpayer in relation to the subject two lots and to resolve the case accordingly.

SO ORDERED.

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

Sereno, C.J. (Chairperson), see dissenting opinion.

Del Castillo, J., joins the dissent of C.J. Sereno.

DISSENTING OPINION

SERENO, *C.J.*:

I am compelled to register my dissent from the opinion of the majority in this case, which allowed petitioner Beaumont Holdings Corporation to continue the action despite its non-compliance with the deposit requirement under Section 267 of the Local Government Code (LGC). A reading of the *ponencia* reveals that the majority ruling was based on a single premise – that hearings may be held to determine whether or not petitioner was a delinquent taxpayer, without requiring the payment of the required deposit.

Regrettably, I cannot support the foregoing conclusion. The majority decision goes against the unambiguous and unqualified language of Section 267. By allowing the trial court to hold hearings even for the limited purpose of resolving the delinquency issue, the majority has sanctioned a violation of the express command in Section 267 for courts **not** to entertain an action unless the deposit requirement is first satisfied.

It must also be emphasized that a plain reading of the provision supports the view that the deposit requirement is intended to apply to **any** action assailing the validity of a tax sale. The provision does not distinguish based on the type of issue raised. Where the law does not distinguish, the Court should not distinguish.

FACTUAL ANTECEDENTS

Before this Court is a Petition for Review on Certiorari filed by Beaumont Holdings Corporation to assail the Court of Appeals (CA) Decision[1] and Resolution[2] dated 29 November 2012 and 28 May 2013, respectively, in CA-G.R. CV No. 96858. The CA affirmed the Resolution[3] issued by the Regional Trial Court (RTC) on 30 September 2010, which dismissed the Complaint[4] filed by petitioner to annul the auction sale of the latter's two lots in Taguig City. The appellate court ruled that the RTC did not acquire jurisdiction over the case because of petitioner's failure to comply with the deposit requirement under Section 267 of Republic Act No. 7160 or the Local Government Code (LGC).[5]

Petitioner is the registered owner of two parcels of land located in Fort Bonifacio, Taguig City.[6] These lots are covered by Transfer Certificates of Title (TCT) Nos. 1033-P[7] and 1034-P.[8]

On 6 November 2007, the Taguig City Government sent a letter to petitioner requiring payment of real property taxes in

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[1] *Rollo,* pp. 166-174; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang.

[2] *Id.* at 180-181.

[3] *Id.* at 71-77; penned by Presiding Judge Paz Esperanza M. Cortes.

[4] *Id.* at 21-25.

[5] *Id.* at 74-76; 171-173.

[6] *Id.* at 167.

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

[8] *Id.* at 28-29.

the total amount of ₱414,132.18 within the month of November 2007.[9] As indicated in the Statement of Account[10] attached to the letter, this sum represented the real property taxes on the two lots for the years 2005, 2006, and the fourth quarter of 2007.[11] The letter stated:

> Attached herewith is your Statement of Account for Real Property Tax from year 2005 to 2006 and the 4th Quarter of 2007, amounting to **Php411,238.68.** Please settle this amount within the month of November to avoid penalties of 2% per month. This applies to current accounts only.
>
> We shall appreciate early remittance thereof, however, if payment has been made, please disregard this statement. Should a discrepancy exist between our billing and your records, kindly coordinate with our office immediately.
>
> We thank you in advance for paying your taxes on time.[12] (Emphasis in the original)

On 29 November 2007, petitioner paid the City Government of Taguig ₱825,370.86.[13] A second payment in the amount of ₱370,753.69 was made on 30 January 2009.[14]

It appears, however, that prior to the reminder sent to petitioner on 6 November 2007, the two lots had already been declared delinquent,[15] levied upon[16] and advertised for sale[17] by the Taguig City Government. The properties were eventually sold at public auction to respondent Mark Anthony Litonjua (Litonjua) on

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[9] *Id*. at 34.

[10] *Id*. at 35-36.

[11] *Id.*

[12] *Id*. at 37.

[13] *Id*. at 40, 167.

[14] *Id*. at 41, 168.

[15] *Id*. at 167.

[16] *Id*.

[17] *Id*. at 168.

15 November 2007,[18] or 14 days prior to the first payment made by petitioner.

On 7 December 2007, the Taguig City Treasurer sent a letter to petitioner informing it of the sale of the two lots.[19] While acknowledging receipt of the first payment of ₱825,370.86, the City Treasurer reminded petitioner that the latter still had to pay the outstanding balance of ₱353,106.92, representing the costs of sale plus 2% interest on the entire amount, in order to redeem the property.[20] Two other letters of the same tenor were sent to petitioner on 5 February 2008[21] and 4 August 2008[22] with updated computations of the amounts due.

On 6 February 2009, Final Bills of Sale[23] were issued by the Taguig City Treasurer conveying the properties to Litonjua in view of petitioner's failure to redeem the properties within one year from the date of the auction sale.[24]

On 25 May 2010, petitioner filed a Complaint[25] before the RTC against Atty. Rosario V. E. Reyes, OIC City Treasurer and chairperson of the Committee on Auction Sale of Taguig City; Wilfredo C. Villar, City Administrator; Francisco T. Endriga, City Assessor; Atty. Shiela F.B. Elbinias-Uyboco, City Assessment Department Head; and Litonjua, as the purchaser of the property.[26] Petitioner sought to (a) nullify the public auction sale of its two lots and all other proceedings taken pursuant thereto; (b) enjoin the Register of Deeds from cancelling its

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[18] *Id.*

[19] *Id*. at 58.

[20] *Id.*

[21] *Id*. at 59.

[22] *Id*. at 60.

[23] *Id*. at 42-47.

[24] *Id*.

[25] *Id*. at 21-25.

[26] *Id*. at 23.

titles over the property and from issuing new TCTs in the name of Litonjua; and (c) hold respondents liable for actual damages in the amount of ₱2 million.[27] Petitioner alleged that the sale of its properties at auction was unjustified considering that it had remitted the required real property taxes before the deadline set by the City Government, i.e. "within the month of November 2007."[28]

On 2 July 2010, respondent city officials filed an Answer[29] refuting petitioner's claims. They alleged that the subject lots were properly sold at auction, because petitioner had failed to pay its real property taxes for 2005, 2006 and 2007 despite several reminders.[30] While acknowledging petitioner's payments, they maintained that the amount remitted was not enough to redeem the property as the 2% bidder's interest and costs of sale had not been paid.[31] They likewise underscored petitioner's noncompliance with Section 267 of the LGC, which prescribes the requirements for actions assailing the validity of tax sales.[32]

Litonjua, for his part, filed a Motion to Dismiss[33] the Complaint on the ground of lack of jurisdiction. He alleged that the failure of petitioner to comply with the conditions precedent to the filing of an action to challenge a tax sale, particularly its failure to deposit the amount required under Section 267, was fatal to his claim.[34]

In its Comment/Opposition to the Motion to Dismiss dated 15 July 2010,[35] petitioner asserted that it was not obliged to

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[27] *Id*.

[28] *Id*. at 22.

[29] *Id*. at 50-56.

[30] *Id*. at 52.

[31] *Id*.

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

[33] *Id*. at 61-64.

[34] *Id*.

[35] *Id*. at 67-69.

comply with the deposit requirement under Section 267, because it was not the delinquent taxpayer referred to in the provision.[36] It maintained that it had paid its real property taxes within the month of November 2007 as required by the City Government of Taguig.[37]

THE RULING OF THE RTC

In a Resolution dated 30 September 2010,[38] the RTC dismissed the Complaint for lack of jurisdiction.[39] Rejecting the argument that the deposit requirement was not applicable to petitioner because it was not a delinquent taxpayer, the trial court stated:

Therefore, whether or not the plaintiff is a delinquent taxpayer is of no moment in determining whether Section 267 is applicable herein. So long as the plaintiff assails the validity of the tax sale at public auction then Section 267 is applicable. As such, the plaintiff must deposit with the Court the amount for which the real property was sold together with interest of Two Percent (2%) per month from the date of sale to the time of the institution of the action. This had been so required by the Supreme Court in the case of National Housing Authority vs. Iloilo City, et al. x x x

x x x x x x x x x

The plaintiff, by arguing that Section 267 is not applicable to them because they are not delinquent taxpayer [sic], implicitly admits that they had not complied with Section 267. Thus the Motion to Dismiss is meritorious.

WHEREFORE, premises considered, the Motion to Dismiss is hereby GRANTED.

Let the case be DISMISSED. [40]

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[36] *Id*. at 68.

[37] *Id*.

[38] *Id*. at 71-77.

[39] *Id*. at 77.

[40] *Id*. at 75-77.

Petitioner's Motion for Reconsideration[41] was denied by the RTC in a Resolution dated 17 February 2011.[42]

THE RULING OF THE CA

On 1 April 2011, petitioner filed an appeal with the CA to challenge the dismissal of the Complaint.[43] Affirming the ruling of the RTC, however, the appellate court held in a Decision dated 29 November 2012:

> We find no legal leg to stand on the herein appellant's contention that since it is not a delinquent taxpayer, Section 267 of R.A. 7160 is not applicable in the present case. We are more convinced with the declaration of the trial court, thus:
>
> > x x x whether or not the plaintiff is a delinquent taxpayer is of no moment in determining whether Section 267 is applicable herein. **So long as the plaintiff assails the validity of the tax sale at public auction then Section 267 is applicable.** x x x (Emphasis supplied)
>
> x x x x x x x x x
>
> The High Court, in *National Housing Authority v. Iloilo City,* held that the deposit required under Section 267 of the Local Government code is a jurisdictional requirement, the non-payment of which warrants the dismissal of the action. Because the herein appellant did not make such deposit, the lower court never acquired jurisdiction over the present complaint hence, justifies the dismissal thereof. Perforce, We find no reason to depart from the move of the lower court in dismissing the present case.[44] (Citations omitted; emphases in the original)

On 28 May 2013, the CA issued a Resolution[45] denying petitioner's Motion for Reconsideration.[46]

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[41] *Id*. at 78-80.

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

[43] *Id*. at 87.

[44] *Id*. at 170,173.

[45] *Id*. at 180-181.

[46] *Id*. at 175-178.

PROCEEDINGS BEFORE THIS COURT

Petitioner asserts that the CA gravely erred in affirming the dismissal of the Complaint for failure to comply with the deposit requirement in Section 267.[47] Petitioner maintains that the provision, when construed in its totality, applies only to delinquent taxpayers.[48] Since it supposedly paid its real property taxes on time, i.e. within the month of November 2007, which was the cut-off date indicated in the letters dated 6 November 2007 sent by the Taguig City Government,[49] petitioner contends that it cannot be required to make the deposit.[50]

In a Comment[51] dated 7 December 2013, Litonjua again highlights petitioner's noncompliance with the deposit requirement under Section 267. This omission, he asserts, warrants the dismissal of the Complaint.[52]

Respondent city officials also filed a Comment[53] dated 4 February 2014, in which they emphasize that Section 267 applies to any "taxpayer" questioning the sale of real property at public auction. They argue that to construe the requirement as applicable only to a delinquent taxpayer would render Section 267 ineffective, as that interpretation would allow anyone to evade compliance so long as the latter claim to have paid their taxes on time.[54]

The majority granted the Petition. In the Decision, it was declared that the precondition for the operation of Section 267 is the realty tax delinquency of the property. This case was

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[47] *Id*. at 13.

[48] *Id*. at 15.

[49] *Id*. at 14, 34-39.

[50] *Id*. at 15.

[51] *Id*. at 206-211.

[52] *Id*. at 209.

[53] *Id*. at 241-246.

[54] *Id*. at 243.

therefore remanded to the RTC, with a directive to undertake proceedings to determine whether petitioner is a delinquent taxpayer.

I **DISSENT** from the view of the majority. For the reasons stated hereunder, I believe the Petition should be denied.

The RTC and the CA correctly dismissed petitioner's Complaint for lack of jurisdiction.

Section 267 of the LGC prevents a court from entertaining a suit for the annulment of a tax sale, unless the taxpayer who brought the suit pays an amount equivalent to the purchase price paid at public auction plus two percent (2%) interest per month from the date of the sale up to the time of the institution of the action. Failure to comply with this prerequisite deprives a court of jurisdiction and is deemed a sufficient ground for the outright dismissal of the action. In *National Housing Authority (NHA) v. Iloilo City*,[55] this Court explained that the plain and unequivocal language of Section 267 admits of no other interpretation:

> As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition — a "prerequisite", to borrow the term used by the acknowledged father of the Local Government Code — which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. **The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made.** This is evident from the use of the word "shall" in the first sentence of Section 267. **Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.**[56] (Emphases supplied)

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[55] 584 Phil. 604 (2008).

[56] *Id*. at 610.

The foregoing pronouncements were reiterated by this Court in *Gamilla v. Burgundy Realty Corp.,*[57] and *Spouses Wong v. City of Iloilo.*[58]

While the delinquency of the properties involved was never questioned in the foregoing cases, it must be emphasized that our interpretation of Section 267 was based on the language of the provision[59] and nothing else. The pronouncements therein were not dependent on the specific allegations of the taxpayers. That same interpretation must therefore be applied to this case.

The deposit in Section 267 is an "ingenious legal device" through which the law ensures that purchasers can be reimbursed for the price they have paid at the auction sale should the court

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[57] In *Gamilla v. Burgundy Realty Corp.,* G.R. No. 212246, 22 June 2015, it was explained:

"On the first issue, the CA erred in taking cognizance of the case. **Section 267 of R.A. No. 7160 explicitly provides that a court shall not entertain any action assailing the validity or sale at public auction of real property unless the taxpayer deposits with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. This condition is a jurisdictional requirement, the nonpayment of which warrants the dismissal of the action.** Considering that BRC did not make such deposit, the RTC should not have acted on the opposition of BRC."

[58] In *Spouses Wong v. City of Iloilo,* 609 Phil. 300 (2009),the Court declared:

"Section 83 of PD 464 states that the RTC shall not entertain any complaint assailing the validity of a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest equivalent to 20% per annum from the date of sale until the institution of the complaint. This provision was adopted in Section 267 of the Local Government Code, albeit the increase in the prescribed rate of interest to 2% per month.

In this regard, *National Housing Authority v. Iloilo City* holds that **the deposit required under Section 267 of the Local Government Code is a jurisdictional requirement, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints."**

[59] *Supra* notes 55, 57 and 58.

declare the sale invalid.[60] In this way, the local government unit is able to retain the bid price regardless of the final outcome of the suit, thereby ensuring the satisfaction of the tax delinquency.[61]

Consistent with this ultimate purpose, the deposit requirement has been considered applicable to *all* "initiatory actions assailing the validity of tax sales."[62] The use of the terms "entertain" and "institution" in the first paragraph of Section 267 supports this broad interpretation.[63]

The foregoing cases evidently apply to the case at bar, as the action filed by petitioner before the RTC seeks to invalidate the tax auction sale of its properties. The Complaint states:

> 10. In view of the foregoing, there being no valid justification to sell plaintiff's property in public auction, the same and all other proceedings taken, thereafter, including the Final Bills of Sale and the Certificates of Sale issued to private defendant Mark Anthony M. Litonjua as inscribed in the plaintiff's titles should be annulled and cancelled ownership and issuing new Transfer Certificates of Title, in favor of private defendant Mark Anthony M. Litonjua;
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> x x x x x x x x x
>
> WHEREFORE, premises considered, it is respectfully prayed that a judgment be rendered by this Honorable Court, as follows:
>
> (1) Nullifying the public auction sale held on November 15, 2007, and all other subsequent proceedings taken by defendants, including the execution and annotation of the Final Bill of Sale and the Certificate of sale issued to Mark Anthony M. Litonjua with respect to subject plaintiff's property covered by Transfer Certificates of Title Nos. 1033-P and 1034-P;[64]

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[60] *Id*. at 611.

[61] *Id*.

[62] *Spouses Plaza v. Lustiva*, G.R. No. 172909, 5 March 2014.

[63] *Id*.

[64] *Rollo,* pp. 22-23.

Given the nature of petitioner's action and its admitted failure to deposit the amount required by Section 267,[65] the RTC and the CA had no choice but to dismiss the Petition for lack of jurisdiction.

The deposit requirement in Section 267 applies to all taxpayers seeking the annulment of a tax sale under Book III, Title II of the LGC.

In an attempt to exempt itself from the deposit requirement, petitioner advances a single argument – it contends that it is not required to pay the deposit under Section 267 because it is *not* a delinquent taxpayer.[66] The sole basis of its proposed interpretation of the first paragraph of Section 267 is the use of the phrase "delinquent owner of the real property" in the second paragraph of the same provision. It argues:

> That with due respect, Section 267 itself would show that it refers to a delinquent taxpayer, thus there would be no basis to require the petitioner to make such deposit so that the lower court could take cognizance of the complaint for as above-shown, petitioner was not a delinquent taxpayer. Section 267 states – "x x x x Neither shall any court declare a sale at public auction invalid by reasons of irregularities or informalities in the proceedings unless the substantive rights of the **delinquent owner** of the real property or the person having legal interest therein have been impaired." x x x Clearly, Section 267 refers to a delinquent taxpayer. [67] (Emphasis in the original)

Petitioner claims that the use of the word "delinquent" in this segment means that the entire Section 267, including the first paragraph requiring a deposit, may be applied only to a delinquent taxpayer.

I am not persuaded.

The plain language of the provision reveals that the law does not support petitioner's proposed interpretation. To begin with,

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[65] *Id*. at 9-20; 67-69; 90-97.

[66] *Rollo*, pp. 14-15.

[67] *Id*. at 15.

the first paragraph of Section 267 speaks only of a "taxpayer" who brings an action to annul a tax sale conducted under Book III, Title II of the LGC, on real property taxation. By definition, a "taxpayer" is "one who pays or is subject to a tax."[68] Since the term is used in its general sense without qualification, the Court must consider it as referring to *any person* who (a) is subject to real property taxes under the LGC; and (b) seeks to challenge the validity of the sale at public auction of real property or rights. There is nothing in the provision to indicate that its application is limited to delinquent taxpayers. *Ubi lex non distinguit nec nos distinguere debemos.* Where the law does not distinguish, the court should not distinguish.

Further, it is an established principle of statutory construction that the legislature is presumed to have known the meaning of the words in the statute and to have used these words advisedly to express its true intent.[69] Where general words are used, their natural meaning cannot be restricted by other words, unless the legislative intention to do so is clear and manifest.[70]

In this case, the general and encompassing term "taxpayer" must be held to embrace all those subject to tax under Section 267, unless there is proof that the legislature intended to limit the application of this provision to a certain type of taxpayer. However, other than the use of the phrase "delinquent owner" in the second paragraph of Section 267, petitioner has failed to present proof of that intent. Accordingly, this Court should not have gone beyond the plain meaning of the provision.

In my view, had the legislature intended the deposit requirement to apply only to a delinquent taxpayer, rather than to all taxpayers, it would have used appropriate words to convey this intention. In fact, the legislature utilized a distinct terminology in the two paragraphs of Section 267 to highlight

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[68] *Black's Law Dictionary*, 1600 (9th ed. 2009).

[69] *PAGCOR v. Philippine Gaming Jurisdiction, Inc.,* G.R. No. 177333, 604 Phil. 547 (2009).

[70] *Tolentino v. Catoy,* 82 Phil. 300 (1948).

the difference between the conditions imposed in actions seeking the annulment of tax sales. While the deposit requirement in the first paragraph was made applicable to a *taxpayer* in general, the second one referred specifically to the impairment of the substantive rights of a *delinquent owner* of real property or a person legally interested therein:

Sec. 267. Action Assailing Validity of Tax Sale. — **No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action.** The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings **unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.** (Emphases supplied)

There is no reason for the Court to deviate from the language of the statute. Petitioner is a taxpayer under the LGC, and it has initiated an action to annul a tax sale under Book III, Title II of the same code. Hence, it is covered by the language of Section 267 and must be required to comply with the deposit requirement in the first paragraph of the provision.

The interpretation accorded by the majority to Section 267 has effectively rendered the provision illogical and completely meaningless. The issue of delinquency is a factual matter that may only be resolved after the presentation of evidence of a taxpayer's failure to pay taxes within the period "authorized by law to make such payments without being subjected to the payment of penalties."[71] Since courts are prohibited from entertaining an action to annul a tax sale *until* the taxpayer

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[71] *Padilla v. City of Pasay,* 132 Phil. 743-753 (1968).

pays the required deposit, it would be impossible to hold the proceedings necessary to decide this question prior to compliance with the requirement.

By allowing the trial court to hold hearings even for the limited purpose of resolving the delinquency issue, the majority has sanctioned a violation of the express command in Section 267 for courts **not** to entertain an action unless the deposit requirement is first satisfied. Their interpretation of Section 267 has likewise rendered the provision inutile, as it allows litigants to easily circumvent the deposit requirement by the mere expedient of contesting the delinquent status of the property. I cannot agree to this interpretation.

Accordingly, I hereby **DISSENT**.

FIRST DIVISION

[G.R. No. 211222. August 7, 2017]

ALLAN S. CU, *petitioner, vs.* **SMALL BUSINESS GUARANTEE AND FINANCE CORPORATION THROUGH MR. HECTOR M. OLMEDILLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IF A CRIMINAL CASE IS DISMISSED BY THE TRIAL COURT OR IF THERE IS AN ACQUITTAL, A RECONSIDERATION OF THE ORDER OF DISMISSAL OR ACQUITTAL MAY BE UNDERTAKEN BY THE PUBLIC PROSECUTOR, OR IN THE CASE OF AN APPEAL, BY THE STATE ONLY THROUGH THE OFFICE OF THE SOLICITOR GENERAL, ON THE

CRIMINAL ASPECT OF THE CASE. THE OFFENDED PARTY MAY UNDERTAKE SUCH MOTION FOR RECONSIDERATION OR APPEAL ONLY INSOFAR AS THE CIVIL ASPECT OF THE CASE IS CONCERNED.— The Court observed in *Mobilia Products, Inc. v. Umezawa* that: In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned. In so doing, the private complainant or offended party need not secure the conformity of the public prosecutor. If the court denies his motion for reconsideration, the private complainant or offended party may appeal or file a petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or x x x adequate remedy in the ordinary course of law.

2. **ID.; ID.; ID.; ID.; RESPONDENT CORPORATION LACKED THE AUTHORITY TO REPRESENT THE STATE IN THE APPEAL OF THE CRIMINAL CASES BEFORE THE COURT OF APPEALS AS THIS AUTHORITY IS SOLELY VESTED IN THE OFFICE OF THE SOLICITOR GENERAL (OSG).—** Following settled jurisprudence, the Court believes, and so holds, that being a mere private complainant, SB Corp. lacked the authority to represent the State in the appeal of the criminal cases before the CA as this authority is **solely** vested in the OSG. The OSG is the law office of the Government whose specific powers and functions include that of representing the Republic and/or the People before any court in any action which affects the welfare of the People as the ends of justice may require. Accordingly, if there is a dismissal of a criminal case by the trial court, it is only the OSG that

may bring an appeal of the criminal aspect representing the People. Clearly, SB Corp. did not file its petition for review with the CA merely to preserve its interest in the civil aspect of the criminal cases but sought the reinstatement of the criminal prosecution of Cu for violation of B.P. 22. Being an obvious attempt to participate in, or otherwise prosecute, the criminal aspect of the cases without the conformity of the OSG, its recourse must fail.

3. **ID.; ID.; ID.; ID.; THE COURT TAKES EXCEPTIONS AND GIVES DUE COURSE TO SEVERAL ACTIONS EVEN WHEN THE RESPECTIVE INTERESTS OF THE GOVERNMENT ARE NOT PROPERLY REPRESENTED BY THE OSG WHEN THE CHALLENGED ORDER AFFECTED THE INTEREST OF THE STATE OR THE PEOPLE, THE CASE INVOLVED A NOVEL ISSUE, AND THE ENDS OF JUSTICE WOULD BE DEFEATED IF ALL THOSE WHO CAME OR WERE BROUGHT TO COURT WERE NOT AFFORDED A FAIR OPPORTUNITY TO PRESENT THEIR SIDES.—** This Court has, however, taken exceptions and given due course to several actions even when the respective interests of the Government were not properly represented by the OSG, namely, when the challenged order affected the interest of the State or the People, the case involved a novel issue, like the nature and scope of jurisdiction of the Cooperative Development Authority, and the ends of justice would be defeated if all those who came or were brought to court were not afforded a fair opportunity to present their sides. The Court is inclined to interpose the exception in the present petition for justice to prevail and if only to write *finis* to the criminal cases from which the petition originates.

4. **COMMERCIAL LAW; BANKS AND BANKING; LIQUIDATION OF A CLOSED BANK; PLACEMENT OF A CLOSED BANK UNDER LIQUIDATION, EFFECTS THEREOF.—** [W]hen a bank is ordered closed by the Monetary Board, PDIC is designated as the receiver which shall then proceed with the takeover and liquidation of the closed bank. The placement of a bank under liquidation has the following effect on interest payments: "The liability of a bank to pay interest on deposits and all other obligations as of closure shall cease upon its closure by the Monetary Board without prejudice

to the first paragraph of Section 85 of Republic Act No. 7653 (the New Central Bank Act)," and on final decisions against the closed bank: "The execution and enforcement of a final decision of a court other than the liquidation court against the assets of a closed bank shall be stayed. The prevailing party shall file the final decision as a claim with the liquidation court and settled in accordance with the Rules on Concurrence and Preference of Credits under the Civil Code or other laws."

5. **ID.; ID.; ID.; A PETITION FOR ASSISTANCE IN THE LIQUIDATION OF A CLOSED BANK IS A PROCEEDING *IN REM*; THE SECURITIES REGULATION CODE (RA 8799) AND SUPREME COURT ADMINISTRATIVE MATTER NO. 00-8-10-SC OR THE RULES OF PROCEDURE ON CORPORATE REHABILITATION ARE NOT APPLICABLE IN A PETITION FOR ASSISTANCE IN THE LIQUIDATION OF A CLOSED BANK.—** The petition for assistance in the liquidation of a closed bank is a special proceeding for the liquidation of a closed bank, and includes the declaration of the concomitant rights of its creditors and the order of payment of their valid claims in the disposition of assets. It is a proceeding *in rem* and the liquidation court has **exclusive** jurisdiction to adjudicate disputed claims against the closed bank, assist in the enforcement of individual liabilities of the stockholders, directors and officers, and decide on all other issues as may be material to implement the distribution plan adopted by PDIC for general application to all closed banks. The provisions of the Securities Regulation Code or RA 8799, and Supreme Court Administrative Matter No. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation are not applicable to the petition for assistance in the liquidation of closed banks.

6. **ID.; ID.; ID.; THE CLOSURE OF THE BANK BY THE MONETARY BOARD, THE APPOINTMENT OF A RECEIVER AND ITS TAKEOVER OF THE BANK, AND THE FILING OF A PETITION FOR ASSISTANCE IN THE LIQUIDATION OF THE CLOSED BANK, ONLY SUSPENDS OR STAYS THE DEMANDABILITY OF THE LOAN OBLIGATION OF THE CLOSED BANK TO ITS CREDITOR, WITH THE CONCOMITANT CESSATION OF THE FORMER'S OBLIGATION TO PAY INTEREST**

TO THE LATTER UPON THE BANK'S CLOSURE, BUT IT DOES NOT SUSPEND THE BIRTH OF THE LOAN OBLIGATION OF THE CLOSED BANK WHERE THE LATTER HAD ALREADY AVAILED OF THE LOAN PROCEEDS.— In the present cases, the closure of G7 Bank by the Monetary Board, the appointment of PDIC as receiver and its takeover of G7 Bank, and the filing by PDIC of a petition for assistance in the liquidation of G7 Bank, had the similar effect of suspending or staying the demandability of the loan obligation of G7 Bank to SB Corp. with the concomitant cessation of the former's obligation to pay interest to the latter upon G7 Bank's closure. Moreover, these events also affected G7 Bank's "liquidability" — subjecting the exact amount that SB Corp. is entitled to collect from G7 Bank to the distribution plan adopted by PDIC and approved by the liquidation court in accordance with the Rules on Concurrence and Preference of Credits under the Civil Code. Therefore, applying *Gidwani* by analogy, at the time SB Corp. presented the subject checks for deposit/ encashment in October 2008, it had no right to demand payment because the underlying obligation was not yet due and demandable from Cu and he could not be held liable for the civil obligations of G7 Bank covered by the subject dishonored checks on account of the Monetary Board's closure of G7 Bank and the takeover thereof by PDIC. Even payment of interest on G7 Bank's loan ceased upon its closure. Moreover, as of the time of presentment of the checks, there was yet no determination of the exact amount that SB Corp. was entitled to recover from G7 Banks as this would still have to be ascertained by the liquidation court pursuant to the PDIC's distribution plan in accordance with the Concurrence and Preference of Credits under the Civil Code. To clarify, given the invocation in *Gidwani* of the definition of an obligation subject to a suspensive obligation, what is suspended here is not the birth of the loan obligation since the debtor had availed of the loan proceeds. What is subject to a suspensive condition is the right of the creditor to demand the payment or performance of the loan — the exact amount due not having been determined or liquidated as the same is subject to PDIC's distribution plan. In the same vein, until then the debtor's obligation to pay or perform is likewise suspended.

APPEARANCES OF COUNSEL

Bayaua and Associates Law Offices for petitioner.

Small Business Corporation Legal Services Group for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals[3] (CA) dated October 16, 2013 in CA-G.R. SP No. 121573 and the Resolution[4] dated February 6, 2014 denying the Motion for Reconsideration filed by petitioner Allan S. Cu ("Cu").

Facts and Antecedent Proceedings

The undisputed facts are summarized by the CA in its Decision dated October 16, 2013, thus:

> x x x Small Business Guarantee and Finance Corporation [SB Corp.] is a government financial institution created by virtue of RA 6977, which is mandated by law to provide easy access credit to qualified micro, small and medium enterprises (MSMEs) through direct lending or through its conduit participating financial institutions for re-lending. One of its clients was Golden 7 Bank (Rural Bank of Nabua, Inc.) [G7 Bank], a banking corporation duly organized and existing under Philippine laws.

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

[2] *Id*. at 32-45. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring.

[3] Eighth (8th) Division.

[4] *Id*. at 67-69. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla concurring.

On August 31, 2007, an "Omnibus Credit Line Agreement" was executed, whereby G7 Bank was initially granted credit line of Fifty Million Pesos (₱50,000,000.00) by SB Corp. for re-lending to qualified MSMEs as sub-borrowers. Eventually, the credit line was increased to Ninety Million Pesos (₱90,000,000.00), and in line with said increase, the Board of Directors of G7 Bank authorized any two of its officers, namely Fidel L. Cu, Allan S. Cu [Cu], Lucia C. Pascual and Norma B. Cueto, as signatories to loan documents, including postdated checks.

Subsequently, various drawdowns were made from the line and each drawdown was covered by a promissory note, amortization schedule and postdated check. Cu and his co-signatory Lucia Pascual (now deceased) [Pascual] then issued more than a hundred postdated checks as payment to the various drawdowns made on the credit line, including the following checks subject of [the criminal cases filed against Cu and Pascual], *viz*:

CHECK NUMBER	DATE	AMOUNT
865691	October 13, 2008	3,881,513.25
977005	October 13, 2008	29,058.75
977017	October 17, 2008	37,800.00
865558	October 6, 2008	225,812.31
865653	October 7, 2008	169,391.25

On July 31, 2008, Bangko Sentral ng Pilipinas (BSP) placed G7 Bank under receivership by the Philippine Deposit Insurance Corporation (PDIC).

Thus, on August 1, 2008, x x x PDIC through its Deputy Receiver, took over the bank, its premises, assets and records and accordingly, PDIC issued the following cease and desist order, to wit:

> "With the MB's closure of the Bank, all members of the Board of Directors and officers of the Bank shall cease to have any further authority to act for and in behalf of the Bank, PDIC, as receiver, shall immediately take charge of the assets, records, and affairs of the Bank. As such, the Bank, its premises[,] assets, records shall be turned over to the Deputy Receiver immediately upon receipt of the attached MB Resolution."

Consequently, PDIC closed all of G7 Bank's deposit accounts with other banks, including its checking account with the Land Bank of the Philippines (LBP) against which the disputed checks were issued.

Upon maturity of the subject postdated checks in October 2008, SB Corp. deposited the same to its account with the LBP Makati branch but all of them were dishonored for reason of "Account Closed". Subsequently, SB Corp. sent demand letters to Cu and Pascual demanding payment of the amounts represented in the dishonored checks. Despite receipt of the demand letters, Cu and Pascual failed to make good the dishonored checks, prompting SB Corp. to file a Complaint-Affidavit for Violation of Batas Pambansa Blg. 22 (B.P. 22) before the Office of the City Prosecutor of Makati.

After finding that probable cause exists to indict Cu and Pascual for Violation of B.P. 22, on five counts, the corresponding Informations were filed in court. Eventually, the cases were raffled to Branch 65 of the [Metropolitan Trial Court,] Makati City [(MeTC)].

Meantime, on October 15, 2009, PDIC filed a Petition for Assistance in the Liquidation of G7 Bank with the RTC Branch 21 of Naga City. SB Corp. then filed its Notice of Appearance with Notice of Claims with the liquidation court on January 28, 2010. The following day, the [MeTC] issued an Order setting the arraignment of the accused Cu and Pascual on March 2, 2010.

Before the scheduled arraignment, however, Cu and Pascual filed an "Omnibus Motion (1. For the Determination of Probable Cause 2. To Dismiss the Instant Cases on Jurisdictional Grounds 3. To Defer the Arraignment and Further Proceedings on the Ground of Prejudicial Question 4. To Dismiss the Case[s] for Lack of Probable Cause)," alleging the following:

> 1. The checks were intended to cover the installment payments of the credit line drawdowns obtained from SB Corp. However, the funding of the checks could not be validly done because G7 [Bank] was placed under receivership; and
>
> 2. The notice of dishonor was not received by them and in the meantime, there is already a petition for liquidation assistance pending with the RTC of Naga City filed by PDIC. Accordingly, the liquidation court has original exclusive jurisdiction over the settlement of all the obligations of G7 Bank, including the amounts covered by the subject checks.

SB Corporation countered that the only issue being determined in a prosecution for BP 22 case is whether or not the accused issued the worthless checks, the defense that they were precluded from fulfilling their obligation by reason of the receivership is a mere afterthought and an evidentiary matter that can be ventilated during trial.

Thereafter, in an Order dated April 5, 2010, the MeTC dismissed the B.P. 22 cases and ruled in this wise:

> "It has been ruled in Abacus Real Estate Development Center, Inc. v. Manila Banking Corporation (455 SCRA 97) that the appointment of a receiver operates to suspend the authority of the bank and its directors and officers over its property and effects, such authority being reposed in the receiver, and in this respect, the receivership is equivalent to an injunction to restrain the bank officers from intermeddling with the property of the bank in any way.
>
> After G7 Bank was placed under receivership and with the designation of PDIC as Receiver, the custody and control of its assets, funds and records are with the receiver. At that time, the bank can no longer transfer or dispose of its assets. In effect, the officers of the bank, the accused in particular, can no longer touch the funds or property of the institution to fund the checks the maturity dates of which are after the bank was placed under receivership. Because of the receivership, G7 Bank cannot by itself keep sufficient funds in its account to cover the full amount of the subject checks at their maturity dates. Clearly, placing the bank under receivership prevented it from funding the checks subject of the cases. Thus, the herein cases for Violation of Batas Pambansa Bilang 22 deserve dismissal. The other grounds cited by the accused need not be discussed for being inconsequential.
>
> **WHEREFORE**, premises considered, Criminal Case Nos. 361400 to 361404 for Violation of Batas Pambansa Bilang 22, against Allan S. Cu and Lucia C. Pascual are **DISMISSED**.
>
> **SO ORDERED**."

SB Corp. filed a Motion for Reconsideration from the Order of dismissal, but the same was denied by the M[e]TC in an Order dated June 25, 2010. It then appealed to the [Regional Trial Court, Branch 61, Makati City (RTC)] arguing that a pending liquidation proceedings

(sic) does not extinguish the criminal and civil liabilities of the signatories to the dishonored corporate checks.

On May 2, 2011, the [RTC] rendered [a] Decision affirming *in toto* the dismissal of the cases for Violation of B.P. 22. The dispositive portion of the said Decision reads:

> "**WHEREFORE**, premises duly considered the instant appeal of the herein complaining juridical entity, the Small Business Guarantee and Finance Corporation (SBGFC) is hereby **DISMISSED** for lack of merit.
>
> Ex concesso, the challenged Order(s) of Branch 65 of the Metropolitan Trial Court of the City of Makati rendered in Criminal Case[s] Nos. 361400 to 361404 and dated 05 April 2010 and 25 June 2010, respectively, are hereby **BOTH AFFIRMED**.
>
> No costs.
>
> **SO ORDERED**."

On June 21, 2011, SB Corp. filed a Motion for Reconsideration of the said Decision which was denied by the [RTC]. Hence the x x x petition [for review under Rule 42] was filed [with the Court of Appeals (CA)].[5]

In the decretal portion of its Decision, the CA: (1) granted the petition filed by SB Corp., (2) vacated and set aside the May 2, 2011 Decision of the Regional Trial Court (RTC) of Makati City, Branch 61, and (3) remanded the cases to the MeTC, Branch 65 of Makati City, for further proceedings.[6]

Cu's motion for reconsideration was denied by the CA in its Resolution dated February 6, 2014. Hence, this Petition for Review on Certiorari under Rule 45 of the Rules of Court.

In the Resolution[7] of the Court dated December 1, 2016, Cu was required to furnish the Office of the Solicitor General (OSG)

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[5] *Id*. at 33-38.

[6] *Id*. at 44.

[7] *Id*. at 119.

with a copy of the petition and OSG was required to file its comment on the petition. The OSG filed its Comment[8] on July 10, 2017.

Issues

Whether the CA erred in not dismissing the SB Corp.'s petition because an appeal from the dismissal of a criminal case may be undertaken only by the State through the Solicitor General.

Whether the CA erred in reversing the May 2, 2011 Decision and September 5, 2011 Resolution of the RTC.

The Court's Ruling

Regarding the first issue, Cu contends that the CA should have dismissed SB Corp.'s petition because SB Corp., as the private offended party, could not, on its own, take an appeal from the decision of the RTC of Makati City, as it is only the Solicitor General who can represent the People of the Philippines on appeal, with respect to the criminal aspect.

In its Comment,[9] SB Corp. counters that Cu is barred from raising this issue now because he did not raise it before the CA. SB Corp. also contends that in CA-G.R. CR No. 34738, which involves the same parties and informations for violation of B.P. 22, involving 35 of 103 checks[10] that were filed against Cu and Pascual before Branch 64, MeTC of Makati City, the Solicitor General filed a motion for reconsideration after SB Corp.'s petition for review was dismissed by the CA for lack of authority to represent the People of the Philippines.[11] SB Corp. thus argues that since the Solicitor General had adopted the arguments of SB Corp. in that case, then it would not act differently in the instant cases. Finally, SB Corp. argues that

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[8] *Id*. at 136-163.

[9] *Id.* at 83-94.

[10] The said checks were issued in payment of the same Omnibus Credit Line Agreement granted in favor of G7 Bank as in the present cases.

[11] *Rollo*, pp. 84, 95-100.

the Revised Rules on Criminal Procedure authorize any party to appeal from a judgment or final order, unless the accused will be placed in double jeopardy[12] and a party may file a petition for review before the CA from a decision of the RTC rendered in the exercise of its appellate jurisdiction.[13]

The OSG, in its Comment, postulates that its participation is not always indispensable in the appeal of the dismissal of a criminal case by the trial court and that there have been times when the Court, in the interest of justice, gave due course to the appeal or petition in a criminal case filed before the Court or the CA by the private complainant or the public prosecutor.[14] It is OSG's position that the CA did not err in giving due course to the petition for review filed by SB Corp. before the CA.[15]

The Court observed in *Mobilia Products, Inc. v. Umezawa*[16] that:

> In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned. In so doing, the private complainant or offended party need not secure the conformity of the

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[12] *Id.* at 85, citing REVISED RULES ON CRIMINAL PROCEDURE, Rule 122, Sec. 1.

[13] *Id.* at 85-86, citing REVISED RULES ON CRIMINAL PROCEDURE, *id.*, Sec. 2(b) in relation to REVISED RULES OF COURT, Rule 42, Sec. 1.

[14] *Id.* at 147.

[15] *Id.* at 147, 149.

[16] 493 Phil. 85 (2005).

public prosecutor. If the court denies his motion for reconsideration, the private complainant or offended party may appeal or file a petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or x x x adequate remedy in the ordinary course of law.[17]

Following settled jurisprudence, the Court believes, and so holds, that being a mere private complainant, SB Corp. lacked the authority to represent the State in the appeal of the criminal cases before the CA as this authority is **solely** vested in the OSG. The OSG is the law office of the Government whose specific powers and functions[18] include that of representing the Republic and/or the People before any court in any action which affects the welfare of the People as the ends of justice may require.[19] Accordingly, if there is a dismissal of a criminal case by the trial court, it is only the OSG that may bring an appeal of the criminal aspect representing the People.[20]

Clearly, SB Corp. did not file its petition for review with the CA merely to preserve its interest in the civil aspect of the criminal cases but sought the reinstatement of the criminal prosecution of Cu for violation of B.P. 22. Being an obvious

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[17] *Id*. at 108, citing *Neplum, Inc. v. Orbeso*, 433 Phil. 844 (2002).

[18] Executive Order No. 292, Series of 1987 or the 1987 Revised Administrative Code, Book IV, Title III, Chapter 12, Section 35 (1) provides:

SECTION 35. *Powers and Functions.* – The Office of the Solicitor General shall 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. x x x It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

[19] *People v. Piccio*, 740 Phil. 616, 621-622 (2014), citing *Villareal v. Aliga*, 724 Phil. 47, 57-59 (2014) and *Gonzales v. Chavez*, 282 Phil. 858, 889 (1992).

[20] *Id*. at 622; citations omitted.

attempt to participate in, or otherwise prosecute, the criminal aspect of the cases without the conformity of the OSG, its recourse must fail.[21]

This Court has, however, taken exceptions and given due course to several actions even when the respective interests of the Government were not properly represented by the OSG,[22] namely, when the challenged order affected the interest of the State or the People,[23] the case involved a novel issue, like the nature and scope of jurisdiction of the Cooperative Development Authority,[24] and the ends of justice would be defeated if all those who came or were brought to court were not afforded a fair opportunity to present their sides.[25]

The Court is inclined to interpose the exception in the present petition for justice to prevail[26] and if only to write *finis* to the criminal cases from which the petition originates.

Proceeding now to the second issue, the OSG posits that a review of SB Corp.'s evidence to assess the propriety of the reinstatement or dismissal of the criminal cases against Cu before the MeTC is not warranted in a petition for review on certiorari before the Court because the determination of whether probable cause exists is not lodged with the Court.

In this petition, the propriety of the dismissal by the MeTC of B.P. 22 cases filed against Cu, which the RTC upheld, is in issue. Did the MeTC and RTC have legal basis for the dismissal?

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[21] See *id.* at 623.

[22] *Antone v. Beronilla*, 652 Phil. 151, 161 (2010).

[23] *Labaro v. Panay*, 360 Phil. 102, 110 (1998), cited in *Antone v. Beronilla*, *id.*

[24] *Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc.*, 432 Phil. 290, 308 (2002), cited in *Antone v. Beronilla*, *id.* at 162. The OSG was not even required to file a comment on the petition.

[25] *Antone v. Beronilla*, *id.*, citing *Tan v. People*, 604 Phil. 68, 88 (2009).

[26] *Id.*

The Court finds that the MeTC and RTC acted correctly and did not gravely abuse their discretion when they ordered the dismissal of the B.P. 22 cases against Cu.

In *Gidwani v. People*,[27] wherein several checks that were issued by the President of an exporter of ready-to-wear clothes in payment of the embroidery services rendered to the exporter were dishonored by the drawee bank for having been drawn against a closed account by reason of the order by the Securities and Exchange Commission (SEC) suspending all actions, claims and proceedings against the exporter that the SEC issued after the exporter filed a petition for declaration of a state of suspension of payments, for the approval of a rehabilitation plan and appointment of a management committee, the Court ruled:

Considering that there was a lawful Order from the SEC, the contract is deemed suspended. When a contract is suspended, it temporarily ceases to be operative; and it again becomes operative when a condition [occurs –] or a situation arises – warranting the termination of the suspension of the contract.

In other words, the SEC Order also created a **suspensive condition**. When a contract is subject to a suspensive condition, its birth takes place or its effectivity commences only if and when the event that constitutes the condition happens or is fulfilled. Thus, at the time [the payee] presented the September and October 1997 checks for encashment, it had no right to do so, as there was yet **no obligation due** from [the exporter, through its President].

Moreover, it is a basic principle in criminal law that any ambiguity in the interpretation or application of the law must be made in favor of the accused. Surely, our laws should not be interpreted in such a way that the interpretation would result in the disobedience of a lawful order of an authority vested by law with the jurisdiction to issue the order.

Consequently, because there was a **suspension of [the exporter's] obligations, [its President] may not be held liable for civil obligations of the corporation** covered by the bank checks at the time this case arose. However, it must be emphasized that [the

[27] 724 Phil. 636 (2014).

President's] non-liability should not prejudice the right of [the payee] to pursue its claim through the remedies available to it, subject to the SEC proceedings regarding the application for corporate rehabilitation.[28] (Emphasis and underscoring supplied)

The Court compared *Gidwani* with *Rosario v. Co*.[29] In *Rosario*, the presentment for payment and the dishonor of the checks took place before the petition for suspension of payments for rehabilitation purposes was filed with the SEC. There was already an obligation to pay the amount covered by the checks since the criminal proceedings were already underway when the SEC issued the Order suspending all actions for claims against the debtor therein. The accused therein was not excused from honoring his duly issued checks by the mere filing of the suspension of payments proceeding before the SEC.[30]

While the facts in present B.P. 22 cases against Cu are not on all fours with those in *Gidwani*, the Court finds no reason why the ruling in *Gidwani* cannot be made to apply to these cases. In *Gidwani*, the SEC order of suspension of payments **preceded** the presentment for encashment of the subject checks therein. Here, the subject postdated checks were deposited by SB Corp. in October 2008, and dishonored for reason of "Account Closed," **after** the closure of G7 Bank and **after** the PDIC, through its Deputy Receiver, had taken over G7 Bank, its premises, assets and records on August 1, 2008 and had issued a cease and desist order against the members of the Board of Directors and officers of G7 Bank and closed all its deposit accounts with other banks, including its checking account with the LBP against which the five disputed checks were issued.

Significantly, when PDIC filed on October 15, 2009 a Petition for Assistance in the Liquidation of G7 Bank with the RTC Branch 21 of Naga City (the "liquidation court"), SB Corp. thereafter filed in said liquidation court, on January 28, 2010, its Notice of Appearance with Notice of Claims.

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[28] *Id*. at 644-645.

[29] 585 Phil. 236 (2008). Erroneously cited in *Gidwani* as *Tiong v. Co*.

[30] *Gidwani v. People*, *supra* note 27, at 644.

To digress, when a bank is ordered closed by the Monetary Board, PDIC is designated as the receiver which shall then proceed with the takeover and liquidation of the closed bank.[31] The placement of a bank under liquidation has the following effect on interest payments: "The liability of a bank to pay interest on deposits and all other obligations as of closure shall cease upon its closure by the Monetary Board without prejudice to the first paragraph of Section 85 of Republic Act No. 7653 (the New Central Bank Act)," and on final decisions against the closed bank: "The execution and enforcement of a final decision of a court other than the liquidation court against the assets of a closed bank shall be stayed. The prevailing party shall file the final decision as a claim with the liquidation court and settled in accordance with the Rules on Concurrence and Preference of Credits under the Civil Code or other laws."[32]

The petition for assistance in the liquidation of a closed bank is a special proceeding for the liquidation of a closed bank, and includes the declaration of the concomitant rights of its creditors and the order of payment of their valid claims in the disposition of assets. It is a proceeding *in rem* and the liquidation court has **exclusive** jurisdiction to adjudicate disputed claims against the closed bank, assist in the enforcement of individual liabilities of the stockholders, directors and officers, and decide on all other issues as may be material to implement the distribution plan adopted by PDIC for general application to all closed banks. The provisions of the Securities Regulation Code or RA 8799, and Supreme Court Administrative Matter No. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation are not applicable to the petition for assistance in the liquidation of closed banks.[33]

In *Gidwani,* there was an SEC order of suspension of payments after a petition to that effect was filed, which had the effect of

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[31] R.A. 3591, as amended by RA No. 10846, Sec. 12(a).

[32] *Id*., Sec. 13(e)(6) and (10).

[33] *Id*., Sec. 16(g), (h) and (i).

suspending the collection of the loan obligation of the debtor therein. In the present cases, the closure of G7 Bank by the Monetary Board, the appointment of PDIC as receiver and its takeover of G7 Bank, and the filing by PDIC of a petition for assistance in the liquidation of G7 Bank, had the similar effect of suspending or staying the demandability of the loan obligation of G7 Bank to SB Corp. with the concomitant cessation of the former's obligation to pay interest to the latter upon G7 Bank's closure. Moreover, these events also affected G7 Bank's "liquidability"[34] — subjecting the exact amount that SB Corp. is entitled to collect from G7 Bank to the distribution plan adopted by PDIC and approved by the liquidation court in accordance with the Rules on Concurrence and Preference of Credits under the Civil Code.

Therefore, applying *Gidwani* by analogy, at the time SB Corp. presented the subject checks for deposit/encashment in October 2008, it had no right to demand payment because the underlying obligation was not yet due and demandable from Cu and he could not be held liable for the civil obligations of G7 Bank covered by the subject dishonored checks on account of the Monetary Board's closure of G7 Bank and the takeover thereof by PDIC. Even payment of interest on G7 Bank's loan ceased upon its closure. Moreover, as of the time of presentment of the checks, there was yet no determination of the exact amount that SB Corp. was entitled to recover from G7 Banks as this would still have to be ascertained by the liquidation court pursuant to the PDIC's distribution plan in accordance with the Concurrence and Preference of Credits under the Civil Code.

To clarify, given the invocation in *Gidwani* of the definition of an obligation subject to a suspensive obligation, what is suspended here is not the birth of the loan obligation since the debtor had availed of the loan proceeds. What is subject to a

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[34] In the context of capability of being liquidated. According to *Montemayor v. Millora*, 670 Phil. 209, 218-219 (2011), a debt is liquidated when its existence and amount are determined or when it is expressed already in definite figures which do not require verification or when the determination of the exact amount depends only on a simple arithmetical operation.

suspensive condition is the right of the creditor to demand the payment or performance of the loan — the exact amount due not having been determined or liquidated as the same is subject to PDIC's distribution plan. In the same vein, until then the debtor's obligation to pay or perform is likewise suspended.

SB Corp. knew at the time it deposited in October 2008 the subject postdated checks that G7 Bank was already under receivership and PDIC had already taken over the bank by virtue of the Monetary Board's closure thereof. SB Corp. acted in clear bad faith because with G7 Bank's closure and PDIC taking over its assets and closing all of its deposit and checking accounts, including that with LBP, there was no way that Cu or any officer of the bank could fund the said checks. Stated otherwise, it was legally impossible for Cu to fund those checks on the dates indicated therein, which were all past G7 Bank's closure because all the bank accounts of G7 Bank were closed by PDIC.

After the closure of G7 Bank, its obligations to SB Corp., including those which the subject checks were supposed to pay, are subject to the outcome of the bank's liquidation. The exact consideration of the subject checks is, thus, contingent and any demand for the payment of the obligation for which those checks were issued after closure and pending liquidation of the bank is premature.

Furthermore, there was no way for Cu to pay SB Corp. the amount due on the subject checks or make arrangements for its payment in full within five banking days from after receiving notice that such checks had been dishonored pursuant to Section 2 of B.P. 22 because as of that time, the exact amount due on the subject checks was not known or uncertain.

Needless to add, the right of SB Corp. to pursue its civil or monetary claim against G7 Bank before the liquidation court exists and is undiminished.

Accordingly, the CA erred in reversing the May 2, 2011 Decision and the September 5, 2011 Order of the RTC, Branch 61 of Makati City.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated October 16, 2013 and Resolution dated February 6, 2014 in CA-G.R. SP No. 121573 are **REVERSED** and **SET ASIDE**. Criminal Case Nos. 361400 to 361404 are **DISMISSED**, without prejudice to the right of Small Business Guarantee and Finance Corporation to pursue its claim against Golden 7 Bank (Rural Bank of Nabua, Inc.) for the value of the five checks before the liquidation court.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211966. August 7, 2017]

JOSE AUDIE ABAGATNAN, JOSEPHINE A. PARCE, JIMMY ABAGATNAN, JOHN ABAGATNAN, JENALYN A. DE LEON, JOEY ABAGATNAN, JOJIE ABAGATNAN, and JOY ABAGATNAN, *petitioners, vs.* **SPOUSES JONATHAN CLARITO and ELSA CLARITO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; BARANGAY CONCILIATION; PARTIES WHO DO NOT ACTUALLY RESIDE IN THE SAME CITY OR MUNICIPALITY OR ADJOINING *BARANGAYS* ARE NOT REQUIRED TO SUBMIT THEIR DISPUTE TO THE *LUPON* AS A PRE-CONDITION TO THE FILING OF A COMPLAINT IN COURT.— [S]ection

412(a) of the LGC requires the parties to undergo a conciliation process before the *Lupon* Chairman or the *Pangkat* as a pre-condition to the filing of a complaint in court x x x. The LGC further provides that "the *lupon* of each *barangay* shall have authority to bring together the parties **actually residing** in the same city or municipality for amicable settlement of all disputes," subject to certain exceptions enumerated in the law. One such exception is in cases **where the dispute involves parties who actually reside in barangays of different cities or municipalities**, *unless* said *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*. Thus, parties who do not actually reside in the same city or municipality or adjoining *barangays* are not required to submit their dispute to the *lupon* as a pre-condition to the filing of a complaint in court. x x x. In the present case, the Complaint filed before the MTCC specifically alleged that not all the real parties in interest in the case actually reside in Roxas City. Jimmy resided in Poblacion, Siniloan, Laguna, while Jenalyn resided in Brgy. de La Paz, Pasig City. As such, **the *lupon* has no jurisdiction over their dispute, and prior referral of the case for barangay conciliation is not a pre-condition to its filing in court**. This is true regardless of the fact that Jimmy and Jenalyn had already authorized their sister and co-petitioner, Josephine, to act as their attorney-in-fact in the ejectment proceedings before the MTCC. As previously explained, the residence of the attorney-in-fact of a real party in interest is *irrelevant* in so far as the "actual residence" requirement under the LGC for prior *barangay* conciliation is concerned.

2. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; THE NON-INCLUSION OF THE ISSUE ON THE LACK OF PRIOR *BARANGAY* CONCILIATION PROCEEDINGS IN THE PRE-TRIAL ORDER BARRED ITS CONSIDERATION DURING THE TRIAL, AS THE PARTIES ARE BOUND BY THE DELIMITATION OF ISSUES THAT THEY AGREED UPON DURING THE PRE-TRIAL PROCEEDINGS.—** [A]s the RTC correctly pointed out, **the lack of *barangay* conciliation proceedings cannot be brought on appeal because it was *not* included in the Pre-Trial Order** x x x. [I]t is important to stress that the issues to be tried between parties in a case is **limited** to those defined

in the pre-trial order as well as those which may be *implied* from those written in the order or *inferred* from those listed by *necessary implication*. In this case, a cursory reading of the issues listed in the Pre-Trial Order easily shows that the parties never agreed, whether expressly or impliedly, to include the lack of prior *barangay* conciliation proceedings in the list of issues to be resolved before the MTCC. In effect, **the non-inclusion of this issue in the Pre-Trial Order barred its consideration during the trial**. This is but consistent with the rule that parties are bound by the delimitation of issues that they agreed upon during the pre-trial proceedings.

APPEARANCES OF COUNSEL

Fredicindo A. Talabucon for petitioners.
Victor A. Azagra for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the June 20, 2013 Decision[1] and the February 3, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 03283 which dismissed, albeit without prejudice, the Complaint for Unlawful Detainer and Damages[3] filed by petitioners Jose Audie Abagatnan, Josephine A. Parce, Jimmy Abagatnan, John Abagatnan, Jenalyn A. De Leon, Joey Abagatnan, Jojie Abagatnan and Joy Abagatnan against respondents spouses Jonathan Clarito and Elsa Clarito, for failure to comply with the mandatory requirement of resorting to prior *barangay* conciliation, as required under Section 412 of Republic Act No. 7160, or the Local Government Code (LGC).

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[1] *Rollo*, pp. 158-171; penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

[2] *Id.* at 178-180.

[3] *Id.* at 28-33.

The Antecedent Facts

Wenceslao Abagatnan (Wenceslao) and his late wife, Lydia Capote (Lydia), acquired a parcel of land designated as Lot 1472-B, with a total land area of 5,046 square meters, and located at *Barangay* Cogon, Roxas City from Mateo Ambrad (Mateo) and Soteraña Clarito (Soteraña), by virtue of a Deed of Absolute Sale[4] executed on August 1, 1967.[5]

On October 4, 1999, Lydia died, leaving her children, who are co-petitioners in this case, to succeed into the ownership of her conjugal share of said property.[6]

In 1990, respondents allegedly approached Wenceslao and asked for permission to construct a residential house made of light materials on a 480-square meter portion of Lot 1472-B (subject property). Because respondent Jonathan Clarito (Jonathan) is a distant relative, Wenceslao allowed them to do so subject to the condition that respondents will vacate the subject property should he need the same for his own use.[7]

In September 2006, petitioners decided to sell portions of Lot 1472-B, including the subject property which was then still being occupied by respondents. They offered to sell said portion to respondents, but the latter declined.[8]

Consequently, petitioners sent respondents a Demand Letter[9] dated October 2, 2006 requiring the latter to vacate the subject property within fifteen (15) days from receipt of the letter. The respondents, however, refused to heed such demand.[10]

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[4] *Id*. at 37.

[5] *Id*.

[6] *Id*. at 159.

[7] *Id*.

[8] *Id.* at 159-160.

[9] *Id*. at 38.

[10] *Id*. at 160.

On November 10, 2006, petitioners filed a Complaint for Unlawful Detainer and Damages[11] against respondents before the Municipal Trial Court in Cities (MTCC), Branch 2, Roxas City, where they claimed to have been unlawfully deprived of the use and possession of a portion of their land.

Notably, the Complaint alleged that prior *barangay* conciliation proceedings are not required as a pre-condition for the filing of the case in court, given that not all petitioners are residents of Roxas City. Specifically, petitioner Jimmy C. Abagatnan (Jimmy) resided in Laguna, while petitioner Jenalyn A. De Leon (Jenalyn) resided in Pasig City.[12]

In their Answer with Counterclaim,[13] respondents argued that prior *barangay* conciliation is a mandatory requirement that cannot be dispensed with, considering that Jimmy and Jenalyn had already executed a Special Power of Attorney[14] (SPA) in favor of their co-petitioner and sister, Josephine A. Parce (Josephine), who is a resident of Roxas City.[15]

Respondents also insisted that Lot 1472-B is only a portion of Lot 1472 which is covered by its mother title, Original Certificate of Title (OCT) No. 9882, under the name of Nicolas Clarito, et al., Jonathan's predecessors-in-interest. Unfortunately, said title was lost or destroyed during the war, but a copy of the owner's duplicate copy was presented before the trial court and made part of the records.[16]

The Municipal Trial Court in Cities Ruling

In its Decision[17] dated August 17, 2007, the MTCC rendered judgment in favor of petitioners and ordered respondents to

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

[12] *Id*. at 28-29.

[13] *Id*. at 40-44

[14] *Id*. at 34-35.

[15] *Id*. at 40.

[16] *Id*. at 41.

[17] *Id*. at 80-89; penned by Presiding Judge Elias A. Conlu.

remove the structures they erected on the subject property and to vacate the same. It also directed respondents to pay petitioners the amount of ₱500.00 per month as reasonable compensation for the use and occupancy of the subject property from the date of the filing of the action up to and until the structures on the property have been removed, as well as the cost of suit.[18]

The MTCC ruled that by preponderance of evidence, petitioners have a better right of material possession over the subject property. It gave merit to petitioners' proof of purchase of Lot 1472-B from Mateo and Soteraña, the Demand Letter dated October 2, 2006 that they sent to respondents, and respondents' refusal to vacate the property.[19]

Respondents thereafter appealed the MTCC Decision to the Regional Trial Court (RTC), Branch 19, Roxas City.

The Regional Trial Court Ruling

In its Decision[20] dated January 15, 2008, the RTC denied the appeal for lack of merit. It ruled that since the parties raised the issue of ownership to justify their claims of possession, and the evidence of ownership is preponderant on petitioners, the MTCC was justified in ruling the case in the latter's favor.[21]

The RTC, too, held that the lack of *barangay* conciliation proceedings cannot be brought on appeal because it was not made an issue in the Pre-Trial Order.[22]

Following the denial, respondents filed a Petition for Review[23] before the CA, assailing the RTC's January 15, 2008 Decision.

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[18] *Id*. at 89.

[19] *Id*. at 87-88.

[20] *Id*. at 110-113; penned by Presiding Judge Esperanza Isabele E. Poco-Deslate.

[21] *Id*. at 113.

[22] *Id*. at 112.

[23] *Id*. at 115-127.

The Court of Appeals Ruling

In its Decision dated June 20, 2013, the CA ruled that the findings of fact of both the MTCC and the RTC are supported by the evidence on record. It gave more probative value to the tax declarations and the Deed of Absolute Sale submitted by petitioners, considering that only a copy of OCT No. 9882 was presented by respondents in court and said copy contained clouded and blurred characters. The name of the alleged registered owner, Francisco Clarito (Jonathan's father), is also not decipherable on the title.[24]

Nevertheless, the CA granted the Petition and dismissed the petitioners' Complaint, albeit without prejudice, for lack of prior referral to the *Katarungang Pambarangay*.[25] It pointed out that majority of petitioners actually resided in *Barangay* Cogon, Roxas City, while the two non-residents of Roxas City already executed an SPA in favor of Josephine, whom they authorized, among others, to enter into an amicable settlement with respondents. Since respondents also reside in the same *barangay*, the dispute between the parties is clearly within the ambit of the *Lupon Tagapamayapa*'s (*Lupon*) authority.[26]

The CA thus concluded that petitioners' Complaint had been prematurely filed with the MTCC, as it should have been first brought before the *Lupon* for mandatory conciliation to accord the parties the chance for amicable settlement.[27]

Petitioners moved for reconsideration, but the CA denied the motion in its Resolution dated February 3, 2014. As a consequence, petitioners filed the present Petition for Review on *Certiorari* before the Court on April 14, 2014, assailing the CA's June 20, 2013 Decision and February 3, 2014 Resolution.

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[24] *Id*. at 165.

[25] *Id*. at 170-171.

[26] *Id*. at 170.

[27] *Id*.

The Issue

Petitioners raise the sole issue of whether the CA correctly dismissed the Complaint for failure to comply with the prior *barangay* conciliation requirement under Section 412 of the LGC, despite the fact that not all real parties in interest resided in the same city or municipality.[28]

The Court's Ruling

The Petition is impressed with merit.

x x x Section 412(a) of the LGC requires the parties to undergo a conciliation process before the *Lupon* Chairman or the *Pangkat* as a pre-condition to the filing of a complaint in court, thus:

> SECTION 412. *Conciliation.* (a) *Pre-condition to Filing of Complaint in Court.* No complaint, petition, action, or proceeding involving **any matter within the authority of the *lupon*** shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the *lupon* or *pangkat* secretary and attested to by the *lupon* or *pangkat* chairman [or unless the settlement has been repudiated by the parties thereto. x x x][29] (Emphasis supplied)

The LGC further provides that "the *lupon* of each *barangay* shall have authority to bring together the parties **actually residing** in the same city or municipality for amicable settlement of all disputes," subject to certain exceptions enumerated in the law.[30]

One such exception is in cases **where the dispute involves parties who actually reside in barangays of different cities or municipalities**, *unless* said *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*.[31]

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[28] *Id*. at 15-17.

[29] *Zamora v. Heirs of Izquierdo*, 485 Phil. 416, 423 (2004).

[30] LOCAL GOVERNMENT CODE of 1991, Section 408.

[31] LOCAL GOVERNMENT CODE of 1991, Section 408(f).

Thus, parties who do not actually reside in the same city or municipality or adjoining *barangays* are not required to submit their dispute to the *lupon* as a pre-condition to the filing of a complaint in court.

In *Pascual v. Pascual*,[32] the Court ruled that the express statutory requirement of actual residency in the LGC pertains specifically to the *real parties in interest* in the case. It further explained that said requirement cannot be construed to apply to the attorney-in-fact of the party-plaintiff, as doing so would abrogate the meaning of a "real party in interest" as defined in Section 2,[33] in relation to Section 3, of Rule 3 of the Rules of Court.

The same ruling was reiterated in *Banting v. Spouses Maglapuz*[34] where the Court held that "the requirement under Section 412 of the [LGC] that a case be referred for conciliation before the *Lupon* as a precondition to its filing in court applies only to those cases **where the real parties-in-interest actually reside in the same city or municipality**."

In the present case, the Complaint filed before the MTCC specifically alleged that not all the real parties in interest in the case actually reside in Roxas City:[35] Jimmy resided in Poblacion, Siniloan, Laguna, while Jenalyn resided in Brgy. de La Paz, Pasig City.[36] As such, **the *lupon* has no jurisdiction over their dispute, and prior referral of the case for barangay conciliation is not a pre-condition to its filing in court.**

This is true regardless of the fact that Jimmy and Jenalyn had already authorized their sister and co-petitioner, Josephine,

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[32] 511 Phil. 700, 706-707 (2005).

[33] Section 2 of the Rules of Court provides:

SEC. 2. Parties in interest. – A 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. x x x

[34] 531 Phil. 101, 115 (2006).

[35] *Rollo*, p. 29.

[36] *Id*. at 28.

to act as their attorney-in-fact in the ejectment proceedings before the MTCC. As previously explained, the residence of the attorney-in-fact of a real party in interest is *irrelevant* in so far as the "actual residence" requirement under the LGC for prior *barangay* conciliation is concerned.

Besides, as the RTC correctly pointed out, **the lack of *barangay* conciliation proceedings cannot be brought on appeal because it was *not* included in the Pre-Trial Order**, which only enumerates the following issues to be resolved during the trial:

The following issues to be resolved by plaintiffs:

1. Whether or not the defendants have unlawfully withheld the portion of Lot 1472 over which were occupied by them, particularly Lot 1472-B;

2. Whether or not the defendants can be lawfully ejected from that portion of Lot 1472-B which are occupied by them;

3. Whether or not the prevailing parties can recover damages.

For the defendants, the issues to be resolved are as follows:

1. Whether or not the plaintiffs have a cause of action for unlawful detainer against the defendants; and,

2. Whether or not the prevailing parties are entitled to an award of damages.[37]

On this point, it is important to stress that the issues to be tried between parties in a case is **limited** to those defined in the pre-trial order[38] as well as those which may be *implied* from those written in the order or *inferred* from those listed by *necessary implication*.[39]

In this case, a cursory reading of the issues listed in the Pre-Trial Order easily shows that the parties never agreed, whether

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

[38] See RULES OF COURT, Rule 18, Section 7.

[39] See *LICOMCEN, Inc. v. Engr. Abainza*, 704 Phil. 166, 174 (2013), citing *Villanueva v. Court of Appeals*, 471 Phil. 394, 407 (2004).

expressly or impliedly, to include the lack of prior *barangay* conciliation proceedings in the list of issues to be resolved before the MTCC.

In effect, **the non-inclusion of this issue in the Pre-Trial Order barred its consideration during the trial.** This is but consistent with the rule that parties are bound by the delimitation of issues that they agreed upon during the pre-trial proceedings.[40]

WHEREFORE, we **GRANT** the Petition for Review on *Certiorari.* The Decision dated June 20, 2013 and the Resolution dated February 3, 2014 of the Court of Appeals in CA-G.R. SP No. 03283 are **REVERSED** and **SET ASIDE**. The Decision dated January 15, 2008 of the Regional Trial Court, Branch 19, Roxas City in Civil Case No. V-47-07 is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 217764. August 7, 2017]

ANTONIETA LUCIDO[1] @ TONYAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY

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[40] *Id*.

[1] "Lucedo" in other parts of the *Rollo*, CA *rollo*, and RTC records.

QUESTIONS OF LAW MAY BE RAISED THEREIN, AS IT IS NOT THE FUNCTION OF THE COURT TO REVIEW AND WEIGH ANEW THE EVIDENCE ALREADY PASSED UPON BY THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS ABSENT ANY SHOWING OF ARBITRARINESS, CAPRICIOUSNESS, OR PALPABLE ERROR.— The issues submitted by petitioner—the prosecution's failure to prove that the abuse suffered by the victim had prejudiced her normal development and want of credibility of the prosecution witnesses—are fundamentally factual. However, this Court is not a trier of facts. As a rule, "only questions of law may be raised in a petition for review on *certiorari* under Rule 45." It is not the function of this Court to review and weigh anew the evidence already passed upon by the Regional Trial Court and the Court of Appeals absent any showing of arbitrariness, capriciousness, or palpable error. Petitioner did not present any substantive or compelling reason for this Court to apply the exception in this case.

2. **CRIMINAL LAW; THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610), CHILD ABUSE; DEFINED AS THE MALTREATMENT OF A CHILD, WHICH INCLUDES PHYSICAL ABUSE, WHETHER IT IS HABITUAL OR NOT.—** This Court finds no reversible error in the Court of Appeals Decision affirming petitioner's conviction for child abuse. It is a fact that when the incident happened, the victim was a child entitled to the protection extended by Republic Act No. 7610, as mandated by the Constitution. Thus, petitioner was properly charged and found guilty of violating Article VI, Section 10(a) of Republic Act No. 7610 x x x. Article I, Section 3(b) of Republic Act No. 7610 defines *child abuse* as the maltreatment of a child, whether habitual or not, including *any* of the following: (1) Psychological and ***physical abuse***, neglect, cruelty, sexual abuse and emotional maltreatment; (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. As defined

in the law, child abuse includes physical abuse of the child, whether it is habitual or not. Petitioner's acts fall squarely within this definition.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A CHILD WITNESS WHO SPOKE IN A CLEAR, POSITIVE, AND CONVINCING MANNER AND REMAINED CONSISTENT ON CROSS-EXAMINATION, IS A CREDIBLE WITNESS, AND MOTIVE BECOMES INCONSEQUENTIAL WHEN THERE IS A CATEGORICAL DECLARATION FROM THE VICTIM, WHICH ESTABLISHES THE LIABILITY OF THE ACCUSED.—** Petitioner's bare imputations of ill motive on Hinampas and AAA deserve scant consideration. This defense had been judiciously taken into account and rejected by the trial court, in light of the clear, consistent, and positive testimonies of AAA, Dr. Abierra, and FFF. As aptly observed by the trial court, Hinampas "ha[d] no control over the intelligence and will of the victim and the parents in testifying against [petitioner]." A child witness like AAA, who spoke in a clear, positive, and convincing manner and remained consistent on cross-examination, is a credible witness. Motive becomes inconsequential when there is a categorical declaration from the victim, which establishes the liability of the accused.

4. **ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT ON THE TRUSTWORTHINESS OF THE WITNESSES WILL NOT BE DISTURBED, ABSENT ANY FACTS OR CIRCUMSTANCES OF REAL WEIGHT WHICH MIGHT HAVE BEEN OVERLOOKED, MISAPPRECIATED, OR MISUNDERSTOOD.—** [T]he inconsistencies relied upon by petitioner are trivial and do not minimize the value of the prosecution witnesses' testimonies. The fact that the victim's father did not mention in his testimony that he had heard any sound that would indicate Lucido's maltreatment of his daughter does not render impossible the positive declaration of the victim as to the abuses she suffered. On the other hand, defense witness Sanchez's testimony is hardly credible because she was no longer residing in Brgy. Atabay in 2007, when AAA was living with Lucido. Further, contrary to petitioner's assertion, the other defense witness, Lusuegro, testified that she heard AAA cry when the latter was staying with Lucido. Indeed, the trial court's assessment on the trustworthiness of AAA and Hinampas will

not be disturbed, absent any facts or circumstances of real weight which might have been overlooked, misappreciated, or misunderstood. Through its firsthand observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe.

5. **CRIMINAL LAW; THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); OFFENSES PUNISHED UNDER SECTION 10(a) THEREOF; THE PROSECUTION NEED NOT PROVE THAT THE ACTS OF CHILD ABUSE, CHILD CRUELTY AND CHILD EXPLOITATION HAVE RESULTED IN THE PREJUDICE OF THE CHILD, AS THE ELEMENT OF RESULTING PREJUDICE TO THE CHILD'S DEVELOPMENT IS NOT A QUALIFYING CONDITION TO THE OTHER ACTS OF CHILD ABUSE, CHILD CRUELTY AND CHILD EXPLOITATION.—** Section 10(a) of Republic Act No. 7610 punishes four (4) distinct offenses, *i.e.* (a) child abuse, (b) child cruelty, (c) child exploitation, and (d) being responsible for conditions prejudicial to the child's development. As correctly ruled by the Court of Appeals, the element that the acts must be prejudicial to the child's development pertains only to the fourth offense. Thus: x x x. Contrary to the proposition of the appellant, the prosecution need *not* prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts. The element of resulting *prejudice to the child's development* cannot be interpreted as a qualifying condition to the other acts of child abuse, child cruelty and child exploitation. Strangulating, severely pinching, and beating an eight (8)-year-old child to cause her to limp are intrinsically cruel and excessive. These acts of abuse impair the child's dignity and worth as a human being and infringe upon her right to grow up in a safe, wholesome, and harmonious place. It is not difficult to perceive that this experience of repeated physical abuse from petitioner would prejudice the child's social, moral, and emotional development.

6. **ID.; ID.; ID.; THE CRIME UNDER REPUBLIC ACT NO. 7610 IS *MALUM PROHIBITUM;* HENCE, THE**

INTENT TO DEBASE, DEGRADE, OR DEMEAN THE MINOR IS NOT THE DEFINING MARK, AS ANY ACT OF PUNISHMENT THAT DEBASES, DEGRADES, AND DEMEANS THE INTRINSIC WORTH AND DIGNITY OF A CHILD CONSTITUTES THE OFFENSE.— [A]AA was maltreated by petitioner through repeated acts of strangulation, pinching, and beating. These are clearly extreme measures of punishment not commensurate with the discipline of an eight (8)-year-old child. Discipline is a loving response that seeks the positive welfare of a child. Petitioner's actions are diametrically opposite. They are abusive, causing not only physical injuries as evidenced by the physical marks on different parts of AAA's body and the weakness of her left knee upon walking, but also emotional trauma on her. Republic Act No. 7610 is a measure geared to provide a strong deterrence against child abuse and exploitation and to give a special protection to children from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. It must be stressed that the crime under Republic Act No. 7610 is *malum prohibitum*. Hence, the *intent to debase, degrade, or demean* the minor is not the defining mark. Any act of punishment that debases, degrades, and demeans the intrinsic worth and dignity of a child constitutes the offense.

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.*:

This resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals' Decision[3] dated August 28, 2014 and

[2] *Rollo*, pp. 10-32.

[3] *Id*. at 34-47. The Decision, docketed as CA-G.R. CEB CR No. 01911, was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann A. Maxino of the Eighteenth Division, Court of Appeals, Cebu City.

Resolution[4] dated March 13, 2015. The assailed Court of Appeals Decision affirmed with modification the Regional Trial Court Decision[5] dated June 27, 2011, while the assailed Resolution denied the Motion for Reconsideration.

The Regional Trial Court Decision found Antonieta Lucido (Lucido) guilty of child abuse under Section 10(a)[6] of Republic Act No. 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.[7]

In the Information[8] dated March 30, 2008, Lucido was charged with child abuse under Section 10(a) of Republic Act No. 7610:

That on or about the month of December, 2007 in Brgy. Atabay, Hilongos, Leyte, within the jurisdiction of the Honorable Court, the above-named accused, did then and there, maliciously, willfully, unlawfully, and intentionally, beat with the use of a belt, pinched, and strangulated the child victim [AAA], who was then eight (8) years old, thereby inflicting physical injuries that affected the normal development of the said child victim.

CONTRARY TO LAW.[9]

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[4] *Id.* at 49-52. The Resolution was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann A. Maxino of the Former Eighteenth Division, Court of Appeals, Cebu City.

[5] *Id*. at 53-58. The Decision, docketed as Crim. Case No. H-1675, was penned by Judge Ephrem S. Abando of Branch 18, Regional Trial Court, Hilongos, Leyte.

[6] Rep. Act No. 7610, Sec. 10(a) provides:

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Section 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

[7] *Rollo,* p. 58.

[8] RTC records, p. 19.

[9] *Id*.

Lucido pleaded not guilty upon arraignment.[10]

On August 10, 2008, the pre-trial was held. Lucido, through counsel, offered to plead guilty to the crime of Less Serious Physical Injuries under Article 265 of the Revised Penal Code or Violation of Section 59, paragraph 8 of Presidential Decree No. 603[11] or the Child and Youth Welfare Code. However, it

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[10] CA *rollo*, p. 78.

[11] Pres. Decree No. 603, Sec. 59 provides:

Section 59. *Crimes.* — Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.

(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.

(3) Sells or abandons the child to another person for valuable consideration.

(4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.

(5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.

(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

(8) *Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignities and other excessive chastisement that embarrass or humiliate him.*

(9) Causes or encourages the child to lead an immoral or dissolute life.

(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.

(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child. (Emphasis supplied)

was not accepted by the complaining witnesses and the prosecution. Thereafter, trial on the merits ensued.[12]

On July 1, 2009, Lucido was released on bail.[13]

The prosecution presented the following as witnesses: the victim AAA, Dr. Conrado Abiera III (Dr. Abiera), the father of the victim FFF, and Maria Hinampas (Hinampas).[14] The prosecution established the following facts:

Sometime in August 2007, in Barangay Atabay, Hilongos, Leyte, AAA was placed by her parents in the custody of their neighbor Lucido, alias Tonyay.[15] The arrangement was made upon the request of Lucido that AAA stay with her since she was living alone.[16] AAA was eight (8) years old at that time.[17]

During AAA's stay with Lucido, the child suffered repeated physical abuse in the latter's hands, which included strangulation,[18] beating,[19] pinching,[20] and touching of her sex organ by Lucido.[21] AAA was also threatened by Lucido that she would be stabbed if she tells anyone about what was being done to her.[22]

One of Lucido's neighbors, Hinampas, noticed the abrasions on AAA's neck and observed that she was limping as she

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[12] CA *rollo*, p. 78.

[13] *Id*.

[14] *Rollo,* p. 35.

[15] TSN dated October 6, 2009, p. 6.

[16] *Id*.

[17] TSN dated January 5, 2010, pp. 14-15; RTC records, p. 12, AAA's Birth Certificate showed that she was born on August 6, 1999.

[18] TSN dated November 27, 2008, p. 5; TSN dated May 26, 2009, p. 4.

[19] *Id*. at 6.

[20] *Id*.

[21] *Id*. at 8.

[22] TSN dated May 26, 2009, pp. 7-8.

walked.[23] The child then related that she was choked and beaten on her leg by Lucido.[24] AAA's parents learned of her plight,[25] prompting FFF to go to Lucido's residence and take AAA back with the help of a barangay tanod.[26]

A subsequent physical examination conducted by Dr. Abiera of Hilongos District Hospital confirmed AAA's story. His findings were as follows:

Multiple abrasions on different parts of the body secondary to pricking nail marks/scratches
There is redness on the peripheral circumference of the hymen
No hymenal laceration noted.
There is weakness of (L) knee joint upon walking.[27]

After the prosecution rested its case, the defense presented Lucido, Lucia Mancio Lusuegro (Lusuegro), and Estrella L. Sanchez (Sanchez) as witnesses.[28] The Court of Appeals summarized their testimonies as follows:

[Lucido] denied that she pinched, beat and hit AAA and that she inserted her finger into AAA's vagina. She claimed that she usually cleaned AAA's vagina and bathed her with hot water. She, likewise, denied that she brought AAA to Bato for sexual intercourse. [Lucido] impute[d] ill motive on Hinampas, whom she claimed to be her enemy, in instituting the complaint against her.

Lucia Mancio Lusuegro . . . a neighbor of [Lucido] and AAA's parents at Brgy. Atabay, Hilongos, Leyte, testified that she heard AAA cry only once outside the house of [Lucido]. She never heard any commotion that [Lucido] maltreated AAA.

Estrella Sanchez . . . testified that the accusation of child abuse and prostitution was not true. She claimed that the filing of the case

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[23] TSN dated January 5, 2010, p. 5.

[24] *Id*.

[25] TSN dated, October 6, 2009, p. 14.

[26] *Id*. at 9.

[27] RTC records, p. 10, Medical Certificate dated January 2, 2008.

[28] *Rollo*, pp. 56-60.

against [Lucido] was instigated by Hinampas, with whom [Lucido] had a quarrel.[29]

On June 27, 2011, the Regional Trial Court rendered a Decision, convicting Lucido of child abuse, as follows:

WHEREFORE, in view of the foregoing, accused ANTONIETA LUCIDO alyas "Tonyay" is found GUILTY beyond reasonable doubt in violation of Section 10 (a) of Republic Act No. 7610 and hereby sentenced to suffer the penalty of Prision Mayor in its minimum period (SIX (6) YEARS and ONE (1) DAY to EIGHT (8) YEARS imprisonment), and to pay the offended party [AAA] Fifty Thousand Pesos (₱50,000.00) as moral damages.

SO ORDERED.[30]

The Court of Appeals affirmed Lucido's conviction, but modified the penalty imposed by applying the Indeterminate Sentence Law. The dispositive portion of the Decision read:

WHEREFORE, the Appeal is DENIED. The Decision, dated 27 June 2011, of the Regional Trial Court of Hilongos[,] Leyte, 8th Judicial Region, Branch 18 in Criminal Case No. H-1675 is hereby AFFIRMED with MODIFICATIONS, to wit:

(a) the appellant Antonieta Lucido @ "Tonyay" is hereby sentenced to four (4) years, nine (9) months and eleven (11) days of *prision correccional,* as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor,* as maximum;

(b) an interest at the rate of six percent (6%) per annum shall be applied to the award of moral damages to be reckoned from this date until fully paid;

(c) the bondsman is ordered to surrender the appellant to the court *a quo,* within ten (10) days from notice and to report to this Court the fact of surrender, within ten (10) days from notice of such fact;

(d) in case of non-surrender, the Regional Trial Court of Hilongos[,] Leyte, 8th Judicial Region, Branch 18 is DIRECTED to:

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[29] *Id*. at 37.

[30] *Id*. at 58.

(i) cancel the bond posted for the provisional liberty of the appellant;

(ii) order the arrest of the appellant; and

(iii) immediately commit the appellant to the Bureau of Prisons.

SO ORDERED.[31]

Lucido's Motion for Reconsideration was likewise denied in the Court of Appeals March 13, 2015 Resolution.

Hence, this Petition[32] was filed on May 20, 2015. This Court received respondent's Comment[33] on November 23, 2015.

Petitioner raises the following issues for this Court's resolution:

1. whether the Court of Appeals erred in sustaining her conviction despite the failure of the prosecution to prove her guilt beyond reasonable doubt; and

2. whether the Court of Appeals erred in not finding that the crime committed was only slight physical injuries and not a violation of Republic Act No. 7610.[34]

Petitioner contends that the prosecution failed to prove "that the physical injuries inflicted on the child had prejudiced the child's development so as to debase, degrade or demean the intrinsic worth and dignity of the child as a human being." She cites the absence of an expert opinion validating scientifically that the acts complained of proximately caused the "prejudice inflicted upon the child's development."[35]

Furthermore, petitioner argues that the prosecution was not able to prove the infliction of physical injuries on the child.

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[31] *Id*. at 46.

[32] *Id*. at 10-32.

[33] *Id*. at 118-134.

[34] *Id*. at 19.

[35] *Id*. at 21.

She avers that Hinampas' testimony of having heard the victim being maltreated several times by Lucido is incredible, exaggerated, and unworthy of belief. First, the victim's own father, whose house was about five (5) meters away from Lucido's house, never testified that he heard the maltreatment done by Lucido upon his own daughter.[36] Second, two (2) defense witnesses who were neighbors of Lucido testified that they did not hear any noise that would indicate Lucido's maltreatment of AAA.[37]

Petitioner claims that the charge against her was ill-motivated. She highlights the ongoing enmity between her and Hinampas, one (1) of the witnesses for the prosecution. Petitioner also imputes ill-motive on AAA in falsely testifying against her after having been scolded for damaging petitioner's cellphone.[38]

Finally, petitioner asserts that the prosecution failed to prove that the acts alleged in the information—beating using a belt, pinching, and strangulating AAA—were intended to "debase, degrade or demean the intrinsic worth and dignity of the child as a human being."[39] Citing *Bongalon v. People*,[40] petitioner contends that she could not be convicted of child abuse but only of slight physical injuries defined and punished under the Revised Penal Code.[41]

On the other hand, respondent argues that the petition must be denied because it raises questions of fact, which could not be done in a petition for review under Rule 45.[42]

This Court denies the petition.

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[36] *Id*. at 22.

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

[38] *Id*. at 23.

[39] *Id*. at 25.

[40] 707 Phil. 11 (2013) [Per *J*. Bersamin, First Division].

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

[42] *Id*. at 124.

I

The issues submitted by petitioner—the prosecution's failure to prove that the abuse suffered by the victim had prejudiced her normal development and want of credibility of the prosecution witnesses—are fundamentally factual. However, this Court is not a trier of facts. As a rule, "only questions of law may be raised in a petition for review on *certiorari* under Rule 45."[43]

It is not the function of this Court to review and weigh anew the evidence already passed upon by the Regional Trial Court and the Court of Appeals absent any showing of arbitrariness, capriciousness, or palpable error.[44] Petitioner did not present any substantive or compelling reason for this Court to apply the exception in this case.

Even if this Court disregards this infirmity, the petition still fails to impress. This Court finds no reversible error in the Court of Appeals Decision affirming petitioner's conviction for child abuse.

It is a fact that when the incident happened, the victim was a child entitled to the protection extended by Republic Act No. 7610, as mandated by the Constitution.[45] Thus, petitioner was properly charged and found guilty of violating Article VI, Section 10(a) of Republic Act No. 7610, which reads:

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[43] *Torres v. People,* G.R. No. 206627, January 18, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/206627.pdf> 5 [Per *J.* Leonen, Second Division].

[44] *Torres v. People,* G.R. No. 206627, January 18, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/206627.pdf> 6 [Per *J.* Leonen, Second Division].

[45] CONST., Art. XV, Sec. 3, par. 2 provides:

Section 3. The State shall defend:

. . . .

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development[.]

ARTICLE VI

OTHER ACTS OF ABUSE

Section 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*

(a) Any person who shall commit any other acts of *child abuse*, *cruelty or exploitation* or *be responsible for other conditions prejudicial to the child's development* including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Emphasis supplied)

Article I, Section 3(b) of Republic Act No. 7610 defines *child abuse* as the maltreatment of a child, whether habitual or not, including *any* of the following:

(1) Psychological and ***physical abuse***, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. (Emphasis supplied)

As defined in the law, child abuse includes physical abuse of the child, whether it is habitual or not. Petitioner's acts fall squarely within this definition.

AAA testified on the physical abuse she suffered in the hands of petitioner. The Regional Trial Court described her narration of the facts to be in "a straightforward, credible and spontaneous manner which could not be defeated by the denial of the accused."[46] From the appearance of the victim, the trial court

[46] *Rollo*, p. 58.

likewise observed physical evidence of the abuses and ill-treatment inflicted by the petitioner on AAA aside from the victim's psychological displacement.[47] AAA's testimony was further corroborated by Dr. Abierra, who noted several observations during his physical examination of the victim. First, there were "multiple abrasions on different parts of [AAA's] body."[48] Additionally, he observed a "redness on the peripheral circumference of the hymen," which could have been caused by a hard pinching.[49] Finally, there was an evident "weakness on the left knee joint," which could have been caused by the victim falling to the ground or being beaten by a hard object.[50]

Petitioner's bare imputations of ill motive on Hinampas and AAA deserve scant consideration.This defense had been judiciously taken into account and rejected by the trial court, in light of the clear, consistent, and positive testimonies of AAA, Dr. Abierra, and FFF.As aptly observed by the trial court, Hinampas "ha[d] no control over the intelligence and will of the victim and the parents in testifying against [petitioner]."[51] A child witness like AAA, who spoke in a clear, positive, and convincing manner and remained consistent on cross-examination, is a credible witness.[52] Motive becomes inconsequential when there is a categorical declaration from the victim, which establishes the liability of the accused.[53]

Moreover, the inconsistencies relied upon by petitioner are trivial and do not minimize the value of the prosecution witnesses'

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[47] *Id.*

[48] TSN dated July 28, 2009, p. 7.

[49] *Id*. at 9.

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

[51] *Rollo*, p. 58.

[52] *People v. Reyes,* 549 Phil. 655, 662 (2007) [Per *J.* Quisumbing, *En Banc*]; *People v. Rama,* 403 Phil. 155, 171-172 (2001) [Per *J*. Puno, First Division].

[53] *People v. Lawa,* 444 Phil. 191, 204 (2003) [*Per Curiam*, *En Banc*]; *People v. Optana*, 404 Phil. 316, 348 (2001) [Per *J.* Kapunan, First Division].

testimonies. The fact that the victim's father did not mention in his testimony that he had heard any sound that would indicate Lucido's maltreatment of his daughter does not render impossible the positive declaration of the victim as to the abuses she suffered. On the other hand, defense witness Sanchez's testimony is hardly credible because she was no longer residing in Brgy. Atabay in 2007, when AAA was living with Lucido.[54] Further, contrary to petitioner's assertion, the other defense witness, Lusuegro, testified that she heard AAA cry when the latter was staying with Lucido.[55]

Indeed, the trial court's assessment on the trustworthiness of AAA and Hinampas will not be disturbed, absent any facts or circumstances of real weight which might have been overlooked, misappreciated, or misunderstood.[56] Through its firsthand observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe.[57]

II

Petitioner further insists that the prosecution failed to prove that the acts complained of were prejudicial to the victim's development.

This Court disagrees.

Section 10(a) of Republic Act No. 7610 punishes four (4) distinct offenses, i.e. (a) child abuse, (b) child cruelty, (c) child exploitation, and (d) being responsible for conditions prejudicial

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[54] TSN dated September 7, 2010, p. 8.

[55] TSN dated January 11, 2011, pp. 5-6 and 9.

[56] *Sanchez v. People,* 606 Phil. 762, 779 (2009) [Per *J.* Nachura, Third Division].

[57] *People v. Diu*, 708 Phil. 218, 232 (2013) [First Division, per *J.* Leonardo-De Castro]; *People v. Nelmida,* 694 Phil. 529, 556 (2012) [*En Banc,* per *J.* Perez]; *Magno v. People*, 516 Phil. 72, 81 (2006) [Per *J.* Garcia, Second Division].

to the child's development.[58] As correctly ruled by the Court of Appeals, the element that the acts must be prejudicial to the child's development pertains only to the fourth offense. Thus:

> Instructive is *Araneta v. People* which held, *viz*:
>
> As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e*., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, *an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein*. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.
>
> Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "*be responsible for other conditions prejudicial to the child's development"* supposes that there are four punishable acts therein. First, the *act of child abuse*; second, *child cruelty*; third, *child exploitation*; and fourth, *being responsible for conditions prejudicial to the child's development*. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.
>
> Contrary to the proposition of the appellant, the prosecution need *not* prove that the acts of child abuse, child cruelty and child

[58] *Araneta v. People*, 578 Phil. 876, 883 (2008) [Per *J*. Chico Nazario, Third Division].

exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts. The element of resulting *prejudice to the child's development* cannot be interpreted as a qualifying condition to the other acts of child abuse, child cruelty and child exploitation.[59] (Emphasis in the original, citations omitted)

Strangulating, severely pinching, and beating an eight (8)-year-old child to cause her to limp are intrinsically cruel and excessive. These acts of abuse impair the child's dignity and worth as a human being and infringe upon her right to grow up in a safe, wholesome, and harmonious place. It is not difficult to perceive that this experience of repeated physical abuse from petitioner would prejudice the child's social, moral, and emotional development.

Petitioner's contention that she should only be convicted for slight physical injuries in light of the ruling in *Bongalon v. People,*[60] is likewise untenable.

The facts in *Bongalon* are markedly different from this case. In *Bongalon*, a father was overwhelmed by his parental concern for the personal safety of his own minor daughters who had just suffered harm at the hands of the minor complainant and hit the minor complainant's back with his hand and slapped his left cheek.[61]

Here, AAA was maltreated by petitioner through repeated acts of strangulation, pinching, and beating. These are clearly extreme measures of punishment not commensurate with the discipline of an eight (8)-year-old child. Discipline is a loving response that seeks the positive welfare of a child. Petitioner's actions are diametrically opposite. They are abusive, causing not only physical injuries as evidenced by the physical marks on different parts of AAA's body and the weakness of her left knee upon walking, but also emotional trauma on her.

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[59] *Rollo*, pp. 39-40.

[60] 707 Phil. 11 (2013) [Per *J*. Bersamin, First Division].

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

Republic Act No. 7610 is a measure geared to provide a strong deterrence against child abuse and exploitation and to give a special protection to children from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.[62] It must be stressed that the crime under Republic Act No. 7610 is *malum prohibitum*.[63] Hence, the *intent to debase*, *degrade*, *or demean* the minor is not the defining mark. Any act of punishment that debases, degrades, and demeans the intrinsic worth and dignity of a child constitutes the offense.

WHEREFORE, the Petition is **DENIED**. The August 28, 2014 Decision and March 13, 2015 Resolution of the Court of Appeals in CA-G.R. CEB CR No. 01911 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222095. August 7, 2017]

IN THE MATTER OF PETITION FOR CANCELLATION OF CERTIFICATES OF LIVE BIRTH OF YUHARES JAN BARCELOTE TINITIGAN and AVEE KYNNA NOELLE BARCELOTE TINITIGAN

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[62] *Araneta v. People*, 578 Phil. 876, 883 (2008) [Per *J*. Chico Nazario, Third Division].

[63] See *Malto v. People*, 560 Phil. 119, 139 (2007) [Per *J*. Corona, First Division].

JONNA KARLA BAGUIO BARCELOTE, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, RICKY O. TINITIGAN, and LOCAL CIVIL REGISTRAR, DAVAO CITY,** *respondents.*

SYLLABUS

1. **CIVIL LAW; THE FAMILY CODE, AS AMENDED BY REPUBLIC ACT 9255; PATERNITY AND FILIATION; AN ILLEGITIMATE CHILD SHALL USE THE SURNAME AND SHALL BE UNDER THE PARENTAL AUTHORITY OF HIS/HER MOTHER, AND THE DISCRETION ON THE PART OF THE ILLEGITIMATE CHILD TO USE THE SURNAME OF HIS/HER FATHER IS CONDITIONAL UPON PROOF OF COMPLIANCE WITH THE LAW.—** Upon the effectivity of RA 9255, the provision that illegitimate children shall use the surname and shall be under the parental authority of their mother was retained, with an added provision that they may use the surname of their father if their filiation has been expressly recognized by their father. Thus, Article 176 of the Family Code, as amended by RA 9255, provides: **Illegitimate children shall use the surname and shall be under the parental authority of their mother,** and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by their father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. In *Grande v. Antonio*, we held that "the use of the word 'may' in [Article 176 of the Family Code, as amended by RA 9255] readily shows that an acknowledged illegitimate child is under no compulsion to use the surname of his illegitimate father. The word 'may' is permissive and operates to confer discretion upon the illegitimate children." x x x. The law is clear that illegitimate children shall use the surname and shall be under the parental authority of their mother. The use of the word "**shall**" underscores

its mandatory character. The **discretion** on the part of the illegitimate child to use the surname of the father is conditional upon proof of compliance with RA 9255 and its IRR. Since the undisputed facts show that the children were born outside a valid marriage after 3 August 1988, specifically in June 2008 and August 2011, respectively, then they are the illegitimate children of Tinitigan and Barcelote. The children shall use the surname of their mother, Barcelote. The entry in the subject birth certificates as to the surname of the children is therefore incorrect; their surname should have been "Barcelote" and not "Tinitigan."

2. **POLITICAL LAW; ADMINISTRATIVE LAW; THE CIVIL REGISTRY LAW (ACT NO. 3753); IT IS MANDATORY THAT THE MOTHER OF AN ILLEGITIMATE CHILD SIGNS THE BIRTH CERTIFICATE OF HER CHILD IN ALL CASES, IRRESPECTIVE OF WHETHER THE FATHER RECOGNIZES THE CHILD AS HIS OR NOT.—** We do not agree with the CA that the subject birth certificates are the express recognition of the children's filiation by Tinitigan, because they were not duly registered in accordance with the law. x x x. The first paragraph of Section 5 of Act No. 3753 assumes that the newborn child is legitimate since our law accords a strong presumption in favor of legitimacy of children. On the other hand, the fourth paragraph of Section 5 specifically provides that **in case of an illegitimate child**, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. The fourth paragraph of Section 5 specifically applies to an illegitimate child and likewise underscores its mandatory character with the use of the word "shall." *Lex specialis derogat generali*. Where there is in the same statute a particular enactment and also a general one which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language which are not within the provision of the particular enactment. Thus, it is **mandatory** that the mother of an illegitimate child signs the birth certificate of her child in all cases, irrespective of whether the father recognizes the child as his or not. The only legally known parent of an illegitimate child, by the fact of illegitimacy, is the mother of the child who conclusively carries the blood of the mother.

Thus, this provision ensures that individuals are not falsely named as parents. The mother must sign and agree to the information entered in the birth certificate because she has the parental authority and custody of the illegitimate child.

3. **ID.; ID.; ID.; THE LOCAL CIVIL REGISTRAR HAS NO AUTHORITY TO REGISTER A BIRTH CERTIFICATE WHICH IS NOT COMPLETELY AND CORRECTLY FILLED UP.—** Since it appears on the face of the subject birth certificates that the mother did not sign the documents, the local civil registrar had no authority to register the subject birth certificates. Under the IRR of Act No. 3753, the civil registrar shall see to it that the Certificate of Live Birth presented for registration is properly and completely filled up, and the entries are correct. In case the entries are found incomplete or incorrect, the civil registrar shall require the person concerned to fill up the document completely or to correct the entries, as the case may be. Clearly, the subject birth certificates were not executed consistent with the provisions of the law respecting the registration of birth of illegitimate children. Aside from the fact that the entry in the subject birth certificates as to the surname of the children is incorrect since it should have been that of the mother, the subject birth certificates are also incomplete as they lacked the signature of the mother.

4. **ID.; ID.; ID.; BIRTH CERTIFICATES WHICH WERE REGISTERED AGAINST THE MANDATORY PROVISIONS OF THE FAMILY CODE REQUIRING THE USE OF THE MOTHER'S SURNAME FOR HER ILLEGITIMATE CHILDREN AND ACT NO. 3753 REQUIRING THE SIGNATURE OF THE MOTHER IN HER CHILDREN'S BIRTH CERTIFICATES, ARE VOID AND SHOULD BE CANCELLED.—** Acts executed against the provisions of mandatory or prohibitory laws shall be void. In *Babiera v. Catotal*, we declared as void and cancelled a birth certificate, which showed that the mother was already 54 years old at the time of the child's birth and which was not signed either by the civil registrar or by the supposed mother. Accordingly, we declare the subject birth certificates void and order their cancellation for being registered against the mandatory provisions of the Family Code requiring the use of the mother's surname for her illegitimate children and Act No. 3753 requiring

the signature of the mother in her children's birth certificates. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the *best interests of the child* shall be the primary consideration.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Law Offices of Enriquez and Associates for private respondent.
Office of the Solicitor General for public respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 5 March 2015 Decision[2] and the 3 December 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 03223-MIN reversing the 28 February 2013 Decision[4] of the Regional Trial Court of Davao City, Branch 15 (RTC) in SPC. PROC. No. 12,007-12.

The Facts

In an Amended Petition[5] dated 20 September 2012 filed before the RTC, petitioner Jonna Karla Baguio Barcelote (Barcelote) stated the following facts:

On 24 June 2008, she bore a child out of wedlock with a married man named Ricky O. Tinitigan (Tinitigan) in her relative's residence in Sibulan, Santa Cruz, Davao del Sur. She

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[1] *Rollo,* pp. 10-32. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 36-53. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Henri Jean Paul B. Inting and Pablito A. Perez concurring.

[3] *Id.* at 54-55.

[4] *Id.* at 56-59. Penned by Judge Ridgway M. Tanjili.

[5] *Id.* at 69-72.

was not able to register the birth of their child, whom she named Yohan Grace Barcelote, because she did not give birth in a hospital. To hide her relationship with Tinitigan, she remained in Santa Cruz, Davao del Sur while Tinitigan lived with his legitimate family in Davao City and would only visit her. On 24 August 2011, she bore another child with Tinitigan, whom she named as Joshua Miguel Barcelote. Again, she did not register his birth to avoid humiliation, ridicule, and possible criminal charges. Thereafter, she lost contact with Tinitigan and she returned to Davao City.

When her first child needed a certificate of live birth for school admission, Barcelote finally decided to register the births of both children. She, then, returned to Santa Cruz, Davao del Sur to register their births. The Local Civil Registrar of Santa Cruz approved the late registration of the births of Yohan Grace Barcelote and Joshua Miguel Barcelote, with Registry Nos. 2012-1344 and 2012-1335, respectively, after submitting proof that the National Statistics Office (NSO) has no record of both births on file.

However, upon submission of the copies of the late registration of the births to the NSO, Barcelote was informed that there were two certificates of live birth (subject birth certificates) with the same name of the mother and the years of birth of the children in their office. The subject birth certificates registered by the Local Civil Registrar of Davao City state the following:

1. Birth Certificate with Registry No. 2008-21709:
   a. Name: Avee Kyna Noelle Barcelote Tinitigan;
   b. Date of Birth: June 4, 2008;
   c. Place of Birth: EUP Family Care Clinic, Holy Cross Agdao Davao City;
   d. Informant: Ricky O. Tinitigan.

2. Birth Certificate with Registry No. 2011-28329:
   a. Name: Yuhares Jan Barcelote Tinitigan;
   b. Date of Birth: August 14, 2011;[6]
   c. Place of Birth: EUP Family Care Clinic, Holy Cross

[6] Omitted in the Amended Petition but stated in the Original Petition dated 23 May 2012.

Agdao Davao City;
d. Informant: Ricky O. Tinitigan.

Thus, Barcelote filed a petition with the RTC for the cancellation of the subject birth certificates registered by Tinitigan without her knowledge and participation, and for containing erroneous entries.

After complying with the jurisdictional requirements, Barcelote was allowed to present evidence *ex parte.* In her testimony, Barcelote reiterated her allegations in the petition and emphasized that the subject birth certificates were registered by her children's biological father, Tinitigan, without her knowledge. She also testified that the subject birth certificates reflected wrong entries, but she did not present any other evidence.

The Ruling of the RTC

On 28 February 2013, the RTC ruled in favor of Barcelote and ordered the cancellation of the subject birth certificates, to wit:

WHEREFORE, premises considered, the petition is hereby GRANTED. Accordingly, the registration of the Certificate of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, respectively intended for Joshua Miguel Barcelote and Yohan Grace Barcelote, by their putative father Ricky Tinitigan at the Local Civil Registrar of Davao City without the con[s]ent or knowledge of their mother, herein petitioner, Jonna Karla Baguio Barcelote, is hereby ordered cancelled.

The Civil Registrar of the Office of the Local Civil Registry of Davao City is directed/ordered to cause the cancellation of:

[i] the birth certificate of Avee Kynna Noelle Barcelote Tinitigan under Registry No. 2008-21709, and

[ii] the certificate of live birth of Yuhares Jan Barcelote Tinitigan under Registry No. 2011-28329.

SO ORDERED.[7]

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[7] *Rollo,* p. 59.

The RTC ruled that the subject birth certificates are legally infirm, because they were registered unilaterally by Tinitigan without the knowledge and signature of Barcelote in violation of Section 5, Act No. 3753. The RTC also held that the subject birth certificates contain void and illegal entries, because the children use the surname of Tinitigan, contrary to the mandate of Article 176 of the Family Code stating that illegitimate children shall use the surname of their mother.

Moreover, the RTC found that it is not for the best interest of the children to use the surname of their father, for there is always a possibility that the legitimate children or wife may ask the illegitimate children to refrain from using the surname of their father. The RTC further held that the subject birth certificates are not reflective of the correct personal circumstances of the children because of the glaring differences in the names and other vital information entered in it.

The Ruling of the CA

On 5 March 2015, the CA reversed and set aside the decision of the RTC. The CA ruled that the registrations of the children's births, caused by Tinitigan and certified by a registered midwife, Erlinda Padilla, were valid under Act No. 3753, and such registrations did not require the consent of Barcelote. The CA further ruled that the children can legally and validly use the surname of Tinitigan, since Republic Act No. (RA) 9255, amending Article 176 of the Family Code, allows illegitimate children to use the surname of their father if the latter had expressly recognized them through the record of birth appearing in the civil register, such as in this case where Barcelote admitted that Tinitigan personally registered the children's births and affixed his surname on the subject birth certificates.

Moreover, the CA found that Barcelote failed to discharge the burden of proving the falsity of the entries in the subject birth certificates and to adduce evidence that the information she provided in the late registration are the true personal circumstances of her children.

The dispositive portion of the decision states:

FOR THESE REASONS, the Decision dated 28 February 201[3] of the Regional Trial Court, Branch 15, Davao City is REVERSED and SET ASIDE. The Amended Petition docketed as Special Proceedings No. 12,007-12 for cancellation of certificates of live birth of her children, registered as Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan in the records of the Local Civil Registrar of Davao City is DISMISSED for lack of merit.

SO ORDERED.[8]

In a Resolution dated 3 December 2015, the CA denied the motion for reconsideration.[9]

Hence, this present petition.

The Issues

Barcelote raises the following issues for resolution:

I.

The CA erred in not cancelling the certificates of live birth for YUHARES JAN BARCELOTE TINITIGAN and AVEE KYNNA BARCELOTE TINITIGAN.

A. Under the Family Code, illegitimate children shall use the surname and shall be under the parental authority of their mother. Being the mother with parental authority, [Barcelote]'s choice of names for her children upon birth should prevail.

B. The CA gravely erred and abused its discretion when it ruled that the RTC did not have basis for its ruling that the certificates of birth registered by [Tinitigan] are not reflective of the true and correct personal circumstances of the [children].

C. The CA misinterpreted the provisions of Act No. 3753, otherwise known as the Law on Registry of Civil Status. It is clear under this law that in case of an illegitimate child, the birth certificate must be signed and sworn to by the mother. Since the certificates of live birth registered by [Tinitigan] were not signed by [Barcelote], the same are void.

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[8] *Id.* at 52.

[9] *Id.* at 54-55.

D. The cancellation of the certificates of live birth, registered by a father who is married to another and who abandoned his illegitimate children, is for the interest and welfare of [the children.]

II.

In the alternative, the CA was incorrect in dismissing the petition for cancellation on the procedural ground that [Barcelote] could have filed a petition for correction of entries under Rule 108 of the Rules of Court. In this case, the petition for cancellation was filed under Rule 108 of the Rules of Court, which governs both "Petition for Cancellation or Correction of Entries in the Civil Registry". Under this rule, even substantial errors in a civil register may be corrected and the true facts established, provided the party aggrieved by the error avail of the appropriate adversary proceeding, which [Barcelote] did. Instead of dismissing the petition outright, considering that the jurisdictional requirements for correction [have] also been complied with, at the very least, the CA should have treated the petition for cancellation as one for correction and ordered the necessary corrections, especially as to the names of [the children].[10]

The Ruling of the Court

We grant the petition.

Prior to its amendment, Article 176 of the Family Code[11] reads:

Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. (Emphasis supplied)

This has been implemented in the National Statistics Office Administrative Order No. 1-93 or the Implementing Rules and Regulations of Act No. 3753 and Other Laws on Civil Registration (IRR of Act No. 3753),[12] to wit:

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

[11] Took effect on 3 August 1988.

[12] Dated 18 December 1992.

RULE 23. Birth Registration of Illegitimate children. — (1) Children conceived or born during the marriage of the parents are legitimate. Children conceived and born outside a valid marriage unless otherwise provided in the Family Code are illegitimate.

(2) An illegitimate child born before 3 August 1988 and acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, the illegitimate child shall carry the surname of the acknowledging parent. If no parent acknowledged the child, he shall carry the surname of the mother.

(3) The name/s of the acknowledging parent/s, shall be indicated in the Certificate of Live Birth.

(4) An illegitimate child born on or after 3 August 1988 shall bear the surname of the mother. (Emphasis supplied)

Upon the effectivity of RA 9255,[13] the provision that illegitimate children shall use the surname and shall be under the parental authority of their mother was retained, with an added provision that they may use the surname of their father if their filiation has been expressly recognized by their father. Thus, Article 176 of the Family Code, as amended by RA 9255, provides:

Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by their father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Emphasis supplied)

In *Grande v. Antonio*,[14] we held that "the use of the word 'may' in [Article 176 of the Family Code, as amended by RA

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[13] Approved on 24 February 2004.

[14] 727 Phil. 448 (2014).

9255] readily shows that an acknowledged illegitimate child is under no compulsion to use the surname of his illegitimate father. The word 'may' is permissive and operates to confer discretion upon the illegitimate children."[15] Thus, the Revised Implementing Rules and Regulations (IRR) of RA 9255, which apply to all illegitimate children born during the effectivity of RA 9255, state:

Rule 8. Effects of Recognition

8.1 As a rule, an illegitimate child not acknowledged by the father shall use the surname of the mother.

8.2 Illegitimate child acknowledged by the father shall use the surname of the mother if no [Affidavit to Use the Surname of the Father] (AUSF) is executed.

8.3 An illegitimate child aged 0-6 years old acknowledged by the father shall use the surname of the father, if the mother or the guardian, in the absence of the mother, executes the AUSF.

8.4 An illegitimate child aged 7 to 17 years old acknowledged by the father shall use the surname of the father if the child executes an AUSF fully aware of its consequence as attested by the mother or guardian.

8.5 Upon reaching the age of majority, an illegitimate child acknowledged by the father shall use the surname of his father provided that he executes an AUSF without need of any attestation.

The law is clear that illegitimate children shall use the surname and shall be under the parental authority of their mother. The use of the word "**shall**" underscores its mandatory character. The **discretion** on the part of the illegitimate child to use the surname of the father is conditional upon proof of compliance with RA 9255 and its IRR.

Since the undisputed facts show that the children were born outside a valid marriage after 3 August 1988, specifically in June 2008 and August 2011, respectively, then they are the

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[15] *Id*. at 455.

illegitimate children of Tinitigan and Barcelote. The children shall use the surname of their mother, Barcelote. The entry in the subject birth certificates as to the surname of the children is therefore incorrect; their surname should have been "Barcelote" and not "Tinitigan."

We do not agree with the CA that the subject birth certificates are the express recognition of the children's filiation by Tinitigan, because they were not duly registered in accordance with the law.

Act No. 3753, otherwise known as the Civil Registry Law,[16] states:

Section 5. Registration and Certification of Birth. – The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data may be required in the regulation to be issued.

In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date and hour of finding and other attendant circumstances.

In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses.

In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge

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[16] Took effect on 27 February 1931.

the child, or to give therein any information by which such father could be identified.

Any fetus having human features which dies after twenty four hours of existence completely disengaged from the maternal womb shall be entered in the proper registers as having been born and having died. (Emphasis supplied)

In *Calimag v. Heirs of Macapaz,*[17] we held that "under Section 5 of Act No. 3753, the declaration of *either* parent of the [newborn] **legitimate** child shall be sufficient for the registration of his birth in the civil register, and only in the registration of birth of an illegitimate child does the law require that the birth certificate be signed and sworn to jointly by the parents of the infant, or only by the mother if the father refuses to acknowledge the child."[18]

The first paragraph of Section 5 of Act No. 3753 assumes that the newborn child is legitimate since our law accords a strong presumption in favor of legitimacy of children.[19] On the other hand, the fourth paragraph of Section 5 specifically provides that **in case of an illegitimate child**, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. The fourth paragraph of Section 5 specifically applies to an illegitimate child and likewise underscores its mandatory character with the use of the word "shall." *Lex specialis derogat generali*. Where there is in the same statute a particular enactment and also a general one which,

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[17] G.R. No. 191936, 1 June 2016, 791 SCRA 620. Emphasis supplied, italics in the original.

[18] *Id*. at 634.

[19] Civil Code, Art. 220 provides: "In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression."

in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language which are not within the provision of the particular enactment.[20]

Thus, it is **mandatory** that the mother of an illegitimate child signs the birth certificate of her child in all cases, irrespective of whether the father recognizes the child as his or not. The only legally known parent of an illegitimate child, by the fact of illegitimacy, is the mother of the child who conclusively carries the blood of the mother.[21] Thus, this provision ensures that individuals are not falsely named as parents.[22]

The mother must sign and agree to the information entered in the birth certificate because she has the parental authority and custody of the illegitimate child. In *Briones v. Miguel*,[23] we held that an illegitimate child is under the sole parental authority of the mother, and the mother is entitled to have custody of the child. The right of custody springs from the exercise of parental authority.[24] Parental authority is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses.[25]

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[20] *Bayan v. Executive Secretary Zamora,* 396 Phil. 623 (2000), citing *Manila Railroad Co. v. Insular Collector of Customs*, 52 Phil. 950 (1929).

[21] See Dissenting Opinion of Justice Carpio in *Tecson v. Commission on Elections*, 468 Phil. 421, 624 (2004).

[22] *Ara v. Pizarro,* G.R. No. 187273, 15 February 2017.

[23] 483 Phil. 483 (2004).

[24] *Santos, Sr. v. Court of Appeals,* 312 Phil. 482 (1995).

[25] *Id.*, citing *Reyes v. Alvarez*, 8 Phil. 732; 2 Manresa 21, cited in I A. Tolentino, Civil Code of the Philippines, Commentaries and Jurisprudence 604 (1990 ed.).

Since it appears on the face of the subject birth certificates that the mother did not sign the documents, the local civil registrar had no authority to register the subject birth certificates. Under the IRR of Act No. 3753, the civil registrar shall see to it that the Certificate of Live Birth presented for registration is properly and completely filled up, and the entries are correct.[26] In case the entries are found incomplete or incorrect, the civil registrar shall require the person concerned to fill up the document completely or to correct the entries, as the case may be.[27]

Clearly, the subject birth certificates were not executed consistent with the provisions of the law respecting the registration of birth of illegitimate children. Aside from the fact that the entry in the subject birth certificates as to the surname of the children is incorrect since it should have been that of the mother, the subject birth certificates are also incomplete as they lacked the signature of the mother.

Acts executed against the provisions of mandatory or prohibitory laws shall be void.[28] In *Babiera v. Catotal*,[29] we declared as void and cancelled a birth certificate, which showed that the mother was already 54 years old at the time of the child's birth and which was not signed either by the civil registrar or by the supposed mother.

Accordingly, we declare the subject birth certificates void and order their cancellation for being registered against the mandatory provisions of the Family Code requiring the use of the mother's surname for her illegitimate children and Act No. 3753 requiring the signature of the mother in her children's birth certificates.

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[26] IRR of Act No. 3753, Rule 9 (1).

[27] IRR of Act No. 3753, Rule 9 (2).

[28] Civil Code of the Philippines, Article 5 provides: "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

[29] 389 Phil. 34 (2000).

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the *best interests of the child* shall be the primary consideration.[30]

WHEREFORE, we **GRANT** the petition. We **REVERSE** and **SET ASIDE** the 5 March 2015 Decision and the 3 December 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 03223-MIN. We **REINSTATE** the 28 February 2013 Decision of the Regional Trial Court of Davao City, Branch 15, in SPC. PROC. No. 12,007-12. The Civil Registrar of the Office of the Local Civil Registry of Davao City is ordered to **CANCEL**: (1) the Certificate of Live Birth of Avee Kynna Noelle Barcelote Tinitigan under Registry No. 2008-21709 and (2) the Certificate of Live Birth of Yuhares Jan Barcelote Tinitigan under Registry No. 2011-28329.

SO ORDERED.

Peralta, Mendoza, Leonen, and *Martires, JJ.,* concur.

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[30] §1 of Article 31 of the Convention on the Rights of the Child.

SECOND DIVISION

[G.R. No. 223592. August 7, 2017]

EQUITABLE INSURANCE CORPORATION, *petitioner, vs.* **TRANSMODAL INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW; THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING; EXCEPTIONS; PRESENT.—** A closer look at the arguments raised in the petition would show that petitioner is indeed asking this Court to review the factual findings of the CA which is not within the scope of a petition for review under Rule 45 of the Rules of Court. However, 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. Considering that the findings of facts of the RTC and the CA are glaringly in contrast, this Court deems it proper to review the present case.

2. **CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; DAMAGES; RIGHT**

OF SUBROGATION; SUBROGATION, DEFINED; AN INSURANCE COMPANY HAS THE RIGHT TO STEP INTO THE SHOES OF THE INSURED WHO HAS A DIRECT CAUSE OF ACTION AGAINST A THIRD PARTY ON ACCOUNT OF THE DAMAGES SUSTAINED BY THE CARGOES.— Indeed, a perusal of the records would show that petitioner is correct in its claim that the marine insurance policy was offered as evidence. In fact, in the questioned decision of the CA, the latter, mentioned such policy x x x. As such, respondent had the opportunity to examine the said documents or to object to its presentation as pieces of evidence. The records also show that respondent was able to cross-examine petitioner's witness regarding the said documents. Thus, it was well established that petitioner has the right to step into the shoes of the insured who has a direct cause of action against herein respondent on account of the damages sustained by the cargoes. "Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities." The right of subrogation springs from Article 2207 of the Civil Code.

3. **ID.; ID.; ID.; ID.; ID.; THE PAYMENT BY THE INSURER TO THE INSURED OPERATES AS AN EQUITABLE ASSIGNMENT TO THE INSURER OF ALL THE REMEDIES WHICH THE INSURED MAY HAVE AGAINST THE THIRD PARTY WHOSE NEGLIGENCE OR WRONGFUL ACT CAUSED THE LOSS.—** The records further show that petitioner was able to accomplish its obligation under the insurance policy as it has paid the assured of its insurance claim in the amount of ₱728,712.00 as evidenced by, among others, the Subrogation Receipt, Loss Receipt, Check Voucher, and Equitable PCI Bank Check No. 0000013925. The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.

4. **ID.; ID.; ID.; ID.; ID.; THE PRESENTATION IN EVIDENCE OF THE MARINE INSURANCE POLICY IS NOT**

INDISPENSABLE BEFORE THE INSURER MAY RECOVER FROM THE COMMON CARRIER THE INSURED VALUE OF THE LOST CARGO IN THE EXERCISE OF ITS SUBROGATORY RIGHT, THE SUBROGATION RECEIPT, BY ITSELF, IS SUFFICIENT TO ESTABLISH NOT ONLY THE RELATIONSHIP BETWEEN THE INSURER AND CONSIGNEE, BUT ALSO THE AMOUNT PAID TO SETTLE THE INSURANCE CLAIM.— This Court's ruling in *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corporation* is highly instructive, thus x x x. In *Delsan Transport Lines, Inc. v. CA*, the Court ruled that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Hence, presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim. The presentation of the insurance contract was deemed not fatal to the insurer's cause of action because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel. x x x. To reiterate, in this case, petitioner was able to present as evidence the marine open policy that vested upon it, its rights as a subrogee. Subrogation is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay.

APPEARANCES OF COUNSEL

Astorga & Repol Law Offices for petitioner.
Casipit Lasam Bendijo Lopez & Associates for respondent.

DECISION

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 11, 2016, of petitioner Equitable Insurance Corporation that seeks to reverse and set aside the Decision[1] dated September 15, 2015 and Resolution[2] dated March 17, 2016 of the Court of Appeals (*CA*) reversing the Decision[3] dated June 18, 2013 of the Regional Trial Court (*RTC*), Branch 26, Manila in a civil case for actual damages.

The facts follow.

Sytengco Enterprises Corporation (*Sytengco*) hired respondent Transmodal International, Inc. (*Transmodal*) to clear from the customs authorities and withdraw, transport, and deliver to its warehouse, cargoes consisting of 200 cartons of gum Arabic with a total weight of 5,000 kilograms valued at US21,750.00.

The said cargoes arrived in Manila on August 14, 2004 and were brought to Ocean Links Container Terminal Center, Inc. pending their release by the Bureau of Customs (*BOC*) and on September 2, 2004, respondent Transmodal withdrew the same cargoes and delivered them to Sytengco's warehouse. It was noted in the delivery receipt that all the containers were wet.

In a preliminary survey conducted by Elite Adjusters and Surveyors, Inc. (*Elite Surveyors*), it was found that 187 cartons had water marks and the contents of the 13 wet cartons were partly hardened. On October 13, 2004, a re-inspection was conducted and it was found that the contents of the randomly opened 20 cartons were about 40% to 60% hardened, while 8 cartons had marks of previous wetting. In its final report dated

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[1] Penned by Associate Justice Pedro B. Corales, with the concurrence of Associate Justices Franchito N. Diamante and Rodil V. Zalameda; *rollo,* pp. 37-49.

[2] *Rollo,* pp. 69-70.

[3] Penned by Presiding Judge Silvino T. Pampilo, Jr., *id.* at 166-170.

October 27, 2004, Elite Surveyor fixed the computed loss payable at ₱728,712.00 after adjustment of 50% loss allowance.

Thus, on November 2, 2004, Sytengco demanded from respondent Transmodal the payment of ₱1,457,424.00 as compensation for total loss of shipment. On that same date, petitioner Equitable Insurance, as insurer of the cargoes per Marine Open Policy No. MN-MRN-HO-000549 paid Sytengco's claim for ₱728,712.00. On October 4, 2004, Sytengco then signed a subrogation receipt and loss receipt in favor of petitioner Equitable Insurance. As such, petitioner Equitable Insurance demanded from respondent Transmodal reimbursement of the payment given to Sytengco.

Thereafter, petitioner Equitable Insurance filed a complaint for damages invoking its right as subrogee after paying Sytengco's insurance claim and averred that respondent Transmodal's fault and gross negligence were the causes of the damages sustained by Sytengco's shipment. Petitioner Equitable Insurance prayed for the payment of ₱728,712.00 actual damages with 6% interest from the date of the filing of the complaint until full payment, plus attorney's fees and cost of suit.

Respondent Transmodal denied knowledge of an insurance policy and claimed that petitioner Equitable Insurance has no cause of action against it because the damages to the cargoes were not due to its fault or gross negligence. According to the same respondent, the cargoes arrived at Sytengco's warehouse around 11:30 in the morning of September 1, 2004, however, Sytengco did not immediately receive the said cargoes and as a result, the cargoes got wet due to the rain that occurred on the night of September 1, 2004. Respondent Transmodal also questioned the timeliness of Sytengco's formal claim for payment which was allegedly made more than 14 days from the time the cargoes were placed at its disposal in contravention of the stipulations in the delivery receipts.

The RTC, in its Decision dated June 18, 2013, found in favor of petitioner Equitable Insurance, thus, the following dispositive portion of said decision:

WHEREFORE, based on the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the following:

(1) Actual damages in the amount of Php728,712.00 plus 6% interest from judicial demand until full payment;

(2) Attorney's fees in the amount equivalent to 10% of the amount claimed;

(3) Costs of suit.

SO ORDERED.[4]

According to the RTC, petitioner Equitable Insurance was able to prove by substantial evidence its right to institute an action as subrogee of Sytengco. It also ruled that petitioner Equitable Insurance's non-presentation of the insurance policy and non-compliance with Section 7, Rule 8 of the Rules of Court on actionable document were raised for the first time in respondent Transmodal's memorandum and also noted that petitioner Equitable Insurance had, in fact, submitted a copy of the insurance contract.

Respondent Transmodal appealed the RTC's decision to the CA. The CA, on September 15, 2015, promulgated its decision reversing the RTC's decision. It disposed of the appeal as follows:

WHEREFORE, the appeal is hereby GRANTED. The June 18, 2013 Decision of the Regional Trial Court, Branch 26, Manila in Civil Case No. 06-114861 is REVERSED and SET ASIDE. Accordingly, Equitable Insurance Corp.'s complaint is DISMISSED for failure to prove cause of action.

SO ORDERED.[5]

The CA ruled that there was no proof of insurance of the cargoes at the time of the loss and that the subrogation was improper. According to the CA, the insurance contract was neither attached in the complaint nor offered in evidence for the perusal

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[4] *Id.* at 170.

[5] *Id.* at 49.

and appreciation of the RTC, and what was presented was just the marine risk note.

Hence, the present petition after the CA denied petitioner Equitable Insurance's motion for reconsideration.

Petitioner Equitable Insurance enumerates the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE CASE OF MALAYAN INSURANCE CO., INC. V. REGIS BROKERAGE CORP. (G.R. NO. 172156, NOVEMBER 23, 2007) IS NOT APPLICABLE IN THE INSTANT CASE;

2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE FACTS SURROUNDING THE CASE OF MALAYAN INSURANCE CO., INC. V. REGIS BROKERAGE CORP. (G.R. NO. 172156, NOVEMBER 23, 2007) IS DIFFERENT FROM THE FACTS ATTENDING THE INSTANT CASE;

3. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF TISON V. COURT OF APPEALS, 276 SCRA 582;

4. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF COMPAÑA MARITIMA V. INSURANCE COMPANY OF NORTH AMERICA, 12 SCRA 213;

5. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE CASE OF DELSAN TRANSPORT LINES, INC. V. COURT OF APPEALS, 273 SCRA 262;

6. THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE STATUTORY PRESUMPTION OF FAULT AND NEGLIGENCE.[6]

It is the contention of petitioner Equitable Insurance that the CA erred in not applying certain jurisprudence on this case which it deemed applicable. It also argues that the present case is not a suit between the insured Sytengco and the insurer but one between the consignee Sytengco and the respondent common

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

carrier since petitioner Equitable Insurance merely stepped into the shoes of the said insured who has a direct cause of action against respondent Transmodal on account of the damage sustained by the subject cargo, thus, the carrier cannot set up as defense any defect in the insurance policy because it cannot avoid its liability to the consignee under the contract of carriage which binds it to pay any loss or damage that may be caused to the cargo involved therein.

In its Comment[7] dated July 25, 2016, respondent Transmodal avers that the CA did not err in not applying certain jurisprudence in the latter's decision. Respondent Transmodal further refutes all the assigned errors that petitioner Equitable Insurance enumerated in its petition.

A closer look at the arguments raised in the petition would show that petitioner is indeed asking this Court to review the factual findings of the CA which is not within the scope of a petition for review under Rule 45 of the Rules of Court. However, 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

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[7] *Id.* at 228-241.

the parties, which, if properly considered, would justify a different conclusion.[8] Considering that the findings of facts of the RTC and the CA are glaringly in contrast, this Court deems it proper to review the present case.

In ruling that petitioner's subrogation right is improper, the CA stated that it found no proof of insurance of the cargoes at the time of their loss. It also found that what was presented in court was the marine risk note and not the insurance contract or policy, thus:

A perusal of the complaint and the other documentary evidence submitted by Equitable Insurance such as the preliminary and final report clearly shows that the claims for damages and subrogation were based on Policy No. MN-MRN-HO-0005479. However, said insurance contract was neither attached in the complaint nor offered in evidence for the perusal and appreciation of the court *a quo*. Instead, Equitable Insurance presented the marine risk note. For clarity, We quote the pertinent portions of the marine risk note, *viz.*:

Line & Subline
MARINE CARGO
RISK NOTE
Policy No.:
MN-MRN-HO-0005479
Issue date Sep. 08, 2004
Invoice No. 59298 V

Assured: SYTENGCO ENTERPRISES CORPORATION
Address: 10 RESTHAVEN ST.
SAN FRANCISCO DEL MONTE SUBDIVISION,
QUEZON CITY, METRO MANILA

We have this day noted the undermentioned risk in your favor and hereby guarantee that this document has all the force and effect of the terms and conditions of EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099.

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[8] *Philippine Shell Petroleum Corporation v. Gobonseng, Jr.,* 528 Phil. 724, 735 (2006); *Spouses Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998); *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (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).

L/C AMOUNT: USD 21,750.00 MARK-UP: 20%
SUM INSURED: PHP 1,457,424.00 EXCHANGE RATE: 55.8400
CARGO: 200 CTNS. GUM ARABIC POWDER KB-120

Supplier: JUMBO TRADING CO., LTD.
Vessel: ASIAN ZEPHYR VOYAGE No.: 062N
BL#: MNL04086310
ETD: 09-AUG-04 ETA: 13-AUG-04
From: THAILAND To: Manila, Philippines[9]

As such, according to the CA, the case of *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance, Inc*.[10] is applicable, wherein this Court held that a marine risk note is not an insurance policy. The CA also found applicable this Court's ruling in *Malayan Insurance Co., Inc. v. Regis Brokerage Corp*.,[11] stating that a marine policy is constitutive of the insurer-insured relationship, thus, such document should have been attached to the complaint as mandated by Section 7,[12] Rule 8 of the Rules of Court.

Petitioner, however, insists that the CA erred in applying the case of *Malayan* because the plaintiff therein did not present the marine insurance policy whereas in the present case, petitioner has presented not only the marine risk note but also Marine Open Policy No. MN-MOP-HO-0000099[13] which were all admitted in evidence.

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[9] *Rollo,* pp. 43-44.

[10] 615 Phil. 627, 634 (2009).

[11] 563 Phil. 1003, 1016 (2007).

[12] Sec. 7. *Action or defense based on document*. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading, as an exhibit, which shall be deemed to be part of the pleading, or said copy may, with like effect, be set forth in the pleading.

[13] (Exhibits "L" to "L-5").

Indeed, a perusal of the records would show that petitioner is correct in its claim that the marine insurance policy was offered as evidence. In fact, in the questioned decision of the CA, the latter, mentioned such policy, thus:

> Contrary to the ruling of the RTC, the marine policy was not at all presented. **As borne by the records, only the marine risk note and EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099 were offered in evidence**. These pieces of evidence are immaterial to Equitable Insurance's cause of action. We have earlier pointed out that a marine risk note is insufficient to prove the insurer's claim. Although the marine risk note provided that it "has all the force and effect of the terms and conditions of EQUITABLE INSURANCE CORPORATION Marine Policy No. MN-MOP-HO-0000099," there is nothing in the records showing that the said policy is related to Policy No. MN-MRN-HO-005479 which was the basis of Equitable Insurance's complaint. It did not escape Our attention that the second page of the marine risk note explicitly stated that it was "attached to and forming part of the Policy No. MN-MRN-005479." Thus, without the presentation of Policy No. MN-MRN-005479, We cannot simply assume that the terms and conditions, including the period of coverage, of such policy are similar to Marine Policy No. MN-MOP-HO-0000099.[14]

As such, respondent had the opportunity to examine the said documents or to object to its presentation as pieces of evidence. The records also show that respondent was able to cross-examine petitioner's witness regarding the said documents. Thus, it was well established that petitioner has the right to step into the shoes of the insured who has a direct cause of action against herein respondent on account of the damages sustained by the cargoes. "Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities."[15] The right of subrogation springs from Article 2207 of the Civil Code which states:

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[14] *Rollo,* pp. 45-46. (Emphasis ours)

[15] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation,* 654 Phil. 67, 75 (2011).

Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

The records further show that petitioner was able to accomplish its obligation under the insurance policy as it has paid the assured of its insurance claim in the amount of ₱728,712,00 as evidenced by, among others, the Subrogation Receipt,[16] Loss Receipt,[17] Check Voucher,[18] and Equitable PCI Bank Check No. 0000013925.[19] The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.[20]

This Court's ruling in *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corporation*[21] is highly instructive, thus:

As a general rule, the marine insurance policy needs to be presented in evidence before the insurer may recover the insured value of the lost/damaged cargo in the exercise of its subrogatory right. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.,* the Court stated that the presentation of the contract constitutive of the insurance relationship

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[16] Exhibit "N".

[17] Exhibit "O".

[18] Exhibit "J".

[19] Exhibit "J-1".

[20] *Aboitiz Shipping Corporation v. Insurance Company of North America,* 583 Phil. 257, 272 (2008).

[21] 736 Phil. 373 (2014).

between the consignee and insurer is critical because it is the legal basis of the latter's right to subrogation.

In Home Insurance Corporation v. CA, the Court also held that the insurance contract was necessary to prove that it covered the hauling portion of the shipment and was not limited to the transport of the cargo while at sea. The shipment in that case passed through six stages with different parties involved in each stage until it reached the consignee. The insurance contract, which was not presented in evidence, was necessary to determine the scope of the insurer's liability, if any, since no evidence was adduced indicating at what stage in the handling process the damage to the cargo was sustained.

An analogous disposition was arrived at in the *Wallem* case cited by ATI wherein the Court held that the insurance contract must be presented in evidence in order to determine the extent of its coverage. It was further ruled therein that the liability of the carrier from whom reimbursement was demanded was not established with certainty because the alleged shortage incurred by the cargoes was not definitively determined.

Nevertheless, the rule is not inflexible. In certain instances, the Court has admitted exceptions by declaring that a marine insurance policy is dispensable evidence in reimbursement claims instituted by the insurer.

In *Delsan Transport Lines, Inc. v. CA,* the Court ruled that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Hence, presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim. The presentation of the insurance contract was deemed not fatal to the insurer's cause of action because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel.

The same rationale was the basis of the judgment in *International Container Terminal Services, Inc. v. FGU Insurance Corporation,*wherein the arrastre operator was found liable for the lost shipment despite the failure of the insurance company to offer in evidence the insurance contract or policy. As in *Delsan,* it was certain that the loss of the cargo occurred while in the petitioner's custody.[22]

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[22] *Asian Terminal, Inc. v. First Lepanto-Taisho Insurance Corporation, supra,* at 392-393. (Citations omitted)

In view thereof, the RTC did not err in its ruling, thus:

Defendant in its memorandum, raised the issue that plaintiff failed to attach in its complaint a copy of the Marine Open Insurance Policy, thus, it failed to establish its cause of action as subrogee of the consignee quoting the case of Malayan Insurance Co., Inc. v. Regis Brokerage Corp.

The above-mentioned case is not applicable in the instant case. In *Malayan Insurance Co. v. Regis Brokerage,* Malayan did not submit the copy of the insurance contract or policy. In the instant case, plaintiff submitted the copy of the insurance contract. In fact, the non-presentation of the insurance contract is not fatal to its cause of action.

In the more recent case of *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.,* it was held:

> Similarly, in this case, the presentation of the insurance contract or policy was not necessary. Although petitioner objected to the admission of the Subrogation Receipt in its Comment to respondent's formal offer of evidence on the ground that respondent failed to present the insurance contract or policy, a perusal of petitioner's Answer and Pre-trial Brief shows that petitioner never questioned respondent's right to subrogation, nor did it dispute the coverage of the insurance contract or policy. Since there was no issue regarding the validity of the insurance contract or policy, or any provision thereof, respondent had no reason to present the insurance contract or policy as evidence during the trial.

Perusal of the records likewise show that the defendant failed to raise the issue of non-compliance with Section 7, Rule 8 of the 1997 Rules of Procedure and the non-presentation of insurance policy during the pre-trial. In the same case, it was held:

> Petitioner claims that respondent's non-presentation of the insurance contract or policy between the respondent and the consignee is fatal to its cause of action.
>
> We do not agree.
>
> First of all, this was never raised as an issue before the RTC. In fact, it is not among the issues agreed upon by the parties to be resolved during the pre-trial. As we have said, the determination of issues during the pre-trial conference bars the

> consideration of other questions, whether during trial or on appeal. Thus, [t]he parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. x x x The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.
>
> Plaintiff was able to prove by substantial evidence their right to institute this action as subrogee of the insured. The defendant did not present any evidence or witness to bolster their defense and to contradict plaintiff's allegation.[23]

To reiterate, in this case, petitioner was able to present as evidence the marine open policy that vested upon it, its rights as a subrogee. Subrogation is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay.[24]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 11, 2016, of petitioner Equitable Insurance Corporation is **GRANTED**. Consequently, the Decision dated September 15, 2015 and Resolution dated March 17, 2016 of the Court of Appeals in CA-G.R. CV No. 101296 are **REVERSED** and **SET ASIDE,** and the Decision dated June 18, 2013 of the Regional Trial Court, Branch 26, Manila is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

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

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[23] *Rollo,* pp. 168-169. (Citations omitted)

[24] *PHILAMGEN v. CA,* 339 Phil. 455, 466 (1997).

FIRST DIVISION

[G.R. No. 224549. August 7, 2017]

SPOUSES JANET URI FAHRENBACH and DIRK FAHRENBACH, *petitioners, vs.* **JOSEFINA R. PANGILINAN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; AS A RULE, THE SUPREME COURT IS NOT A TRIER OF FACTS; AN EXCEPTION IS WHEN THE FINDINGS OF FACT OF THE TRIAL COURT ARE CONFLICTING OR CONTRADICTORY WITH THOSE OF THE COURT OF APPEALS.—** [I]t must be emphasized that as a rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial. This Rule, however, allows exceptions, such as instances when the findings of fact of the trial court are conflicting or contradictory with those of the CA, as in this case where the conflicting findings of facts of the MCTC on one hand, and the RTC and the CA on the other, warrant a second look for the proper dispensation of justice.

2. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY OR UNLAWFUL DETAINER; ONLY QUESTION THAT THE COURTS MUST RESOLVE IN FORCIBLE ENTRY OR UNLAWFUL DETAINER CASES IS WHO BETWEEN THE PARTIES IS ENTITLED TO THE PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY IN DISPUTE; EXPLAINED.—** It is well-settled that the only question that the courts must resolve in forcible entry or unlawful detainer cases is who between the parties is entitled to the physical or material possession of the property in dispute. The main issue is possession *de facto*, independently of any claim of ownership or possession *de jure* that either party may set forth in his pleading. The principal issue must be possession *de facto*, or actual possession, and ownership is merely ancillary to such issue. In forcible entry, the plaintiff must prove that it was in prior physical possession of the premises until it was deprived thereof by the defendant. In this case, respondent had sufficiently proven her prior possession *de facto* of the subject lot. Records

disclose that respondent occasionally visited the subject lot since she acquired the same from Abid in September 1995. She even paid the lot's realty taxes, as well as requested for a survey authority thereon. In fact, she submitted old photographs showing herself on the subject lot, the identity of which petitioners did not contend. Notably, jurisprudence states that the law does not require a person to have his feet on every square meter of the ground before it can be said that he is in possession thereof. In *Bunyi v. Factor*, the Court held that "visiting the property on weekends and holidays is evidence of actual or physical possession. The fact of her residence somewhere else, by itself, does not result in loss of possession of the subject property." In contrast, petitioners themselves claim that they began occupying the subject lot only in August 2005, after Alvarez executed the corresponding Deed of Sale in their favor. Hence, in light of the foregoing, there is no doubt that respondent had prior *de facto* possession.

3. **ID.; ID.; ID.; TACKING OF POSSESSION ONLY APPLIES TO POSSESSION *DE JURE*, OR THAT POSSESSION WHICH HAS FOR ITS PURPOSE THE CLAIM OF OWNERSHIP.—** [T]he Court finds it proper to dispel petitioners' mistaken notion that their possession should be tacked onto that of Alvarez who allegedly occupied the property since 1974. In *Nenita Quality Foods Corporation v. Galabo*, the Court clarified that tacking of possession only applies to possession *de jure*, or that possession which has for its purpose the claim of ownership, *viz.*: True, the law allows a present possessor to tack his possession to that of his predecessor-in-interest to be deemed in possession of the property for the period required by law. **Possession in this regard, however, pertains to possession *de jure* and the tacking is made for the purpose of completing the time required for acquiring or losing ownership through prescription.** We reiterate **- possession in forcible entry suits refers to nothing more than physical possession, not legal possession.**

4. **ID.; ID.; ID.; JUDGMENT IN CASES FOR FORCIBLE ENTRY SHALL INCLUDE THE SUM JUSTLY DUE AS ARREARS OF RENT OR AS REASONABLE COMPENSATION FOR THE USE AND OCCUPATION OF THE PREMISES; CASE AT BAR.—** With regard to the rent due respondent, the CA correctly held that since petitioners

disturbed respondent's possession of the subject lot, rent is due respondent from the time petitioners intruded upon her possession. Under Section 17, Rule 70 of the Rules of Court, the judgment in cases for forcible entry shall include the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises. However, in *Badillo v. Tayag*, the Court clarified that reasonable amount of rent in suits for forcible entry must be determined not by mere judicial notice, but by supporting evidence. Here, since the RTC indeed failed to cite any document showing the assessment of the subject lot, any increase in the realty taxes, and the prevailing rental rate in the area, the CA correctly remanded this aspect to the RTC for proper determination.

5. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF PROPER IN CASE AT BAR.—** Anent the award of attorney's fees, the Court finds the same in order, considering that petitioners' intrusion on respondent's property has compelled the latter to incur expenses to protect her interests.

APPEARANCES OF COUNSEL

Pascual Dulalas-Pascual (PDP) Law Offices for petitioners.
Jagmis & Ramirez Law Office 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 September 21, 2015 and the Resolution[3]dated April 14, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 133552, which affirmed with modification the Decision[4]

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[1] Dated June 30, 2016. *Rollo*, pp. 11-35.

[2] *Id*. at 41-51. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

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

[4] *Id*. at 246-252. Penned by Presiding Judge Bienvenido C. Blancaflor.

dated August 30, 2013 of the Regional Trial Court of Palawan, Branch 95 (RTC) in Civil Case No. 4924, ordering petitioners Spouses Janet Uri Fahrenbach and Dirk Fahrenbach (petitioners) to vacate the parcel of land claimed by respondent Josefina R. Pangilinan (respondent), but remanding the case to the RTC for the determination of the proper amount of monthly rentals petitioners should pay respondent.

The Facts

On September 6, 1995, respondent acquired a parcel of unregistered land (subject lot) from her aunt, Felomina Abid (Abid), through a Waiver of Rights.[5] The said lot measured 5.78 hectares and was covered by Tax Declaration No. 0056.[6] However, unknown to respondent, Abid also executed a Deed of Sale[7] on July 15, 1995 in favor of Columbino Alvarez (Alvarez) covering the same piece of land.[8] The Deed of Sale to Alvarez contained the following description:

> An area of 5.7800 hectares, unirrigated riceland, more or less, under Tax Declaration No. 0056; Property Index No. 066-02-020-07-002; Bounded on the North: Mindoro Strait; East: Ass. Lot No. 005, Sec. 06; South AL No. 003; West: AL No. Oil; with an assessed value of "₱8,290.00."[9]

On August 2, 2005, after purportedly learning that the description of the property he bought under the Deed of Sale was erroneous, Alvarez executed a handwritten letter stating that the subject lot, with an area of 5.78 hectares and covered by Tax Declaration No. 0056, belonged to respondent.[10] Alvarez also executed a *Sinumpaang Salaysay* on July 14, 2006, stating that the said land is not the property he had intended to buy

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[5] *Id*. at 43.

[6] *Id*. at 42 and 67.

[7] *Id*. at 64.

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

[9] *Id*. at 64.

[10] *Id*. at 43 and 68.

from Abid but the one with an area of eight (8) hectares under Tax Declaration No. 019-0233-A.[11]

In September 2005, respondent learned that petitioners were occupying the 5.78-hectare subject lot she acquired from Abid and built structures thereon without respondent's consent.[12] Despite demands, petitioners refused to vacate the premises.[13] Thus, after the barangay conciliation proceedings failed, respondent filed a complaint[14] for forcible entry against petitioners before the Municipal Circuit Trial Court of Coron-Busuanga, Palawan (MCTC), which was docketed as Civil Case No. 601.[15] Among others, respondent prayed that petitioners be ordered to vacate the premises, pay a monthly rent of ₱10,000.00 from September 2005 up to the termination of the case, and pay ₱125,000.00 as attorney's fees and litigation expenses.[16]

In their Answer,[17] petitioners maintained that the land they were occupying is different from respondent's land which is covered by Tax Declaration No. 0056. According to petitioners, the area they were occupying is the eight (8)-hectare property covered by Tax Declaration No. 0052, which they allegedly acquired from Alvarez in 2005 by virtue of a Deed of Sale. Petitioners further averred that Alvarez had been in possession of the same parcel of land since 1974 after Abid allowed him to cultivate it. On the other hand, respondent neither physically possessed the said property nor introduced improvements thereon.[18]

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[11] *Id*. at 43 and 69.

[12] *Id*. at 43.

[13] *Id.*

[14] Dated August 30, 2006. *Id*. at 56-62.

[15] *Id*. at 43.

[16] *Id*. at 60.

[17] Dated September 18, 2006. *Id*. at 73-80.

[18] *Id*. at 123.

The MCTC Ruling

In a Decision[19] dated November 6, 2012, the MCTC dismissed respondent's complaint and upheld petitioners' possession. The MCTC observed that while the parties claim to have bought different properties, *i.e.*, the 5.78-hectare property for the respondent and the eight (8)-hectare property for the petitioners, it was found and agreed that they were in fact claiming one and the same lot.[20] In resolving the issue of prior possession, the MCTC took judicial notice of the written report[21] issued by the City Environment and Natural Resources Office (CENRO) of Coron, Palawan, as well as the report[22] of the Office of the Municipal Assessor which conducted the ocular inspection and public hearing relative to respondent's and Alvarez's conflicting claims back in 2005 and 2006.[23] The MCTC noted that their findings clearly state that petitioners' predecessor-in-interest, Alvarez, was the actual occupant of the area being claimed by respondent.[24]

Anent the casual visits to the property respondent allegedly made, the MCTC ruled that the same was not sufficient to constitute actual possession contemplated by law in ejectment cases. The MCTC observed that since respondent's alleged acquisition of the property in 1995, she has not hired a caretaker nor fenced the same as an overt manifestation of her claim of ownership. Thus, respondent's action for forcible entry cannot prevail over petitioners whose possession can be traced to their predecessor-in-interest.[25]

Aggrieved, respondent appealed to the RTC.[26]

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[19] *Id*. at 187-203. Penned by Judge Lovelle Moana R. Hitosis.

[20] *Id*. at 195.

[21] Records, Vol. I, pp. 135-136.

[22] *Id.* at 128-130. Erroneously referred to in the MCTC Decision as "Office of the Municipal Court."

[23] *Rollo*, p. 199.

[24] *Id*.

[25] *Id*. at 199-200.

[26] *Id*. at 44.

The RTC Ruling

In a Decision[27] dated August 30, 2013, the RTC reversed the ruling of the MCTC and ordered petitioners to vacate the subject lot.[28] The RTC pointed out that before one can be adjudged to have a better right of possession over another, it is necessary to first ascertain the actual premises of the property subject of actual and prior possession.[29] In this case, the RTC observed that the identity of the property petitioners were actually occupying was not clear.[30]

In this regard, the RTC observed that based on the Deed of Sale, it would appear that petitioners purchased an eight (8)-hectare lot bounded by the seashore on the east; however, the relevant tax declaration, *i.e.*, Tax Declaration No. 0052, did not include "seashore" as a boundary.[31] This, according to the RTC, was the cause of the confusion anent the identity of the property in dispute, considering that Alvarez held another eight (8)-hectare property bounded by the seashore and covered by Tax Declaration No. 019-0233-A:[32]

Tax Declaration No. 0052	Tax Declaration No. 019-0233-A
North: ASS LOT #005	North: Seashore
South: ASS LOT #007	South: AL# 017
East: ASS LOT #007	East: AL# 003, 016
West: ASS LOT #011, Sec. 07	West: AL# 001[33]

Thus, since the word "seashore" was somehow inserted in the Deed of Sale, it would appear that what the property

[27] *Id*. at 246-252.

[28] See *id*. at 252.

[29] *Id*. at 248.

[30] See *id*. at 252.

[31] *Id*. at 249-250.

[32] *Id*. at 250-251.

[33] *Id*. at 251. See also Declarations of Real Property for Tax Declaration Nos. 0052 and 019-0233-A; *id*. at 85-86.

petitioners bought and were occupying was the lot that was previously occupied by Alvarez and covered by Tax Declaration No. 019-0233-A. However, in truth, the RTC found out that petitioners were actually occupying respondent's property covered by Tax Declaration No. 0056.[34] Notably, the lot covered by Tax Declaration No. 0056[35] was also bounded by the seashore as the Mindoro Strait lies on its northern side:[36]

Tax Declaration No. 0056
North: Mindoro Strait
South: Ass. Lot No. 003
East: AL# 005, Sec. 6
West: Ass. Lot No. 011[37]

In view of the foregoing, the RTC concluded that petitioners acted in bad faith and, accordingly, ordered them to vacate the property and pay respondent: (*a*) rent in the amount of ₱5,000.00 per month from September 2005, plus legal interest of six percent (6%) per annum until respondent is restored to its possession; and (*b*) attorney's fees and litigation expenses amounting to ₱125,000.00.[38]

Dissatisfied, petitioners moved for reconsideration,[39] which was, however, denied in an Order[40] dated November 18, 2013, prompting them to elevate the case to the CA through a petition for *certiorari*.[41]

The CA Ruling

In a Decision[42] dated September 21, 2015, the CA affirmed the RTCs findings insofar as it held that respondent was the

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[34] *Id*. at 252

[35] See *id*. at 251.

[36] See *id*.

[37] *Id*.

[38] *Id*. at 252.

[39] See Motion for Reconsideration dated October 8, 2013; *id.* at 253-265.

[40] *Id*. at 267-272.

[41] *Id*. at 273-301.

[42] *Id*. at 41-51.

prior possessor of the subject lot, but remanded the case to the RTC for the determination of the proper amount of monthly rentals payable to respondent.[43]

The CA noted that the parties in this case are claiming one and the same property, *i.e.* the lot covered by Tax Declaration No. 0056,[44] and that respondent's prior possession *de facto* thereof has been proven as she occasionally visited the same, paid realty taxes, and even requested for a survey authority thereon.[45] Thus, since a person need not have his/her feet on every square meter of the ground before it can be said that he/she is in possession of the land, the CA ruled that respondent did not lose her possession of the subject lot, although she resided somewhere else and only occasionally visited the same.[46]

Meanwhile, the CA rejected petitioners' argument that their possession of the subject lot from the time they purchased the same in August 2005 should be tacked to Alvarez's possession. According to the CA, the concept of tacking refers to legal possession and does not apply to physical possession, which is the issue in suits for forcible entry such as this case.[47] The CA also echoed the RTC's observation that petitioners' documentary evidence are replete with inconsistencies, such as the boundary description of the property they acquired from Alvarez, as stated in the Deed of Sale vis-a-vis Tax Declaration Nos. 0052 and 019-0233-A.[48]

Anent the award of monthly rent to the respondent, the CA noted that the RTC did not cite any document showing realty assessment of the land, justify the award of ₱5,000.00 monthly rental in favor of respondent.[49] In this regard, the CA remanded

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[43] *Id.* at 51.

[44] *Id*. at 48.

[45] *Id*. at 45.

[46] *Id*. at 48.

[47] *Id*. at 49.

[48] *Id*.

[49] *Id*. at 50.

the case to the RTC for the determination of the monthly rentals due respondent.[50]

Dissatisfied, petitioners moved for reconsideration,[51] which was, however, denied by the CA in a Resolution[52] dated April 14, 2016; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in holding that respondent was in prior possession of the subject lot.

The Court's Ruling

The petition is denied.

At the outset, it must be emphasized that as a rule, the Court is not a trier of facts[53] and does not normally embark in the evaluation of evidence adduced during trial.[54] This rule, however, allows exceptions, such as instances when the findings of fact of the trial court are conflicting or contradictory with those of the CA,[55] as in this case where the conflicting findings of facts of the MCTC on one hand, and the RTC and the CA on the other, warrant a second look for the proper dispensation of justice.

After a thorough study of this case, the Court agrees with the findings of the CA and the RTC that respondent was the prior possessor of the subject lot.

The present controversy involves two (2) properties which are separate and distinct from each other. The first property is

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[50] *Id*. at 51.

[51] See Motion for Reconsideration dated October 14, 2015; *id.* at 328-339.

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

[53] *Spouses Dela Cruz v. Spouses Capco*, 729 Phil. 624, 633 (2014), citing *Continental Cement Corporation v. Filipinas (PREFAB) Systems, Inc.*, 612 Phil. 524, 535 (2009).

[54] *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374, 403 (2014).

[55] *Id*. at 403-404.

the 5.78-hectare lot covered by Tax Declaration No. 0056, while the second is the eight (8)-hectare parcel of land under Tax Declaration No. 0052 (now under Tax Declaration No. 019-0233-A). Petitioners contend that they are in possession of the second lot, as the same was purportedly acquired by them from Alvarez through a Deed of Sale. However, it was uncovered that due to the anent the identity of the property sold, petitioners were actually occupying the first subject lot and, hence, were erroneously claiming the same.[56] In truth, the subject lot was not the property sold to petitioners by Alvarez, but was the one which respondent acquired from Abid in September 1995 by virtue of a Waiver of Rights.[57] In fact, this first lot was the subject of Alvarez's handwritten letter[58] dated August 2, 2005 and *Sinumpaang Salaysay*[59] dated July 14, 2006, acknowledging respondent's ownership over it. With the true identity of the subject lot having been established, it must nonetheless be determined whether or not respondent had prior *de facto* possession over the same, considering that this case stemmed from a forcible entry complaint.

It is well-settled that the only question that the courts must resolve in forcible entry or unlawful detainer cases is who between the parties is entitled to the physical or material possession of the property in dispute.[60] The main issue is possession *de facto*, independently of any claim of ownership or possession *de jure* that either party may set forth in his pleading. The principal issue must be possession *de facto*, or actual possession, and ownership is merely ancillary to such issue.[61] In forcible entry, the plaintiff must prove that it was in prior physical possession of the premises until it was deprived thereof by the defendant.

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[56] *Rollo*, pp. 48, 195, and 249.

[57] *Id*. at 67.

[58] *Id*. at 68.

[59] *Id*. at 69.

[60] See *Mangaser v. Ugay*, 749 Phil. 372, 381-382 (2014).

[61] See *Echanes v. Spouses Hailar*, G.R. No. 203880, August 10, 2016.

In this case, respondent had sufficiently proven her prior possession *de facto* of the subject lot. Records disclose that respondent occasionally visited the subject lot since she acquired the same from Abid in September 1995. She even paid the lot's realty taxes, as well as requested for a survey authority thereon.[62] In fact, she submitted old photographs[63] showing herself on the subject lot, the identity of which petitioners did not contend. Notably, jurisprudence states that the law does not require a person to have his feet on every square meter of the ground before it can be said that he is in possession thereof.[64] In *Bunyi v. Factor*,[65] the Court held that "visiting the property on weekends and holidays is evidence of actual or physical possession. The fact of her residence somewhere else, by itself, does not result in loss of possession of the subject property."[66] In contrast, petitioners themselves claim that they began occupying the subject lot only in August 2005, after Alvarez executed the corresponding Deed of Sale in their favor.[67] Hence, in light of the foregoing, there is no doubt that respondent had prior *de facto* possession.

At this juncture, the Court finds it proper to dispel petitioners' mistaken notion that their possession should be tacked onto that of Alvarez who allegedly occupied the property since 1974. In *Nenita Quality Foods Corporation v. Galabo*,[68] the Court clarified that tacking of possession only applies to possession *de jure*, or that possession which has for its purpose the claim of ownership, *viz.*:

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[62] *Rollo*, p. 45.

[63] Records, Vol. II, pp. 563-566.

[64] *Mangaser v. Ugay*, *supra* note 60, at 382.

[65] 609 Phil. 134 (2009).

[66] *Id*. at 143.

[67] *Rollo*, pp. 73-80.

[68] 702 Phil. 506 (2013).

True, the law allows a present possessor to tack his possession to that of his predecessor-in-interest to be deemed in possession of the property for the period required by law. **Possession in this regard, however, pertains to possession *de jure* and the tacking is made for the purpose of completing the time required for acquiring or losing ownership through prescription.** We reiterate **- possession in forcible entry suits refers to nothing more than physical possession, not legal possession.**[69] (Emphases supplied)

As earlier stated, possession *de jure* is irrelevant because the only question in forcible entry — as it is here — is prior physical possession or possession *de facto*.

Finally, the Court clarifies that the written report issued by the CENRO of Coron, Palawan,[70] as well as the report of the Office of the Municipal Assessor[71] which conducted the ocular inspection and public hearing relative to respondent's and Alvarez's conflicting claims back in 2005 and 2006,[72] are of no consequence to this case. As the records show, the MCTC took judicial notice of the foregoing documents in rendering a ruling favorable to petitioners. Nevertheless, the MCTC itself stated that the said reports deal with the conflict *between Alvarez and respondent* — **not** *between petitioners and respondent*. In fact, the report of the Office of the Municipal Assessor states:

DATE: August 30, 2006

FOR: Hon. Mario T. Reyes, Jr., Municipal Mayor
THRU: Hon. Eliseo B. Buenaflor, Municipal Vice[-]Mayor
FROM: Mr. Reynario R. Labrador, Municipal Assessor

SUBJECT: BACK TO OFFICE REPORT RE: TRAVEL TO BARANGAY SAN JOSE THIS MUNICIPALITY TO ATTEND PUBLIC HEARING **REGARDING CONFLICT OF OWNERSHIP**

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[69] *Id*. at 519.

[70] Records, Vol. I, pp. 135-136.

[71] *Id*. at 128-130.

[72] *Rollo*, p. 199.

OF A PARCEL OF LAND BETWEEN JOSEFINA REYES PANGILINAN AND COLUMBINO ALVAREZ[73] (Emphasis supplied)

Meanwhile, the report of the CENRO of Coron, Palawan[74] states:

With sufficient documents to prove the claim of [Alvarez] and our findings that the area is actually occupied and cultivated by his family, [Janet Uri Fahrenbach] [,] with her desire to purchase the land, had it surveyed to be sure of the total area of the land[,] considering that it is covered by Tax Declaration, [and if it is] smaller or bigger than the declared area. Hence, a Survey Authority was issued on July 25, 2005.

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The inspection was done with positive results that [respondent] and [Alvarez], right then and there[,] agreed that her claim is 5.78 [hectares] covered by Tax Declaration No. 0056. A copy of the handwritten document dated August 2, 2005 is herewith attached.

Based on the certification of the Municipal Assessor[,] the Tax Declaration for [the] 5.78 [-hectare lot] was transferred to [respondent] by virtue of a Waiver of Rights dated September 6, 1995[;] [the same lot] was also conveyed by [Abid] to [Alvarez] by virtue of a Deed of Sale dated July 15,1995, almost two months ahead of the Waiver of Rights.

x x x x[75] (Emphases supplied)

Thus, these reports clearly relate to the conflict between Alvarez and respondent regarding the ownership of the lot covered by Tax Declaration No. 0056, and not with respect to the possession between petitioners and respondent. In this light, the Court cannot therefore subscribe to the MCTC's conclusion that these reports established petitioners' prior possession of the subject lot. In fact, this conclusion cannot be inferred from the subject reports, which only state that Alvarez was the actual

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[73] Records, Vol. I, p. 128.

[74] *Id.* at 135-136.

[75] *Id*.

occupant of the area being claimed by respondent.[76] As already explained, Alvarez's possession is irrelevant, considering that petitioners' alleged possession over the subject lot cannot be tacked onto that of Alvarez in suits for forcible entry, as in this case.

With regard to the rent due respondent, the CA correctly held that since petitioners disturbed respondent's possession of the subject lot, rent is due respondent from the time petitioners intruded upon her possession. Under Section 17, Rule 70 of the Rules of Court, the judgment in cases for forcible entry shall include the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises. However, in *Badillo v. Tayag*,[77] the Court clarified that reasonable amount of rent in suits for forcible entry must be determined not by mere judicial notice, but by supporting evidence.[78] Here, since the RTC indeed failed to cite any document showing the assessment of the subject lot, any increase in the realty taxes, and the prevailing rental rate in the area, the CA correctly remanded this aspect to the RTC for proper determination.

Anent the award of attorney's fees, the Court finds the same in order, considering that petitioners' intrusion on respondent's property has compelled the latter to incur expenses to protect her interests.[79]

WHEREFORE, the petition is **DENIED**. The Decision dated September 21, 2015 and the Resolution dated April 14, 2016 of the Court of Appeals in CA-G.R. SP No. 133552 are hereby **AFFIRMED**.

SO ORDERED.

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

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[76] *Id*. at 128-130 and 135-136.

[77] 448 Phil. 606 (2003).

[78] *Id*. at 623, citing *Herrera v. Bollos*, 424 Phil. 851, 858 (2002).

[79] See Article 2208 of Civil Code of the Philippines. See also Sec. 17, Rule 70 of Rules of Court.

FIRST DIVISION

[G.R. No. 228894. August 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN PAUL CERALDE *y* RAMOS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "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. **CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; IN BOTH INSTANCES, IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUG BE ESTABLISHED WITH MORAL CERTAINTY.—** Ceralde was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty. Thus,

in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti.*

3. **ID.; ID.; CHAIN OF CUSTODY RULE.—** Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items <u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official</u>** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

4. **ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – <u>under justifiable grounds</u> – will not render void and invalid the seizure and custody over the seized items <u>so long as the integrity and evidentiary value of the seized items</u>**

> **are properly preserved by the apprehending officer or team.** In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is justifiable ground for non-compliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe,* **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant John Paul Ceralde *y* Ramos (Ceralde) assailing the Decision[2] dated August 4, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06100, which affirmed the Joint Decision[3] dated February 18, 2013 of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 (RTC) in Crim. Case Nos. L-9245 and L-9246, finding Ceralde guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic

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[1] See Notice of Appeal dated August 26, 2016; *rollo*, 19-20.

[2] *Id*. at 2-18. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez concurring.

[3] CA *rollo*, pp. 74-80. Penned by Presiding Judge Teodoro C. Fernandez.

Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from two (2) Informations[5] filed before the RTC charging Ceralde of the crime of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, the accusatory portions of which state:

Criminal Case No. L-9245

The undersigned accuses JOHN PAUL CERALDE *y* RAMOS in the commission of Illegal Sale of Dangerous Drugs as follows:

"That on or about July 23, 2011 along Artacho St., Brgy. Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully] and unlawfully sell three (3) small transparent plastic sachet containing dried Marijuana leaves, a dangerous and prohibited drug, worth 200.00 to SPO1 Jolly V. Yanes, acting as poseur-buyer, without any lawful authority.["]

Contrary to Art. II, Sec. 5 of RA 9165.[6]

Criminal Case No. L-9246

The undersigned accuses JOHN PAUL CERALDE *y* RAMOS in the commission of Illegal Possession of Dangerous Drugs as follows:

"That on or about July 23, 2011 along Artacho St., Brgy. Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully], unlawfully and feloniously have in his possession, control and custody one (1) heat-sealed plastic sachets containing dried marijuana fruiting

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[4] 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.

[5] Both dated July 25, 2011. See records (Crim. Case No. L-9245), pp.1-4; and records (Crim. Case No. L-9246), pp.1-4.

[6] Records (Crim. Case No. L-9245), p. 1.

tops weighing 0.480 grams, without any necessary license or authority to possess the same."

Contrary to Section 11, Article II of RA 9165.[7]

The prosecution alleged that at around one (1) o'clock in the morning of July 23, 2011, the buy-bust team composed of Senior Police Officer 1 (SPO1) Jolly Yanes (SPO1 Yanes), a certain SPO1 Santos, Police Officer 3 Marday Delos Santos (PO3 Delos Santos), and one Police Officer 2 Dizon proceeded to the target area to conduct an entrapment operation on Ceralde. Shortly after, Ceralde arrived and handed three (3) plastic sachets of suspected marijuana leaves to the poseur-buyer, SPO1 Yanes, who, in turn, gave Ceralde the marked money. Thereafter, SPO1 Yanes raised his right hand to signal the rest of the team that the transaction was completed and, consequently, Ceralde was apprehended. PO3 Delos Santos conducted a body search on Ceralde and found another plastic sachet of marijuana in his pants. He then secured the remaining three (3) confiscated plastic sachets of marijuana leaves from SPO1 Yanes and told him to "go ahead."[8] PO3 Delos Santos immediately marked all four (4) plastic sachets at the place of arrest and in the presence of Ceralde, and subsequently, brought the latter, together with the marked money and the confiscated plastic sachets, to the police station for further investigation and proper documentation. Thereat, PO3 Pedro Vinluan (PO3 Vinluan), the alleged duty investigator, received the confiscated plastic sachets from PO3 Delos Santos and prepared the request for laboratory examination. At around 12 o'clock noon of the same day, PO3 Delos Santos delivered the request for laboratory examination, together with the seized items, to the Philippine National Police (PNP) Crime Laboratory in Urdaneta City, where they were tested positive for the presence of marijuana by Police Chief Inspector and Forensic Chemist Emelda B. Roderos (PCI Roderos). Afterwards, the seized drugs were submitted to Records and Evidence Custodian Mercedita Velasco (REC Velasco) for safekeeping until such time that they were presented to the court as evidence.[9]

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[7] Records (Crim. Case No. L-9246), p. 1.

[8] See *rollo*, pp. 3-4. See also CA *rollo*, pp. 75-76.

[9] See *rollo*, pp. 4-5. See also CA *rollo*, pp. 76-77.

For his part, Ceralde denied the charges against him but opted not to present any evidence during trial, invoking his constitutional right of presumption of innocence. Consequently, he moved to submit the case for decision.[10]

The RTC Ruling

In a Joint Decision[11] dated February 18, 2013, the RTC found Ceralde guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165 and, accordingly, sentenced him as follows: (*a*) in Crim. Case No. L-9245, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, with costs; and (*b*) in Crim. Case No. L-9246, to suffer the penalty of imprisonment for an indeterminate term 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 of ₱300,000.00, with costs.[12] It held that the prosecution sufficiently established all the elements of the crime of illegal sale of dangerous drugs as it was able to prove that: (*a*) an illegal sale marijuana, a dangerous drug, actually took place during a valid buy-bust operation; (*b*) Ceralde was positively identified by witnesses as the seller of the said dangerous drug; and (*c*) the said dangerous drug was presented and duly identified in open court as the subject of the sale. It also ruled that Ceralde had no right to possess the 0.480 gram of marijuana incidentally recovered from him during his arrest, thus, necessitating his conviction for violation of Sections 5 and 11, Article II of RA 9165.[13]

Aggrieved, Ceralde appealed[14] to the CA.

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[10] See CA *rollo*, p. 77.

[11] *Id*. at 74-80.

[12] *Id*. at 80.

[13] See *id*. at 78-79.

[14] See Notice of Appeal dated March 6, 2013; records (Crim. Case No. L-9245), p. 147.

The CA Ruling

In a Decision[15] dated August 4, 2016, the CA affirmed the Decision of the RTC.[16] It declared that prior surveillance is not required for the validity of an entrapment operation, the conduct of which is best left to the discretion of the police officers, noting too that there were verified reports of Ceralde being involved in the sale of illegal drugs prior to his arrest.[17] Moreover, the CA observed that all the elements of the crime of illegal sale of dangerous drugs were adequately proven, and that the chain of custody rule was substantially complied with, given that: (*a*) the seized items were properly marked immediately upon confiscation and in the presence of Ceralde, and (*b*) the absence of representatives from the media, the Department of Justice (DOJ), and any elected public official during the inventory was justified as time was of the essence.[18] More importantly, the integrity and evidentiary value of the seized drugs were preserved from the time of their seizure by PO3 Delos Santos until their presentation in court as evidence. PO3 Delos Santos turned over the seized items to PO3 Vinluan at the police station for further investigation and documentation. Thereafter, the latter returned them to PO3 Delos Santos, who delivered them to the PNP Crime Laboratory for testing. After the conduct of qualitative examination by PCI Roderos, the drugs were submitted to REC Velasco for safekeeping until their presentation in court.[19] Finally, the CA held that the marijuana was validly confiscated from him after he was bodily searched during an *in flagrante delicto* arrest.[20]

Hence, this appeal.

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[15] *Rollo*, pp. 2-18.

[16] See *id*. at 17-18.

[17] See *id*. at 7.

[18] See *id*. at 8-11.

[19] See *id*. at 11-16.

[20] See *id*. at 16-17.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Ceralde's conviction for illegal sale and illegal possession of dangerous drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[21] "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."[22]

Here, Ceralde was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[23] Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[24]

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[21] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[22] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[23] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[24] *People v. Bio*, 753 Phil. 730, 736 (2015).

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[25]

Pertinently, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[26] Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items <u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official</u>** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[27] In the case of *People v. Mendoza*,[28] the Court stressed that "**<u>[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence</u>** that had tainted the buy-busts conducted under the regime of <u>RA No. 6425</u> *<u>(Dangerous Drugs Act of 1972)</u>* again reared their ugly heads as to **<u>negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence</u>**

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[25] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[26] *People v. Sumili*, *supra* note 23, at 349-350.

[27] See Section 21 (1) and (2), Article II of RA 9165.

[28] 736 Phil. 749 (2014).

herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[29]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[30] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[31] – provide that the said inventory and photography may

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[29] *Id*. at 764.

[30] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[31] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" approved on July 15, 2014, Section 1 of which states:

> SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:
>
> "SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> "(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the 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 of the inventory and be given a copy thereof: *Provided,*

be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[32] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[33] In *People v. Almorfe*,[34] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[35] Also, in *People v. De Guzman*,[36] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[37]

> 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.

x x x x x x x x x"

[32] See Section 21 (a), Article II of the IRR of RA 9165.

[33] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[34] 631 Phil. 51 (2010).

[35] *Id.*. at 60; citation omitted.

[36] 630 Phil. 637 (2010).

[37] *Id.* at 649.

After a judicious study of the case, the Court finds that deviations from the prescribed chain of custody rule were unjustified, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Ceralde.

An examination of the records reveals that while the prosecution was able to show that the seized items were properly marked by PO3 Delos Santos immediately upon their confiscation at the place of the arrest and in the presence of Ceralde, the same was not done in the presence of any elected public official and a representative from the DOJ and the media. In an attempt to justify such absence, PO3 Delos Santos testified that:

[PROSECUTOR PORLUCAS]: Can you tell us the reason, at the time of the taking of the photograph the absence accused, the absence of the Department of Justice as well as the representative from the Media and the Barangay Kagawad of the place?

[PO3 Delos Santos]: Because this is a case of a buy-bust operation and it is a confidential matter and we are not allowed to tell other person about it because it might be leaked and it will not prove productive and also we are running out of time to inform.[38]

Based on the aforesaid testimony, the justification given by PO3 Delos Santos was insufficient for the saving-clause to apply. His claim that the instant buy-bust operation is a "confidential matter" which requires them "not to tell other person about it," not even an elected public official and a representative from the DOJ or the media, cannot be given credence, as the law mandates their presence to ensure the proper chain of custody and to avoid the possibility of switching, planting, or contamination of evidence. Moreover, PO3 Delos Santos did not satisfactorily explain why compliance with said rule "will not prove productive," not to mention the exigent circumstances which would actually show that they were "running out of time to inform" the said required witnesses. In fact, there is dearth of evidence to show that the police officers even attempted to contact and secure the other witnesses, notwithstanding the fact

[38] TSN, April 25, 2012, pp. 9-10.

that buy-bust operations are usually planned out ahead of time. Neither did the police officers provide any other explanation for their non-compliance, such as a threat to their safety and security or the time and distance which the other witnesses would have had to consider. Thus, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, the integrity and evidentiary value of the items purportedly seized from Ceralde were already compromised. Perforce, Ceralde's acquittal is in order.

"As a final note, it is fitting to mention that '[t]he Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions. Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.'"[39]

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 4, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06100 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant John Paul Ceralde *y* Ramos is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

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[39] See *Bulauitan v. People*, G.R. No. 218891, September 19, 2016.

EN BANC

[G.R. No. 187257. August 8, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE SOLICITOR GENERAL (OSG) as the PEOPLE'S TRIBUNE, and the NATIONAL POWER BOARD, *petitioners, vs.* **HON. LUISITO G. CORTEZ, Presiding Judge, Regional Trial Court, Branch 84, Quezon City, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION (NECU), and NAPOCOR EMPLOYEES AND WORKERS UNION (NEWU),** *respondents.*

[G.R. No. 187776. August 8, 2017]

ROLANDO G. ANDAYA, in his capacity as Secretary of the Department of Budget and Management and member of the Board of Directors of the National Power Corporation, *petitioner, vs.* **HON. LUISITO G. CORTEZ, Presiding Judge, Regional Trial Court, Branch 84, Quezon City, ABNER P. ELERIA, MELITO B. LUPANGCO, NAPOCOR EMPLOYEES CONSOLIDATED UNION and NAPOCOR EMPLOYEES AND WORKERS UNION,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; THE COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (REPUBLIC ACT NO. 6758); CONSOLIDATION OF ALLOWANCES AND COMPENSATION; THE COST OF LIVING ALLOWANCE (COLA) AND AMELIORATION ALLOWANCE (AA) OF NAPOCOR OFFICERS AND EMPLOYEES WERE INTEGRATED INTO THE STANDARDIZED SALARIES EFFECTIVE JULY 1, 1989.—** Respondents NECU and NEWU attempt to sway this Court by insisting that those hired after Republic Act No. 6758 took effect have never received their

COLA and AA and that these allowances were deducted from their basic pay. This issue, however, has already been discussed and passed upon in this Court's February 7, 2017 Decision: Thus, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* clarified that those who were already receiving COLA and AA as of July 1, 1989, **but whose receipt was discontinued due to the issuance of DBM-CCC No. 10, were entitled to receive such allowances during the period of the Circular's ineffectivity, or from July 1,1989 to March 16,1999. The same factual premise was present in *Metropolitan Waterworks and Sewerage System*, wherein this Court reiterated that those already receiving COLA as of July 1, 1989 were entitled to its payment from 1989 to 1999**. In neither of these cases did this Court suggest that the compensation of the employees after the promulgation of Republic Act No. 6758 would be **increased** with the addition of the COLA and AA. If the total compensation package were the same, then clearly the COLA or AA, or both were **factually** integrated. x x x. Republic Act No. 6758 remained effective during the period of ineffectivity of DBM-CCC No. 10. Thus, the COLA and AA of NAPOCOR officers and employees were integrated into the standardized salaries effective July 1, 1989 pursuant to Section 12 of Republic Act No. 6758.

2. **ID.; ID.; ID.; ID.; THE RECEIPT OF A TRANSITION ALLOWANCE IS NOT PROOF THAT ONLY THOSE WHO WERE HIRED BEFORE JULY 1, 1989 RECEIVED THEIR COLA AND AA, AS THE TRANSITION ALLOWANCE WAS GIVEN ONLY TO COMPLY WITH THE NON-DIMINUTION CLAUSE OF THE LAW, AND WAS NEVER MEANT AS AN ADDITIONAL COMPENSATION TO THE STANDARDIZED PAY.—** Those who were hired after the implementation of Republic Act No. 6758, or after July 1, 1989, did not receive a lesser compensation package than those who were hired before July 1, 1989. To emphasize, respondents NECU's and NEWU's COLA and AA were integrated into their basic salary by virtue of Section 12 of Republic Act No. 6758 x x x. Section 12 has never been ineffective or rendered unconstitutional. Thus, all allowances not covered by the exceptions to Section 12 are presumed to have been integrated into the basic standardized pay. The receipt of a transition allowance is not proof that only those who were hired before July 1, 1989 received their COLA

and AA. As this Court explained in its February 7, 2017 Decision, the transition allowance was given only to comply with the non-diminution clause of the law. It was never meant as an additional compensation to the standardized pay.

3. **ID.; ID.; THE ELECTRIC POWER CRISIS ACT OF 1993 (REPUBLIC ACT NO. 7648); THE NEW COMPENSATION PLAN UNDER REPUBLIC ACT NO. 7648 ALREADY INCORPORATED ALL BENEFITS PREVIOUSLY INTEGRATED, INCLUDING THE COLA AND AA.—** This Court likewise clarified that upon the implementation of Republic Act No. 7648, NAPOCOR workers were covered by a new compensation plan. All prior questions on the non-publication of Department of Budget and Management Corporate Compensation Circular No. 10 would no longer apply to the determination of whether COLA and AA were withheld. Furthermore, the new compensation plan under Republic Act No. 7648 already incorporated all benefits previously integrated, including the COLA and AA.

4. **ID.; ID.; ID.; ID.; ALLEGED DEDUCTION OF THE COLA AND AA FROM THE BASIC PAY, NOT PROVED.—** The alleged "Exhibit C" presented by respondents NECU and NEWU as evidence to prove that the COLA and AA were factually deducted from their basic pay is unmeritorious. It appears to be a collection list submitted before the Regional Trial Court in compliance with the Writ of Execution dated March 23, 2009. The list specifies names of employees, a computation of their alleged entitlements to their COLA and AA, and deductions for attorney's fees and docket fees. However, these computations were made only after the trial court had ruled in their favor. This Court has already ruled that the trial court gravely abused its discretion in granting the judgment award. Thus, these computations do not prove conclusively that respondents NECU's and NEWU's COLA and AA were withheld from July 1, 1989 to March 19, 1999. Respondents NECU and NEWU, all 16,500 of them, were in a position to submit to this Court any pay slip or Notice of Position Allocation and Salary Adjustment showing an actual deduction of the COLA and AA from July 1, 1989 to March 19, 1999. They have failed to do so. As it stands, **respondents NECU and NEWU have failed to prove that their COLA and AA were factually deducted from their basic pay**.

APPEARANCES OF COUNSEL

DBM Legal and Legislative Services for RolandoAndaya.

Napoleon Uy Galit and Associates Law and *Angara Abello Concepcion Regala & Cruz* for NECU, NEWU, A. Aleria & M. Lupangco.

R E S O L U T I O N

LEONEN, *J*.:

This resolves the 16,500 Workers' Solicitous Motion for Reconsideration[1] filed by respondents National Power Corporation Employees Consolidated Union (NECU) and the National Power Corporation Employees and Workers Union (NEWU) of this Court's February 7, 2017 Decision.[2] This Decision vacated and set aside the November 28, 2008 Decision,[3] March 20, 2009 Joint Order,[4] and March 23, 2009 Writ of Execution[5] of Branch 84, Regional Trial Court, Quezon City in Civil Case No. Q-07-61728.

To recall, a Petition for Mandamus[6] was filed by NECU and NEWU with Branch 84, Regional Trial Court, Quezon City, praying that the National Power Corporation (NAPOCOR) be ordered to release the Cost of Living Allowance (COLA) and Amelioration (AA) allegedly withheld from them from July 1,

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[1] *Rollo* (G.R. No. 187257), pp. 2997-3037.

[2] *Republic v. Hon. Cortez, et al.*, G.R. Nos. 187257 and 187776, February 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> [Per *J*. Leonen, *En Banc*].

[3] *Rollo* (G.R. No. 187257), pp. 1530-1553. The Decision was penned by Presiding Judge Luisito G. Cortez.

[4] *Id*. at 1515-1529. The Joint Order was penned by Presiding Judge Luisito G. Cortez.

[5] *Id*. at 1554-1557.

[6] *Id*. at 1531.

1989 to March 19, 1999.[7] NECU and NEWU pointed to this Court's pronouncements in *De Jesus v. Commission on Audit*,[8] *Philippine Ports Authority Employees Hired After July 1, 1998 v. Commission on Audit*,[9] and *Metropolitan Waterworks and Sewerage System v. Bautista, et al.*[10] They believed that they were among the government employees whose COLA and AA were not factually integrated into their basic salary upon the implementation of Republic Act No. 6758.[11]

The trial court's Decision dated November 28, 2008 and Joint Order dated March 20, 2009 granted their Petition and awarded a total of ₱6,496,055,339.98 as alleged back COLA and AA with ₱704,777,508.60 as legal interest.[12] A Writ of Execution was issued on March 23, 2009, ordering its immediate release and payment.[13]

The Office of the Solicitor General, acting as the People's Tribune, and then Secretary of Budget and Management Rolando G. Andaya separately filed Petitions for Certiorari[14] with this Court, seeking to nullify the trial court's issuances. The Office of the Solicitor General, in particular, prayed for the issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction to enjoin the implementation of the Writ of Execution dated March 23, 2009,[15] which this Court granted in the Resolution[16] dated April 15, 2009.

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[7] *Id*. at 1531. July 1, 1989 is the date of effectivity of Republic Act No. 6758 while March 19, 1999 is the date of publication of DBM Corporate Compensation Circular No. 10.

[8] 355 Phil. 584 (1998) [Per *J*. Purisima, *En Banc*].

[9] 506 Phil. 382 (2005) [Per Acting *CJ*. Panganiban, *En Banc*].

[10] 572 Phil. 383 (2008) [Per *J*. R.T. Reyes, Third Division].

[11] The Compensation and Position Classification Act of 1989.

[12] *Rollo* (G.R. No. 187257), pp. 1552-1553.

[13] *Id*. at 1554-1557.

[14] *Id*. at 7-68 and *rollo* (G.R. No. 187776), pp. 2-43.

[15] *Id*. at 576-579.

[16] *Id*. at 581-582.

On February 7, 2017, this Court rendered a Decision[17] granting the Petitions for Certiorari. This Court held, among others, that respondents NECU's and NEWU's COLA and AA for the period July 1, 1989 to March 19, 1999 were already factually integrated into their basic salaries, by virtue of Section 12 of Republic Act No. 6758[18] and Memorandum Order No. 198, series of 1994.[19] The dispositive portion of the Decision read:

> **WHEREFORE**, the Petitions for Certiorari and Prohibition in **G.R. Nos. 187257** and **187776** are **GRANTED**. The Decision dated November 28, 2008, Joint Order dated March 20, 2009, and Writ of Execution dated March 23, 2009 of the Regional Trial Court of Quezon City, Branch 84 in Civil Case No. Q-07-61728 are **VACATED** and **SET ASIDE**. The Temporary Restraining Order dated April 15, 2009 is made **PERMANENT**.[20] (Emphasis in the original)

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[17] *Republic v. Hon. Cortez, et al.*, G.R. Nos. 187257 and 187776, February 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> [Per *J.* Leonen, *En Banc*].

[18] Rep. Act No. 6758, Sec. 12 provides:

Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

[19] Directing and Authorizing the Upgrading of Compensation of Personnel of the National Power Corporation at Rates Comparable with those Prevailing in Privately-Owned Power Utilities and for Other Purposes (1994).

[20] *Republic v. Hon. Cortez, et al.*, G.R. Nos. 187257 and 187776, February 7, 2017<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> 43 [Per *J.* Leonen, *En Banc*].

In their 16,500 Workers' Solicitous Motion for Reconsideration,[21] respondents NECU and NEWU insist that law, jurisprudence, and evidence support their contention that their COLA and AA were deducted from their salaries from July 1, 1989 to March 19, 1999.[22] In particular, they distinguish NAPOCOR workers into three (3) categories. The first category includes workers already employed when Republic Act No. 6758 took effect and whose COLA and AA were integrated into their basic salaries only up to 1993. The second category covers those hired after Republic Act No. 6758 took effect and whose COLA and AA were allegedly deducted from 1989 to 1999. The third category consists of employees hired after the effectivity of Republic Act No. 7648 and whose COLA and AA were allegedly deducted from 1994 to 1999.[23] They present "Exhibit C,"[24] insisting that this is factual evidence that their basic pay for the disputed period did not include their COLA and AA.[25]

On the other hand, the Office of the Solicitor General counters that the issues raised by respondents NECU and NEWU have already been "amply and exhaustively addressed"[26] in this Court's February 7, 2017 Decision, and thus, would merit its immediate denial.[27]

Respondents NECU and NEWU attempt to sway this Court by insisting that those hired after Republic Act No. 6758 took effect have never received their COLA and AA and that these allowances were deducted from their basic pay. This issue, however, has already been discussed and passed upon in this Court's February 7, 2017 Decision:

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[21] *Rollo* (G.R. No. 187257), pp. 2997-3037. A Motion for Reconsideration was also submitted by the Power Generation Employees Association-NPC (*rollo* (G.R. No. 187257), pp. 3483-3496) but this was noted without action considering that it is no longer a party to this case.

[22] *Id*. at 3003-3005.

[23] *Id*. at 3016-3023.

[24] *Id*. at 3039-3421.

[25] *Id*. at 3029-3031.

[26] *Id*. at 3706.

[27] *Id*. at 3706-3707.

Thus, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* clarified that those who were already receiving COLA and AA as of July 1, 1989, **but whose receipt was discontinued due to the issuance of DBM-CCC No. 10, were entitled to receive such allowances during the period of the Circular's ineffectivity, or from July 1, 1989 to March 16, 1999. The same factual premise was present in *Metropolitan Waterworks and Sewerage System*, wherein this Court reiterated that those already receiving COLA as of July 1, 1989 were entitled to its payment from 1989 to 1999**.

In neither of these cases did this Court suggest that the compensation of the employees after the promulgation of Republic Act No. 6758 would be **increased** with the addition of the COLA and AA. If the total compensation package were the same, then clearly the COLA or AA, or both were **factually** integrated.

. . . .

Republic Act No. 6758 remained effective during the period of ineffectivity of DBM-CCC No. 10. Thus, the COLA and AA of NAPOCOR officers and employees were integrated into the standardized salaries effective July 1, 1989 pursuant to Section 12 of Republic Act No. 6758, which provides:

> Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Unlike in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989*, there would be no basis to distinguish between those hired before July 1, 1989 and those hired after July 1, 1989. Both sets

of NAPOCOR employees were continuously receiving their COLA and AA since these allowances were already factually integrated into the standardized salaries pursuant to Section 12 of Republic Act No. 6758.

In order to settle any confusion, we abandon any other interpretation of our ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* with regard to the entitlement of the NAPOCOR officers and employees to the back payment of COLA and AA during the period of legal limbo. To grant any back payment of COLA and AA despite their factual integration into the standardized salary would cause salary distortions in the Civil Service. It would also provide unequal protection to those employees whose COLA and AA were proven to have been factually discontinued from the period of Republic Act No. 6758's effectivity.

Generally, abandoned doctrines of this Court are given only prospective effect. However, a strict interpretation of this doctrine, when it causes a breach of a fundamental constitutional right, cannot be countenanced. In this case, it will result in a violation of the equal protection clause of the Constitution.

Furthermore, *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989* only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in the case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA or AA. Neither situation applies in this case.[28] (Emphasis and underscoring in the original, citations omitted)

Those who were hired after the implementation of Republic Act No. 6758, or after July 1, 1989, did not receive a lesser compensation package than those who were hired before July 1, 1989. To emphasize, respondents NECU's and NEWU's COLA and AA were integrated into their basic salary by virtue of Section 12 of Republic Act No. 6758, which provides:

Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances;

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[28] *Republic v. Hon. Cortez, et al.*, G.R. Nos. 187257 and 187776, February 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> 25-28 [Per *J.* Leonen, *En Banc*], citing *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, 506 Phil. 382, 385 (2005) [Per Acting *C.J.* Panganiban,

clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Section 12 has never been ineffective or rendered unconstitutional. Thus, all allowances not covered by the exceptions to Section 12 are presumed to have been integrated into the basic standardized pay. The receipt of a transition allowance is not proof that only those who were hired before July 1, 1989 received their COLA and AA. As this Court explained in its February 7, 2017 Decision, the transition allowance was given only to comply with the non-diminution clause of the law. It was never meant as an additional compensation to the standardized pay:

Prior to Republic Act No. 6758, or on June 30, 1989, Mr. Camagong was receiving a total salary of ₱8,506.30. Upon the effectivity of the law, or on July 1, 1989, all allowances, except those specifically excluded, were deemed integrated into his basic salary. *To stress, all allowances previously granted were already deemed integrated into the standardized salary rates by July 1, 1989*.

As shown above, Mr. Camagong's adjusted salary of ₱4,386.00 already included all allowances previously received. This amount is obviously less than his previous total compensation of ₱8,506.30.

En Banc]; *Metropolitan Waterworks and Sewerage System v. Bautista, et al.*, 572 Phil. 383, 403-407 (2008) [Per *J.* R. T. Reyes, Third Division]; *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 382 (2006) [Per *J.* Garcia, *En Banc*]; and *Carpio Morales v. Court of Appeals (Sixth Division)*, G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431 [Per *J.* Perlas-Bernabe, *En Banc*].

The law, however, provided a remedy in the form of a transition allowance. *NAPOCOR Employees Consolidated Union (NECU)* explains:

> When Rep. Act No. 6758 became effective on July 1, 1989, the new position title of Camagong was Plant Equipment Operator B with a salary grade of 14 and with a monthly salary of ₱4,386.00.
>
> Admittedly, in the case of Camagong, his monthly gross income of 8,506.30 prior to the effectivity of Rep. Act No. 6758, was thereafter reduced to only 4,386.00. The situation, however, is duly addressed by the law itself. For, while Rep. Act No. 6758 aims at standardizing the salary rates of government employees, yet the legislature has adhered to the policy of non-diminution of pay when it enacted said law. So it is that Section 17 thereof precisely provides for a "transition allowance," as follows:
>
>> Section 17. Salaries of Incumbents. — Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred to as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.
>>
>> The transition allowance referred to herein shall be treated as part of the basic salary for purposes of computing retirement pay, year-end bonus and other similar benefits.
>>
>> As basis for computation of the first across-the-board salary adjustment of incumbents with transition allowance, no incumbent who is receiving compensation exceeding the standardized salary rate at the time of the effectivity of this Act, shall be assigned a salary lower than ninety percent (90%) of his present compensation or the standardized salary rate, whichever is higher. Subsequent increases shall be based on the resultant adjusted salary.

Evidently, the transition allowance under the aforequoted provision was purposely meant to bridge the difference in pay between the pre-R.A. 6758 salary of government employees and their standardized pay rates thereafter, and because non-diminution of pay is the governing

principle in Rep. Act No. 6758, Camagong, pursuant to Section 17 of that law was given a transition allowance of ₱4,120.30. This explains why, in the case of Camagong, his gross monthly income remained at ₱8,506.30, as can be seen in his NPASA, clearly showing that the allowances he used to receive prior to the effectivity of Rep. Act No. 6758, were integrated into his standardized salary rate.[29] (Emphasis in the original, citations omitted)

This Court likewise clarified that upon the implementation of Republic Act No. 7648,[30] NAPOCOR workers were covered by a new compensation plan. All prior questions on the non-publication of Department of Budget and Management Corporate Compensation Circular No. 10 would no longer apply to the determination of whether COLA and AA were withheld. Furthermore, the new compensation plan under Republic Act No. 7648 already incorporated all benefits previously integrated, including the COLA and AA:

The enactment of Republic Act No. 7648, or the Electric Power Crisis Act of 1993 authorized the President of the Philippines to reorganize NAPOCOR and to upgrade its compensation plan. From this period, NAPOCOR ceased to be covered by the standardized salary rates of Republic Act No. 6758.

Pursuant to Republic Act No. 7648, then President Fidel V. Ramos issued Memorandum Order No. 198, providing for a different position classification and compensation plan for NAPOCOR employees to take effect on January 1, 1994. The compensation plan states:

SEC. 2. COMPENSATION PLAN. The NPC Compensation Plan consists of the following:

2.1 Total monthly compensation structure as shown in Annex "A" which shall include:

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[29] *Republic v. Hon. Cortez, et al*., G.R. Nos. 187257 and 187776, February 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> 32–34 [Per *J.* Leonen, *En Banc*], citing *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*, 519 Phil. 372, 385-386 (2006) [Per *J*. Garcia, *En Banc*] and *Philippine Ports Authority v. Commission on Audit*, 289 Phil. 266, 274 (1992) [Per *J*. Gutierrez, Jr., *En Banc*].

[30] The Electric Power Crisis Act of 1993.

> 2.1.1 Monthly basic salary schedule as shown in Annex "B"; and
>
> 2.1.2 Schedule of monthly allowances as provided in Annex "C" which include existing government mandated allowances such as PERA and Additional Compensation, and Rice Subsidy, and Reimbursable Allowances, i.e., RRA, RTA and RDA, provided however, that the NP Board is hereby authorized to further rationalize and/or revise the rates for such allowances as may be necessary; and
>
> 2.2 "Pay for Performance". Pay for Performance is a variable component of the total annual cash compensation consisting of bonuses and incentives but excluding the 13th month pay, earned on the basis of corporate and/or group performance or productivity, following a Productivity Enhancement Program (PEP), and step-increases given in recognition of superior individual performance using a performance rating system, duly approved by the NP Board. The corporate or group productivity or incentive bonus shall range from zero (0) to four (4) months basic salary, to be given in lump-sum for each year covered by the PEP. The in-step increases on the other hand, once granted, shall form part of the monthly basic salary.

. . . .

Memorandum Order No. 198, series of 1994 only includes the basic salary and the following allowances: Personal Economic Relief Allowance (PERA) and Additional Compensation, Rice Subsidy, and Reimbursable Allowances. Republic Act No. 7648 also provides that only the President of the Philippines can upgrade the compensation of NAPOCOR personnel:

> SECTION 5. Reorganization of the National Power Corporation. — The President is hereby empowered to reorganize the NAPOCOR, to make it more effective, innovative, and responsive to the power crisis. For this purpose, the President may abolish or create offices; split, group, or merge positions; transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting measures and take such other related actions necessary to carry out the purpose herein declared. *Nothing*

> *in this Section shall result in the diminution of the present salaries and benefits of the personnel of the NAPOCOR*: Provided, That any official or employee of the NAPOCOR who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by the Board of Directors of the NAPOCOR, with the approval of the President.
>
> The President may upgrade the compensation of the personnel of the NAPOCOR at rates comparable to those prevailing in privately-owned power utilities to take effect upon approval by Congress of the NAPOCOR's budget for 1994.

In issuing Memorandum No. 198, series of 1994, the President determined that the New Compensation Plan for the NAPOCOR personnel shall include the basic salary, PERA and Additional Compensation, Rice Subsidy, and Reimbursable Allowances. The discretion of the President to specify the new salary rates, however, is qualified by the statement: "*Nothing in this Section shall result in the diminution of the present salaries and benefits of the personnel of the NAPOCOR*." This qualification is repeated in Section 7 of the Memorandum:

> SEC. 7. NON-DIMINUTION IN PAY. Nothing in this Order shall result in the reduction of the compensation and benefits entitlements of NPC personnel prior to the effectivity of this Order.

The Board of Directors is authorized to rationalize or revise only the rates for PERA and Additional Compensation, Rice Subsidy, and Reimbursable Allowances:

> 2.1.2 Schedule of monthly allowances as provided in Annex "C" which include existing government[-]mandated allowances such as PERA and Additional Compensation, and Rice Subsidy, and Reimbursable Allowances, i.e., RRA, RTA and RDA, provided however, that the NP Board is hereby authorized to further rationalize and/or revise the rates *for such allowances* as may be necessary[.]

As previously discussed, COLA and AA were already deemed integrated into the basic standardized salary from July 1, 1989 to December 31, 1993. These allowances need not be separately granted.

All basic salaries by December 31, 1993 already included the COLA and AA.[31] (Emphasis in the original, citations omitted)

The alleged "Exhibit C" presented by respondents NECU and NEWU as evidence to prove that the COLA and AA were factually deducted from their basic pay is unmeritorious. It appears to be a collection list submitted before the Regional Trial Court in compliance with the Writ of Execution dated March 23, 2009. The list specifies names of employees, a computation of their alleged entitlements to their COLA and AA, and deductions for attorney's fees and docket fees.[32] However, these computations were made only after the trial court had ruled in their favor. This Court has already ruled that the trial court gravely abused its discretion in granting the judgment award. Thus, these computations do not prove conclusively that respondents NECU's and NEWU's COLA and AA were withheld from July 1, 1989 to March 19, 1999.

Respondents NECU and NEWU, all 16,500 of them, were in a position to submit to this Court any pay slip or Notice of Position Allocation and Salary Adjustment showing an actual deduction of the COLA and AA from July 1, 1989 to March 19, 1999. They have failed to do so. As it stands, **respondents NECU and NEWU have failed to prove that their COLA and AA were factually deducted from their basic pay**.

Interestingly, while the 16,500 Workers' Solicitous Motion for Reconsideration was pending, two (2) motions were filed by the law firm of Angara Abella Concepcion Regala & Cruz (ACCRA), formally entering its appearance **as lead counsel** on behalf of respondents NECU and NEWU.[33] These motions were an *Entry of Appearance with Omnibus Motion for Leave of Court and Time to File Supplemental Motion for*

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[31] *Republic v. Hon. Cortez, et al*., G.R. Nos. 187257 and 187776, February 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> 35–38 [Per *J.* Leonen, *En Banc*].

[32] See *rollo* (G.R. No. 187257), p. 3099.

[33] *Rollo*, p. 3500.

Reconsideration[34] and a *Motion for Leave to File and Admit Attached Supplemental Motion for Reconsideration.*[35]

The ACCRA pleadings do not contain a *conforme* from respondents NECU and NEWU or a withdrawal of appearance from their counsel, Atty. Napoleon Uy Galit (Atty. Galit). It also appears from ACCRA's affidavits of service that there were no copies furnished to Atty. Galit or to respondents NECU and NEWU. While motions for reconsideration are not among the pleadings required to be verified,[36] this circumstance is highly unusual, especially considering that the grant of a motion for reconsideration in this case may result in a more than ₱7 billion judgment award.

Nonetheless, in view of the denial of the 16,500 Workers' Solicitous Motion for Reconsideration, this Court finds that it is no longer necessary to pass upon ACCRA's pleadings.

WHEREFORE, the 16,500 Workers' Solicitous Motion for Reconsideration is **DENIED** with **FINALITY** as the basic issues have already been passed upon in this Court's February 7, 2017 Decision. No further pleadings or motions shall be entertained in this case. Let entry of final judgment be issued immediately.

The Entry of Appearance with Omnibus Motion for Leave of Court and Time to File Supplemental Motion for Reconsideration and the Motion for Leave to File and Admit Attached Supplemental Motion for Reconsideration are **NOTED WITHOUT ACTION** in view of the denial of the 16,500 Workers' Solicitous Motion for Reconsideration.

SO ORDERED.

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

Peralta, Mendoza, and *Jardeleza, JJ.,* no part.

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[34] *Id.* at 3499-3507.

[35] *Id.* at 3514-3517.

[36] *See* RULES OF COURT, Rule 37, Sec. 2 in relation to Rule 7, Sec. 4.

EN BANC

[G.R. No. 190004. August 8, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EUGENIO DALAUTA**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DEFINED; DOCTRINE OF PRIMARY JURISDICTION; COURTS CANNOT, AND WILL NOT, RESOLVE A CONTROVERSY INVOLVING A QUESTION WHICH IS WITHIN THE JURISDICTION OF AN ADMINISTRATIVE TRIBUNAL, ESPECIALLY WHERE THE QUESTION DEMANDS THE EXERCISE OF SOUND ADMINISTRATIVE DISCRETION REQUIRING THE SPECIAL KNOWLEDGE, EXPERIENCE AND SERVICES OF THE ADMINISTRATIVE TRIBUNAL TO DETERMINE TECHNICAL AND INTRICATE MATTERS OF FACT.—** Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. Jurisdiction over the subject matter is conferred only by the Constitution or the law. The courts, as well as administrative bodies exercising quasi-judicial functions, have their respective jurisdiction as may be granted by law. In connection with the courts' jurisdiction *vis-a-vis* jurisdiction of administrative bodies, the doctrine of primary jurisdiction takes into play. The doctrine of primary jurisdiction tells us that courts cannot, and will not, resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

2. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; COMPREHENSIVE AGRARIAN REFORM LAW (REPUBLIC ACT NO. 6657); DEPARTMENT OF AGRARIAN REFORM (DAR), JURISDICTION THEREOF.—** In agrarian reform cases, **primary jurisdiction** is vested in the DAR, more specifically, in the DARAB as provided for in

Section 50 of R.A. No. 6657 which reads: **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). Meanwhile, Executive Order (*E.O.*) No. 229 also vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.

3. **ID.; ID.; ID.; SPECIAL AGRARIAN COURTS (SACs); JURISDICTION THEREOF OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS IS ORIGINAL AND EXCLUSIVE.—** [T]he SACs are the Regional Trial Courts expressly granted by law with **original** and **exclusive jurisdiction** over all petitions for the determination of just compensation to landowners. Section 57 of R.A. No. 6657 provides: **SEC. 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. x x x. Adhering thereto, in *Land Bank of the Philippines v. Heir of Trinidad S. Vda. De Arieta*, it was written: In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. But as with the DAR-awarded compensation, LBP's valuation of lands covered by CARL is considered only as an **initial determination**, which is **not conclusive**, as **it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation**, taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations.

4. **ID.; ID.; ID.; JUST COMPENSATION; THE VALUATION OF PROPERTY IN EMINENT DOMAIN IS ESSENTIALLY A JUDICIAL FUNCTION WHICH CANNOT BE VESTED IN ADMINISTRATIVE AGENCIES; THE EXECUTIVE DEPARTMENT OR THE LEGISLATURE MAY MAKE THE INITIAL DETERMINATION, BUT WHEN A PARTY CLAIMS A VIOLATION OF THE GUARANTEE IN THE BILL OF RIGHTS THAT PRIVATE PROPERTY MAY NOT BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION, NO STATUTE, DECREE, OR EXECUTIVE ORDER CAN MANDATE THAT ITS OWN DETERMINATION SHALL PREVAIL OVER THE COURT'S FINDINGS.—** Section 9, Article III of the 1987 Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." In *Export Processing Zone Authority v. Dulay*, the Court ruled that **the valuation of property in eminent domain is essentially a judicial function** which **cannot be vested in administrative agencies**. "The executive department or the legislature may make the initial determination, but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the 'just-ness' of the decreed compensation." Any law or rule in derogation of this proposition is contrary to the letter and spirit of the Constitution, and is to be struck down as void or invalid.

5. **ID.; ID.; ID.; ID.; THE DAR REGULATION WHICH PROVIDES FOR A PERIOD OF FIFTEEN (15) DAYS WITHIN WHICH A LANDOWNER CAN FILE A PETITION FOR THE DETERMINATION OF JUST COMPENSATION BEFORE THE SPECIAL AGRARIAN COURT HAS NO STATUTORY BASIS; THE COURT'S RULING IN THE VETERANS BANK (379 PHIL. 141, 147), MARTINEZ (582 PHIL. 739), AND SORIANO (685 PHIL. 583) MUST BE ABANDONED.—** Since the determination of just compensation is a judicial function, the Court must abandon its ruling in *Veterans Bank, Martinez* and *Soriano* that a petition for determination of just compensation before the SAC shall be proscribed and adjudged dismissible if not filed

within the I5-day period prescribed under the DARAB Rules. To maintain the rulings would be incompatible and inconsistent with the legislative intent to vest the original and exclusive jurisdiction in the determination of just compensation with the SAC. Indeed, such rulings judicially reduced the SAC to merely an appellate court to review the administrative decisions of the DAR. This was never the intention of the Congress. [I]n Section 57 of R.A. No. 6657, Congress expressly granted the RTC, acting as SAC, the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Only the legislature can recall that power. The DAR has no authority to qualify or undo that. The Court's pronouncement in *Veterans Bank, Martinez, Soriano, and Limkaichong*, reconciling the power of the DAR and the SAC essentially barring any petition to the SAC for having been filed beyond the 15-day period provided in Section II, Rule XIII of the DARAB Rules of Procedure, cannot be sustained. The DAR regulation simply has no statutory basis.

6. **ID.; ID.; ID.; ID.; A PETITION FOR THE DETERMINATION OF JUST COMPENSATION MUST BE FILED BEFORE THE SPECIAL AGRARIAN COURT WITHIN TEN (10) YEARS FROM THE TIME THE LANDOWNER RECEIVED THE NOTICE OF COVERAGE; ANY INTERRUPTION OR DELAY CAUSED BY THE GOVERNMENT SHALL TOLL THE RUNNING OF THE PRESCRIPTIVE PERIOD.—** While R.A. No. 6657 itself does not provide for a period within which a landowner can file a petition for the determination of just compensation before the SAC, it cannot be imprescriptible because the parties cannot be placed in limbo indefinitely. The Civil Code settles such conundrum. Considering that the payment of just compensation is an obligation created by law, **it should only be ten (10) years from the time the landowner received the notice of coverage**. The Constitution itself provides for the payment of just compensation in eminent domain cases. Under Article 1144, such actions must be brought within ten (10) years from the time the right of action accrues. Nevertheless, any interruption or delay caused by the government like proceedings in the DAR should toll the running of the prescriptive period. The statute of limitations has been devised to operate against those who slept on their rights, but not against those desirous to act but

cannot do so for causes beyond their control. In this case, Dalauta received the Notice of Coverage on February 7, 1994. He then filed a petition for determination of just compensation on February 28, 2000. Clearly, the filing date was well within the ten year prescriptive period under Article 1141.

7. **ID.; ID.; ID.; ID.; FILING OF A PETITION FOR THE DETERMINATION OF JUST COMPENSATION BEFORE THE SPECIAL AGRARIAN COURT (SAC) DURING THE PENDENCY OF AN *ADMINISTRATIVE* CASE BEFORE THE DAR FOR THE SAME OBJECTIVE IS NOT STRICTLY A CASE OF FORUM SHOPPING, AS THE ADMINISTRATIVE DETERMINATION BEING NOT *RES JUDICATA* BINDING ON THE SAC.—** There may be situations where a landowner, who has a pending *administrative* case before the DAR for determination of just compensation, still files a petition before the SAC for the same objective. Such recourse is not strictly a case of forum shopping, the administrative determination being not *res judicata* binding on the SAC. This was allowed by the Court in *LBP v. Celada* and other several cases. x x x. Nevertheless, the practice should be discouraged. Everyone can only agree that simultaneous hearings are a waste of time, energy and resources. To prevent such a messy situation, a landowner should withdraw his case with the DAR before filing his petition before the SAC and manifest the fact of withdrawal by alleging it in the petition itself. Failure to do so, should be a ground for a motion to suspend judicial proceedings until the administrative proceedings would be terminated. It is simply ludicruous to allow two procedures to continue at the same time.

8. **ID.; ID.; ID.; ID.; JUST COMPENSATION IN THE CASE AT BAR MUST BE COMPUTED PURSUANT TO THE FORMULA PROVIDED UNDER DAR-LBP JOINT MEMORANDUM CIRCULAR NO. 11, SERIES OF 2003 (JMC NO. 11 (2003); LEGAL INTEREST OF 12% AND 6% PER ANNUM, IMPOSED.—** Upon an assiduous assessment of the different valuations arrived at by the DAR, the SAC and the CA, the Court agrees x x x that **just compensation for respondent Dalauta's land should be computed based on the formula provided under DAR-LBP Joint Memorandum Circular No. 11, series of 2003** (JMC

No. 11 (2003)). x x x. JMC No. 11 (2003) provides for several valuation procedures and formulas, depending on whether the commercial trees found in the land in question are harvestable or not, naturally grown, planted by the farmer-beneficiary or lessee or at random. It also provides for the valuation procedure depending on when the commercial trees are cut (*i.e.*, while the land transfer claim is pending or when the landholding is already awarded to the farmer-beneficiaries). x x x. [T]he award shall earn legal interest. Pursuant to *Nacar v. Gallery Frames*, the interest shall be computed from the time of taking at the rate of twelve percent (12%) *per annum* until June 30, 2013. Thereafter, the rate shall be six percent (6%) *per annum* until fully paid.

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

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (REPUBLIC ACT NO. 6657); JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IS ULTIMATELY A JUDICIAL MATTER, AND THE COURTS CANNOT BE PRECLUDED FROM LOOKING INTO THE "JUST-NESS" OF THE DECREED COMPENSATION. — The Constitution recognizes the right to just compensation. Article III, Section 9 of the Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." Article XIII, Section 4 of the Constitution also recognizes the landowner's right to just compensation. The determination of just compensation, as a constitutional right, is ultimately a judicial matter. Thus, in *Export Processing Zone Authority v. Dulay*: The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

2. ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURTS SITTING AS SPECIAL AGRARIAN COURTS HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS.— [T]he legislature vested jurisdiction over petitions for the determination of just compensation to landowners with the courts. Thus, under Section 57 of Republic Act No. 6657, Regional Trial Courts sitting as Special Agrarian Courts have "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This jurisdiction is original, which means that petitions for the determination of just compensation may be initiated before Special Agrarian Courts. This jurisdiction is also *exclusive*, which means that no other court or quasi-administrative tribunal has the same original jurisdiction over these cases.

3. ID.; ID.; ID.; ID.; THE RIGHT TO JUST COMPENSATION IS IMPRESCRIPTIBLE.— [A]s a constitutional right, the right to just compensation is imprescriptible. Generally, prescription is statutory and a statutory right cannot trump fundamental constitutional rights. Notably, Section 57 does not provide a time period for a landowner to file a petition for the determination of just compensation, even in the context of agrarian reform.

4. ID.; ID.; ID.; ID.; THE QUASI-JUDICIAL POWER OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) IS LIMITED TO AGRARIAN DISPUTES; TERMS "AGRARIAN REFORM" AND "AGRARIAN DISPUTE," DEFINED.— Fundamentally, the quasi-judicial power of the DARAB is limited to agrarian disputes. Section 50 of Republic Act No. 6657 provides [for the Quasi-Judicial Powers of the DAR]. x x x. It is true that the Department of Agrarian Reform's quasi-judicial power refers to agrarian reform matters and matters involving the implementation of agrarian reform. However, [Section 3(a) and (d) of RA No. 6657] defines agrarian reform and agrarian disputes x x x. Thus, "agrarian reform" refers to redistribution of lands, and "agrarian dispute" refers to disputes relating to tenurial arrangements. Certainly, the amount of just compensation to be paid by the government to a private landowner pursuant

to expropriation of land does not relate to the redistribution of land, or to tenurial arrangements. Although "compensation of lands" is mentioned under the definition of "agrarian dispute," this is compensation specifically for land that is transferred directly from a private landowner to an agrarian reform beneficiary. It does not include the determination of just compensation where the government is acquiring land from a private landowner.

5. **ID.; ID.; ID.; ID.; DISAGREEMENT BETWEEN PRIVATE LAND LANDOWNER AND FARMER-BENEFICIARY AS TO THE PRICE OF LAND CONSTITUTES AN AGRARIAN DISPUTE UNDER SECTION 3(d) OF REPUBLIC ACT NO. 6657.—** The law contemplates two instances where the government engages in the valuation of private land. One, x x x is to determine how much the beneficiaries will pay. The other, subject of this case, is to determine just compensation. The law contemplates government engaging in the valuation of land where private land is transferred from a landowner to agrarian reform beneficiaries, under a voluntary land transfer. In case of disagreement between an owner and a farmer-beneficiary as to the price of land, the law lays down a procedure for the Department of Agrarian Reform to receive evidence from interested parties and determine the matter. Notably, it is this type of dispute as to compensation that constitutes an agrarian dispute under Section 3(d) of Republic Act No. 6657.

6. **ID.; ID.; ID.; ID.; PRELIMINARY VALUATION BY THE DEPARTMENT OF AGRARIAN REFORM IS NOT A PREREQUISITE TO THE FILING OF A PETITION FOR THE DETERMINATION OF JUST COMPENSATION; THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE SPECIAL AGRARIAN COURT APPLIES WHEN THE LANDOWNER DOES NOT ACCEPT THE VALUATION OF LAND PROPOSED BY THE DEPARTMENT OF AGRARIAN REFORM.—** [T]here is an internal valuation made by the Department of Agrarian Reform when it wishes to acquire private land. The law provides for a procedure for government, through the Department of Agrarian Reform, to initially determine the value of the land to be offered to the landowner. If the landowner agrees, then there will be

no need for condemnation proceedings. Thus, under the law, the Department of Agrarian Reform shall first make an internal valuation of the land to be acquired, after which it shall notify the landowners of its proposed purchase price. Thereafter, the landowner signifies whether he or she accepts or rejects the department's offer. If the landowner accepts the Department of Agrarian Reform's offer, the offer is binding as a contractual agreement between the parties, and no further proceedings are necessary to determine compensation. Where the landowner does not accept the Department of Agrarian Reform's initial offer, the department shall conduct summary administrative proceedings, requiring the Land Bank of the Philippines and interested parties to submit evidence, to determine the compensation. Based on this summary administrative proceeding, the Department of Agrarian Reform shall determine an amount as compensation, which shall be given to the landowner, if he or she accepts the price. Otherwise, it shall be deposited with a designated bank to facilitate condemnation proceedings. If the landowner does not accept the valuation of land proposed by the Department of Agrarian Reform, then the original and exclusive jurisdiction of the SAC applies. Clearly, only this special jurisdiction involves the power to determine the amount of just compensation in relation to expropriation. Moreover, under the law, a preliminary valuation by the Department of Agrarian Reform is not a prerequisite to the filing of a petition for the determination of just compensation.

7. **ID.; ID.; ID.; ID.; NO BASIS FOR THE EXECUTIVE BRANCH TO LIMIT THE PERIOD FOR LANDOWNERS TO ASSERT THEIR RIGHT TO JUST COMPENSATION UNDER RA NO. 6657, AS ANY ATTEMPT TO DO SO SHOULD BE STRUCK DOWN FOR BEING OUTSIDE THE CONSTITUTIONAL CONFINES OF THE EMINENT DOMAIN POWERS OF THE STATE.—** Considering that Republic Act No. 6657 does not provide a limit on the period within which a landowner can file a petition for the determination of just compensation, and considering further that the right to just compensation is a constitutional right, there is no basis for the executive branch to limit the period for landowners to assert their right to just compensation under this act. Any attempt to do so should be struck down for being outside the constitutional confines of the eminent domain powers of the state. Hence,

the Special Agrarian Court did not err when it took cognizance of the case, despite petitioner's failure to file a petition within the period prescribed by the DARAB Rules of Procedure.

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

1. **CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; EFFECT AND APPLICATION OF LAWS; DOCTRINE OF *STARE DECISIS*; 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, EVEN THOUGH THE PARTIES MAY BE DIFFERENT; ABANDONMENT OF THE DOCTRINE MUST BE BASED ONLY ON STRONG AND COMPELLING REASONS; OTHERWISE, THE BECOMING VIRTUE OF PREDICTABILITY WHICH IS EXPECTED FROM THE COURT WOULD BE IMMEASURABLY AFFECTED AND THE PUBLIC'S CONFIDENCE IN THE STABILITY OF SOLEMN PRONOUNCEMENTS DIMINISHED.—** The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) enjoins adherence to judicial precedents. It 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. Commonly considered as a key feature of a common-law system, this principle has been transplanted into the hybrid legal system that is the Philippines. It is considered doctrine and embodied in Article 8 of the Civil Code of the Philippines which provides that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." Under the doctrine of *stare decisis*, 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, even though the parties may be different. Thus, until authoritatively abandoned, such decisions assume the same authority as the statute itself and necessarily become, to the extent that they are applicable, the criteria which control the actuations not only of those called upon to decide thereby but also of those duty-

bound to enforce obedience thereto. This doctrine has assumed such value in our judicial system that the Court has consistently ruled that abandonment of this doctrine 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 solemn pronouncements diminished. For that reason, courts can only be justified in setting aside this doctrine upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*.

2. **ID.; ID.; ID.; ID.; WHEN TO ABANDON A DOCTRINE.—** The great benefits derived by our judicial system from the doctrine of *stare decisis* notwithstanding, x x x the Court cannot adhere to "idolatrous reverence to precedent" because "more than anything else is that the court should be right" and not "perpetuate error." x x x. Although the Court has yet to adopt hard and fast rules to determine when to abandon doctrine, we can derive some guidance from jurisprudence. We have, for example, abandoned doctrine when: (1) authorities are abundant and conflicting, but the Court needs to break new ground with a decision that rests on a strong foundation of reason and justice; (2) it is not wise to subordinate legal reason to case law and doing so will perpetuate error; (3) an existing ruling is in violation of the law in force; (4) the precedent is "alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights," and where the dire consequences predicted in the precedent "have not come to pass;" and (5) the legal landscape has radically shifted.

3. **ID.; ID.; ID.; ID.; THE COURT SHOULD AFFIRM, NOT ABANDON, THE COURT'S DECISIONS IN VETERANS BANK (G.R. No. 132767), MARTINES (G.R. No. 169008), SORIANO (G.R. No. 184282), AND LIMKAICHONG (G.R. No. 158464), WHICH HELD THAT AN AGRARIAN REFORM ADJUDICATOR'S DECISION ON JUST COMPENSATION MUST BE BROUGHT TO THE SPECIAL AGRARIAN COURT (SAC) WITHIN THE 15-DAY PERIOD STATED IN THE RULES OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); OTHERWISE, THE ADJUDICATOR'S DECISION WILL ATTAIN FINALITY.—**

Combining the guideposts, tests, and cautionary warnings of both the Court and the U.S. Supreme Court, x x x the Decisions in *Veterans Bank, Martinez,* and *Limkaichong*, including the cases reaffirming them, should not be abandoned. There is no need to break new ground on the question of whether applying the 15-day period (to elevate the DAR adjudicator's decision to the SAC) is the better rule, or whether the jurisdiction of the SAC is original and not appellate. *Association, Veterans Bank, Martinez, Limkaichong,* and *Alfonso* have laid to rest these and related issues, and on sound legal ground. There is no showing, claim, or clamor from bench, bar, or academe of a change of "facts on the ground" that have made implementation of the 15-day rule intolerably unworkable or impractical. The Congress need not incur the added burden of huge interest costs because cases where there is an equitable need to relax the *Veterans Bank* and *Martinez* doctrine have proven to be so few and far in between. Neither has the legal landscape radically shifted. Land reform, as mandated by the Constitution, continues to be a priority of the Government. Finally, no related principle of the law on just compensation has so far developed as to make *Association* and *Martinez* remnants of abandoned doctrine.

4. **REMEDIAL LAW; COURTS; JURISDICTION; ORIGINAL AND APPELLATE JURISDICTION, DISTINGUISHED;. ORIGINAL JURISDICTION VESTED IN A COURT DOES NOT PRECLUDE PRELIMINARY DETERMINATION BY AN ADMINISTRATIVE AGENCY; NEITHER DOES THE FACT THAT A SPECIFIC ISSUE HAS BEEN PASSED UPON FIRST BY A TRIBUNAL OTHER THAN A COURT MAKE COGNIZANCE OF THAT MATTER BY A COURT APPELLATE.— [O]riginal jurisdiction** simply means "*the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law*." **Original jurisdiction vested in a court does not preclude preliminary determination by an administrative agency.** Neither does the fact that a specific issue has been passed upon first by a tribunal other than a court make cognizance of that matter by a court appellate. On the other hand, "appellate jurisdiction" means "the authority of a court *higher in rank* to re-examine the final order or judgment of a *lower* court which tried the case now elevated for judicial review."

5. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); JUST COMPENSATION; THE PRELIMINARY DETERMINATION MADE BY THE DEPARTMENT OF AGRARIAN REFORM IS BY NO MEANS A JUDGMENT OR ORDER OF A LOWER COURT WHICH WOULD MAKE ITS REVIEW BY THE REGIONAL TRIAL COURT, SITTING AS SPECIAL AGRARIAN COURT, APPELLATE.—** [T]he filing with the SAC of a petition for judicial determination of just compensation, which essentially assails the DAR's preliminary determination, is the first time that a *judicial* court will take cognizance of the matter. The preliminary determination made by the DAR is by no means a judgment or order of a lower court which would make its review by the RTC, sitting as SAC, appellate. [T]he grant of primary jurisdiction does not deprive nor limit the court's jurisdiction to determine just compensation. As we have explained in *Alfonso*, the Congress had, in fact, guaranteed the full and heightened exercise of this original and exclusive jurisdiction by allowing for a *de* novo review of the DAR's preliminary determination x x x. [T]he Court should welcome, not begrudge, the Congress' decision to allow the DAR adjudicator to participate in the process. The adjudicator's contributions are designed to aid the judicial method. It is summary and time bound. There is likewise no claim that the DAR's participation delays or corrupts the process. It is not in our place to question the wisdom of this decision of the Congress because, xxx the Congress had arranged for *judicial* courts to have full *de novo* review of the DAR's contributions. [W]e should also respect the legislative design to give the DAR the authority to issue rules and regulations to carry out the objects and purposes of RA 6657, including the provision of a 15-day period within which to bring its *preliminary* determination of just compensation before the SAC.

6. **ID.; ID.; ID.; ID.; THE RULE OF FINALITY AND IMMUTABILITY OF JUDGMENTS OF THE DEPARTMENT OF AGRARIAN REFORM AS PROVIDED UNDER SECTION 51 OF RA 6657 SHOULD NOT BE READ ALONE OR IN ISOLATION TO MEAN THAT THE DECISION OF THE DAR ADJUDICATOR PEREMPTORILY BECOMES FINAL AFTER THE LAPSE OF THE 15-DAY**

PERIOD, FOR SUCH A LITERAL READING WILL RUN COUNTER TO THE MANDATE OF SECTION 16 THAT THE LANDOWNER MAY "BRING" THE DECISION TO THE SPECIAL AGRARIAN COURT.— Section 51 incorporates into RA 6657 the rule of finality and immutability of judgments, a staple feature of our procedural due process system. It should, however, not be read alone or in isolation to mean that the decision of the DAR adjudicator peremptorily becomes final after the lapse of the 15-day period. Such a literal reading will run counter to the mandate of Section 16 that the landowner may "bring" the decision to the proper court, *i.e.*, the SAC. As x x x explained in *Veterans Bank*, even if a law provides that the decision of the DAR is final and unappealable, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action. In addition, while it is true that the Congress did not specify, under Section 57, the period within which the dissatisfied landowner can "bring" the DAR decision to the proper court, this omission is not fatal because the DAR was vested with the power to "issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes" of RA 6657. This, x x x includes the authority to adopt "a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before [the DAR]." Provisions like Section 49 are a staple feature of laws governing the creation of administrative agencies. The Court should reconcile the provisions of RA 6657 together, rather than construe them to be at war with each other. It is a cardinal rule in statutory construction that the whole and every part of a statute must be considered to produce a harmonious whole x x x.

7. **ID.; ID.; ID.; ID.; THE PERIOD WITHIN WHICH THE DECISION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) MUST BE BROUGHT TO THE SPECIAL AGRARIAN COURT FOR JUDICIAL REVIEW, IS A MATTER WHICH THE CONGRESS MAY VALIDLY DELEGATE TO THE DAR THROUGH THE PROMULGATION OF RULES OF PROCEDURE, BUT THE LAW MUST PROVIDE FOR ADEQUATE GUIDELINES OR LIMITATIONS TO MAP OUT THE BOUNDARIES OF THE DELEGATE'S AUTHORITY TO PREVENT THE DELEGATION FROM "RUNNING**

RIOT." — In *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, the Court, through Justice Isagani R. Cruz, said x x x. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation." With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. **These regulations have the force and effect of law.** Here, the Congress laid down substantive law when it provided that the DAR adjudicator's decision must be subjected to judicial review. How this may be enforced, *e.g.*, the period within which the decision must be brought to the SAC for judicial review, is a matter which the Congress may validly delegate to the DAR through the promulgation of rules of procedure. The law must, of course, provide for adequate guidelines or limitations to map out the boundaries of the delegate's authority to prevent the delegation from "running riot." The power of the delegate cannot be unlimited; there should exist a sufficient standard to guide the delegate in the exercise of its authority.

8. **ID.; ID.; ID.; ID.; THE 15-DAY PERIOD IS NOT ONLY REASONABLE, BUT IT IS ALSO JUST AND PROMOTES THE EXPEDITIOUS REVIEW OF THE DAR'S ADJUDICATION, AND THE SAME IS WITHIN THE RANGE PROVIDED BY LAW, REGULATION, AND THE RULES OF COURT GOVERNING THE PERIODS RESPECTING THE JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.—** With respect to the DAR's rule-making power, Congress, under Section 49 of RA 6657, provided that the rules to be promulgated should "carry out" RA 6657 and ensure the "just, expeditious and inexpensive determination" of actions before the DAR. Thus and by authority of Section 49, the DAR promulgated the 1994 DARAB Rules of Procedure. Under Rule XIII, Section 11 of the DARAB Rules, it is provided: [T]he 15-day rule carries out and enforces the substantive mandate to subject the DAR decision to judicial review. Not only is this

period reasonable, it is also just and promotes the expeditious review of the DAR's adjudication. It is within the range provided by law, regulation, and the Rules of Court governing the periods respecting the judicial review of administrative decisions. The Administrative Code, which provides for a default uniform procedure for the judicial review of decisions of administrative agencies, similarly mandates that agency decisions become final and executory fifteen (15) days from receipt by the party, unless within that period an administrative appeal or judicial review has been perfected. Notably, judicial review shall also be made via a petition for review filed within a period of fifteen (15) days from receipt of judgment.

9. **ID.; ID.; ID.; ID.; THE PROCESS FOR DETERMINING JUST COMPENSATION IN AN EXPROPRIATION PROCEEDING IS A PROCEDURAL MATTER GOVERNED BY THE RULES OF COURT OR THE APPLICABLE SPECIAL LAW, WHILE THE JUSTNESS OF THE AMOUNT OF COMPENSATION IS DETERMINED BY SUBSTANTIVE LAW.—** We should also not confuse the application of substantive law with matters of procedure. The provisions of the Civil Code on prescription of actions are substantive law provisions. The provision of a period within which to bring an administrative agency's finding before the courts, on the other hand, concerns only procedure. Thus, while we do not dispute that a landowner's right to just compensation for the taking of his private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, the *manner* or *mode* of enforcing this substantive right is a matter governed by procedural law. Otherwise stated, the *process* for determining just compensation in an expropriation proceeding (including finality of decisions, and the finality of judgments of the RTCs or the SACs, and periods and manner of appeals) is a procedural matter governed by the Rules of Court or the applicable special law, in this case, RA 6657. The *justness* of the amount of compensation, on the other hand, is determined by *substantive* law, *i.e.*, the Constitution, Section 17 of RA 6657 and the Decisions of the Court.

10. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; EXPRORIATION PROCEEDINGS; TWO STAGES.—** Rule 67 of the Rules of Court provides for

the procedure for the *traditional* mode of expropriation. Expropriation is a special civil action, which only the Government can initiate. Expropriation proceedings comprise two stages: (1) the determination of the authority of the Government to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts; and (2) the determination of the just compensation for the property sought to be taken. Expropriation proceedings are commenced with the filing of a verified complaint by the plaintiff government entity or agency before the RTC. This first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the Government has a lawful right to take the property sought to be condemned, for a public use or purpose. In the second stage, the RTC, with the aid of commissioners, ascertains the compensation due the landowner. The determination of just compensation is thus an integral part of the special civil action of expropriation. There is only one action, that of expropriation. The Rules of Court do not allow the landowner to assert his claim for just compensation against the Government in a new or separate proceeding. To do so will allow for the splitting of the Government's action and defeat the objective of Rules of Court to secure the just, speedy, and inexpensive disposition of **each** action or proceeding.

11. **ID.; ID.; ID.; ID.; THE LANDOWNER IS OBLIGED TO LITIGATE HIS CLAIM FOR JUST COMPENSATION IN THE SAME EXPROPRIATION PROCEEDING.—** That the landowner is obliged to litigate his claim for just compensation in the same expropriation proceeding is plain from the text of Section 3 of Rule 67 x x x. Section 6 of the same Rule further limits the time within which the landowner must present his evidence, *i.e.*, he must do so at any time the commissioners call for the reception of evidence and before the commissioners submit their report. The landowner is given ten (10) days to object to the commissioner's report. Thereafter, the RTC acts on the commissioners' report and renders judgment. The landowner may contest the RTC's determination of just compensation in an appeal or later, by way of a petition for review with the Court of Appeals or this Court, following the procedure and the reglementary periods provided by Rules 41 and 45 of the Rules of Court, respectively. Clearly, Rule 67 provides for one continuous process for the determination of

just compensation once an eminent domain proceeding has been initiated by Government. It leaves absolutely no room for the landowner, or the Government, for that matter, to abort, bypass or short-circuit the process, much less postpone the finality of a judgment to some future time.

12. **ID.; ID.; ID.; ID.; THE COURT HAS NO AUTHORITY TO SUBSTITUTE VALIDLY PROMULGATED PROCEDURAL REGLEMENTARY PERIODS APPLICABLE TO AN EXPROPRIATION PROCEEDING WITH CIVIL CODE'S SUBSTANTIVE LAW PROVISIONS ON PRESCRIPTIVE PERIODS.—** The Court has no authority to substitute validly promulgated procedural reglementary periods applicable to an expropriation proceeding with Civil Code's substantive law provisions on prescriptive periods. Under the principle of separation of powers, only the Congress has the authority to legislate law. Furthermore, for the Court to grant the landowner, by judicial fiat, such periods to initiate determination of just compensation *outside* of the expropriation proceeding initiated by the Government, is also unjust. It is well to remember that in *Martinez*, this Court upheld the 15-day rule provided under the DARAB Rules because it is consistent with "the principles of justice and equity." We held that a "belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.

13. **ID.; ID.; ID.; JUST COMPENSATION; IT WOULD BE UNJUST TO LEAVE THE GOVERNMENT IN A STATE OF UNCERTAINTY AS TO THE AMOUNT IT SHOULD PAY AS JUST COMPENSATION, ESPECIALLY WHEN THE GOVERNMENT IS READY, ABLE AND WILLING TO PAY UPON FINAL JUDGMENT.—** In *Martinez*, it was the Government which belatedly filed a petition with the SAC. Now the proverbial shoe is on the other foot. Respondent Dalauta filed his claim for just compensation with the SAC **four years** from his receipt of the notice of coverage. It would be unjust to leave the Government in a state of uncertainty as to the amount it should pay as just compensation, especially when the Government is ready, able and willing to pay upon final judgment. More, the Government has a strong public interest in paying

just compensation nearest to the time of taking as this avoids incurring the unnecessary financial burden of paying interest. Since the landowner is entitled to the payment of interest where there is delay in the payment of just compensation, delay (which is deemed to be an effective forbearance on the part of the State) entitles the landowner to the payment of interest. The interest due is not insubstantial. It is computed at the rate of 12% *per annum* from the time of taking until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, interest shall be at six percent (6%) *per annum*.

14. **ID.; ID.; ID.; ID.; PROMPT PAYMENT DOCTRINE; THE RIGHT OF THE LANDOWNER TO RECEIVE PROMPT PAYMENT IS SUBJECT TO THE CORRELATIVE OBLIGATION OF THE LANDOWNER TO PROMPTLY ACCEPT THE JUST COMPENSATION TO BE PAID BY THE GOVERNMENT AS DETERMINED IN A FINAL JUDGMENT.—** [T]he governmental interest is founded on the Constitution. It is doctrinal that the payment of just compensation be made "within a reasonable time from the taking." Without "prompt payment," compensation cannot be considered just. The landowner who is immediately deprived of his land should not be made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. The prompt payment doctrine, however, protects the Government as well. The right of the landowner to receive prompt payment is subject to the correlative obligation of the landowner to promptly accept the just compensation to be paid by the Government as determined in a final judgment. In the ordinary course of events, a landowner would want to be made "financially whole" as soon as possible. A contrary view will only allow landowners to arbitrage the prevailing low-interest regime against the judicially-imposed legal rates of 12% or 6%. Worse, landowners can wager that the Court in some future time will redefine its jurisprudence on the computation of interest. Either way, x x x burdening the Government with this additional financial cost would be unconstitutional because it is an unnecessary, excessive, extravagant, and unconscionable expenditure.

15. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; COMPREHENSIVE AGRARIAN REFORM**

LAW OF 1988 (RA 6657); JUST COMPENSATION; JUST COMPENSATION FOR RESPONDENT'S LAND SHOULD BE COMPUTED BASED ON THE FORMULA PROVIDED UNDER DAR-LBP JOINT MEMORANDUM CIRCULAR NO. 11, SERIES OF 2003 (JMC NO. 11 (2003)).— [B]oth the CA and the SAC erred in applying the formula under DAR AO No. 6, series of 1992. **Just compensation for respondent Dalauta's land should instead be computed based on the formula provided under DAR-LBP Joint Memorandum Circular No. 11, series of 2003** (JMC No. 11 (2003)). x x x. JMC No. 11 (2003) provides for several valuation procedures and formulas, depending on whether the commercial trees found in the land in question are harvestable or not, naturally grown, planted by the farmer- beneficiary or lessee or at random. It also provides for the valuation procedure depending on when the commercial trees are cut (*i.e.*, while the land transfer claim is pending or when the landholding is already awarded to the farmer-beneficiaries).

16. **ID.; ID.; ID.; ID.; REMAND OF THE CASE TO THE SPECIAL AGRARIAN COURT FOR FURTHER PROCEEDINGS, WARRANTED.—** The records show that the LBP submitted in evidence a Schedule of Base Unit Market Values for Agricultural Lands and Plants respecting the area where respondent's property is found. Under this Schedule, base market values for falcata/rubber lands are indicated, depending on its class (1, 2, or 3) and nature (level or on hillside). Since there is no evidence on record as to the class and nature of the property in question, x x x the case be remanded to receive evidence on the same, for purposes of determining the proper UMV. For the same reason, the SAC, on remand, should also receive evidence as to the applicable LAF and RCPI for the relevant period (1994).

APPEARANCES OF COUNSEL

LBP Legal Services Department for petitioner Land Bank of the Philippines.

Sorrera-Ty Salise-Gonzaga Law Offices for respondent.

DECISION

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 seeks to review, reverse and set aside the September 18, 2009 Decision[1] of the Court of Appeals-Cagayan de Oro *(CA)* in CA-G.R. SP No. 01222-MIN, modifying the May 30, 2006 Decision[2] of the Regional Trial Court, Branch 5, Butuan City *(RTC),* sitting as Special Agrarian Court *(SAC)*, in Civil Case No. 4972 – an action for determination of just compensation.

The Facts

Respondent Eugenio Dalauta *(Dalauta)* was the registered owner of an agricultural land in Florida, Butuan City, with an area of 25.2160 hectares and covered by Transfer Certificate of Title *(TCT)* No. T-1624. The land was placed by the Department of Agrarian Reform *(DAR)* under compulsory acquisition of the Comprehensive Agrarian Reform Program *(CARP)* as reflected in the Notice of Coverage,[3] dated January 17, 1994, which Dalauta received on February 7, 1994. Petitioner Land Bank of the Philippines *(LBP)* offered ₱192,782.59 as compensation for the land, but Dalauta rejected such valuation for being too low.[4]

The case was referred to the DAR Adjudication Board *(DARAB)* through the Provincial Agrarian Reform Adjudicator *(PARAD)* of Butuan City. A summary administrative proceeding was conducted to determine the appropriate just compensation for the subject property. In its Resolution,[5] dated December 4,

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring *rollo*, pp. 63-82.

[2] Penned by Presiding Judge Augustus L. Calo. *Id.* at 126-148.

[3] *Id.* at 221.

[4] *Id.* at 65.

[5] Land Valuation Case No. LV-X-02-164, *id.* at 179-180.

1995, the PARAD affirmed the valuation made by LBP in the amount of ₱192,782.59.

On February 28, 2000, Dalauta filed a petition for determination of just compensation with the RTC, sitting as SAC. He alleged that LBP's valuation of the land was inconsistent with the rules and regulations prescribed in DAR Administrative Order *(A.O.)* No. 06, series of 1992, for determining the just compensation of lands covered by CARP's compulsory acquisition scheme.

During the trial, the SAC constituted the Board of Commissioners *(Commissioners)* tasked to inspect the land and to make a report thereon. The Report of the Commissioners,[6] dated July 10, 2002, recommended that the value of the land be pegged at ₱100,000.00 per hectare. With both Dalauta and the DAR objecting to the recommended valuation, the SAC allowed the parties to adduce evidence to support their respective claims.

Dalauta's Computation

Dalauta argued that the valuation of his land should be determined using the formula in DAR A.O. No. 6, series of 1992, which was *Land Value (LV) = Capitalized Net Income (CNI) x 0.9 + Market Value (MV) per tax declaration x 0.1*, as he had a net income of ₱350,000.00 in 1993 from the sale of the trees that were grown on the said land. Norberto C. Fonacier *(Fonacier),* the purchaser of the trees, testified that he and Dalauta executed their Agreement[7] before Atty. Estanislao G. Ebarle, Jr., which showed that he undertook to bear all expenses in harvesting the trees and to give Dalauta the amount of ₱350,000.00 as net purchase payment, for which he issued a check. He said that it was his first and only transaction with Dalauta. Fonacier also claimed that a portion of Dalauta's land was planted with corn and other trees such as ipil-ipil, lingalong, and other wild trees.

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

[7] Records, p. 13.

During his cross-examination, Dalauta clarified that about 2,500 trees per hectare were planted on about twenty-one (21) hectares of his land, while the remaining four (4) hectares were reserved by his brother for planting corn. He also claimed to have replanted the land with gemelina trees, as advised by his lawyer, after Fonacier harvested the trees in January 1994. Such plants were the improvements found by the Commissioners during their inspection. Dalauta added that he had no tenants on the land. He prayed that the compensation for his land be pegged at ₱2,639,566.90.

LBP's Computation

LBP argued that the valuation of Dalauta's land should be determined using the formula *LV = MV x 2*, which yielded a total value of ₱192,782.59 for the 25.2160 hectares of Dalauta's land.

LBP claimed that during the ocular inspection/investigation, only 36 coconut trees existed on the subject land; that three (3) hectares of it were planted with corn; and the rest was idle with few second-growth trees. To support its claim, LBP presented, as witnesses, Ruben P. Penaso *(Penaso)*, LBP Property Appraiser of CDO Branch, whose basic function was to value the land covered by CARP based on the valuation guidelines provided by DAR; and Alex G. Carido *(Carido)*, LBP Agrarian Operation Specialist of CDO Branch, whose function was to compute the value of land offered by a landowner to the DAR, using the latter's guidelines.

Based on Penaso's testimony, 3.0734 hectares of the subject land were planted with corn for family consumption while the 22.1426 hectares were idle, although there were second-growth trees thereon. He reported that the trees had no value and could be considered as weeds. Likewise, Penaso indicated "none" under the column of Infrastructures in the report, although there was a small house made of wood and cut logs in the center of the corn land. He posited that an infrastructure should be made of concrete and hollow blocks. Penaso stated that the sources of their data were the guide, the BARC representative, and the

farmers from the neighboring lots. On cross-examination, he admitted that there were coconut trees scattered throughout the land; that he did not ask the guide about the first-growth trees or inquire from the landowner about the land's income; and that he used the land's market value as reflected in its 1984 tax declaration.[8]

Per testimony of Carido, the valuation of Dalauta's land was computed in September 1994 pursuant to the Memorandum Request to Value the Land[9] addressed to the LBP president. He alleged that the entries in the Claims Valuation and Processing Forms were the findings of their credit investigator. Carido explained that they used the formula *LV = MV x 2* in determining the value of Dalauta's land because the land had no income. The land's corn production during the ocular inspection in 1994 was only for family consumption. Hence, pursuant to DAR A.O. No. 6, series of 1992, the total value of Dalauta's land should be computed as *LV = MV x 2*, where MV was the Market Value per Tax Declaration based on the Tax Declaration issued in 1994.[10] Carido explained that:

> xxx using the formula MV x 2, this is now the computation. Land Value = Market Value (6,730.07) x 2 = 13,460.14 – this is the price of the land per hectare, x the area of corn land which is 3.0734, we gave the total Land Value for corn ₱41,368.39. For Idle Land, the Market Value which is computed in the second page of this paper is ₱3,419.07 by using the formula MV x 2 = ₱3,419.07 x 2, we come up with the Land Value per hectare = 6,838.14 multiplied by the area of the idle land which is 22.1426 hectares. The total Land Value for idle is ₱151,414.20. Adding the total Land Value for corn and idle, we get the grand total of ₱192,782.59, representing the value of the 25.2160 hectares.[11]

On cross and re-cross-examinations, Carido admitted that there were different ways of computing the land value under

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[8] *Rollo*, pp. 68-69.

[9] *Id*. at 198-199.

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

[11] *Id*. at 70.

DAR A.O. No. 6. He claimed that no CNI and/or Comparable Sales *(CS)* were given to him because the land production was only for family consumption, hence, CNI would not apply. Further, he explained that the net income and/or production of the land within twelve (12) months prior to the ocular inspection was considered in determining the land value.[12]

The Ruling of the SAC

On May 30, 2006, the SAC rendered its decision as follows:

WHEREFORE, AND IN VIEW OF ALL OF THE FOREGOING, DAR and LBP are directed to pay to:

1.) Land Owner Mr. Eugenio Dalauta the following:

a. Two Million Six Hundred Thirty Nine Thousand Five Hundred Fifty Seven (₱2,639,557.00) Pesos, Philippine Currency, as value of the Land;

b. One Hundred Thousand (₱100,000.00) Pesos, Philippine Currency for the farmhouse;

c. One Hundred Fifty Thousand (₱150,000.00) Pesos, Philippine Currency, as reasonable attorney's fees;

d. Fifty Thousand (₱50,000.00) Pesos, Philippine Currency as litigation expenses;

2.) The Members of the Board of Commissioners:

a. Ten Thousand (₱10,000.00) Pesos, Philippine Currency for the Chairman of the Board;

b. Seven Thousand Five Hundred (₱7,500.00) Pesos, Philippine Currency for each of the two (2) members of the Board;

SO ORDERED.[13]

The SAC explained its decision in this wise:

Going over the records of this case, taking into consideration the Commissioners Report which is replete with pictures of the

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

[13] *Id*. at 148.

improvements introduced which pictures are admitted into evidence not as illustrated testimony of a human witness but as probative evidence in itself of what it shows (Basic Evidence, Bautista, 2004 Edition), this Court is of the considered view that the Report (Commissioners) must be given weight.

While LBP's witness Ruben P. Penaso may have gone to the area, but he did not, at least, list down the improvements. The members of the Board of Commissioners on the other hand, went into the area, surveyed its metes and bounds and listed the improvements they found including the farmhouse made of wood with galvanized iron roofing (Annex "C", Commissioner's Report, p. 132, Record)

All told, the basic formula for the valuation of lands covered by Voluntary Offer to Sell and Compulsory Acquisition is:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula is used if all the three (3) factors are present, relevant and applicable. In any case, the resulting figure in the equation is always multiplied to the number of area or hectarage of land valued for just compensation.

Whenever one of the factors in the general formula is not available, the computation of land value will be any of the three (3) computations or formulae:

LV = (CNI x 0.9) + (MV x 0.1)
(If the comparable sales factor is missing)

LV = (CS x 0.9) + (MV x 0.1)
(If the capitalize net income is unavailable)

LV = MV x 2 (If only the market value factor is available)

(Agrarian Law and Jurisprudence as compiled by DAR and UNDP pp. 94-95)

Since the Capitalized Net Income in this case is available, the formula to be used is:

LV = (CNI x 0.9) + (MV x 0.1)

Whence:

LV = (₱350,000.00/.12 x 0.9) + (P145,570 x 0.1)
= (₱2,916,666.67 x 0.9) + (P145,557.00) [sic]
= ₱2,625,000.00 + ₱14,557.00
= ₱2,639,557.00 plus P100,000.00 for the Farmhouse.[14]

Unsatisfied, LBP filed a motion for reconsideration, but it was denied by the SAC on July 18, 2006.

Hence, LBP filed a petition for review under Rule 42 of the Rules of Court before the CA, arguing: 1] that the SAC erred in taking cognizance of the case when the DARAB decision sustaining the LBP valuation had long attained finality; 2] that the SAC erred in taking judicial notice of the Commissioners' Report without conducting a hearing; and 3] that the SAC violated Republic Act *(R.A.)* No. 6657[15] and DAR A.O. No. 6, series of 1992, in fixing the just compensation.

The CA Ruling

In its September 18, 2009 Decision, the CA ruled that the SAC correctly took cognizance of the case, citing *LBP v. Wycoco*[16] and *LBP v. Suntay.*[17] It reiterated that the SAC had original and exclusive jurisdiction over all petitions for the determination of just compensation. The appellate court stated that the original and exclusive jurisdiction of the SAC would be undermined if the DAR would vest in administrative officials the original jurisdiction in compensation cases and make the SAC an appellate court for the review of administrative decisions.[18]

With regard to just compensation, the CA sustained the valuation by the SAC for being well within R.A. No. 6657, its implementing rules and regulations, and in accordance with

[14] *Id*. at 147-148.

[15] Comprehensive Agrarian Reform Law of 1988.

[16] 464 Phil. 83 (2004).

[17] 561 Phil. 711 (2007).

[18] *Rollo*, p. 76.

settled jurisprudence. The factors laid down under Section 17 of R.A. No. 6657, which were translated into a basic formula in DAR A.O. No. 6, series of 1992, were used in determining the value of Dalauta's property. It stated that the courts were not at liberty to disregard the formula which was devised to implement Section 17 of R.A. No. 6657. The CA, however, disagreed with the SAC's valuation of the farmhouse, which was made of wood and galvanized iron, for it was inexistent during the taking of the subject land.[19]

The appellate court also disallowed the awards of attorney's fees and litigation expenses for failure of the SAC to state its factual and legal basis. As to the award of commissioner's fees, the CA sustained it with modification to conform with Section 15, Rule 141[20] of the Rules of Court. Considering that the Commissioners worked for a total of fifteen (15) days, the CA ruled that they were only entitled to a fee of ₱3,000.00 each or a total of ₱9,000.00.[21] The dispositive portion reads:

> **WHEREFORE**, in view of all the foregoing, the instant petition is PARTIALLY GRANTED, and the assailed Decision dated May 30, 2006 of the RTC, Branch 5, Butuan City, in Civil Case No. 4972, is hereby MODIFIED as follows: **(1) the compensation for the farmhouse (₱100,000.00), as well as the awards for attorney's fees (₱150,000.00) and litigation expenses (₱50,000.00), are hereby DELETED;** and **(2) the members of the Board of Commissioners shall each be paid a commissioner's fee of Three Thousand Pesos (₱3,000.00) by petitioner Land Bank of the Philippines. The assailed Decision is AFFIRMED in all other respect.**

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[19] *Id*. at 77-80.

[20] **Section 15.** *Fees of commissioners in eminent domain proceedings*. — The commissioners appointed to appraise land sought to be condemned for public uses in accordance with these rules shall each receive a compensation of two hundred (₱200.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as part of the costs of the proceedings. (13a)

[21] *Rollo*, pp. 80-81.

SO ORDERED.[22]

Not in conformity, LBP filed this petition raising the following:

ISSUES

1. **Whether or not the trial court had properly taken jurisdiction over the case despite the finality of the PARAD Resolution.**

2. **Whether or not the trial court correctly computed the just compensation of the subject property.**

The Court's Ruling

Primary Jurisdiction of the DARAB and Original Jurisdiction of the SAC

Jurisdiction is defined as the power and authority of a court to hear, try and decide a case.[23] Jurisdiction over the subject matter is conferred only by the Constitution or the law.[24] The courts, as well as administrative bodies exercising quasi-judicial functions, have their respective jurisdiction as may be granted by law. In connection with the courts' jurisdiction *vis-a-vis* jurisdiction of administrative bodies, the doctrine of primary jurisdiction takes into play.

The doctrine of primary jurisdiction tells us that courts cannot, and will not, resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[25]

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[22] *Id*.

[23] *Asia International Auctioneers, Inc. v. Hon. Parayno*, 565 Phil. 255, 265 (2007).

[24] *Republic v. Bantigue Point Development Corp.*, 684 Phil.192, 199 (2012).

[25] *Paloma v. Mora*, 507 Phil. 697, 712 (2005).

In agrarian reform cases, **primary jurisdiction** is vested in the DAR, more specifically, in the DARAB as provided for in Section 50 of R.A. No. 6657 which reads:

> **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). [Emphasis supplied]

Meanwhile, Executive Order *(E.O.)* No. 229 also vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.[26]

On the other hand, the SACs are the Regional Trial Courts expressly granted by law with **original** and **exclusive jurisdiction** over all petitions for the determination of just compensation to landowners. Section 57 of R.A. No. 6657 provides:

> **SEC. 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. [Emphases supplied]

Adhering thereto, in *Land Bank of the Philippines v. Heir of Trinidad S. Vda. De Arieta,*[27] it was written:

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[26] *Sta. Ana v. Spouses Carpo*, 593 Phil. 108, 126 (2008).

[27] 642 Phil. 198 (2010).

In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. But as with the DAR-awarded compensation, LBP's valuation of lands covered by CARL is considered only as an **initial determination**, which is **not conclusive**, as **it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation,** taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations. xxx.[28] [Emphases and underscoring supplied]

The DARAB Rules and Subsequent Rulings

Recognizing the separate jurisdictions of the two bodies, the DARAB came out with its own rules to avert any confusion. Section 11, Rule XIII of the 1994 DARAB Rules of Procedure reads:

Land Valuation Determination and Payment of Just Compensation. - The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but **shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof.** Any party shall be entitled to only one motion for reconsideration. [Emphasis supplied]

The Court stamped its imprimatur on the rule in *Philippine Veterans Bank v. CA (Veterans Bank);*[29] *LBP v. Martinez (Martinez);*[30] and *Soriano v. Republic (Soriano).*[31] In all these cases, it was uniformly decided that the petition for determination of just compensation before the SAC should be filed within the period prescribed under the DARAB Rules, that is, "within

[28] *Id.* at 222.

[29] 379 Phil. 141, 147 (2000).

[30] 582 Phil. 739 (2008).

[31] 685 Phil. 583 (2012).

fifteen (15) days from receipt of the notice thereof." In *Philippine Veterans Bank,* it was written:

> There is **nothing contradictory** between the provision of §50 granting the DAR primary jurisdiction to determine and adjudicate "agrarian reform matters" and exclusive original jurisdiction over "all matters involving the implementation of agrarian reform," which includes the determination of questions of just compensation, and the provision of §57 granting Regional Trial Courts "original and exclusive jurisdiction" over (1) all petitions for the determination of just compensation to landowner, and (2) prosecutions of criminal offenses under R.A. No. 6657. The first refers to **administrative proceedings**, while the second refers to **judicial** proceedings. Under R.A. No. 6657, the Land Bank of the Philippines is charged with the preliminary determination of the value of lands placed under land reform program and the compensation to be paid for their taking. It initiates the acquisition of agricultural lands by notifying the landowner of the government's intention to acquire his land and the valuation of the same as determined by the Land Bank. Within 30 days from receipt of notice, the landowner shall inform the DAR of his acceptance or rejection of the offer. In the event the landowner rejects the offer, a summary administrative proceeding is held by the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator, as the case may be, depending on the value of the land, for the purpose of determining the compensation for the land. The landowner, the Land Bank, and other interested parties are then required to submit evidence as to the just compensation for the land. The DAR adjudicator decides the case within 30 days after it is submitted for decision. If the landowner finds the price unsatisfactory, he may bring the matter directly to the appropriate Regional Trial Court.
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> To implement the provisions of R.A. No. 6657, particularly §50 thereof, Rule XIII, §11 of the DARAB Rules of Procedure provides:
>
>> Land Valuation Determination and Payment of Just Compensation. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts **within fifteen (15) days from receipt of the notice thereof**. Any party shall be entitled to only one motion for reconsideration.

As we held in *Republic v. Court of Appeals,*[32] this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

Accordingly, as the petition in the Regional Trial Court was **filed beyond the 15-day period** provided in Rule XIII, §11 of the Rules of Procedure of the DARAB, **the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal**. xxx[33] [Emphases and underscoring supplied; Citations omitted]

Any uncertainty with the foregoing ruling was cleared when the Court adhered to the *Veterans Bank* ruling in its July 31, 2008 Resolution in *Land Bank v. Martinez:*[34]

> On the supposedly conflicting pronouncements in the cited decisions, the Court reiterates its ruling in this case that **the agrarian reform adjudicator's decision on land valuation attains finality after the lapse of the 15-day period** stated in the DARAB Rules. The petition for the fixing of just

[32] 331 Phil. 1070, 1077 (1996).

[33] *Philippine Veterans Bank v. CA*, *supra* note 29, at 147-149.

[34] 582 Phil. 739 (2008).

> compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period. This conclusion, as already explained in the assailed decision, is based on the doctrines laid down in *Philippine Veterans Bank v. Court of Appeals* and *Department of Agrarian Reform Adjudication Board v. Lubrica*. [Emphases and underscoring supplied]

Jurisdiction of the SAC is Original and Exclusive; The Court's Ruling in Veterans Bank and Martinez should be Abandoned

Citing the rulings in *Veterans* and *Martinez*, the LBP argues that the PARAD resolution already attained finality when Dalauta filed the petition for determination of just compensation before the RTC sitting as SAC. The petition was filed beyond the 15-day prescriptive period or, specifically, more than five (5) years after the issuance of the PARAD Resolution.

This issue on jurisdiction and prescription was timely raised by LBP as an affirmative defense, but the SAC just glossed over it and never really delved on it. When the issue was raised again before the CA, the appellate court, citing *LBP v. Wycoco*[35] and *LBP v. Suntay,*[36] stressed that the RTC, acting as SAC, had original and exclusive jurisdiction over all petitions for the determination of just compensation. It explained that the original and exclusive jurisdiction of the SAC would be undermined if the DAR would vest in administrative officials the original jurisdiction in compensation cases and make the SAC an appellate court for the review of administrative decisions.[37]

The Court agrees with the CA in this regard. Section 9, Article III of the 1987 Constitution provides that "[p]rivate

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[35] 464 Phil. 83 (2004).

[36] 561 Phil. 711 (2007).

[37] *Rollo*, p. 76.

property shall not be taken for public use without just compensation." In *Export Processing Zone Authority v. Dulay,*[38] the Court ruled that **the valuation of property in eminent domain is essentially a judicial function** which **cannot be vested in administrative agencies**. "The executive department or the legislature may make the initial determination, but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the 'just-ness' of the decreed compensation."[39] Any law or rule in derogation of this proposition is contrary to the letter and spirit of the Constitution, and is to be struck down as void or invalid. These were reiterated in *Land Bank of the Philippines v. Montalvan*,[40] when the Court explained:

> It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has **"original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners."** This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, **it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void.** Thus, direct resort to the SAC by private respondent is valid.
>
> It would be well to emphasize that the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is **essentially a judicial function**

[38] 233 Phil. 313 (1987).

[39] *Id*. at 326.

[40] 689 Phil. 641, 652 (2012).

which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation. [Emphases and underscoring supplied]

Since the determination of just compensation is a judicial function, the Court must abandon its ruling in *Veterans Bank, Martinez* and *Soriano* that a petition for determination of just compensation before the SAC shall be proscribed and adjudged dismissible if not filed within the 15-day period prescribed under the DARAB Rules.

To maintain the rulings would be incompatible and inconsistent with the legislative intent to vest the original and exclusive jurisdiction in the determination of just compensation with the SAC. Indeed, such rulings judicially reduced the SAC to merely an appellate court to review the administrative decisions of the DAR. This was never the intention of the Congress.

As earlier cited, in Section 57 of R.A. No. 6657, Congress expressly granted the RTC, acting as SAC, the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Only the legislature can recall that power. The DAR has no authority to qualify or undo that. The Court's pronouncement in *Veterans Bank, Martinez, Soriano, and Limkaichong,* reconciling the power of the DAR and the SAC essentially barring any petition to the SAC for having been filed beyond the 15-day period provided in Section 11, Rule XIII of the DARAB Rules of Procedure, cannot be sustained. The DAR regulation simply has no statutory basis.

On Prescription

While R.A. No. 6657 itself does not provide for a period within which a landowner can file a petition for the determination of just compensation before the SAC, it cannot be imprescriptible because the parties cannot be placed in limbo indefinitely. The Civil Code settles such conundrum. Considering that the payment of just compensation is an obligation created by law, **it should only be ten (10) years from the time the landowner received the notice of coverage.** The Constitution itself provides for

the payment of just compensation in eminent domain cases.[41] Under Article 1144, such actions must be brought within ten (10) years from the time the right of action accrues. Article 1144 reads:

> Art. 1144. The following actions must be brought within **ten years** from the time the right of action accrues:
> (1) Upon a written contract;
> (2) **Upon an obligation created by law**;
> (3) Upon a judgment. (n)

Nevertheless, any interruption or delay caused by the government like proceedings in the DAR should toll the running of the prescriptive period. The statute of limitations has been devised to operate against those who slept on their rights, but not against those desirous to act but cannot do so for causes beyond their control.[42]

In this case, Dalauta received the Notice of Coverage on February 7, 1994.[43] He then filed a petition for determination of just compensation on February 28, 2000. Clearly, the filing date was well within the ten year prescriptive period under Article 1141.

Concurrent Exercise of Jurisdiction

There may be situations where a landowner, who has a pending *administrative* case before the DAR for determination of just compensation, still files a petition before the SAC for the same objective. Such recourse is not strictly a case of forum shopping, the administrative determination being not *res judicata* binding on the SAC.[44] This was allowed by the

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[41] Section 9, Article III of the 1987 Constitution provides that "private property shall not be taken for public use without just compensation."

[42] *Coderias v. Estate of Juan Chioco*, 712 Phil. 354, 370 (2013); and *Antonio v. Engr. Morales,* 541 Phil. 306, 311 (2007).

[43] *Rollo,* p. 9; CA Decision, p. 2.

[44] There is no *res judicata* because the DAR determination is only a preliminary assessment of the reasonable compensation to be paid. It is not

Court in *LBP v. Celada*[45] and other several cases. Some of these cases were enumerated in *Land Bank of the Philippines v. Umandap*[46] as follows:

1. In the 1999 case of *Land Bank of the Philippines v. Court of Appeals*,[47] we held that the SAC properly acquired jurisdiction over the petition to determine just compensation filed by the landowner without waiting for the completion of DARAB's re-evaluation of the land.

2. In the 2004 case of *Land Bank of the Philippines v. Wycoco*,[48] we allowed a direct resort to the SAC even where no summary administrative proceedings have been held before the DARAB.

3. In the 2006 case of *Land Bank of the Philippines v. Celada*,[49] this Court upheld the jurisdiction of the SAC despite the pendency of administrative proceedings before the DARAB. x x x.

x x x x x x x x x

4. In the 2009 case of *Land Bank of the Philippines v. Belista*,[50] this Court permitted a direct recourse to the SAC without an intermediate appeal to the DARAB as mandated under the new provision in the 2003 DARAB Rules of Procedure. We ruled:

> Although Section 5, Rule XIX of the 2003 DARAB Rules of Procedure provides that the land valuation cases decided by the adjudicator are now appealable to the Board, such rule could not change the clear import of Section 57 of RA No. 6657 that the original and exclusive jurisdiction to determine just compensation is in the RTC. Thus, Section 57 authorizes direct

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a judgment on the merits because it is the RTC acting as SAC, pursuant to its original and exclusive jurisdiction, that has the authority to ultimately settle the question of just compensation. (See *Spouses Arevalo v. Planters, Development Bank*, 686 Phil. 236 [2012]).

[45] 515 Phil. 467 (2006).

[46] 649 Phil. 396, 420-421 (2010).

[47] 376 Phil. 252 (1999).

[48] 464 Phil. 83 (2004).

[49] *Supra* note 44.

[50] 608 Phil. 658 (2009).

> resort to the SAC in cases involving petitions for the determination of just compensation. In accordance with the said Section 57, petitioner properly filed the petition before the RTC and, hence, the RTC erred in dismissing the case. Jurisdiction over the subject matter is conferred by law. Only a statute can confer jurisdiction on courts and administrative agencies while rules of procedure cannot.[51]

Nevertheless, the practice should be discouraged. Everyone can only agree that simultaneous hearings are a waste of time, energy and resources. To prevent such a messy situation, a landowner should withdraw his case with the DAR before filing his petition before the SAC and manifest the fact of withdrawal by alleging it in the petition itself. Failure to do so, should be a ground for a motion to suspend judicial proceedings until the administrative proceedings would be terminated. It is simply ludicruous to allow two procedures to continue at the same time.

On Just Compensation

Upon an assiduous assessment of the different valuations arrived at by the DAR, the SAC and the CA, the Court agrees with the position of Justice Francis Jardeleza that **just compensation for respondent Dalauta's land should be computed based on the formula provided under DAR-LBP Joint Memorandum Circular No. 11, series of 2003** (JMC No. 11 (2003)). This Memorandum Circular, which provides for the *specific* guidelines for properties with standing commercial trees, explains:

> The Capitalized Net Income (CNI) approach to land valuation assumes that there would be uniform streams of future income that would be realized in perpetuity from the seasonal/permanent crops planted to the land. **In the case of commercial trees (hardwood and soft wood species), however, only a <u>one-time income</u> is realized when the trees are due for harvest. The regular CNI approach in the valuation of lands planted to commercial trees would therefore <u>not</u> apply.**[52] (Emphasis and underscoring supplied.)

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[51] *Id*. at 668-669.

[52] This much was also explained during trial by the LBP witness Alex G. Carido, as noted in the assailed CA Decision:

During the proceedings before the SAC, Dalauta testified that he derived a net income of ₱350,000.00 in 1993 from the sale to Fonacier of falcata trees grown in the property. He presented the following evidence to bolster his claim of income: (1) Agreement between Dalauta and Fonacier over the sale of falcata trees;[53] (2) copy of deposit slip of amount of ₱350,000.00; [54] and (3) Certification from Allied Bank as to fact of deposit of the amount of ₱350,000.00 on November 15, 1993.[55]

Petitioner's next witness was Alex G. Carido (Carido), the Agrarian Operation Specialist of its Cagayan de Oro branch, whose function, among others, is to compute the value of a land offered by a landowner to the DAR, using the guidelines provided by the latter. He recalled that the valuation of respondent's property was made in September 1994 pursuant to a Memorandum Request to Value the Land addressed to petitioner's President.

Carido testified that the entries in the Claims Valuation and Processing Forms were the findings of their credit investigator. He explained that the data for Capitalized Net Income was not applicable then, as the land's produce was only for family consumption, and that since the property had no income, they used the formula Land Value (LV) = Market Value (MV) x 2, from DAR AO No. 6, series of 1992, in computing the total value of the subject land, where MV is the Market Value per Tax Declaration based on the Tax Declaration issued in 1994. x x x

On cross-examination, Carido admitted that there are different ways of computing the Land Value under DAR AO No. 6, and that to determine which of the formulas is applicable for computing the land value of a particular property, the data gathered in the Field Investigation Report are to be considered. He maintained that he used the formula Land Value = Market Value x 2 in computing the valuation of the subject land because the data for Capitalized Net Income (CNI) and/or Comparable Sales [CS] were not given to him.

During re-cross examination, **when asked why no CNI was provided in the investigation report, Carido stated that <u>CNI is relevant only if there is production from the property, and that while there was corn production in the subject land during ocular inspection in 1994, the same was for family consumption only, hence, CNI will not apply.</u>** He went on to say that the net income and/or production of the land within twelve (12) months prior to the ocular inspection shall be considered in determining the land value. (*Rollo*, pp. 69-71)[Emphasis and underscoring supplied].

[53] Records, pp. 13, 172.

[54] *Id*. at 172, 174.

[55] *Id*. at 172, 175.

Dalauta's sale of falcata trees indeed appears to be a one-time transaction. He did not claim to have derived any other income from the property prior to receiving the Notice of Coverage from the DAR in February 1994. For this reason, his property would be more appropriately covered by the formula provided under JMC No. 11 (2003).

JMC No. 11 (2003) provides for several valuation procedures and formulas, depending on whether the commercial trees found in the land in question are harvestable or not, naturally grown, planted by the farmer-beneficiary or lessee or at random. It also provides for the valuation procedure depending on when the commercial trees are cut (*i.e.,* while the land transfer claim is pending or when the landholding is already awarded to the farmer-beneficiaries).

Dalauta alleges to have sold all the falcata trees in the property to Fonacier in 1993.[56] After Fonacier finished harvesting in January 1994, he claims that, per advice of his lawyer, he immediately caused the **date of effectivity of this Joint Memorandum Circular** x x x." It is submitted, however, that applying the above formula to compute just compensation for respondent's land would be the *most equitable course of action* under the circumstances. Without JMC No. 11 (2003), Dalauta's property would have to be valued using the formula for idle lands, the CNI and CS factors not being applicable. Following this formula, just compensation for Dalauta's property would only amount to ₱225,300.00, computed as follows:

LV = MV x 2

Where:

LV = Land Value
MV = Market Value per Tax Declaration*

- For the area planted to corn, ₱7,740.00/hectare
- For idle/pasture land, ₱3,890/hectare

[56] *Rollo*, p. 10.

Thus:

For the 4 hectares planted to corn:

LV = (₱7,740/hectare x 4 hectares) x 2
= ₱61,920.00

For the 21 hectares of idle/pasture land:

LV = (₱3,890/hectare x 21) x 2
= ₱163,380.00

Total Land Value = ₱61,920.00 + ₱163,380.00
= ₱225,300.00

As above stated, the amount would be more equitable if it would be computed pursuant to JMC No. 11 (2003). Moreover, the award shall earn legal interest. Pursuant to *Nacar v. Gallery Frames*,[57] the interest shall be computed from the time of taking at the rate of twelve percent (12%) *per annum* until June 30, 2013. Thereafter, the rate shall be six percent (6%) *per annum* until fully paid.

WHEREFORE, the Court hereby **DECLARES** that the final determination of just compensation is a judicial function; that the jurisdiction of the Regional Trial Court, sitting as Special Agrarian Court, is original and exclusive, not appellate; that the action to file judicial determination of just compensation shall be ten (10) years from the time of the taking; and that at the time of the filing of judicial determination, there should be no pending administrative action for the determination of just compensation.

As to the just compensation, the September 18, 2009 Decision of the Court of Appeals decreeing payment of ₱2,639,557.00 as the value of the subject property is **SET ASIDE**. Let the case be remanded to the Regional Trial Court, Branch 5, Butuan City, sitting as Special Agrarian Court, for purposes of computing just compensation in accordance with JMC No. 11 (2003) and this disposition.

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[57] 716 Phil. 267 (2013).

The amount shall earn legal interest from the time of taking at the rate of twelve percent (12%) *per annum* until June 30, 2013. Thereafter, the rate shall be six percent (6%) *per annum* until fully paid.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

Jardeleza, J., see separate concurring and dissenting opinion.

Caguioa, J., joins the separate concurring and dissenting opinion of *J.* Jardeleza.

SEPARATE OPINION

LEONEN, *J.*:

I reiterate the position in my separate concurring opinion in *Limkaichong v. Land Bank of the Philippines,*[1] that the original and exclusive jurisdiction of Special Agrarian Courts to determine just compensation cannot be superseded by administrative rules.

The Constitution recognizes the right to just compensation. Article III, Section 9 of the Constitution provides that "[p]rivate property shall not be taken for public use without just compensation."[2] Article XIII, Section 4[3] of the Constitution also recognizes the landowner's right to just compensation.

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[1] *Separate Concurring Opinion* of *J.* Leonen, G.R. No. 158464, August 2, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf> [Per *J.* Bersamin, *En Banc*].

[2] CONST., Art. III, Sec. 9.

[3] CONST., Art. XIII, Sec. 4 provides:

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other

The determination of just compensation, as a constitutional right, is ultimately a judicial matter. Thus, in *Export Processing Zone Authority v. Dulay*:[4]

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[5]

Consistent with this, the legislature vested jurisdiction over petitions for the determination of just compensation to landowners with the courts. Thus, under Section 57 of Republic Act No. 6657,[6] Regional Trial Courts sitting as Special Agrarian Courts have "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners."[7] This

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farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[4] 233 Phil. 313 (1987) [Per *J*. Gutierrez, Jr., *En Banc*].

[5] *Id*. at 326.

[6] Comprehensive Agrarian Reform Law of 1988.

[7] Rep. Act No. 6657, Sec. 57 provides:

Section 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

jurisdiction is original, which means that petitions for the determination of just compensation may be initiated before Special Agrarian Courts. This jurisdiction is also *exclusive*, which means that no other court or quasi-administrative tribunal has the same original jurisdiction over these cases.

Moreover, I agree with the astute and discerning insight of Justice Lucas Bersamin that as a constitutional right, the right to just compensation is imprescriptible. Generally, prescription is statutory and a statutory right cannot trump fundamental constitutional rights. Notably, Section 57 does not provide a time period for a landowner to file a petition for the determination of just compensation, even in the context of agrarian reform.

I

The *ponencia* points out that, under Section 50 of Republic Act No. 6657, the Department of Agrarian Reform Adjudication Board (DARAB) has the primary jurisdiction to determine and adjudicate agrarian reform matters and, generally, has exclusive original jurisdiction over all matters involving the implementation of agrarian reform. In relation to the separate jurisdictions of the DARAB and the Special Agrarian Courts, the DARAB promulgated a rule providing a 15-day period within which to appeal a decision on land valuation, and preliminary determination and payment of just compensation.[8] Further, the *ponencia* enumerates cases where this Court held that a petition for determination of just compensation before the Special Agrarian Courts shall be made within the 15-day period prescribed by the DARAB Rules, and notes that these cases may be incongruent with the original and exclusive jurisdiction of the Special Agrarian Courts over all petitions for the determination of just compensation to landowners.[9]

Fundamentally, the quasi-judicial power of the DARAB is limited to agrarian disputes. Section 50 of Republic Act No. 6657 provides:

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[8] *Ponencia*, p. 10.

[9] *Id*. at 13.

SECTION 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).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue *subpoena*, and *subpoena duces tecum*, and enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.

Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: *Provided, however*, That when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

It is true that the Department of Agrarian Reform's quasi-judicial power refers to agrarian reform matters and matters involving the implementation of agrarian reform. However, the law defines agrarian reform and agrarian disputes as:

SECTION 3. *Definitions*. — For the purpose of this Act, unless the context indicates otherwise:

(a) Agrarian Reform means the redistribution of lands, regardless of crops or fruits produced to farmers and regular farmworkers who are landless, irrespective of tenurial

arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work.

... ...

(d)Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

Thus, "agrarian reform" refers to redistribution of lands, and "agrarian dispute" refers to disputes relating to tenurial arrangements. Certainly, the amount of just compensation to be paid by the government to a private landowner pursuant to expropriation of land does not relate to the redistribution of land, or to tenurial arrangements. Although "compensation of lands" is mentioned under the definition of "agrarian dispute," this is compensation specifically for land that is transferred directly from a private landowner to an agrarian reform beneficiary. It does not include the determination of just compensation where the government is acquiring land from a private landowner.

II

The law contemplates two instances where the government engages in the valuation of private land. One, discussed earlier, is to determine how much the beneficiaries will pay. The other, subject of this case, is to determine just compensation.

The law contemplates government engaging in the valuation of land where private land is transferred from a landowner to agrarian reform beneficiaries, under a voluntary land transfer. In case of disagreement between an owner and a farmer-beneficiary as to the price of land, the law lays down a procedure for the Department of Agrarian Reform to receive evidence from interested parties and determine the matter.[10] Notably, it is this type of dispute as to compensation that constitutes an agrarian dispute under Section 3(d) of Republic Act No. 6657.

Then there is an internal valuation made by the Department of Agrarian Reform when it wishes to acquire private land. The law provides for a procedure for government, through the Department of Agrarian Reform, to initially determine the value of the land to be offered to the landowner. If the landowner agrees, then there will be no need for condemnation proceedings. Thus, under the law, the Department of Agrarian Reform shall first make an internal valuation of the land to be acquired, after which it shall notify the landowners of its proposed purchase price.[11] Thereafter, the landowner signifies whether he or she accepts or rejects the department's offer.[12] If the landowner accepts the Department of Agrarian Reform's offer, the offer is binding as a contractual agreement between the parties, and no further proceedings are necessary to determine compensation.

Where the landowner does not accept the Department of Agrarian Reform's initial offer, the department shall conduct summary administrative proceedings, requiring the Land Bank of the Philippines and interested parties to submit evidence, to determine the compensation.[13] Based on this summary administrative proceeding, the Department of Agrarian Reform shall determine an amount as compensation, which shall be given to the landowner, if he or she accepts the price. Otherwise,

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[10] Rep. Act No. 6657, Section 21.

[11] Rep. Act No. 6657, Section 16 (a).

[12] Rep. Act No. 6657, Section 16 (b).

[13] Rep. Act No. 6657, Section 16 (d).

it shall be deposited with a designated bank to facilitate condemnation proceedings.[14]

If the landowner does not accept the valuation of land proposed by the Department of Agrarian Reform, then the original and exclusive jurisdiction of the SAC applies.

Section 57 of Republic Act No. 6657 provides:

> SECTION 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Clearly, only this special jurisdiction involves the power to determine the amount of just compensation in relation to expropriation. Moreover, under the law, a preliminary valuation by the Department of Agrarian Reform is not a prerequisite to the filing of a petition for the determination of just compensation.

It is in this context that we should re-evaluate earlier precedents.

III

The *ponencia* mentions *Philippine Veterans Bank v. Court of Appeals,*[15] *Land Bank v. Martinez,*[16] *Soriano v. Republic,*[17] and *Limkaichong v. Land Bank of the Philippines.*[18] I concur

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[14] Rep. Act No. 6657, Section 16 (e).

[15] 379 Phil. 141 (2000) [Per *J.* Mendoza, Second Division].

[16] 556 Phil. 809 (2007) [Per *J.* Nachura, Third Division].

[17] 685 Phil. 583 (2012) [Per *J.* Villarama, First Division].

[18] G.R. No. 158464, August 2, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464.pdf> [Per *J.* Bersamin, *En Banc*].

with the *ponencia* that in some cases, this Court laid down rules incongruent with the original and exclusive jurisdiction of the Special Agrarian Courts. Further, a close examination of jurisprudence reveals no sound basis, in policy or in law, for binding the courts to the 15-day period of the DARAB Rules. Although the DARAB may be bound by its own rules and act according to the periods it prescribes, there is no reason for the rules promulgated by the DARAB to have any effect on how the courts deal with cases within their original and exclusive jurisdiction.

In *Philippine Veterans Bank v. Court of Appeals,*[19] the issue was the Regional Trial Court's dismissal of a petition for determination of just compensation on the basis that it was filed beyond the 15-day reglementary period. However, the discussion of Section 50, Rule XIII, §11 of the DARAB Rules of Procedure was limited to the issue of the primary jurisdiction of the Department of Agrarian Reform:

To implement the provisions of R.A. No. 6657, particularly §50 thereof, Rule XIII, §11 of the DARAB Rules of Procedure provides:

> *Land Valuation and Preliminary Determination and Payment of Just Compensation*. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

As we held in *Republic v. Court of Appeals*, this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to

[19] 379 Phil. 141 (2000) [Per *J*. Mendoza, Second Division].

determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

Accordingly, as the petition in the Regional Trial Court was filed beyond the 15-day period provided in Rule XIII, §11 of the Rules of Procedure of the DARAB, the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal.[20]

In *Veterans*, this Court did not explain its basis for finding the 15-day reglementary period binding on the courts. This Court said that Rule XIII, §11 of the DARAB Rules of Procedure, which contained the 15-day period, was an implementation of Section 50 of Republic Act No. 6657, which vests the Department of Agrarian Reform with primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive, original jurisdiction over all matters involving the implementation of agrarian reform. But there is no explanation why the jurisdiction granted to the Department of Agrarian Reform in Section 50 of Republic Act No. 6657 extends to an authority to limit the period to invoke the original and exclusive jurisdiction of the Special Agrarian Courts under Section 57 of this act.

Land Bank v. Martinez[21] also does not explain why the 15-day period should be binding on the courts. *Martinez*, however, is different from the case at bar, in that the subject of the petition there was not whether the courts could take cognizance over a petition for determination of just compensation. Rather, the main issue there was whether the Provincial Agrarian Reform Adjudicator could validly issue a writ of execution after the

[20] *Id*. at 148-149.

[21] 556 Phil. 809 (2007) [Per *J*. Nachura, Third Division].

lapse of the 15-day period.[22] There was no need to discuss the jurisdiction of the Special Agrarian Courts in that case. Nonetheless, *Martinez* said that the consequence of filing a petition beyond the 15-day period was that the Provincial Agrarian Reform Adjudicator's decision attained finality.[23] This Court relied on its earlier cases, *Philippine Veterans Bank*,[24] and *Department of Agrarian Reform Adjudication Board v. Lubrica*[25] when it declared:

> Finally and most importantly, we find petitioner not entitled to the grant of a writ of *certiorari* by the appellate court because the Office of the PARAD did not gravely abuse its discretion when it undertook to execute the September 4, 2002 decision. Rule XIII, Section 11 of the DARAB Rules of Procedure, which was then applicable, provides that:
>
> > Section 11. Land Valuation and Preliminary Determination and Payment of Just Compensation. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.
>
> In *Philippine Veterans Bank v. Court of Appeals* and in *Department of Agrarian Reform Adjudication Board v. Lubrica,* we explained the consequence of the said rule to the effect that the adjudicator's decision on land valuation attains finality after the lapse of the 15-day period. Considering therefore that, in this case, LBP's petition with the SAC for the fixing of just compensation was filed 26 days after its receipt of the PARAD's decision, or eleven days beyond the reglementary period, the latter had already attained finality. The PARAD could very well issue the writ of execution.[26] (Citations omitted)

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[22] *Id*. at 821.

[23] *Id*.

[24] 379 Phil. 141 (2000) [Per *J*. Mendoza, Second Division].

[25] 497 Phil. 313 (2005) [Per *J*. Tinga, Second Division].

[26] *Land Bank v. Martinez,* 556 Phil. 809, 821 (2007) [Per *J*. Nachura, Third Division].

In a Resolution in *Land Bank v. Martinez*,[27] this Court sitting *En Banc* reiterated its August 14, 2007 Decision and made its ruling in *Veterans* doctrinal:

> [F]or the guidance of the bench and the bar . . . the better rule is that stated in *Philippine Veterans Bank,* reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, *while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality.* This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition before the SAC, *e.g.,* one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.[28]

However, as discussed earlier, *Philippine Veterans Bank*[29] did not explain why the 15-day period should be binding on the courts.

The facts of *Department of Agrarian Reform Adjudication Board v. Lubrica,*[30] like those of *Martinez,* are not on all fours with this case. In *Lubrica*, the DARAB issued a writ of preliminary injunction against the Regional Agrarian Reform Adjudicator's writ of execution because a petition for determination for just compensation had been filed with the Special Agrarian Court.[31] The 15-day period was mentioned only in passing. The issue in *Lubrica* was whether DARAB had the power to issue the extraordinary writ of certiorari and not whether the Special Agrarian Court could take cognizance

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[27] 582 Phil. 739 (2008) [Per *J.* Nachura, *En Banc*].

[28] *Id.* at 746.

[29] 379 Phil. 141 (2000) [Per *J*. Mendoza, Second Division].

[30] 497 Phil. 313 (2005) [Per *J*. Tinga, Second Division].

[31] *Id*. at 318.

of a petition for determination of just compensation beyond the 15-day period prescribed by DARAB.[32]

The petitioners in *Soriano v. Republic*[33] questioned the application of the 15-day period on petitions for determination of just compensation filed with the court. In *Soriano,* this Court reiterated once more its ruling in *Veterans*:

> In *Phil. Veterans Bank v. Court of Appeals*, we explained that the consequence of the said rule is that the adjudicator's decision on land valuation attains finality after the lapse of the 15-day period. Considering that Agrarian Case No. 64-2001, filed with the SAC for the fixing of just compensation, was filed 29 days after petitioners' receipt of the DARAB's decision in DARAB Case No. LV-XI-0071-DN-2000 for the lot covered by TCT No. (T-8935) T-3120 and 43 days after petitioners' receipt of the DARAB's decision in DARAB Case No. LV-XI-0073-DN-2000, for the lot covered by TCT No. (T-2906) T-749, the DARAB's decisions had already attained finality.[34]

This Court glossed over the issue of the basis for the period within which the Special Agrarian Court could exercise its jurisdiction, relying again on the precedent laid down in *Veterans* and *Republic v. Court of Appeals*:

> Petitioners contend that there is no statutory basis for the promulgation of the DARAB procedure providing for a mode of appeal and a reglementary period to appeal. On the matter of whether the DARAB Rules of Procedure laid out an appeal process and the validity of the 15-day reglementary period has already been laid to rest, the Court, in *Republic v. Court of Appeals* and subsequent cases has clarified that the determination of the amount of just compensation by the DARAB is merely a preliminary administrative determination which is subject to challenge before the SACs which have original and exclusive jurisdiction over all petitions for the determination of just compensation under Section 57, R.A. No. 6657. In *Republic v. Court of Appeals*, we ruled:

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[32] *Id*. at 322.

[33] 685 Phil. 583 (2012) [Per *J.* Villarama, First Division].

[34] *Id*. at 589.

> [U]nder the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. In the terminology of §57, the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.
>
> Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, **it is clear from §57 that the *original* and *exclusive* jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void**. What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.

The above ruling was reiterated in *Philippine Veterans Bank v. Court of Appeals.* In that case, petitioner landowner who was dissatisfied with the valuation made by LBP and DARAB, filed a petition for determination of just compensation in the RTC (SAC). However, the RTC dismissed the petition on the ground that it was filed beyond the 15-day reglementary period for filing appeals from the orders of the DARAB. On appeal, the CA upheld the order of

dismissal. When the case was elevated to this Court, we likewise affirmed the CA and declared that:

> To implement the provisions of R.A. No. 6657, particularly §50 thereof, Rule XIII, §11 of the DARAB Rules of Procedure provides:
>
> *Land Valuation and Preliminary Determination and Payment of Just Compensation*. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

As we held in *Republic v. Court of Appeals*, this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

Accordingly, as the petition in the Regional Trial Court was filed beyond the 15-day period provided in Rule XIII, §11 of the Rules of Procedure of the DARAB, the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal.[35] (Emphasis in the original)

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[35] *Id.* at 589-592.

Finally, in *Limkaichong v. Land Bank of the Philippines*,[36] this Court recognized the validity of the 15-day period, citing, again, *Veterans*. This Court did not bind petitioner in that case to the 15-day period. Only because petitioner's complaint was filed before "the Court en banc unanimously resolved the jurisprudential conundrum through its declaration in *Land Bank v. Martinez* that the better rule was that enunciated in *Philippine Veterans Bank*"[37] that this Court decided that the ruling in *Veterans* must be applied prospectively.

Considering that Republic Act No. 6657 does not provide a limit on the period within which a landowner can file a petition for the determination of just compensation, and considering further that the right to just compensation is a constitutional right, there is no basis for the executive branch to limit the period for landowners to assert their right to just compensation under this act. Any attempt to do so should be struck down for being outside the constitutional confines of the eminent domain powers of the state.

Hence, the Special Agrarian Court did not err when it took cognizance of the case, despite petitioner's failure to file a petition within the period prescribed by the DARAB Rules of Procedure.

ACCORDINGLY, I vote to **DENY** the Petition.

CONCURRING AND DISSENTING OPINION

JARDELEZA, *J.*:

With respect to my esteemed colleague Justice Mendoza, I submit this Concurring and Dissenting Opinion.

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[36] G.R. No. 158464, August 2, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464.pdf> [Per *J.* Bersamin, *En Banc*].

[37] *Id.* at 13.

The Court should **affirm**, not **abandon**, the Court's decisions in *Philippine Veterans Bank v. Court of Appeals*[1] (*Veterans Bank*), *Land Bank of the Philippines v. Martinez*[2] (*Martinez*), *Soriano v. Republic*[3] (*Soriano*), and *Limkaichong v. Land Bank of the Philippines*[4] (*Limkaichong*), (collectively, the Decisions). In these Decisions, we held that an agrarian reform adjudicator's decision on just compensation must be brought to the Special Agrarian Court (SAC) within the 15-day period stated in the rules of the Department of Agrarian Reform Adjudication Board (DARAB); otherwise, the adjudicator's decision will attain finality.

In my view, affirmance by the Court of these Decisions is the better and more prudent course of action because: (1) applying *stare decisis* will lend stability to, and inspire public confidence in, the Court's existing pronouncements validating the 15-day rule; (2) there are no strong and compelling reasons to abandon the Decisions; and (3) the arguments to support abandonment of existing doctrine have already been considered and, in my view, correctly rejected by the Court.

The proposed disposition in this case would not only reverse settled doctrines, it would also allow landowners to bring actions for the judicial determination of just compensation ten (10) years from receipt of the Notice of Coverage under Republic Act No. 6657 (RA 6657). This, to me, is simply bad policy. Aside from subverting the Congress' legislative design for the comprehensive agrarian reform program, the proposed disposition would also violate substantive and procedural law and defeat the Government's interest in paying just compensation nearest to the time of taking.

Furthermore, while I believe that the petition should be denied in accordance with our ruling in *Limkaichong,* the case should

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[1] G.R. No. 132767, January 18, 2000, 322 SCRA 139.

[2] G.R. No. 169008, July 31, 2008, 560 SCRA 776.

[3] G.R. No. 184282, April 11, 2012, 669 SCRA 354.

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

be remanded because both the Special Agrarian Court (SAC) and the Court of Appeals (CA) failed to apply the appropriate formula to compute just compensation.

I

In 1996, the Second Division of the Court promulgated *Republic v. Court of Appeals*[5] (*Republic*). There, through Justice Vicente V. Mendoza, we held that the original and exclusive jurisdiction to determine just compensation belonged to the Regional Trial Court (RTC), sitting as a SAC. We said: "It would subvert [the] 'original and exclusive' jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases to administrative officials and make the RTC an appellate court for the review of administrative decisions."[6]

Four years later, on January 18, 2000, the Court, also through the Second Division, and again through Justice Vicente V. Mendoza, decided *Veterans Bank* where we declared that there is "nothing contradictory" in Section 50 which grants to the DAR primary jurisdiction over all matters involving the implementation of agrarian reform (including questions of just compensation) and Section 57 which grants the RTC "original and exclusive jurisdiction" over all petitions for the determination of just compensation and prosecution of criminal offenses under RA 6657.[7]

In 2007, the Court, in *Land Bank of the Philippines v. Suntay*[8] (*Suntay*), seemed to revert to its 1996 ruling relative to the 15-day period. There, the Court, through its First Division, nullified the Order of the RTC dismissing a petition for judicial determination of just compensation on the ground that the same was filed beyond the 15-day period under the DARAB Rules. While acknowledging that there was no conflict between Sections 50 and 57 of RA 6657, it nevertheless held that applying the

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[5] G.R. No. 122256, October 30, 1996, 263 SCRA 758.

[6] *Id*. at 765.

[7] *Supra* at 145.

[8] G.R. No. 157903, October 11, 2007, 535 SCRA 605.

15-day period under the DARAB Rule converts the RTC/SAC's original and exclusive jurisdiction to determine just compensation into an appellate one. Citing the ruling in *Republic,* it declared that this is "contrary to Section 57 and therefore would be void."[9]

Within a year, the Court *en banc* promulgated *Martinez* and sought to "resolve the conflict in the rulings of the Court x x x."[10] There, we held:

> [W]e now declare herein, for the guidance of the bench and the bar, that the better rule is that stated in *Philippine Veterans Bank*, reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, *while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality.* This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.[11] (Emphasis in the original.)

Less than a year ago, on August 2, 2016, the Court *en banc* **unanimously** affirmed *Martinez* in *Limkaichong*. Speaking through Justice Lucas P. Bersamin, the Court said:

> In all of the foregoing rulings of the Court as well as in subsequent ones, it could not have been overemphasized that the determination of just compensation in eminent domain is a judicial function. However, the more recent jurisprudence uphold the preeminence of the pronouncement in *Philippine Veterans Bank* to the effect that the parties only have 15 days from their receipt of the decision/order of the DAR within which to invoke the original and exclusive jurisdiction of the SAC; otherwise, the decision/order attains finality and immutability.[12]

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[9] *Id.* at 617.

[10] *Supra* at 783.

[11] *Id.* at 783.

[12] *Supra* note 4.

More recently, the Court's Third Division, through Justice Bienvenido L. Reyes in *Mateo v. Department of Agrarian Reform*[13] (*Mateo*), affirmed the DAR's primary jurisdiction when, citing our *en banc* decision in *Alfonso v. Land Bank of the Philippines*[14] (*Alfonso*), it held that "*administrative remedies cannot be dispensed with and direct resort to the SAC is proscribed.*"[15]

Now, it is proposed that we abandon these rulings, specifically, our rulings in *Veterans Bank*, *Martinez*, and *Limkaichong*.[16] This proposal is grounded on two reasons: ***First***, the principle, espoused in *Export Processing Zone Authority v. Dulay*[17] (*Dulay*), that the determination of just compensation is a judicial function. Following this principle, the grant by Congress to the DAR of the primary jurisdiction to preliminary determine just compensation would be "contrary to the letter and spirit of the Constitution."[18] ***Second***, Section 11, Rule XIII of the DARAB Rules of Procedure, which contains the 15-day period, has no statutory basis. This provision, which allows the DAR's otherwise preliminary determination of just compensation to attain finality unless brought to the SAC within fifteen (15) days, allegedly reduces the SAC's exclusive and original jurisdiction to determine just compensation, contrary to the intent of Congress.

I disagree. For reasons already stated at the outset, I believe that the better and more prudent course of action would be to

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[13] G.R. No. 186339, February 15, 2017.

[14] G.R. No. 181912, November 29, 2016.

[15] As will be later discussed, however, *Mateo* is an exception to the strict application of the 15-day period rule. In view of the specific circumstances obtaining in the case, the Court in *Mateo* sustained the landowner's recourse to the SAC prior to the termination of the proceedings before the DAR adjudicator.

[16] *Ponencia*, p. 14.

[17] G.R. No. 59603, April 29, 1987, 149 SCRA 305.

[18] *Ponencia*, p. 14.

affirm, not reverse, *Veterans Bank*, *Martinez*, and *Limkaichong,* as well as all the cases affirming them.

I shall elaborate on my reasons *in seriatim*.

A

With all due respect, the arguments (supporting abandonment of previous rulings) are a reprise of issues already considered and, in my view, correctly decided. In fact, this Court had already *twice* rejected the core premise of both arguments, namely, that the determination of just compensation is a judicial function which cannot be transferred, even preliminarily, to the DAR.

The first time was 25 years ago in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*[19] (*Association*), where the Court resolved the numerous constitutional challenges raised against RA 6657. Among other objections, many landowners invoked *Dulay* and argued that entrusting to the DAR the manner of fixing just compensation violated the judicial function. This argument was unanimously rejected by the Court, which distinguished the provisions of RA 6657 from *Dulay* and upheld the constitutionality of the grant of primary jurisdiction to the DAR. We quote:

> Objection is raised, however, to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d) x x x.
>
> x x x x x x x x x
>
> A reading of the aforecited Section 16(d) will readily show that it does not suffer from the arbitrariness that rendered the challenged decrees constitutionally objectionable. Although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:

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[19] G.R. No. 78742, July 14, 1989, 175 SCRA 343.

> Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.
>
> The determination made by the DAR is only *preliminary* unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review *with finality* the said determination in the exercise of what is admittedly a judicial function.[20]

Only last year, the Court, in *Alfonso,* had second occasion to weigh in on the constitutionality of the grant of primary jurisdiction of the DAR. The constitutionality of the DAR's power to come up with a basic formula to determine just compensation was put in issue by some members of the Court on the ground that, under *Dulay*, the determination of just compensation is a judicial function which cannot *constitutionally* be entrusted to an administrative agency. As in *Association*, the Court again rejected this argument. In *Alfonso*, we explained why the grant to the DAR of primary jurisdiction to determine just compensation *is* constitutional and does not limit or deprive the courts of their judicial power:

> *C. Primary jurisdiction and the judicial power/function to determine just compensation*
>
> Section 1, Article VIII of the 1987 Constitution provides that "judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."
>
> The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution. The determination of just compensation in cases of eminent domain is thus an actual controversy that calls for the exercise of judicial power by the courts. This is what the Court means when it said that "[t]he determination of 'just compensation' in eminent domain cases is a judicial function."
>
> Before RA 6657, the courts exercised the power to determine just compensation under the Rules of Court. This was true under RAs

[20] *Id.* at 380-382.

1400 and 3844 and during the time when President Marcos in Presidential Decree No. 1533 attempted to impermissibly restrict the discretion of the courts, as would be declared void in *EPZA v. Dulay (EPZA)*. RA 6657 changed this process by providing for preliminary determination by the DAR of just compensation.

Does this grant to the DAR of primary jurisdiction to determine just compensation limit, or worse, deprive, courts of their judicial power? We hold that it does not. There is no constitutional provision, policy, principle, value or jurisprudence that places the determination of a justiciable controversy beyond the reach of Congress' constitutional power to require, through a grant of primary jurisdiction, that a particular controversy be first referred to an expert administrative agency for adjudication, subject to subsequent judicial review.

In fact, the authority of Congress to create administrative agencies and grant them preliminary jurisdiction flows not only from the exercise of its plenary legislative power, but also from its constitutional power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court.[21] (Emphasis supplied. Citations omitted.)

To reiterate, I believe that we should affirm, not reverse, existing jurisprudential precedents as they were soundly, and correctly, decided. For me, I would rather affirm the settled doctrine and return to what Justice Minita Chico-Nazario calls the "becoming virtue of predictability."[22]

B

The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) enjoins adherence to judicial precedents. It 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. Commonly considered as a key feature of a common-law system, this principle has been transplanted into the hybrid

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[21] *Supra* note 14.

[22] *Pepsi-Cola Products Philippines, Incorporated v. Pagdanganan*, G.R. No. 167866, October 16, 2006, 504 SCRA 549, 564.

legal system that is the Philippines.[23] It is considered doctrine[24] and embodied in Article 8 of the Civil Code of the Philippines which provides that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."[25]

Under the doctrine of *stare decisis*, 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, even though the parties may be different.[26] Thus, until authoritatively abandoned, such decisions assume the same authority as the statute itself and necessarily become, to the extent that they are applicable, the criteria which control the actuations not only of those called upon to decide thereby but also of those duty-bound to enforce obedience thereto.[27] This doctrine has assumed such value in our judicial system that the Court has consistently ruled that abandonment of this doctrine 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 solemn pronouncements diminished.[28] For that reason, courts

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[23] Theodore Te, *Stare (In(Decisis): Some Reflections on Judicial Flip-Flopping in League of Cities v. COMELEC* and *Navarro v. Ermita*, 85 Phil. L.J. 785, 785-789 (2011) [hereinafter "STARE (IN)DECISIS"].

[24] See Emiliano Lazaro, *The Doctrine of Stare Decisis and the Supreme Court of the Philippine Islands*, 15 Phil. L.J. 404 (1937); Randy J. Kozel, *Stare Decisis as Judicial Doctrine*, 67 WASH.& LEE L. REV. 411 (2010).

[25] See *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009, 588 SCRA 285, 293.

[26] *Cabaobas v. Pepsi-Cola Products Philippines, Inc.*, G.R. No. 176908, March 25, 2015, 754 SCRA 325, 341, citing *Philippine Carpet Manufacturing Corporation v. Tagyamon*, G.R. No. 191475, December 11, 2013, 712 SCRA 489, 500.

[27] *Pepsi-Cola Products Philippines, Incorporated v. Pagdanganan*, *supra* at 564.

[28] *Lazatin v. Desierto*, *supra* at 294-295, citing *Pepsi-Cola Products Philippines, Incorporated v. Pagdanganan*, *supra* at 294-296.

can only be justified in setting aside this doctrine upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis.*[29]

In *Martinez*, the Court *en banc* sought to clarify the confusion brought about by its "conflicting pronouncements"[30] in *Republic, Veterans Bank,* and *Suntay*. In affirming its ruling in *Veterans Bank,* the Court laid down a clear, unequivocal and straightforward rule, which it reaffirmed in *Limkaichong*, and which the Third Division most recently applied in *Mateo*.

Martinez is important not only because of **what** we said, but because of **how** we said it. The Court *en banc* there candidly admitted the existence of a "conflict" in its rulings. This is a remarkable admission from a Court obligated to speak with one voice. While there is only **one** Supreme Court, the fact that it acts through three divisions bears formidable pressure on the efficacy of its decision-making processes, which are expected to be designed to prevent conflicts. Whenever such conflicts occur, they reflect on the integrity and legitimacy of the Court's internal processes. In such cases, the Court *en banc* must then intervene to lay down the correct rule for the bench and bar to follow. This is precisely what the Court sought to achieve in *Martinez.* Preserving the integrity of the decision-making processes of the Court demands that there be prompt and strict compliance not only by the bench and the bar, but also by the Court itself.

For the Court to reverse itself once more needlessly opens us to criticism that we flip-flop in our decisions. I refer to the public disapprobation that greeted the Court's changes of views in *League of Cities v. Commission on Elections*[31] and *Navarro*

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[29] *Lazatin v. Desierto*, *supra* at 295.

[30] *Supra* note 2 at 781.

[31] G.R. No. 176951, 571 SCRA 263, November 18, 2008; 608 SCRA 636, December 21, 2009; 628 SCRA 819, August 24, 2010; February 15, 2011; April 12, 2011; June 28, 2011, 652 SCRA 798.

v. Ermita[32] which caused the Court to be accused of engaging in the practice of **"stare (in)decisis."**[33] These cases have etched into the public mind an uncalled-for association between the word "flip-flop" and the decision-making process of the Court.[34] We should be mindful that in these days of heightened accountability of public servants, the *manner* in which the Court has "changed its mind" is as, if not more, important than the *substance* of what we say.

C

The great benefits derived by our judicial system from the doctrine of *stare decisis*[35] notwithstanding, I agree with Justice Malcolm that the Court cannot adhere to "idolatrous reverence to precedent" because "more than anything else is that the court should be right" and not "perpetuate error."[36] This case confronts the Court with the delicate task of deciding whether to affirm or abandon precedent in the context of land reform, one of the most important and radical social justice legislation of our time.

Although the Court has yet to adopt hard and fast rules to determine when to abandon doctrine, we can derive some guidance from jurisprudence. We have, for example, abandoned doctrine when: (1) authorities are abundant and conflicting, but the Court needs to break new ground with a decision that rests on a strong foundation of reason and justice;[37] (2) it is not wise to subordinate legal reason to case law and doing so will

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[32] G.R. No. 180050, February 10, 2010, 612 SCRA 131; May 12, 2010, 620 SCRA 529; April 12, 2011, 648 SCRA 400.

[33] *See* STARE (IN)DECISIS, *supra* note 23.

[34] *Id.*

[35] See *Lazatin v. Desierto*, *supra* at 295-296.

[36] *Philippine Trust Co. v. Mitchell*, 59 Phil. 30, 36 (1933).

[37] *Villaflor v. Summers*, 41 Phil. 62 (1920), on whether physical examination of a pregnant woman violates the constitutional right against self-incrimination.

perpetuate error;[38] (3) an existing ruling is in violation of the law in force;[39] (4) the precedent is "alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights," and where the dire consequences predicted in the precedent "have not come to pass;"[40] and (5) the legal landscape has radically shifted.[41]

In 2006, Chief Justice Reynato Puno, in his dissenting opinion in *Lambino v. Commission on Elections*,[42] called for the adoption of the four-pronged *stare decisis* test formulated by the United States Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*[43] (*Planned Parenthood*). *Planned Parenthood* would later be cited with approval by Justice Eduardo Nachura in *Ting v. Velez-Ting*,[44] which upheld the doctrine in *Republic v. Court of Appeals and Molina.*[45] The four-pronged test of *Planned Parenthood* is as follows:

Rather, when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. Thus, for example,

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[38] *Philippine Trust Co. v. Mitchell*, *supra*, overruling previous case law in favor of an interpretation that the Insolvency Law takes precedence over the Civil Code provisions on insolvency.

[39] *Tan Chong v. Secretary of Labor*, 79 Phil. 249 (1947), substituting the principle in citizenship of *jus soli* in favor of *jus sanguinis*.

[40] *Ebranilag v. The Division Superintendent of Schools of Cebu*, G.R. No. 95770, March 1, 1993, 219 SCRA 256, overruling the 30-year old flag salute law decision.

[41] *Carpio Morales v. Court of Appeals (Sixth Division)*, G.R. No. 217126, November 10, 2015, 774 SCRA 431, overturning the 1959 condonation case of Pascual decided under the 1935 Constitution.

[42] G.R. No 174153, October 25, 2006, 505 SCRA 160, 311-312.

[43] 505 U.S. 833 (1992).

[44] G.R. No. 166562, March 31, 2009, 582 SCRA 694.

[45] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

we may ask whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification.

So in this case we may enquire whether *Roe's* central rule has been found unworkable; whether the rule's limitation on state power could be removed without serious inequity to those who have relied upon it or significant damage to the stability of the society governed by it; whether the law's growth in the intervening years has left *Roe's* central rule a doctrinal anachronism discounted by society; and whether *Roe's* premises of fact have so far changed in the ensuing two decades as to render its central holding somehow irrelevant or unjustifiable in dealing with the issue it addressed.[46] (Citations omitted.)

Even as it formulated the four-pronged *stare decisis* test in *Planned Parenthood,* the U.S. Supreme Court warned about the "terrible price" that would be paid by the court's legitimacy were it to engage in the unprincipled overruling of doctrine:

[T]he Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands.

The underlying substance of this legitimacy is of course the warrant for the Court's decisions in the Constitution and the lesser sources of legal principle on which the Court draws. **That substance is expressed in the Court's opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all.** But even when justification is furnished by apposite legal principle, something more is required. Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must

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[46] *Supra* at 854-855.

be beyond dispute. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, **the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.**

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There is, first, a point beyond which **frequent overruling would overtax the country's belief in the Court's good faith. Despite the variety of reasons that may inform and justify a decision to overrule, we cannot forget that such a decision is usually perceived (and perceived correctly) as, at the least, a statement that a prior decision was wrong. <u>There is a limit to the amount of error that can plausibly be imputed to prior Courts.</u>** If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.[47] (Emphasis and underscoring supplied.)

Combining the guideposts, tests, and cautionary warnings of both the Court and the U.S. Supreme Court, it is my view that the Decisions in *Veterans Bank*, *Martinez*, and *Limkaichong*, including the cases reaffirming them, should not be abandoned. There is no need to break new ground on the question of whether applying the 15-day period (to elevate the DAR adjudicator's decision to the SAC) is the better rule, or whether the jurisdiction of the SAC is original and not appellate. *Association*, *Veterans Bank*, *Martinez*, *Limkaichong*, and *Alfonso* have laid to rest these and related issues, and on sound legal ground. There is no showing, claim, or clamor from bench, bar, or academe of a change of "facts on the ground" that have made implementation of the 15-day rule intolerably unworkable or impractical. The Congress need not incur the added burden of huge interest costs because cases where there is an equitable need to relax the

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[47] *Id.* at 865-866.

Veterans Bank and *Martinez* doctrine have proven to be so few and far in between. Neither has the legal landscape radically shifted. Land reform, as mandated by the Constitution, continues to be a priority of the Government. Finally, no related principle of the law on just compensation has so far developed as to make *Association* and *Martinez* remnants of abandoned doctrine.

On the contrary, the Court in *Alfonso* clarified how the judicial function and settled principles of administrative law (such as the doctrine of primary jurisdiction) jointly effectuate legislation such as the land reform law. If, in *Alfonso,* we deigned to trust the DAR with fixing the formula for just compensation, subject only to the Court's approval of meritorious deviations, I cannot see why we refuse to trust the DAR's judgment that fifteen (15) days is a reasonable period to challenge its finding before the SAC. As stated, I do not see strong and compelling reasons to abandon them as to, in the words of Justice Diosdado M. Peralta, "override the great benefits derived by our judicial system from the doctrine of *stare decisis*."[48]

II

The *ponencia* advances that, since RA 6657 does not provide for a period within which the landowner must bring the DAR's determination of just compensation to the SAC, the Civil Code provisions on prescription should apply. Considering further that the payment of just compensation is an obligation created by law, the *ponencia* concludes that the action for judicial determination of just compensation should be brought within ten years, under Article 1144(2) of the Civil Code,[49] from the time the landowner receives the notice of coverage.[50] Justice Leonen, on the other hand, argues that an action to determine

[48] *Lazatin v. Desierto*, *supra* note 25, at 295-296.

[49] CIVIL CODE, Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment. (Emphasis supplied.)

[50] *Ponencia*, pp. 14-15.

just compensation for expropriated land is an imprescriptible constitutional right which "cannot [be] trump[ed]" by a statutorily defined period.[51]

I disagree. This is not only proscribed under the system of separation of powers, it is, in my view, simply bad policy. The proposed disposition would: (a) subvert the legislative design for the comprehensive agrarian reform program which vests the DAR not only with primary jurisdiction over agrarian-related controversies but also the power to issue rules and regulations to carry out the objectives and purpose of RA 6657; (b) violate existing substantive and procedural laws; and (c) defeat the Government's interest in paying just compensation nearest to the time of taking.

A

As earlier discussed, the Court in *Association* and *Alfonso* has already explained why the grant to the DAR of primary jurisdiction *is* constitutional and does not limit or deprive the courts of their judicial power.

Nevertheless, and despite the Court's clear pronouncements, we are again confronted with virtually the same issue. It thus seems to me that maybe the pith of the objection against the DAR's participation rests on the view that since the determination of just compensation is a *judicial* function, only a *judicial* court can (originally and in the first instance) decide the matter after an evidentiary hearing conducted under *judicial* rules of court, such that it is *judicial* trier of fact that observes the demeanor and credibility of witnesses. Any other process would impermissibly degrade the exercise of the judicial function to determine just compensation.

I submit, however, that **original jurisdiction** simply means "*the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law.*"[52] **Original jurisdiction vested in a court**

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[51] Separate Opinion of Justice Leonen, p. 2.

[52] FLORENZ D. REGALADO, *I REMEDIAL LAW COMPENDIUM 4* (2005). (Emphasis and underscoring supplied.)

does not preclude preliminary determination by an administrative agency. Neither does the fact that a specific issue has been passed upon first by a tribunal other than a court make cognizance of that matter by a court appellate. On the other hand, "appellate jurisdiction" means "the authority of a court *higher in rank* to re-examine the final order or judgment of a *lower* court which tried the case now elevated for judicial review."[53]

Thus, in *Yamane v. BA Lepanto Condominium Corporation*,[54] the Court was asked to rule on the issue of whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises original or appellate jurisdiction. Applying the definition of Justice Florenz D. Regalado, the Court there ruled:

> [T]he review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction. **In short, the review is the initial judicial cognizance of the matter.** Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.[55] (Emphasis supplied.)

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[53] *Id.*

[54] G.R. No. 154993, October 25, 2005, 474 SCRA 258.

[55] *Id.* at 268. The Court noted that Rule 43 of the 1997 Rules of Civil Procedure provides for the appellate jurisdiction of the Court of Appeals over decisions rendered by administrative agencies and quasi-judicial tribunals. However, the Court explained that Batas Pambansa Blg. 129 expressly provides such appellate jurisdiction of the CA. B.P 129 does not confer such appellate jurisdiction on the RTCs over rulings made by non-judicial entities. The Court explained:

The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, *Batas Pambansa Blg*. 129 (B.P. 129), ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities,

Similarly, the filing with the SAC of a petition for judicial determination of just compensation, which essentially assails the DAR's preliminary determination, is the first time that a *judicial* court will take cognizance of the matter. The preliminary determination made by the DAR is by no means a judgment or order of a lower court which would make its review by the RTC, sitting as SAC, appellate.

It is also my view, as explained in my Concurring Opinion in *Limkaichong*, that the grant of primary jurisdiction does not deprive nor limit the court's jurisdiction to determine just compensation. As we have explained in *Alfonso*, the Congress had, in fact, guaranteed the full and heightened exercise of this original and exclusive jurisdiction by allowing for a *de novo* review of the DAR's preliminary determination:

In case of a proper challenge, SACs are actually empowered to conduct a *de novo* review of the DAR's decision. Under RA 6657, a full trial is held where SACs are authorized to (1) appoint one or more commissioners, (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of fact anew. In other words, in exercising its **exclusive and original jurisdiction** to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of a Regional Trial Court (RTC) under Rule 67 of the Revised Rules of Court.

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boards or commission, by explicitly using the phrase "appellate jurisdiction." The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government.

Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities. (*Id.* at 268-269.)

In such manner, the SAC thus conducts a more *exacting* type of review, compared to the procedure provided either under Rule 43 of the Revised Rules of Court, which governs appeals from decisions of administrative agencies to the Court of Appeals, or under Book VII, Chapter 4, Section 25 of the Administrative Code of 1987, which provides for a default administrative review process. In both cases, the reviewing court decides based on the record, and the agency's findings of fact are held to be binding when supported by substantial evidence. The SAC, in contrast, retries the whole case, receives new evidence, and holds a full evidentiary hearing.

In this light, until and unless this Court's ruling *in Association of Small Landowners* is reversed, a becoming modesty and respectful courtesy towards a co-equal branch of government demand that the Court defer to the Congress' grant of primary jurisdiction to the DAR.[56]

I feel that the Court should welcome, not begrudge, the Congress' decision to allow the DAR adjudicator to participate in the process. The adjudicator's contributions are designed to aid the judicial method. It is summary and time bound. There is likewise no claim that the DAR's participation delays or corrupts the process. It is not in our place to question the wisdom of this decision of the Congress because, as earlier explained, the Congress had arranged for *judicial* courts to have full *de novo* review of the DAR's contributions.

In similar fashion, I submit that we should also respect the legislative design to give the DAR the authority to issue rules and regulations to carry out the objects and purposes of RA 6657, including the provision of a 15-day period within which to bring its *preliminary* determination of just compensation before the SAC.

The Congress, under Sections 49, 51, and 57 of RA 6657, said:

Sec. 49. *Rules and Regulations*. — The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said

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[56] *Supra*, note 4.

rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

Sec. 51. *Finality of Determination.* — Any case or controversy before [the DAR] shall be decided within thirty (30) days after it is submitted for resolution. Only one (1) motion for reconsideration shall be allowed. Any order, ruling or decision shall be final after the lapse of fifteen (15) days from receipt of a copy thereof.

Sec. 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.

Section 51 incorporates into RA 6657 the rule of finality and immutability of judgments, a staple feature of our procedural due process system. It should, however, not be read alone or in isolation to mean that the decision of the DAR adjudicator peremptorily becomes final after the lapse of the 15-day period. Such a literal reading will run counter to the mandate of Section 16 that the landowner may "bring" the decision to the proper court, *i.e.*, the SAC. As Justice Vicente V. Mendoza explained in *Veterans Bank*, even if a law provides that the decision of the DAR is final and unappealable, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[57]

In addition, while it is true that the Congress did not specify, under Section 57, the period within which the dissatisfied landowner can "bring" the DAR decision to the proper court, this omission is not fatal because the DAR was vested with the power to "issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes" of RA 6657.[58]

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[57] *Supra* note 1, at 147. See also *San Miguel Corporation v. Secretary of Labor*, G.R. No. L-39195, May 16, 1975, 64 SCRA 56.

[58] RA 6657, Sec. 49.

This, to me, includes the authority to adopt "a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before [the DAR]."[59] Provisions like Section 49 are a staple feature of laws governing the creation of administrative agencies.[60] The Court should reconcile the provisions of RA 6657 together, rather than construe them to be at war with each other. It is a cardinal rule in statutory construction that the whole and every part of a statute must be considered to produce a harmonious whole:

> The cardinal rule, after all, in statutory construction is that the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. And courts should adopt a construction that will give effect to every part of a statute, if at all possible. *Ut magis valeat quam pereat* or that construction is to be sought which gives effect to the whole of the statute—its every word.[61] (Citations omitted.)

The constitutionality of the exercise by the DAR of its power to promulgate the 1994 DARAB Rules of Procedure, or the reasonableness of the 15-day period it provided under Rule XIV, is not impugned in this case. Nevertheless, given the challenges raised in this case, permit me to say a few words.

In *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*,[62] the Court, through Justice Isagani R. Cruz, said:

> [I]t is true that legislative discretion as to the substantive contents of the law cannot be delegated. What can be delegated is the discretion to determine *how* the law may be enforced, not *what* the law shall be. The ascertainment of the latter subject is a prerogative of the

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[59] RA 6657, Sec. 50.

[60] See, *e.g.*, LABOR CODE, Art. 5.

[61] *Inding v. Sandiganbayan*, G.R. No. 143047, July 14, 2004, 434 SCRA 388, 403, citing RUBEN E. AGPALO, *STATUTORY CONSTRUCTION 197* (1995).

[62] G.R. No. 76633, October 18, 1988, 166 SCRA 533.

legislature. This prerogative cannot be abdicated or surrendered by the legislature to the delegate.

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With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation."

With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. **These regulations have the force and effect of law**.[63] (Emphasis supplied.)

Here, the Congress laid down substantive law when it provided that the DAR adjudicator's decision must be subjected to judicial review. How this may be enforced, *e.g.*, the period within which the decision must be brought to the SAC for judicial review, is a matter which the Congress may validly delegate to the DAR through the promulgation of rules of procedure.

The law must, of course, provide for adequate guidelines or limitations to map out the boundaries of the delegate's authority to prevent the delegation from "running riot."[64] The power of the delegate cannot be unlimited; there should exist a sufficient standard to guide the delegate in the exercise of its authority.[65]

With respect to the DAR's rule-making power, Congress, under Section 49 of RA 6657, provided that the rules to be promulgated should "carry out" RA 6657 and ensure the "just, expeditious and inexpensive determination" of actions before the DAR. Thus and by authority of Section 49, the DAR

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[63] *Id.* at 542-545.

[64] *Id*. at 543.

[65] *Id*. at 545.

promulgated the 1994 DARAB Rules of Procedure. Under Rule XIII, Section 11 of the DARAB Rules, it is provided:

Sec. 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but **shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts <u>within fifteen (15) days from receipt of the notice thereof.</u>** Any party shall be entitled to only one motion for reconsideration. (Emphasis and underscoring supplied.)

To my mind, the 15-day rule carries out and enforces the substantive mandate to subject the DAR decision to judicial review. Not only is this period reasonable, it is also just and promotes the expeditious review of the DAR's adjudication. It is within the range provided by law, regulation, and the Rules of Court governing the periods respecting the judicial review of administrative decisions.[66] The Administrative Code, which provides for a default uniform procedure for the judicial review of decisions of administrative agencies, similarly mandates that agency decisions become final and executory fifteen (15) days from receipt by the party, unless within that period an administrative appeal or judicial review has been perfected. Notably, judicial review shall also be made via a petition for review filed within a period of fifteen (15) days from receipt of judgment.[67]

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[66] For example, with respect to a case before the Civil Service Commission, Rule 13, Section 70 of the Revised Rules on Administrative Cases in the Civil Service provides that "[a] party may elevate a decision of the Commission before the CA by way of a petition for review under Rule 43 of the [Rules of Court]." Rule 43, Section 4, in turn, provides that a party has **fifteen (15)** days to appeal counted from notice of award, judgment, final order, resolution, or date of last publication, if publication is required. Additionally, as regards cases before the Construction Industry Arbitration Commission, Rule 18, Section 18.2 of CIAC Revised Rules of Procedure Governing Construction Arbitration provides that "[a] petition for review from a final award may be taken by any of the parties within **fifteen (15) days** from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court."

[67] ADMINISTRATIVE CODE, Book VII, Chapter 3, Sec. 14. *Decision.* – Every decision rendered by the agency in a contested case shall be in writing

I would imagine that if the DAR were to dare to provide for a ten (10) or thirty (30) year period within which to bring the DAR adjudicator's decision to the SAC, its act would surely

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and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

Sec. 15. *Finality of Order.* – The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

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Sec. 23. *Finality of Decision of Appellate Agency.* – In any contested case, the decision of the appellate agency shall become final and executory fifteen (15) days after the receipt by the parties of a copy thereof.

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Sec. 25. *Judicial Review.* –

(1) Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.

(2) Any party aggrieved or adversely affected by an agency decision may seek judicial review.

(3) The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.

(4) Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order. Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall show, by stating the specific material dates, that it was filed within the period fixed in this chapter.

(5) The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration,

be overturned by the Court for being that of a "roving commission" exercising "profligate and invalid" delegation of legislative powers whose authority should be "canalized within banks to keep it from overflowing."[68] I see no reason why the same considerations should not apply to us.

Furthermore, this Court, in at least three cases involving the implementation and interpretation of RA 6657, has previously validated the DAR's exercise of its rule-making functions under Section 49. There is no reason to treat the 1994 DARAB Rules of Procedure any differently.

In *Land Bank of the Philippines v. Celada*[69] (*Celada*), the Court, citing *Land Bank of the Philippines v. Banal*[70] (*Banal*) held that the DAR basic formula on just compensation was issued pursuant to its rule-making power to carry out the object and purposes of RA 6657. Thus:

> It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.[71] (Citations omitted.)

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the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.

(6) The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.

(7) Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law. (Emphasis supplied.)

[68] *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, *supra* note 63, at 543, citing *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659, 674

[69] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[70] G.R. No. 143276, July 20, 2004, 434 SCRA 543.

[71] *Landbank v. Celada*, *supra* at 507.

In *Alfonso*, the Court rejected arguments from some members of the Court to overturn *Celada* or *Banal.*[72]

In *Roxas & Co., Inc. v. Court of Appeals*,[73] the Court recognized that Section 16 of RA 6657, providing for identification of the land as among the first steps in the compulsory acquisition of property, is "silent on how the identification process must be made." The Court, on grounds of due process, upheld the DAR's authority to "fill in this gap" by issuing Administrative Order (AO) No. 12, series of 1989, which set the operating procedure in the identification of such lands.[74] The Court would affirm the authority of the DAR to "fill in" the Section 16 gap in *Department of Agrarian Reform v. Robles.*[75]

The wide acceptance of the doctrine of primary jurisdiction grew out of the recognition that the Court does not know it all or does not always know better. While this view may perhaps not be acceptable to some, a becoming modesty should, in my view, lead the Court to breathe harmonious meaning to all the words used by the Congress for a workable RA 6657. We should respect, rather than subvert, the legislative purpose to make the DAR and the courts partners in implementing land reform. I quote again my *ponencia* in *Alfonso*:

> We must be reminded that the government (through the administrative agencies) and the courts are not adversaries working towards different ends; our roles are, rather, complementary. As the United States Supreme Court said in *Far East Conference v. United States*:
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> > x x x [C]ourt and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard

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[72] See Dissenting Opinion of Justice Velasco and Concurring Opinion of Justice Leonen.

[73] G.R. No. 127876, December 17, 1999, 321 SCRA 106.

[74] *Id.* at 130.

[75] G.R. No. 190482, December 9, 2015, 777 SCRA 141, 170-171.

> to the appropriate function of the other in securing the plainly indicated objects of the statute. **Court and agency are the means adopted to attain the prescribed end, and, so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action.** Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim.
>
> The Congress (which wrote Section 17 and funds the land reform land acquisition), the DAR (author of DAR AO No.5 [1998] and implementer of land reform), and the LBP (tasked under EO 405 with the valuation of lands) are partners to the courts. All are united in a common responsibility as instruments of justice and by a common aim to enable the farmer to "banish from his small plot of earth his insecurities and dark resentments" and "rebuild in it the music and the dream." Courts and government agencies must work together if we are to achieve this shared objective.[76] (Emphasis in the original. Citations omitted.)

B

We should also not confuse the application of substantive law with matters of procedure. The provisions of the Civil Code on prescription of actions are substantive law provisions. The provision of a period within which to bring an administrative agency's finding before the courts, on the other hand, concerns only procedure. Thus, while we do not dispute that a landowner's right to just compensation for the taking of his private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights,[77] the *manner* or *mode* of enforcing this substantive right is a matter governed by procedural law.

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[76] *Alfonso v. Land Bank of the Philippines*, *supra* note 14.

[77] CONSTITUTION, Art. III, Sec. 9. Private property shall not be taken for public use without just compensation. See *Alfonso v. Land Bank of the Philippines*, *supra*.

Otherwise stated, the *process* for determining just compensation in an expropriation proceeding (including finality of decisions, and the finality of judgments of the RTCs or the SACs, and periods and manner of appeals) is a procedural matter governed by the Rules of Court or the applicable special law, in this case, RA 6657. The *justness* of the amount of compensation, on the other hand, is determined by *substantive* law, *i.e.*, the Constitution,[78] Section 17 of RA 6657[79] and the Decisions of the Court.[80]

Let me elaborate.

Rule 67 of the Rules of Court provides for the procedure for the *traditional* mode of expropriation. Expropriation is a special civil action, which only the Government can initiate.

Expropriation proceedings comprise two stages: (1) the determination of the authority of the Government to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts; and (2) the determination of the just compensation for the property sought to be taken.[81] Expropriation proceedings are commenced with the filing of a verified complaint by the plaintiff government entity or agency before the RTC.[82] This first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the Government has a lawful right to take the property sought to be condemned, for a public use or purpose.[83] In the second

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[78] *Id.*

[79] See also RA 6657, Sec. 16.

[80] See *Alfonso v. Land Bank of the Philippines*, *supra*.

[81] *Municipality of Cordova, Province of Cebu v. Pathfinder Development Corporation*, G.R. No. 205544, June 29, 2016, 795 SCRA 190, 199.

[82] RULES OF COURT, Rule 67, Sec. 1.

[83] *Municipality of Cordova, Cebu v. Pathfinder Development Corporation*, *supra* at 199.

stage, the RTC, with the aid of commissioners, ascertains the compensation due the landowner.[84]

The determination of just compensation is thus an integral part of the special civil action of expropriation. There is only one action, that of expropriation. The Rules of Court do not allow the landowner to assert his claim for just compensation against the Government in a new or separate proceeding. To do so will allow for the splitting of the Government's action and defeat the objective of Rules of Court to secure the just, speedy, and inexpensive disposition of **each** action or proceeding.

That the landowner is obliged to litigate his claim for just compensation in the same expropriation proceeding is plain from the text of Section 3 of Rule 67:

Sec. 3. *Defenses and objections.* – If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer not to be made not later than ten (10) days from the filing thereof. **However, <u>at the trial</u> of the issue of just compensation whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property**, and he may share in the distribution of the award. (Emphasis and underscoring supplied.)

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[84] RULES OF COURT, Rule 67, Secs. 5, 6, and 7.

Section 6[85] of the same Rule further limits the time within which the landowner must present his evidence, *i.e.*, he must do so at any time the commissioners call for the reception of evidence and before the commissioners submit their report.[86] The landowner is given ten (10) days to object to the

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[85] RULES OF COURT, Rule 67, Sec. 6. *Proceedings by commissioners.* – Before entering upon the performance of their duties, the commissionersshall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. **Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case.** The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken. (Emphasis and underscoring supplied.)

[86] RULES OF COURT, Rule 67, Sec. 7. *Report by commissioners and judgment thereupon.* – The court may order the commissioners to report when any particular portion of the real estate shall have been passed upon by them, and may render judgment upon such partial report, and direct the commissioners to proceed with their work as to subsequent portions of the property sought to be expropriated, and may from time to time so deal with such property. The commissioners shall make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual until the court shall have accepted their report and rendered judgment in accordance with their recommendations. **Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners were notified of their appointment, which time may be extended in the discretion of the court. Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire.** (Emphasis and underscoring supplied.)

commissioner's report.[87] Thereafter, the RTC acts on the commissioners' report[88] and renders judgment.[89]

The landowner may contest the RTC's determination of just compensation in an appeal or later, by way of a petition for review with the Court of Appeals or this Court, following the procedure and the reglementary periods provided by Rules 41 and 45 of the Rules of Court, respectively. Clearly, Rule 67 provides for one continuous process for the determination of just compensation once an eminent domain proceeding has been initiated by Government. It leaves absolutely no room for the landowner, or the Government, for that matter, to abort, bypass or short-circuit the process, much less postpone the finality of a judgment to some future time.

Before the passage of RA 6657, courts exercised the power to determine just compensation under the traditional mode of

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[87] RULES OF COURT, Rule 67, Sec. 8. *Action upon commissioners' report.* – **Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed their objections to the report or their statement of agreement therewith**, the court may, after hearing, accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken. (Emphasis and underscoring supplied.)

[88] *Id.*

[89] RULES OF COURT, Rule 67, Sec. 13. *Recording judgment, and its effect.* – The judgment entered in expropriation proceedings shall state definitely, by an adequate description, the particular property or interest therein expropriated, and the nature of the public use or purpose for which it is expropriated. **When real estate is expropriated, a certified copy of such judgment shall be recorded in the registry of deeds of the place in which the property is situated, and its effect shall be to vest in the plaintiff the title to the real estate so described for such public use or purpose.** (Emphasis supplied.)

expropriation under Rule 67 of the Rules of Court as outlined above. This process changed with RA 6657, which sought to implement an ambitious agrarian reform program covering an estimated 7.8 million hectares of land for acquisition and redistribution to landless farmers and farmworker beneficiaries.[90]

As we explained in our landmark holding in *Association*, RA 6657 does not deal with the traditional exercise of the power of eminent domain. It deals, rather, with a "revolutionary kind of expropriation." It is revolutionary because of its scale: it affects all private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. Likewise, it is intended for the benefit not only of a particular community or a small segment of the population but of the entire Filipino nation.[91]

Consequently, to achieve some measure of uniformity in both process and result, the Congress saw fit to delegate to the DAR the preliminary determination of just compensation, under the procedure outlined in Section 16 of RA 6657. This is a departure from the traditional mode of eminent domain under Rule 67. Even then, except for this innovation, the procedure provided in Sections 16, 51, 54, and 57, similarly provide for one seamless and continuous process of expropriation. From the moment the SAC takes over, the Rules of Court apply. The Congress did not create a new substantive right or procedure which grants landowners a period of ten (10) or thirty (30) years from notice of coverage to "bring" the issue of just compensation before the courts.

To put it more bluntly, the Court has no authority to substitute validly promulgated procedural reglementary periods applicable to an expropriation proceeding with Civil Code's substantive law provisions on prescriptive periods. Under the principle of separation of powers, only the Congress has the authority to

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[90] *Alfonso v. Land Bank of the Philippines*, *supra* note 14.

[91] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, *supra* note 19 at 386.

legislate law. Furthermore, for the Court to grant the landowner, by judicial fiat, such periods to initiate determination of just compensation *outside* of the expropriation proceeding initiated by the Government, is also unjust. It is well to remember that in *Martinez*, this Court upheld the 15-day rule provided under the DARAB Rules because it is consistent with "the principles of justice and equity." We held that a "belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property."[92]

In *Martinez*, it was the Government which belatedly filed a petition with the SAC. Now the proverbial shoe is on the other foot. Respondent Dalauta filed his claim for just compensation with the SAC **four years** from his receipt of the notice of coverage. It would be unjust to leave the Government in a state of uncertainty as to the amount it should pay as just compensation, especially when the Government is ready, able and willing to pay upon final judgment.

C

More, the Government has a strong public interest in paying just compensation nearest to the time of taking as this avoids incurring the unnecessary financial burden of paying interest. Since the landowner is entitled to the payment of interest where there is delay in the payment of just compensation, delay (which is deemed to be an effective forbearance on the part of the State) entitles the landowner to the payment of interest.[93] The interest due is not insubstantial. It is computed at the rate of 12% *per annum* from the time of taking until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, interest shall be at six percent (6%) *per annum.*[94]

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[92] *Land Bank of the Philippines v. Martinez*, *supra* note 2 at 783.

[93] *Mateo v. Department of Agrarian Reform*, *supra* note 13.

[94] *Id*.

I submit that the governmental interest is founded on the Constitution. It is doctrinal that the payment of just compensation be made "within a reasonable time from the taking." Without "prompt payment," compensation cannot be considered just.[95] The landowner who is immediately deprived of his land should not be made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[96] The prompt payment doctrine, however, protects the Government as well. The right of the landowner to receive prompt payment is subject to the correlative obligation of the landowner to promptly accept the just compensation to be paid by the Government as determined in a final judgment.

In the ordinary course of events, a landowner would want to be made "financially whole" as soon as possible. A contrary view will only allow landowners to arbitrage the prevailing low-interest regime against the judicially-imposed legal rates of 12% or 6%. Worse, landowners can wager that the Court in some future time will redefine its jurisprudence on the computation of interest.[97] Either way, I believe that burdening the Government with this additional financial cost would be unconstitutional because it is an unnecessary, excessive, extravagant, and unconscionable expenditure.

III

I vote to deny the petition insofar as it questions the jurisdiction of the SAC. I also vote to deny the petition insofar as it will uphold the SAC's determination of just compensation. Instead, I submit that the case should be remanded for proper computation of just compensation.

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[95] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 557-558.

[96] *Id.*

[97] See *Secretary of the Department of Public Works and Highways v. Tecson*, G.R. No. 179334, July 1, 2013, 756 SCRA 389, (Leonen, *J.*, *dissenting*), where Justice Leonen argued for the adoption of present value in the computation of fair market value.

A

There is no need to abandon or reverse *Martinez* and *Veterans Bank*; we need only to apply the exceptions which can be found in existing jurisprudence. The Court, in a number of cases, has recognized a fair and equitable way to deal with exceptions to the application of *Martinez* or *Veterans Bank*.

In *Secretary of Department of Public Works and Highways v. Spouses Tecson*,[98] a case involving the government's acquisition of right of way, the Court sustained the right of a landowner to just compensation despite the lapse of 54 years from the time the government entered into the property in 1940 without the benefit of expropriation proceedings and payment of just compensation. Because of the failure of the respondents-landowners to question the absence of expropriation proceedings for a long period of time, they were deemed to have waived the ability to question the power of the government to expropriate or the public use for which the power was exercised.[99] What was left to respondents was the right of compensation.[100]

In *Mateo*, which involved compulsory acquisition under RA 6657, the Court sustained the landowner's right to bring, independently from the expropriation proceedings, an action for determination of just compensation before the SAC due to the official inaction on the part of appropriate government agencies. There, although the LBP and the DAR entered the property of the Mateos sometime in 1994, payment in agrarian reform bonds was deposited only in 1996 and 1997. Furthermore, when the Mateos filed their petition before the SAC, no summary proceedings have yet been initiated by the DAR to make further valuation. The Court thus held that the DAR's delay and inaction had unjustly prejudiced the Mateos; precluding them from filing a complaint before the SAC would only result in an injustice.

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[98] *Id.*

[99] *Id.* at 409-410.

[100] *Id.*

In *Limkaichong*, the Court sustained a landowner's petition before the SAC for determination of just compensation filed more than two months from the challenged DARAB valuation. There, we held that we "cannot fairly and properly" bar petitioner's complaint for the determination of just compensation on the basis of the 15-day rule in *Veterans Bank* because:

[t]he prevailing rule at the time she filed her complaint x x x was that enunciated in *Republic v. Court of Appeals* on October 30, 1996. The pronouncement in *Philippine Veterans Bank* was promulgated on January 18, 2000 when the trial was already in progress in the RTC. At any rate, it would only be eight years afterwards that the Court *en banc* unanimously resolved the jurisprudential conundrum through its declaration in *Land Bank v. Martinez* that the better rule was that enunciated in *Philippine Veterans Bank*. The Court must, therefore, prospectively apply *Philippine Veterans Bank*. x x x[101]

Here, respondent Dalauta filed his petition before the SAC on February 8, 2000, or only 21 days after the promulgation of the decision in *Veterans Bank* and nearly eight years before our resolution in *Martinez.* The CA, which issued its Decision on September 18, 2009, barely 10 months after *Martinez,* made absolutely no mention of *Martinez*, relying mainly on the 2007 case of *Suntay*. I submit that, under these circumstances, justice and equity dictate that we apply *Veterans Bank* and *Martinez* prospectively, and grant respondent Dalauta the same liberality extended to the landowner in *Limkaichong*.

B

In his petition for the determination of just compensation filed with the SAC, respondent Dalauta alleged that his land is "fully cultivated and wholly planted x x x with falcata trees" wherein he derived a net income of ₱350,000.00.[102] He thus averred that just compensation for his property should be computed using the formula under paragraph II of DAR AO No. 6, series of 1992, that is, $LV = (CNI \times 0.9) + (MV \times 0.1)$.

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[101] *Supra*, note 4.

[102] CA *rollo*, p. 16.

Applying this formula, respondent computes just compensation for his property at ₱2,639,566.90.[103]

The LBP, on the other hand, argues that the valuation of respondent's land should be determined using the formula for idle lands, that is, *LV = MV x 2*. Under this formula, respondent would only receive a total of ₱192,782.59 for his 25.2160-hectare property.[104] The SAC, however, essentially agreed with respondent Dalauta, computing just compensation for his property as follows:

> Since the Capitalized Net Income in this case is available, the formula to be used is:
>
> **LV = (CNI x 0.9) + (MV x 0.1)**
>
> Whence:
>
> LV = (₱350,000/.12 x 0.9) + (₱145,570 x 0.1)
> = (₱2,916,666.67 x 0.9) + (₱14,557.00])
> = ₱2,625,000.00 + ₱14,577.00
> = ₱2,639,557.00 plus ₱100,000.00 for the farmhouse[105]

The CA affirmed the SAC's computation, rejecting the LBP's claim that it used the formula *LV = MV x 2*, under A.3 of DAR AO No. 6, series of 1992, due to the unavailability/inapplicability of CNI data. According to the CA, "[r]ecords show that the non-availability of the CNI data was due to [LBP]'s failure or omission to exert any effort to obtain the same during ocular inspection or investigation of the subject land x x x."[106] It deleted, however, the ₱100,000.00 award for the farmhouse, finding that "such improvement was inexistent during the taking of the subject land."[107]

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[103] *Id.*

[104] *Rollo*, p. 70.

[105] *Id*. at 148.

[106] *Id*. at 24.

[107] *Id*. at 25.

I submit that both the CA and the SAC erred in applying the formula under DAR AO No. 6, series of 1992. **Just compensation for respondent Dalauta's land should instead be computed based on the formula provided under DAR-LBP Joint Memorandum Circular No. 11, series of 2003** (JMC No. 11 (2003)). This Memorandum Circular, which provides for the *specific* guidelines for properties with standing commercial trees, explains:

The Capitalized Net Income (CNI) approach to land valuation assumes that there would be uniform streams of future income that would be realized in perpetuity from the seasonal/permanent crops planted to the land. **In the case of commercial trees (hardwood and soft wood species), however, only a <u>one-time income</u> is realized when the trees are due for harvest. The regular CNI approach in the valuation of lands plated to commercial trees would therefore <u>not</u> apply.**[108] (Emphasis and underscoring supplied.)

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[108] This much was also explained during trial by the LBP witness Alex G. Carido, as noted in the assailed CA Decision:

Petitioner's next witness was Alex G. Carido (Carido), the Agrarian Operation Specialist of its Cagayan de Oro branch, whose function, among others, is to compute the value of a land offered by a landowner to the DAR, using the guidelines provided by the latter. He recalled that the valuation of respondent's property was made in September 1994 pursuant to a Memorandum Request to Value the Land addressed to petitioner 's President.

Carido testified that the entries in the Claims Valuation and Processing Forms were the findings of their credit investigator. He explained that the data for Capitalized Net Income was not applicable then, as the land's produce was only for family consumption, and that since the property had no income, they used the formula Land Value (LV) = Market Value (MV) x 2, from DAR AO No. 6, series of 1992, in computing the total value of the subject land, where MV is the Market Value per Tax Declaration based on the Tax Declaration issued in 1994.

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On cross-examination, Carido admitted that there are different ways of computing the Land Value under DAR AO No. 6, and that to determine which of the formulas is applicable for computing the land value of a particular property, the data gathered in the Field Investigation Report are to be considered. He maintained that he used the formula Land Value = Market Value x 2 in computing the valuation of the subject land because the data for Capitalized Net Income (CNI) and/or Comparable Sales [CS] were not given to him.

During the proceedings before the SAC, respondent Dalauta testified that he derived a net income of ₱350,000.00 in 1993 from the sale to Norberto Fonacier (Fonacier) of falcata trees grown in the property. Respondent presented the following evidence to bolster his claim of income: (1) Agreement between respondent Dalauta and Fonacier over the sale of falcata trees;[109] (2) copy of deposit slip of amount of ₱350,000.00;[110] and (3) Certification from Allied Bank as to fact of deposit of the amount of ₱350,000.00 on November 15, 1993.[111]

This sale of falcata trees by respondent, however, appears to be a one-time transaction. Apart from this lone transaction, respondent did not allege to have derived any other income from the property prior to receiving the Notice of Coverage from the DAR in February 1994. Even respondent, in the Comment he filed before the CA, admits as much.[112] For this reason, I submit that his property would be more appropriately covered by the formula provided under JMC No. 11 (2003).

JMC No. 11 (2003) provides for several valuation procedures and formulas, depending on whether the commercial trees found in the land in question are harvestable or not, naturally grown, planted by the farmer-beneficiary or lessee or at random. It also provides for the valuation procedure depending on when the commercial trees are cut (*i.e.*, while the land transfer claim is pending or when the landholding is already awarded to the farmer-beneficiaries).

During re-cross examination, **when asked why no CNI was provided in the investigation report, Carido stated that <u>CNI is relevant only if there is production from the property, and that while there was corn production in the subject land during ocular inspection in 1994, the same was for family consumption only, hence, CNI will not apply</u>.** He went on to say that the net income and/or production of the land within twelve (12) months prior to the ocular inspection shall be considered in determining the land value. *Id*. at 69-71. (Emphasis and underscoring supplied.)

[109] Records, pp. 13, 172.

[110] *Id*. at 172, 174.

[111] *Id*. at 172, 175.

[112] *Rollo*, p. 317.

Respondent alleges to have sold all the falcata trees in the property to Fonacier in 1993.[113] After Fonacier finished harvesting in January 1994, respondent claims that, per advice of his lawyer, he immediately caused the replanting of falcata trees.[114] Thus, per the Schedule of Harvestable Age of Different Tree Species of JMC No. 11 (2003),[115] at the time respondent received the Notice of Coverage in 1994, the falcata trees planted in his property were **not** yet of harvestable age. The applicable formula for purposes of valuing respondent's property, at least those parts planted to falcata trees, would therefore be:

LV = (MV x 2) + CDC

Where:

LV = Land Value
MV = Market Value of the land which shall be based on the applicable Unit Market Value (UMV) classification of idle land
CDC = Cumulative Development Cost of "not yet harvestable" trees incurred by the [landowner] from land preparation up to the date of receipt of [claimfolder] by LBP for processing.

The MV is computed using the formula:

MV = UMV x LAF x RCPI

Where:

UMV = Unit Market Value
LAF = Location Adjustment Factor
RCPI = applicable Regional Consumer Price Index

The CDC of "not yet harvestable" commercial trees is determined using the following formula:

CDC = CDC per Tree x Number of Not Yet Harvestable Trees

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[113] Records, p. 172.

[114] *Id.*

[115] Annex E, JMC No. 11 (2003).

Considering, however, the dearth of evidence on record to establish values for the factors included in the above formula, I vote that the case be remanded to the SAC for further proceedings.

C

The records show that the LBP submitted in evidence a Schedule of Base Unit Market Values for Agricultural Lands and Plants respecting the area where respondent's property is found.[116] Under this Schedule, base market values for falcata/ rubber lands are indicated, depending on its class (1, 2, or 3) and nature (level or on hillside). Since there is no evidence on record as to the class and nature of the property in question, I submit that the case be remanded to receive evidence on the same, for purposes of determining the proper UMV. For the same reason, the SAC, on remand, should also receive evidence as to the applicable LAF and RCPI for the relevant period (1994).

In addition, under JMC No. 11 (2003), development cost data are primarily sourced from the landowner, to be validated against his accounting records (*i.e.*, ledgers, receipts, *etc.*) and interview with farmworkers and laborers. If the landowner's records are unavailable or cannot be validated, development cost data can be obtained from: (1) the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) of the Department of Environment and Natural Resources (DENR); or, in the absence of this data, (2) the schedule of development, maintenance and protection cost for each tree species provided under Annex A of JMC No. 11 (2003).

Here, respondent, on cross-examination, claims that his property was planted with about 2,500 falcata trees per hectare.[117] Apart from this, however, there is no other evidence on record to support or validate respondent's claim. Neither is there any evidence in the records from either respondent or the CENRO/

[116] *Rollo*, pp. 194, 213.

[117] *Id.* at 68.

PENRO as to the development cost incurred in the planting of the falcata trees. JMC No. 11 (2003), on the other hand, provides that "[i]f the [landowner]'s actual number of trees per hectare exceeds that of the standard tree density of **1,667 trees/hectare (2m x 3m)**, the [landowner]'s CDC shall be computed based on the CDC of 1,667 trees/hectare."[118] Under the Schedule of Development, Maintenance and Protection Cost provided in JMC No. 11 (2003), the CDC/Hectare for Year 1 is ₱22, 377.00. Thus, granting that 21 hectares of respondent's property were planted to falcata trees, the CDC for the same would thus be ₱22,377.00/hectare x 21 hectares or a total of ₱469,917.00.

Applying all the data so far available, just compensation for respondent's property should be computed thus:

LV = (MV x 2) + CDC

Where:

MV = UMV + LAF + RCPI (all still to be determined by the SAC after it has received evidence on the same)

CDC = ₱469,917.00

I realize that JMC No. 11 (2003) does not appear to be applicable to the facts of this case insofar as it provides that it covers only "all land transfer claims involving lands planted to commercial trees **whose Memorandum of Valuation have not yet been forwarded to DAR as of date of effectivity of this Joint Memorandum Circular** x x x," I submit, however, that applying the above formula to compute just compensation for respondent's land would be the most equitable course of action under the circumstances. Without JMC No. 11 (2003), respondent's property would have to be valued using the formula for idle lands, the CNI and CS factors not being applicable. Following this formula, just compensation for respondent's property would only amount to **₱225,300.00**, computed as follows:

LV = MV x 2

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[118] *Supra* note 116. Emphasis supplied.

Where:

LV = Land Value
MV = Market Value per Tax Declaration*

- For the area planted to corn, ₱7,740.00/hectare[119]
- For idle/pasture land, ₱3,890/hectare[120]

Thus:

For the 4 hectares planted to corn:

LV = (₱7,740/hectare x 4 hectares) x 2

= **₱61,920.00**

For the 21 hectares of idle/pasture land:

LV = (₱3,890/hectare x 21 hectares) x 2

= **₱163,380.00**

Total Land Value = ₱61,920.00 + ₱163,380.00

= ₱225,300.00

All the foregoing premises considered, I vote that the petition be **DENIED** and the case **REMANDED** to the SAC for purposes of computing just compensation in accordance with JMC No. 11 (2003) and this Opinion.

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[119] Per 1994 Tax Declaration. Records, p. 7.

[120] *Id.*

EN BANC

[G.R. No. 196342. August 8, 2017]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **NOEL GO CAOILI** ***alias*** **"BOY TAGALOG,"** *respondent.*

[G.R. No. 196848. August 8, 2017]

NOEL GO CAOILI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE UNDER ARTICLE 335 THEREOF, AS AMENDED BY THE ANTI-RAPE LAW OF 1997 (R.A. NO. 8353); TWO MODES OF RAPE.—** R.A. No. 8353 or the "Anti-Rape Law of 1997" amended Article 335, the provision on rape in the RPC, reclassifying rape as a crime against persons and introducing rape by "sexual assault," as differentiated from rape through "carnal knowledge" or rape through "sexual intercourse." x x x Thus, rape under the RPC, as amended, can be committed in two ways: (1) Article 266-A paragraph 1 refers to **rape through sexual intercourse**, also known as "organ rape" or "penile rape." The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt. (2) Article 266-A paragraph 2 refers to **rape by sexual assault**, also called "instrument or object rape," or "gender-free rape." It must be attended by any of the circumstances enumerated in sub-paragraphs (a) to (d) of paragraph 1.

2. **ID.; ID.; RAPE UNDER ARTICLE 266-A THEREOF; RAPE BY SEXUAL ASSAULT; ACCUSED'S INSERTION OF HIS FINGER INTO THE VICTIM'S GENITALIA AND MADE A PUSH AND PULL MOVEMENT WITH SUCH FINGER FOR 30 MINUTES CONSTITUTES RAPE BY SEXUAL ASSAULT.—** Through AAA's testimony, the prosecution was able to prove that Caoili molested his own daughter when he inserted his finger into her vagina and thereafter

made a push and pull movement with such finger for 30 minutes, thus, clearly establishing rape by sexual assault under paragraph 2, Article 266-A of the RPC.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ILL MOTIVES BECOME INCONSEQUENTIAL IF THERE IS AN AFFIRMATIVE AND CREDIBLE DECLARATION FROM THE RAPE VICTIM, WHICH CLEARLY ESTABLISHES THE LIABILITY OF THE ACCUSED.—** Caoili, however, questions AAA's credibility, arguing that her testimony lacked veracity since she harbored hatred towards him due to the latter's strict upbringing. The Court however, oppugns the veracity of Caoili's claim. It is settled that ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.

4. **ID.; ID.; ID.; THE ASSESSMENT OF THE CREDIBILITY OF WITNESSES IS A DOMAIN BEST LEFT TO THE TRIAL COURT JUDGE BECAUSE OF HIS UNIQUE OPPORTUNITY TO OBSERVE THEIR DEPORTMENT AND DEMEANOR ON THE WITNESS STAND; A VANTAGE POINT DENIED THE APPELLATE COURTS, AND WHEN HIS FINDINGS HAVE BEEN AFFIRMED BY THE COURT OF APPEALS, THESE ARE GENERALLY BINDING AND CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS NOT PRESENT.—** AAA was a little over 15 years old when she testified, and she categorically identified Caoili as the one who defiled her. She positively and consistently declared that Caoili inserted his finger into her vagina and that she suffered tremendous pain during the insertion. Her account of the incident, as found by the RTC and the CA, was clear, convincing and straightforward, devoid of any material or significant inconsistencies. In *People v. Pareja*, the Court held that: [T]he "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied the appellate courts, and when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court." While there are recognized exceptions to the rule, this Court has found no substantial reason to overturn the identical

conclusions of the trial and appellate courts on the matter of AAA's credibility.

5. **ID.; ID.; ID.; WHEN A RAPE VICTIM'S TESTIMONY ON THE MANNER SHE WAS MOLESTED IS STRAIGHTFORWARD AND CANDID, AND IS CORROBORATED BY THE MEDICAL FINDINGS OF THE EXAMINING PHYSICIAN, THE SAME IS SUFFICIENT TO SUPPORT A CONVICTION FOR RAPE.—** When a rape victim's testimony on the manner she was molested is straightforward and candid, and is corroborated by the medical findings of the examining physician, as in this case, the same is sufficient to support a conviction for rape. In a long line of cases, this Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. Indeed, leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.

6. **CRIMINAL LAW; REVISED PENAL CODE; RAPE UNDER ARTICLE 266-A THEREOF; RAPE BY SEXUAL ASSAULT; WHERE THE RAPE IS COMMITTED BY A CLOSE KIN, SUCH AS THE VICTIM'S FATHER, STEPFATHER, UNCLE, OR THE COMMON-LAW SPOUSE OF HER MOTHER, IT IS NOT NECESSARY THAT ACTUAL FORCE OR INTIMIDATION BE EMPLOYED; MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.—** It is likewise settled that in cases where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation. Verily, the prosecution has sufficiently proved the crime of rape by sexual assault as defined in paragraph 2 of Article 266-A of the RPC. Caoili, however, cannot be convicted of said crime.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; VARIANCE DOCTRINE; ALLOWS THE CONVICTION OF AN ACCUSED FOR A CRIME PROVED WHICH IS DIFFERENT FROM BUT NECESSARILY INCLUDED IN**

THE CRIME CHARGED; AN ACCUSED CHARGED IN THE INFORMATION WITH RAPE BY SEXUAL INTERCOURSE CANNOT BE FOUND GUILTY OF RAPE BY SEXUAL ASSAULT, EVEN THOUGH THE LATTER CRIME WAS PROVEN DURING TRIAL.— The variance doctrine, which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged, is embodied in Section 4, in relation to Section 5 of Rule 120 of the Rules of Court x x x. By jurisprudence, however, an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual assault, even though the latter crime was proven during trial. This is due to the substantial distinctions between these two modes of rape.

8. **CRIMINAL LAW; REVISED PENAL CODE; RAPE UNDER ARTICLE 266-A THEREOF; RAPE THROUGH SEXUAL INTERCOURSE; ELEMENTS.—** The elements of rape through sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation. Rape by sexual intercourse is a crime committed by a man against a woman, and the central element is carnal knowledge.

9. **ID.; ID.; ID.; RAPE BY SEXUAL ASSAULT; ELEMENTS.—** [T]he elements of rape by sexual assault are : (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.

10. **ID.; ID.; ID.; RAPE BY SEXUAL INTERCOURSE DISTINGUISHED FROM RAPE BY SEXUAL ASSAULT; RAPE BY SEXUAL INTERCOURSE IS NOT NECESSARILY INCLUDED IN RAPE BY SEXUAL ASSAULT, AND VICE-VERSA.—** In the first mode (rape by sexual intercourse): (1) the offender is always a man; (2) the offended party is always a woman; (3) rape is committed through penile penetration of the vagina; and (4) the penalty is *reclusion perpertua*. In the second mode (rape by sexual

assault): (1) the offender may be a man or a woman; (2) the offended party may be a man or a woman; (3) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) the penalty is *prision mayor*. The Court en banc's categorical pronouncement in *People v. Abulon*, thus, finds application: In view of the material differences between the two modes of rape, the first mode is not necessarily included in the second, and vice-versa. Thus, since the charge in the Information in Criminal Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven, without violating his constitutional right to be informed of the nature and cause of the accusation against him.

11. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; VARIANCE DOCTRINE; CANNOT BE APPLIED TO CONVICT AN ACCUSED OF RAPE BY SEXUAL ASSAULT IF THE CRIME CHARGED IS RAPE THROUGH SEXUAL INTERCOURSE, SINCE THE FORMER OFFENSE CANNOT BE CONSIDERED SUBSUMED IN THE LATTER.—** The language of paragraphs 1 and 2 of Article 266-A of the RPC, as amended by R.A. No. 8353, provides the elements that substantially differentiate the two forms of rape, *i.e.,* rape by sexual intercourse and rape by sexual assault. It is through legislative process that the dichotomy between these two modes of rape was created. To broaden the scope of rape by sexual assault, by eliminating its legal distinction from rape through sexual intercourse, calls for judicial legislation which We cannot traverse without violating the principle of separation of powers. The Court remains steadfast in confining its powers within the constitutional sphere of applying the law as enacted by the Legislature. [G]iven the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.

12. **LEGAL ETHICS; ATTORNEYS; PUBLIC PROSECUTORS MUST BE MORE JUDICIOUS AND CIRCUMSPECT IN PREPARING THE INFORMATION SINCE A MISTAKE**

OR DEFECT THEREIN MAY NOT RENDER FULL JUSTICE TO THE STATE, THE OFFENDED PARTY AND EVEN THE OFFENDER.— The Court, thus, takes this occasion to once again remind public prosecutors of their crucial role in drafting criminal complaints or Information. They have to be more judicious and circumspect in preparing the Information since a mistake or defect therein may not render full justice to the State, the offended party and even the offender. Thus, in *Pareja*, the Court held that: The primary duty of a lawyer in public prosecution is to see that justice is done - to the State, that its penal laws are not broken and order maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his crime.

13. **CRIMINAL LAW; SEXUAL ABUSE UNDER SECTION 5 (b) of R.A. NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); ELEMENTS.—** R.A. No. 7610 finds application when the victims of abuse, exploitation or discrimination are children or those "persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition." It is undisputed that at the time of the commission of the lascivious act, AAA was fourteen (14) years, one (1) month and ten (10) days old. This calls for the application of Section 5(b) of R.A. No. 7610 x x x. The elements of sexual abuse under Section 5(b) of R.A. No. 7610 are as follows: (1) The accused commits the act of sexual intercourse or **lascivious conduct**; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age. The prosecution's evidence has sufficiently established the elements of lascivious conduct under Section 5(b) of R.A. No. 7610.

14. **ID.; ID.; DOES NOT REQUIRE A PRIOR OR CONTEMPORANEOUS ABUSE THAT IS DIFFERENT FROM WHAT IS COMPLAINED OF, OR THAT A THIRD PERSON SHOULD ACT IN CONCERT WITH THE ACCUSED; SEXUAL ABUSE AND LASCIVIOUS CONDUCT, DEFINED.—** The evidence confirms that Caoili committed lascivious acts against AAA when he kissed her

lips, touched and mashed her breast, and inserted his finger into her vagina and made a push and pull movement with such finger for 30 minutes. AAA's testimony during direct examination showed how her father , Caoili, committed lascivious acts against her. x x x. AAA likewise confirmed on cross examination that Caoili molested her. She even recounted that her father threatened her not to tell anybody about the incident. Caoili's acts are clearly covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2 of the rules and regulations of R.A. No. 7610: (g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or **coercion** of a child to engage in, or assist another person to engage in, sexual intercourse or **lascivious conduct** or the molestation, prostitution, or incest with children; (h) "Lascivious conduct" means the **intentional touching**, either directly or through clothing, of the **genitalia**, anus, groin, **breast**, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to **abuse**, humiliate, harass, degrade, or arouse or **gratify the sexual desire of any person,** bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. It has been settled that Section 5(b) of R.A. No. 7610 does not require a prior or contemporaneous abuse that is different from what is complained of, or that a third person should act in concert with the accused.

15. **ID.; ID.; ACTS OF LASCIVIOUNESS TERMS "INFLUENCE" AND "COERCION," DEFINED; INTIMIDATION NEED NOT NECESSARILY BE IRRESISTIBLE; IT IS SUFFICIENT THAT SOME COMPULSION EQUIVALENT TO INTIMIDATION ANNULS OR SUBDUES THE FREE EXERCISE OF THE WILL OF THE OFFENDED PARTY.—** AAA was a child below 18 years old at the time the lascivious conduct was committed against her. Her minority was both sufficiently alleged in the Information and proved. "Influence" is the improper use of power or trust in any way that deprives a person of free will and substitutes another's objective. On the other hand, "coercion" is the improper use of power to compel another to submit to the wishes of one who wields it. In *People v. Leonardo*, the Court ruled that: Section 5 of R.A. No. 7610 does not merely cover a situation of a child

being abused for profit, but also one in which a child is coerced to engage in lascivious conduct. To repeat, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

16. **ID.; ID.; ID.; MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE AND INTIMIDATION.—** It cannot be denied that AAA, who is only a little over 14 years old at the time the offense was committed, was vulnerable and would have been easily intimidated by an attacker who is not only a grown man but is also someone exercising parental authority over her. Even absent such coercion or intimidation, Caoili can still be convicted of lascivious conduct under Section 5(b) of R.A. No. 7610 as he evidently used his moral influence and ascendancy as a father in perpetrating his lascivious acts against AAA. It is doctrinal that moral influence or ascendancy takes the place of violence and intimidation.

17. **ID.; ID.; ID.; CONSENT IS IMMATERIAL, AS THE MERE ACT OF HAVING SEXUAL INTERCOURSE OR COMMITTING LASCIVIOUS CONDUCT WITH A CHILD WHO IS EXPLOITED IN PROSTITUTION OR SUBJECTED TO SEXUAL ABUSE CONSTITUTES THE OFFENSE BECAUSE IT IS A *MALUM PROHIBITUM*.—** It bears emphasis, too, that consent is immaterial in cases involving violation of Section 5 of R.A. No. 7610. The mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense because it is a *malum prohibitum*, an evil that is proscribed. Clearly, therefore, all the essential elements of lascivious conduct under Section 5(b) of R.A. No. 7610 have been proved, making Caoili liable for said offense.

18. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; VARIANCE DOCTRINE; ACCUSED CAN BE HELD GUILTY OF THE LESSER CRIME OF LASCIVIOUS CONDUCT UNDER SECTION 5(b) OF R.A. NO. 7610, WHICH WAS THE OFFENSE PROVED, BECAUSE IT IS INCLUDED IN RAPE THROUGH SEXUAL INTERCOURSE, THE OFFENSE CHARGED.—** Caoili had been charged with rape through sexual intercourse in violation of Article 266-A of the RPC and R.A. No. 7610. Applying the variance doctrine under Section 4, in relation to Section 5 of Rule 120 of the Revised Rules of Criminal Procedure, Caoili can be held guilty of the lesser crime of acts of lasciviousness performed on a child, *i.e.*, lascivious conduct under Section 5(b) of R.A. No. 7610, which was the offense proved, because it is included in rape, the offense charged. This echoes the Court's pronouncement in *Leonardo*, *viz.*: This Court holds that the lower courts properly convicted the appellant in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V- 02 and 555-V-02 for five counts of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 even though the charges against him in the aforesaid criminal cases were for rape in relation to Republic Act No. 7610. The lower court['s] ruling is in conformity with the **variance doctrine** embodied in Section 4, in relation to Section 5, Rule 120 of the Revised Rules of Criminal Procedure, x x x: x x x With the aforesaid provisions, the **appellant can be held guilty of a lesser crime of acts of lasciviousness performed on a child, *i.e.*, sexual abuse under Section 5(b), Article III of Republic Act No. 7610, which was the offense proved because it is included in rape, the offense charged.** The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not. Nonetheless, the right is not transgressed if the information sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused, which, in this case, is lascivious conduct under Section 5(b) of R.A. No. 7610.

19. **CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC**

IN RELATION TO SECTION 5 OF R.A. NO. 7610; BEFORE AN ACCUSED CAN BE CONVICTED OF CHILD ABUSE THROUGH LASCIVIOUS CONDUCT ON A MINOR BELOW 12 YEARS OF AGE, THE REQUISITES FOR ACT OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC MUST BE MET IN ADDITION TO THE REQUISITES FOR SEXUAL ABUSE UNDER SECTION 5 OF R.A. NO. 7610; CONVERSELY, WHEN THE VICTIM, AT THE TIME THE OFFENSE WAS COMMITTED, IS AGED TWELVE (12) YEARS OR OVER BUT UNDER EIGHTEEN (18), OR IS EIGHTEEN (18) OR OLDER BUT UNABLE TO FULLY TAKE CARE OF HERSELF/HIMSELF OR PROTECT HIMSELF/HERSELF FROM ABUSE, NEGLECT, CRUELTY, EXPLOITATION OR DISCRIMINATION BECAUSE OF A PHYSICAL OR MENTAL DISABILITY OR CONDITION, THE NOMENCLATURE OF THE OFFENSE SHOULD BE LASCIVIOUS CONDUCT UNDER SECTION 5(b) OF R.A. NO. 7610, AND THE PERPETRATOR IS PROSECUTED SOLELY UNDER R.A. NO. 7610.— Based on the language of Section 5(b) of R.A. No. 7610, however, the offense designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed. This finds support in the first proviso in Section 5(b) of R.A. No. 7610 which requires that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be*." Thus, pursuant to this proviso, it has been held that before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610. Conversely, when the victim, at the time the offense was committed, is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or

condition, the nomenclature of the offense should be Lascivious Conduct under Section 5(b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610. In the case at bar, AAA was a little over 14 years old when the lascivious conduct was committed against her. Thus, We used the nomenclature "Lascivious Conduct" under Section 5(b) of R.A. No. 7610.

20. **ID.; ID.; ID.; GUIDELINES IN DESIGNATING THE PROPER OFFENSE IN CASE LASCIVIOUS CONDUCT IS COMMITTED UNDER SECTION 5(b) OF R.A. NO. 7610, AND IN DETERMINING THE IMPOSABLE PENALTY.—** [F]or the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty: 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty. 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period. 3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

21. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AMENDMENT OR SUBSTITUTION; MISTAKE IN CHARGING THE PROPER OFFENSE; REMAND OF THE CASE TO THE TRIAL COURT FOR THE PURPOSE OF FILING THE PROPER INFORMATION NOT PROPER WHERE THE TRIAL HAS BEEN CONCLUDED, AND THE REGIONAL TRIAL COURT**

ALREADY RETURNED A VERDICT.— The CA erred in remanding the case to the trial court for the purpose of filing the proper Information on the basis of the last paragraph of Section 14, Rule 110 and Section 19, Rule 119 of the Rules of Court x x x. [T]he rules are applicable only before judgment has been rendered. In this case, the trial has been concluded. The RTC already returned a guilty verdict, which has been reviewed by the CA whose decision, in turn, has been elevated to this Court.

22. **ID.; ID.; JUDGMENT; THE JUDGMENT OF THE COURT OF APPEALS DID NOT AMOUNT TO AN ACQUITTAL IN CASE AT BAR.—** Contrary to Caoili's stance, the CA's decision did not amount to a judgment of acquittal. It is true the CA declared that given the substantial distinctions between rape through sexual intercourse, as charged, and rape by sexual assault, which was proved, "no valid conviction can be had without running afoul of the accused's Constitutional right to be informed of the charge." This statement, however, must be read alongside the immediately succeeding directive of the appellate court, remanding the case to the RTC **for further proceedings** pursuant to Section 14, Rule 110 and Section 19, Rule 119 of the Rules of Court. Said directive clearly shows that the CA still had cause to detain Caoili and did not discharge him; in fact, the CA would have Caoili answer for the proper Information which it directed the prosecution to file. These are not consistent with the concept of acquittal which denotes a discharge, a formal certification of innocence, a release or an absolution. While the procedure adopted by the CA is certainly incorrect, its decision cannot be deemed to have the effect of an acquittal.

23. **CRIMINAL LAW; LASCIVIOUS CONDUCT UNDER SECTION 5 (b) OF REPUBLIC ACT NO. 7610; PROPER IMPOSABLE PENALTY.—** Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*. Since the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as acts of lasciviousness, relationship is

always aggravating. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e.*, *reclusion perpetua*, without eligibility of parole. This is in consonance with Section 31(c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.

24. **ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** Section 31(f) of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of Php 15,000. Parenthetically, considering the gravity and seriousness of the offense, taken together with the evidence presented against Caoili, this Court finds it proper to award damages. In light of recent jurisprudential rules, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua,* the victim is entitled to civil indemnity, moral damages and exemplary damages each in the amount of Php 75,000.00, regardless of the number of qualifying aggravating circumstances present. The fine, civil indemnity and all damages thus imposed shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

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

1. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHTS OF ACCUSED; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; AN ACCUSED CAN ONLY BE CONVICTED OF A CRIME CHARGED IN THE INFORMATION, AND PROVED BEYOND REASONABLE DOUBT DURING TRIAL, FOR TO CONVICT THE ACCUSED OF AN OFFENSE OTHER THAN THAT CHARGED IN THE INFORMATION WOULD VIOLATE THE CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION, UNLESS THE CRIME IS ALLEGED OR NECESSARILY INCLUDED IN THE INFORMATION FILED AGAINST HIM.—** Caoili cannot be merely convicted of the lesser crime of acts of lasciviousness under Article 336 of the RPC in an information charging rape by sexual intercourse,

because what were proved during trial are sexual abuse under Section 5(b), Article III of R.A. No. 7610 **and** rape by sexual assault under Article 266-A, paragraph 2 of the RPC. Conviction for such lesser crime is not only unfair to the victim who is no less than his minor daughter, but also violates the declaration of state policy and principles under Section 2 of R.A. No. 7610 and Section 3(2), Article XV of the 1987 Constitution, which provide for special protection to children from all forms of abuse, neglect, cruelty, exploitation and other conditions prejudicial to their development. x x x. The 1987 Constitution mandates that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. From this fundamental law stems the rule that an accused can only be convicted of a crime charged in the information, and proved beyond reasonable doubt during trial. To convict the accused of an offense other than that charged in the information would violate the Constitutional right to be informed of the nature and cause of the accusation, unless the crime is alleged or necessarily included in the information filed against him.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; VARIANCE DOCTRINE; UNDER THE VARIANCE DOCTRINE, THE ACCUSED SHALL EITHER BE CONVICTED OF THE OFFENSE PROVED WHICH IS INCLUDED IN THE OFFENSE CHARGED, OR OF THE OFFENSE CHARGED WHICH IS INCLUDED IN THE OFFENSE PROVED.—** For the variance doctrine to apply, it is required that (1) there is a variance between an offense charged and that proved, and (2) the offense as charged is included in or necessarily includes the offense proved. Under the variance doctrine, the accused shall either be convicted (1) of the offense proved which is included in the offense charged, or (2) of the offense charged which is included in the offense proved. While there is a variance between the offense charged [rape by sexual intercourse] and that proved [sexual abuse under R.A. No. 7610 and rape by sexual assault], Caoili should be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610 because it was the offense proved during trial, and it is necessarily included in the crime of acts of lasciviousness

under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in rape.

3. **ID.; ID.; ID.; ID.; AN OFFENSE CHARGED NECESSARILY INCLUDES THE OFFENSE PROVED WHEN SOME OF THE ESSENTIAL ELEMENTS OR INGREDIENTS OF THE FORMER, AS ALLEGED IN THE COMPLAINT OR INFORMATION, CONSTITUTE THE LATTER, WHEREAS AN OFFENSE CHARGED IS NECESSARILY INCLUDED IN THE OFFENSE PROVED WHEN THE ESSENTIAL INGREDIENTS OF THE FORMER CONSTITUTE OR FORM PART OF THOSE CONSTITUTING THE LATTER; APPLIED TO THE CASE AT BAR. —** An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter, whereas an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter. x x x. Applying the variance doctrine in this case where the crime charged is rape by sexual intercourse, Caoili can still be convicted of sexual abuse under Section 5(b), Article III of R.A No. 7610. This is because the same crime was proved during trial and is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in a complaint for rape.

4. **CRIMINAL LAW; REVISED PENAL CODE; ARTICLE 336 THEREOF; ACTS OF LASCIVIOUSNESS; ELEMENTS; LEWDNESS, DEFINED.—** The elements of acts of lasciviousness under Article 336 of the RPC, on the one hand, are: 1. The offender commits any act of lasciviousness or lewdness; 2. That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and 3. That the offended party is another person of either sex. [L]ewdness is defined as an obscene, lustful, indecent, and lecherous act which signifies that form of immorality which has relation to moral impurity; or that which is carried in a wanton manner. Moreover, the presence or absence of lewd

designs is inferred from the nature of the acts themselves and the environmental circumstances.

5. **ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATORY ACT); ARTICLE III, SECTION 5(b) THEREOF; SEXUAL ABUSE; ELEMENTS.—** The elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610, on the other hand, are: 1. The accused commits a sexual intercourse or lascivious conduct; 2. The said act was performed with a child exploited in prostitution or subjected to sexual abuse; and 3. The child, whether male or female, is below 18 years of age.

6. **ID.; ID.; SEXUAL ABUSE UNDER SECTION 5(b), ARTICLE III of R.A. NO. 7610 IS NECESSARILY INCLUDED IN THE CRIME OF ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE.—** Promulgated in relation to Section 32 of R.A. No. 7610 are the Rules and Regulations (*IRR*) on the Reporting and Investigation of Child Abuse Cases which define the terms "sexual abuse" and lascivious conduct." x x x. A comparison of the essential elements or ingredients of sexual abuse under Section 5(b), Article III of R.A. No. 7610 and acts of lasciviousness under Article 336 of the RPC barely reveals any material or substantial difference between them. The first element of sexual abuse under R.A. No. 7610, which includes lascivious conduct, lists the particular acts subsumed under the broad term "act of lasciviousness or lewdness" under Article 336. The second element of "*coercion and influence*" as appearing under R.A. No 7610 is likewise broad enough to cover ''*force and intimidation*'' as one of the circumstances under Article 336. Anent the third element, the offended party under R.A. No. 7610 and Article 336 may be of either sex, save for the fact that the victim in the former must be a child. [T]herefore the sexual abuse under Section 5(b), Article III of R.A. No. 7610 is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AMENDMENT OR SUBSTITUTION; SUBSTITUTION OF INFORMATION APPLIES ONLY**

WHEN THERE IS A MISTAKE IN CHARGING THE PROPER OFFENSE, AND THE ACCUSED CANNOT BE CONVICTED OF THE OFFENSE CHARGED OR ANY OTHER OFFENSE NECESSARILY INCLUDED IN THE OFFENSE CHARGED; SECOND REQUISITE NOT PRESENT. **—** [T]he CA erred in applying Section 14, Rule 110, in relation to Section 19, Rule 119 of the Rules of Court, and ordering the remand of the case for further proceedings. Suffice it to stress that the provisions on substitution of information applies only when (1) there is a mistake in charging the proper offense, and (2) the accused cannot be convicted of the offense charged or any other offense necessarily included in the offense charged. The second requisite is absent in this case.

8. **ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATORY ACT); ARTICLE III, SECTION 5(b) THEREOF; SEXUAL ABUSE; BEFORE AN ACCUSED CAN BE HELD CRIMINALLY LIABLE OF LASCIVIOUS CONDUCT, WHICH IS INCLUDED IN SEXUAL ABUSE UNDER SECTION 5(b), ARTICLE III OF R.A. NO. 7610, THE REQUISITES OF ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE MUST BE MET IN ADDITION TO THE REQUISITES OF SEXUAL ABUSE UNDER THE SAID SECTION 5(b).—** As held in *Dimakuta v. People*, if the victim of lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused may be held liable for: x x x 2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. **In case the acts of lasciviousness is covered by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable.** x x x Before an accused can be held criminally liable of lascivious conduct, which is included in sexual abuse under Section 5(b), Article III of R.A. No. 7610, the requisites of acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites of sexual abuse under the said Section 5(b), namely: (1) the accused commits the act of sexual intercourse or lascivious

conduct; (2) the said act was performed with a child exploited in prostitution or subjected to sexual abuse; and (3) the child, whether male or female, is below 18 years of age. All these requisites are present in this case.

9. **ID.; ID.; ID.; ID.; LASCIVIOUS CONDUCT, DEFINED; ACCUSED'S LEWD ACTS OF KISSING THE VICTIM'S LIPS, MASHING HER BREASTS, INSERTING HIS FINGER INTO HER VAGINA AND MAKING A PUSH-AND-PULL MOVEMENT INSIDE HER FOR THIRTY (30) MINUTES, CONSTITUTE LASCIVIOUS CONDUCT.—** [C]aoili's lewd acts of kissing the victim's lips, mashing her breasts, inserting his finger into her vagina and making a push-and-pull movement inside her for thirty (30) minutes, constitute lascivious conduct as defined in the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases: Section 2. Definition of Terms. - As used in these Rules, unless the context requires otherwise — x x x h) "Lascivious conduct" means the **intentional touching**, either directly or through clothing, of the genitalia, anus, groin, **breast**, inner thigh, or buttocks, or the **introduction of any object into the genitalia**, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person; x x x.

10. **ID.; ID.; ID.; ID.; A CHILD IS CONSIDERED AS SEXUALLY ABUSED WHEN HE OR SHE IS SUBJECTED TO LASCIVIOUS CONDUCT UNDER THE COERCION OR INFLUENCE OF ANY ADULT, AND THAT MORAL ASCENDANCY IS EQUIVALENT TO INTIMIDATION, WHICH ANNULS OR SUBDUES THE FREE EXERCISE OF THE WILL BY THE OFFENDED PARTY.—** Caoili clearly has moral ascendancy over the victim who is his minor daughter. It is settled that in cases where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of violence. It bears emphasis that a child is considered as sexually abused under Section 5(b), Article III of R.A. No. 7610 when he or she is subjected to lascivious conduct under the coercion or

influence of any adult, and that moral ascendancy is equivalent to intimidation, which annuls or subdues the free exercise of the will by the offended party.

11. **ID.; ID.; ID.; ID.; "CHILD ABUSE" DOES NOT REQUIRE THAT THE VICTIM SUFFER A SEPARATE AND DISTINCT ACT OF SEXUAL ABUSE ASIDE FROM THE ACT COMPLAINED OF, FOR IT REFERS TO THE MALTREATMENT, WHETHER HABITUAL OR NOT, OF THE CHILD; THUS, A VIOLATION OF SECTION 5(b) OCCURS EVEN THOUGH THE ACCUSED COMMITTED SEXUAL ABUSE AGAINST THE CHILD VICTIM ONLY ONCE, EVEN WITHOUT A PRIOR SEXUAL AFFRONT; ACCUSED SHOULD BE CONVICTED OF SEXUAL ABUSE UNDER SECTION 5(b), ARTICLE III OF R.A. NO. 7610, AND NOT JUST ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC IN CASE AT BAR.—** The victim was admitted and proved to be 14 years old at the time of the commission of the offense. Under Section 3(a) of R.A. No. 7610, "children" refers to persons below eighteen (18) years of age or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition." Accordingly, Caoili should be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610, and not just acts of lasciviousness under Article 336 of the RPC, in relation to the same provision of R.A. No. 7610. In *Quimvel v. People*, (*Quimvel*) the Court held that Section 5(b), Article III of R.A. No. 7610 punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse, and covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. The Court noted that the very definition of "child abuse" under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of, for it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Section 5(b) occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.

Moreover, the Court pointed out that it is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). As can be gleaned from Section 5, Article III of R.A. No. 7610, the offense can be committed against "**any adult**, syndicate or group," without qualification. The clear language of the special law, therefore, does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence.

12. **ID.; ID.; ID.; ID.; THE NON-MENTION IN THE INFORMATION OF "*COERCION,*" "*INFLUENCE,*" OR "*EXPLOITED IN PROSTITUTION OR SUBJECT TO OTHER ABUSE,*" IS NOT A BAR TO UPHOLD THE FINDING OF GUILT AGAINST AN ACCUSED FOR VIOLATION OF SECTION 5(b), ARTICLE III OF R.A. NO. 7610.—** It may not be amiss to state that the absence of the phrase "*exploited in prostitution or subject to other sexual abuse*" or even the specific mention of "coercion" or "*influence*" in the Information filed against Caoili, is not a bar to uphold the finding of guilt against an accused for violation of Section 5(b), Article III of R.A. No. 7610. As held in *Quimvel*: x x x Just as the Court held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of "*force and intimidation*," the Court must also rule that the information in the case at bench does not suffer from the alleged infirmity. So too did the Court find no impediment in *People v. Abadies, Malto v. People, People v. Ching, People v. Bonaagua*, and *Caballo v. People* to convict the accused therein for violation of Sec. 5, RA 7610 notwithstanding the non-mention in the information of "*coercion,*" *influence,*" or "*exploited in prostitution or subject to other abuse*."

13. **ID.; ID.; ID.; ID.; ACCUSED IN CASE AT BAR SHOULD BE CONVICTED OF SEXUAL ABUSE COMMITTED AGAINST A CHILD UNDER SECTION 5(b), ARTICLE III OF R.A. NO. 7610, AS THE LATTER CRIME WAS PROVED DURING TRIAL AND IS NECESSARILY INCLUDED IN THE CRIME OF ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC, WHICH IS NECESSARILY INCLUDED IN A COMPLAINT FOR RAPE; PROPER IMPOSABLE PENALTY.—** [W]hile

Nazareno is silent on the application of the variance doctrine, x x x applying the same doctrine in this case where the crime charged is rape by sexual intercourse, Caoili can still be convicted of sexual abuse committed against a child under Section 5(b), Article III of R.A No. 7610. This is because the latter crime was proved during trial and is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in a complaint for rape. Since Caoili should be convicted of sexual abuse under R.A. No. 7610, the proper imposable penalty should be taken from *reclusion temporal* in its medium period to *reclusion perpetua* under Section 5(b), Article III thereof, and not *prision correccional* under Article 336 of the RPC, because the victim was alleged [15 years old] and proved [14 years old] to be a child. x x x. [I]f the victim of a lascivious conduct is from 12 to 17 years old, like in the case at bar, the crime should not be considered as "in relation to Article 336 of the RPC" because the circumstances of absence of consent of the victim, her being deprived of reason or consciousness, and the use of force or intimidation, should already be established in order to hold the accused liable. Thus, if the victim is from 12 years old to 17, or 18 years old, or over but under special circumstances, the crime is sexual abuse under Section 5(b), Article III of R.A. No. 7610, which carries the penalty of *reclusion temporal* medium to *reclusion perpetua*. Note that it is only when the victim is under 12 years old that the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape, and Article 336 of the RPC, for rape or lascivious conduct, as the case may be. Equally noteworthy is the fact that Article 335, paragraph 3 and Article 336 have been amended by R.A. No. 8353 x x x. There being no mitigating circumstance to offset the alternative aggravating circumstance of (paternal) relationship as alleged in the Information and proved during trial, x x x Caoili should be sentenced to suffer the maximum period of the penalty, *i.e., reclusion perpetua*.

14. **ID.; ID.; ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED.—** [C]aoili should also be ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each, pursuant to *People v. Jugueta*, and a fine in the amount of ₱15,000.00, pursuant to Section 31(f), Article

XII of R.A. No. 7610, with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

15. **ID.; ID.; ID.; ID.; ID.; IMPOSITION OF INDETERMINATE SENTENCE NOT PROPER; REASONS.—** Caoili cannot be meted indeterminate sentence computed from the penalty of *prision correccional* under Article 336 of the RPC, as it would defeat the purpose of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339, which used to be punishable by *arresto mayor*, and now by *prision correccional* pursuant to Section 10, Article VI of R.A. 7610. **Second**, it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prision correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child an a probationable offense, pursuant to the Probation Law of 1976, as amended by R.A. No. 10707. Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. No. 7610 and the Constitution on the special protection to children.

CAGUIOA, *J.*, *separate opinion*:

1. **CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATORY ACT); LASCIVIOUS CONDUCT UNDER SECTION 5(b) THEREOF; ELEMENTS; IT MUST BE ALLEGED AND PROVED THAT THE CHILD IS EXPLOITED IN PROSTITUTION OR THE CHILD IS SUBJECTED TO OTHER SEXUAL ABUSE.—** The essential elements of a violation of Section 5(b) are: (1) The accused commits the act of sexual intercourse or *lascivious conduct*; (2) The said act is performed with a child exploited in prostitution or subjected

to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age. The phrase "a child exploited in prostitution or subjected to other sexual abuse" in the second element is defined by Section 5 of RA 7610 as "[a child], who (a) for money, profit or other consideration, or (b) due to coercion or influence by an adult, group, or syndicate, indulges in sexual intercourse or lascivious conduct. This is what distinguishes the "common" or "ordinary" acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) from a violation of Section 5(b). In other words, it must be alleged and proved that: a) the child is exploited in prostitution; OR b) the child is subjected to other sexual abuse. These should already be existing at the time of sexual intercourse or lascivious conduct complained of.

2. **ID.; ID.; ID.; THE ALLEGATION OF RELATIONSHIP AND MINORITY IN THE INFORMATION MEETS THE REQUIREMENT OF COERCION AND INFLUENCE REQUIRED UNDER SECTION 5(b) OF RA 7610.—** The allegation of relationship and minority in the Information suffices to inform the accused of the nature and cause of the accusation against him and supports a conviction for Section 5(b) under the same Information because it meets the requirement of coercion and influence required to convert a child into one subjected to other sexual abuse as defined by Section 5. This x x x forecloses any argument that the accused was not informed of the nature and cause of the accusation against him.

3. **ID.; ID.; ID.; SECTION 5(b) of RA 7610 IS NECESSARILY INCLUDED IN A CHARGE OF RAPE UNDER SECTION 266-A(2) OF THE REVISED PENAL CODE.—** Neither does it offend against the variance doctrine to determine the existence of the elements of Section 5(b) in a charge of Article 336 or one wherein Article 336 is necessarily included, Section 5(b) being a subset of the universe of lascivious conduct covered by Article 336 of the RPC, is necessarily included in a charge of rape under Section 266-A(2) of the RPC if the specific circumstances required for Section 5(b) to operate can be fairly read into the allegations in the Information and thereafter proved.

4. **ID.; ID.; ID.; IT MUST BE SHOWN THAT THE CHILD IS ALREADY A CHILD EXPLOITED IN PROSTITUTION**

OR SUBJECTED TO OTHER SEXUAL ABUSE AT THE TIME THE SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT COMPLAINED OF WAS COMMITTED OR THAT CIRCUMSTANCES OBTAINED PRIOR OR DURING THE FIRST INSTANCE OF ABUSE THAT CONSTITUTES SUCH FIRST INSTANCE OF SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT AS HAVING CONVERTED THE CHILD INTO A CHILD "EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE." — From the initial Sworn Statement filed by AAA, she already claimed that the abuse had begun as early as February 2003. In fact during AAA's direct testimony, she testified that she had told her mother about the sexual abuse as early as June 2005 but her mother did not believe her. Therefore, at the time the lascivious conduct was committed upon AAA on October 23, 20115, she was already a child subjected to other sexual abuse — meeting the second element. [T]his is not to say that in every instance, prior sexual affront upon the child must be shown to characterize the child as one "subjected to other sexual abuse." What is only necessary is to show that the child is already a child exploited in prostitution or subjected to other sexual abuse at the time the sexual intercourse or lascivious conduct complained of was committed or that circumstances obtained prior or during the first instance of abuse that constitutes such first instance of sexual intercourse or lascivious conduct as having converted the child into a child "exploited in prostitution or subjected to other sexual abuse." Otherwise, it appears that without the circumstances of Section 5(a) or independent evidence of coercion or influence, a single instance of sexual intercourse or lascivious conduct may not be sufficient to meet the second element of Section 5(b).

5. **ID.; ID.; ID.; TO SECURE A CONVICTION FOR VIOLATION OF SECTION 5(b) OF RA 7610, COERCION OR INFLUENCE MUST BE SHOWN; ACTUAL FORCE OR INTIMIDATION NEED NOT BE EMPLOYED IN INCESTUOUS RAPE OF A MINOR BECAUSE THE MORAL AND PHYSICAL DOMINION OF THE FATHER IS SUFFICIENT TO COW THE VICTIM INTO SUBMISSION.—** [I]n *People v. Fragante*, where the Court found the elements of Section 5(b) present in the several instances

of sexual intercourse and lascivious conducted committed by the accused against his minor daughter, it was held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission. The appreciation of how the sexual intercourse and lascivious conduct in this case fell within the ambit of Section 5(b) is cogently explained thus: appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse. This is the same situation obtaining in this case, with evidence extant in the records that the child had already been subjected to sexual abuse under circumstances showing coercion and influence (otherwise termed "[a father's] moral and physical dominion" in *Fragante*) even prior to the act complained of. x x x. [T]o secure a conviction for violation of Section 5(b), coercion or influence (or otherwise, that the child indulged in sexual intercourse or lascivious conduct for money, profit or other consideration) is a textually-provided circumstance that must be shown. [T]his element of coercion or influence was shown in this case.

6. **ID.; ID.; DOES NOT COVER ALL SEXUAL ABUSES AGAINST CHILDREN NOR DOES IT SUBSUME ALL INSTANCES THEREOF THAT ARE ALREADY COVERED BY OTHER PENAL LAWS.—** This case does not detract from x x x position that RA 7610 does not cover all sexual abuses against children under its provisions to the exclusion of the RPC. RA 7610 affords protection to a special class of children without subsuming any and all offenses against children that are already covered by other penal laws such as the RPC and the Child and Youth Welfare Code. To reiterate, by both literal and purposive tests, x x x nothing in the language of the law or in the Senate deliberations that necessarily leads to the conclusion that RA 7610 subsumes all instances of sexual abuse against children. [T]he accused is, as he should be, convicted of Lascivious Conduct under Section 5(b) of RA 7610.

LEONEN, *J., dissenting opinion*:

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT OF ACCUSED; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATIONS AGAINST HIM;**

IMPORTANCE AND PURPOSE OF THE RULE; THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATIONS AGAINST A PERSON NEED NOT BE ALLEGED WITH THE HIGHEST DEGREE OF PARTICULARITY; IT IS SATISFIED AS LONG AS FACTS ARE ALLEGED WITH SUFFICIENT CLARITY THAT ALLOWS THE ACCUSED TO UNDERSTAND WHAT ACTS HE IS BEING MADE LIABLE FOR IN ORDER TO ENABLE HIM TO MAKE A DEFENSE.— The accused may be convicted of rape by sexual intercourse without violating his due process rights and his right to be informed of the nature and cause of the accusations against him as provided in Article III, Section 14 of the 1987 Constitution and reproduced in Rule 115, Section 1(b) of our Rules of Procedure. The importance and purpose of this rule has been explained by this Court in *People v. Quitlong*: First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause, and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. The right to be informed of the nature and cause of the accusations against a person need not be alleged with the highest degree of particularity. It is satisfied as long as facts are alleged with sufficient clarity that allows the accused to understand what acts he is being made liable for in order to enable him to make a defense.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE UNDER ARTICLE 266-A THEREOF; WHEN AND HOW COMMITTED; CARNAL KNOWLEDGE WITHOUT VALID CONSENT CONSTITUTES RAPE; ACCUSED'S INSERTION OF HIS FINGER IN THE VICTIM'S GENITALIA QUALIFIES AS CARNAL KNOWLEDGE OR SEXUAL INTERCOURSE.—** The information substantially charged the accused with forced carnal knowledge or sexual intercourse. It is sufficiently clear to inform the accused what acts he is being made liable for. It is sufficient to enable him to form a defense. Article 266-A(1) of the Revised Penal Code provides that carnal knowledge without valid consent constitutes 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. Evidence of lack of valid consent and carnal knowledge is, therefore, already sufficient to convict an accused of rape by sexual intercourse under Article 266-A(1) of the Revised Penal Code. The prosecution already established that the accused inserted his finger in his daughter's vagina. This already qualifies as carnal knowledge or sexual intercourse.

3. **ID.; ID.; ID.; SEXUAL INTERCOURSE IS NOT LIMITED TO THOSE INVOLVING PENETRATION, GENITALS, AND OPPOSITE SEXES; WHEN FORCED, SEXUAL INTERCOURSE CONSTITUTES RAPE.—** The persistence of an archaic understanding of rape relates to our failure to disabuse ourselves of the notion that carnal knowledge or sexual intercourse is merely a reproductive activity. It is not. Sexual intercourse may be done for pleasure. It may be done for religious purposes. It may be a means to an end. Hence, sexual intercourse encompasses a wide range of sexual activities not limited to those involving penetration, genitals, and opposite sexes. Sexual intercourse is a sexual activity that is participated in by at least two (2) individuals of the same or opposite sex for purposes of attaining erotic pleasure. It may be penetrative or simply stimulative. It may or may not involve persons of opposite sexes. When forced, sexual intercourse constitutes rape. This understanding of sexual intercourse would prevent courts from unnecessarily and unjustly convicting persons of lesser crimes when they are undoubtedly guilty of rape.

4. **ID.; ANTI-RAPE LAW OF 1997 (REPUBLIC ACT NO. 8353); RECONCEPTUALIZED RAPE AS A CRIME AGAINST PERSONS WHICH IS A RECOGNITION THAT RAPE MAY BE COMMITTED TO ANY PERSON REGARDLESS OF SEX AND GENDER AND THROUGH VARIOUS MEANS.—** Republic Act No. 8353's reconceptualization of rape as a crime against persons and the broadening of its definition to include its other forms point towards this understanding. The reconceptualization of rape as a crime against persons is a

recognition that rape may be committed to any person regardless of sex and gender. It is also a recognition that rape may be committed through various means. The diversity of means by which rape can be committed allowed our lawmakers to create gradations for purposes of determining the appropriate punishment. However, the imposition of different punishments for different manners of committing rape or sexual assault should not be read as a reflection of the actual heinousness of the corresponding acts for the victim. In *People v. Quintos y Badilla*, this Court said: The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable ... [O]ne experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner. "The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong. Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.

5. **ID.; REVISED PENAL CODE; RAPE UNDER ARTICLE 266-A THEREOF; TO LEGALLY CONSTITUTE THE FINGER AS A SEPARATE OBJECT NOT USED IN "SEXUAL INTERCOURSE" OR "CARNAL KNOWLEDGE" NOT ONLY DEFIES REALITY, BUT IT ALSO UNDERMINES THE PURPOSE OF THE PUNISHMENT UNDER ARTICLE 266-A, PARAGRAPH 2 OF THE REVISED PENAL CODE. —** By involving the finger only as a means to violate Article 266-A, paragraph 2, thereby equating it to an "instrument or object," this Court misunderstands the gravity and the power used by those who want to defile the person of

another through rape. It misunderstands the crime. Rape is not an act of pleasure. It is an illicit expression of power. It is not an act that simply addresses the uncontrolled instincts of the perpetrator. It is an act which fulfills a depraved desire to impose one's will on another, reducing the other to the status of a subordinate. The finger is as much part of the human body as the penis. It is not a separate instrument or object. It is an organ that can act as a conduit to give both pleasure as well as raw control upon the body of another. At a certain age, when men have difficulty with erections, his finger or any other similar organ becomes a handy tool of oppression. This Court cannot maintain an artificially prudish construction of sexual intercourse. When it does, it becomes blind to the many ways that women's bodies are defiled by the patriarchy. To legally constitute the finger as a separate object not used in "sexual intercourse" or "carnal knowledge" not only defies reality, it undermines the purpose of the punishment under Article 266-A, paragraph 2.

6. **ID.; ID.; RAPE BY SEXUAL ASSAULT UNDER ARTICLE 266-A(1) THEREOF; COMMITTED BY THE ACCUSED IN CASE AT BAR, NOT RAPE BY SEXUAL ASSAULT OR MERE LASCIVIOUS CONDUCT; IMPOSITION OF THE PENALTY OF *RECLUSION PERPETUA,* WARRANTED.—** Even if there is any deficiency in the form of the information, the remedy is not to prejudice the punishment for the wrong done to the victim. Rather it is to call the attention of the prosecutor who drafted the charge. Too often, the mistake of the same leads to acquittal or downgrading of the appropriate punishment. Whether this is due to lack of competence, supervision, design or consideration, the effect is the same. The consequent inability of our institutions to do what is right and just due to trivial technicalities erodes the public's confidence in what we are supposed to do: courageously do what is right and just. When we allow our system to be eroded in this way, rapists would be able to rely on the illicit graciousness of misguided prosecutors. After all, using "sexual intercourse" in lieu of "carnal knowledge" or "sexual assault" is so obviously simple but fraught with a lot of opportunities for the accused. Laws should not be read so as to obfuscate reality. Its words should be able to reflect the ability of the state to correctly categorize the evil that men do. Clearly, in this case, the offense committed was rape by sexual intercourse. It was not rape by sexual assault or a mere lascivious conduct. Accordingly, the

accused should be convicted of rape under Article 266-A(1) of the Revised Penal Code and sentenced to suffer the penalty of *reclusion perpetua*.

MARTIRES, *J., dissenting opinion*:

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE UNDER ARTICLE 266-A OF THE REVISED PENAL CODE; *CARNAL KNOWLEDGE* SHOULD NOT BE LIMITED EXCLUSIVELY TO THE CONTACT BETWEEN THE PENIS AND THE VAGINA, FOR A PERPETRATOR'S USE OF ANY OF HIS OR HER ORGANS, SUCH AS THE TONGUE OR THE FINGER, IN ORDER TO CREATE BODILY PLEASURE OR TO PENETRATE A VAGINA CONSTITUTES CARNAL KNOWLEDGE.—** The crux of carnal knowledge, xxx is ***sexual bodily connection***. The finger is a part of the body by which a sexual bodily connection may be attained. It is an organ that evokes sensations of pleasure, particularly in sexual situations; thus, it should not be deemed as an "object" within the contemplation of the second paragraph of Article 266-A. A man's use of his penis, the tongue, or his finger to penetrate a vagina for the purpose of sexual stimulation or sensation undeniably creates a sexual bodily connection with a woman; thus, *carnal knowledge* of the woman is achieved. [T]he concept of *carnal knowledge* should not be limited exclusively to the contact between the penis and the vagina. The word *carnal*, as defined, describes "in or of the flesh" or "having to do with or preoccupied with bodily or sexual pleasure, sensual or sexual." A perpetrator's use of any of his or her organs, such as the tongue or the finger, in order to create bodily pleasure or to penetrate a vagina constitutes *carnal knowledge*. Consequently, when such carnal knowledge is attained under any of the circumstances in the first paragraph of Article 266-A, the perpetrator should be convicted of Rape.

2. **ID.; ID.; RAPE UNDER ARTICLE 266-A (1) AND (2) THEREOF; ELEMENTS; WHEN A PERPETRATOR INSERTS INTO THE GENITAL OR ANAL ORIFICE OF ANOTHER AN INSTRUMENT OR OBJECT THAT DOES NOT FORM PART OF THE PERPETRATOR'S BODY, THE OFFENSE COMMITTED IS PUNISHABLE UNDER THE SECOND PARAGRAPH OF ARTICLE 266-A, WHILE**

WHEN A PERPETRATOR *PENETRATES* A VAGINA WITH THE USE OF ANY OF HIS OR HER OWN BODY PARTS, THE OFFENSE COMMITTED IS PUNISHABLE UNDER THE FIRST PARAGRAPH. — 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. The use of a body organ in order to *penetrate* a vagina should be distinguished from the sexual *insertion* of an instrument or object into the genital or anal orifice of another. This latter act is defined and punished under the second paragraph of Article 266-A, *viz*: Article 266-A. Rape: When and How Committed. - Rape is committed: x x x By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. Thus, under the two categories of rape created by the twin paragraphs under Article 266-A, when a perpetrator *inserts* into the genital or anal orifice of another an instrument or object that does not form part of the perpetrator's body, the offense committed is punishable under the second paragraph of Article 266-A; when a perpetrator *penetrates* a vagina with the use of any of his or her own body parts, the offense committed is punishable under the first paragraph.

3. **ID.; ID.; ID.; FINGERING IS NO MERE ACT OF LASCIVIOUSNESS, AS THE FORCED PENETRATION OR ENTRY INTO A WOMAN'S MOST PRIVATE PART BY OR WITH WHATEVER MEANS WITH THE USE OF A BODILY ORGAN IS CARNAL KNOWLEDGE, AND AN OUTRAGE TO THE DIGNITY OF THE VICTIM.—** [T]he majority unduly confines the concept of carnal knowledge under the first paragraph of Article 266-A to penile penetration and, correspondingly, unduly restricts the law's coverage. Such limitation disregards a vital premise in our rape jurisprudence, namely, that carnal knowledge is achieved when a person has

> *sexual bodily connection* with a woman. To reiterate: the penetration of a vagina by means of any bodily part such as the finger or tongue is a *sexual bodily connection*. To limit the concept of carnal knowledge solely to penile penetration is contrary to human experience. Carnal knowledge occurs on a wanton field, and is achieved in sundry ways: vaginal, oral, anal, and fingering. Which brings us back to the case at hand. The majority may take notice that the act of "fingering" a woman, as it has been said time and again, is an act from which women may, unwittingly or not, derive pleasure in varied degrees. Rapists exploit this biological imperative. Our rape jurisprudence is replete with grievous narratives where the perpetrators, before attaining carnal knowledge of their victims through penile means, had already attained carnal knowledge of their victims through the use of their finger on their victim's vagina in a bid to arouse and confuse her, and in the belief that this would facilitate the penile intercourse to follow. The fingering committed, in itself, is already carnal knowledge. In cases of rape, the forced penetration or entry into a woman's most private part by or with whatever means with the use of a bodily organ is carnal knowledge, and an outrage to the dignity of the victim. Fingering is no mere act of lasciviousness. x x x. The accused, having been found to have fingered his own daughter, should be convicted of Rape under the first paragraph of Article 266-A.

APPEARANCES OF COUNSEL

The Solicitor General for the People of the Philippines.
Public Attorney's Office for Noel Go Caoili.

D E C I S I O N

TIJAM, *J*.:

Assailed in these consolidated petitions for review[1] under Rule 45 of the Rules of Court are the July 22, 2010 Decision[2]

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[1] *Rollo* (G.R. No. 196342), pp. 11-48; *rollo* (G.R. No. 196848), pp. 11-35.

[2] Penned by Associate Justice Edgardo A. Camello, concurred in by Associate Justices Leoncia R. Dimagiba and Nina G. Antonio-Valenzuela; CA *rollo*, pp. 109-119.

and March 29, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00576-MIN, which set aside the June 17, 2008 Decision[4] of the Regional Trial Court (RTC) of Surigao City, Branch 30, in Criminal Case No. 7363, finding Noel Go Caoili (Caoili) alias "Boy Tagalog" guilty of the crime of Rape by Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353,[5] and remanded the case to the RTC for further proceedings consistent with the CA's opinion.

The Facts

On June 22, 2006, First Assistant Provincial Prosecutor Raul O. Nasayao filed an Information against Caoili, charging him with the crime of rape through sexual intercourse in violation of Article 266-A, in relation to Article 266-B, of the RPC as amended by R.A. No. 8353, and R.A. No. 7610.[6] The accusatory portion of the Information reads:

That on or about the 23rd day of October 2005, at 7:00 o'clock in the evening, more or less, in Purok [III], Barangay [JJJ], [KKK], [LLL], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom and intelligence, with lewd design, did, then and there, willfully, unlawfully and feloniously had sexual intercourse with one [AAA],[7] a minor, fifteen (15) years

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[3] *Rollo* (G.R. No. 196342), pp. 62-67.

[4] Penned by Presiding Judge Floripinas C. Buyser; records, pp. 87-97.

[5] The Anti-Rape Law of 1997.

[6] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES. Approved on June 17, 1992.

[7] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, *An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes;* Republic Act No. 9262, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties*

of age and the daughter of the herein accused, through force, threat and intimidation and against her will, to her damage and prejudice in the amount as may be allowed by law.

CONTRARY TO Article 266-A, in relation to Article 266-B of R.A. 8353, with the aggravating circumstance that the accused is the father of the victim and R.A. 7610[.][8]

On July 31, 2006, the RTC issued an Order[9] confirming Caoili's detention at the Municipal Station of the Bureau of Jail Management and Penology after his arrest[10] on October 25, 2005.

Upon arraignment on September 15, 2006,[11] Caoili pleaded not guilty to the crime charged. After the pre-trial, trial on the merits ensued.

The victim, AAA, testified that on October 23, 2005, at 7:00 p.m., her father, Caoili, sexually molested her at their house located in Barangay JJJ, Municipality of KKK, in the Province of LLL. Caoili kissed her lips, touched and mashed her breast, inserted the fourth finger of his left hand into her vagina, and made a push and pull movement into her vagina with such finger for 30 minutes. AAA felt excruciating pain during and after the ordeal. Against her father's harsh warning not to go out of the house, AAA proceeded to the house of her uncle, BBB, located 20 meters away from their house. When he learned of this, Caoili fetched AAA and dragged her home. He beat and hit her with a piece of wood, and boxed her on the stomach.[12]

Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the *Rule on Violence Against Women and Their Children*, effective November 5, 2004. (*People v. Dumadag*, 667 Phil. 664 [2011])

[8] Records, p. 1.

[9] *Id*. at 17.

[10] Apprehension Report, *id*. at 8.

[11] Certificate of Arraignment, *id.* at 22.

[12] *Rollo* (G.R. No. 196342), pp. 15-16.

On October 26, 2005, AAA disclosed to Emelia Loayon (Loayon), the guidance counselor at AAA's school, the sexual molestation and physical violence committed against her by her own father. Loayon accompanied AAA to the police station to report the sexual and physical abuse. AAA also executed a sworn statement[13] regarding the incident before the Municipal Mayor.[14]

AAA underwent a medical examination conducted by Dr. Ramie Hipe (Dr. Hipe) at the [KKK] Medicare Community Hospital. Dr. Hipe issued a medical certificate dated October 26, 2005 showing that AAA had suffered:[15]

x x x x x x x x x

1. Contusion, 5 inches in width, distal 3rd, lateral aspect, left Thigh.
2. Contusion, 2 cms in width, distal 3rd, lateral aspect, left Forearm
3. (+) tenderness, left parietal area, head
4. (+) tenderness, over the upper periumbilical area of abdomen
5. tenderness, over the hypogastric area

x x x x x x x x x

Genital Examination

x x x x x x x x x

Hymen

- fimbriated in shape
- with laceration on the following:
- complete laceration – 12 o'clock position
- partial laceration – 3 o'clock position
- complete laceration – 6 o'clock position
- partial laceration – 8 o'clock position
- complete laceration – 9 o'clock position
- partial laceration – 11 o'clock position[16]

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[13] *Pangutana Ug Tubag*, records, p. 5.

[14] *Rollo* (G.R. No. 196342), p. 17.

[15] *Id*.

[16] Exhibits, pp. 10-11.

Dr. Hipe referred AAA to a Medical Specialist, Dr. Lucila Clerino (Dr. Clerino), for further Medico-Legal examination and vaginal smear. Dr. Clerino issued a Supplementary Medical Certificate dated October 28, 2005, indicating that AAA's hymenal area had lacerations complete at 6 o'clock and 9 o'clock superficial laceration at 12 o'clock.[17]

AAA sought the assistance of the Department of Social Welfare and Development which facilitated her admission to a rehabilitation center run by the Missionary Sisters of Mary.[18]

For his defense, Caoili denied molesting AAA. He alleged that on October 23, 2005, at about 7:00 p.m., he saw AAA with her boyfriend at the cassava plantation. He recognized AAA by the fragrance of her perfume and by the outline of her ponytail. He even greeted them "good evening" but they did not respond. He then went home. When AAA arrived at their house, he confronted her and the latter admitted that she was with her boyfriend "*Dodong*" earlier that evening. He was so angry so he struck AAA's right thigh with a piece of wood and pushed the same piece of wood on her forehead. When AAA cried out in pain, he became remorseful and asked for forgiveness, but AAA kept mum. After they had supper, Caoili and his son slept in one room; while AAA and her siblings slept in another room.[19]

The RTC's Ruling

On June 17, 2008, the RTC rendered its Decision[20] declaring Caoili guilty of rape by sexual assault. The dispositive portion of the Decision reads:

> WHEREFORE, finding the accused NOEL GO CAOILI alias "Boy Tagalog" guilty beyond reasonable doubt, as principal, of the crime of rape, defined and penalized in paragraph 2 of Article 266-A in

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[17] *Rollo* (G.R. No. 196342), p. 18.

[18] CA *rollo*, p. 44.

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

[20] Records, pp. 87-97.

relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and after considering the aggravating circumstance of being the parent of the complainant, who was fourteen (14) years, one (1) month and ten (10) days old at the time of the incident in question, there being no mitigating circumstance to off-set the same, this Court hereby sentences the said accused to suffer imprisonment for an indefinite period of TEN (10) YEARS and ONE (1) DAY of *Prision Mayor* in its maximum period, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Reclusion Temporal* in its maximum period, as maximum, and to pay the costs. Four-fifths (4/5) of the preventive detention of said accused shall be credited to his favor.

The same accused is hereby ordered to pay complainant [AAA] an indemnity *ex delicto* of ₱50,000.00; moral damages of ₱50,000.00; and exemplary damages of another ₱50,000.00.

SO ORDERED.[21]

On September 29, 2008, pursuant to a Commitment Order[22] issued by the RTC on August 27, 2008, provincial jail guards escorted Caoili for his confinement at the Davao Prisons and Penal Farm, Panabo, Davao del Norte (Davao Penal Colony).[23]

Thereafter, Caoili filed his appeal before the CA.

The CA's Ruling

On July 22, 2010, the CA rendered the assailed Decision,[24] the dispositive portion of which reads, thus:

FOR THESE REASONS, the appealed Decision of Branch 30 of the Regional Trial Court of Surigao City, in Criminal Case Nos. 7363, is SET ASIDE. Let this case be as it is **IMMEDIATELY REMANDED** to the trial court for further proceedings consistent with this opinion. *Costs de oficio*.

SO ORDERED.[25]

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[21] Records, p. 97.

[22] CA *rollo*, p. 7.

[23] *Id*. at 8.

[24] *Id*. at 109-119.

[25] *Id*. at 119.

The CA held that although Caoili is clearly guilty of rape by sexual assault, what the trial court should have done was to direct the State Prosecutor to file a new Information charging the proper offense, and after compliance therewith, to dismiss the original Information. The appellate court found it "imperative and morally upright" to set the judgment aside and to remand the case for further proceedings pursuant to Section 14, Rule 110,[26] in relation to Section 19, Rule 119[27] of the Rules of Court.

Thereafter, Caoili and the Office of the Solicitor General (OSG) filed their respective petitions for review before this Court: G.R. No. 196342 was instituted by the OSG and G.R. No. 196848 was filed by Caoili. These petitions were ordered consolidated by the Court in its Resolution[28] dated on August 1, 2011.

In G.R. No. 196342, the OSG assails the CA's Decision for not being in accord with the law and established jurisprudence. Their petition was anchored on the following grounds:[29]

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[26] **Sec. 14.** *Amendment or substitution*. — x x x

x x x x x x x x x

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

[27] **Sec. 19.** *When mistake has been made in charging the proper offense*. — When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information.

[28] *Rollo* (G.R. No. 196848), p. 160.

[29] *Rollo* (G.R. No. 196342), pp. 27-28.

I.

[CAOILI] WAS CONVICTED OF A CRIME NECESSARILY INCLUDED IN THE OFFENSE CHARGED IN THE INFORMATION AND EMBRACED WITHIN THE SAME ARTICLE OF [R.A. NO.] 8353.

II.

[CAOILI'S] CONSTITUTIONAL RIGHT TO BE INFORMED OF THE CHARGE AGAINST HIM WAS NOT VIOLATED SINCE HE ACTIVELY PARTICIPATED DURING THE TRIAL PROCEEDINGS AND NEVER QUESTIONED THE PRESENTATION OF EVIDENCE SHOWING THAT THE CRIME COMMITTED WAS SEXUAL ASSAULT AND NOT SIMPLE RAPE.

III.

THE HONORABLE [CA] HAS ALREADY AFFIRMED THE CONVICTION OF [CAOILI] FOR THE CRIME OF RAPE BY SEXUAL ASSAULT.

IV.

THE LAST PARAGRAPH OF SECTION 14, RULE 110 OF THE RULES OF COURT, IN RELATION TO SECTION 19, RULE 119, OF THE SAME RULES, IS NOT APPLICABLE IN THE INSTANT CASE.

In G.R. No. 196848, *Caoili* raises the following issues[30] for our consideration:

I.

WHETHER RAPE BY SEXUAL ASSAULT IS NECESSARILY INCLUDED IN RAPE BY SEXUAL INTERCOURSE;

II.

WHETHER THE CASE MAY BE REMANDED TO THE COURT *A QUO* FOR FURTHER PROCEEDINGS PURSUANT TO SECTION 14, RULE 110 AND SEC. 19, RULE 119 OF THE RULES OF COURT;

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[30] *Rollo* (G.R. No. 196848), pp. 21-22.

III.

WHETHER THE PROSECUTION HAS SUFFICIENTLY ESTABLISHED BEYOND REASONABLE DOUBT THE GUILT OF [CAOILI] ON [sic] THE CRIME CHARGED IN THE INFORMATION;

IV.

WHETHER THE DECISION OF THE HONORABLE [CA] ACQUITTED [CAOILI.]

The Court's Ruling

The petitions lack merit.

The prosecution has established rape by sexual assault.

R.A. No. 8353 or the "Anti-Rape Law of 1997" amended Article 335, the provision on rape in the RPC, reclassifying rape as a crime against persons and introducing rape by "sexual assault," as differentiated from rape through "carnal knowledge" or rape through "sexual intercourse."[31] Incorporated into the RPC by R.A. No. 8353, Article 266-A reads:

> 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 is 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[.]

[31] *People v. Pareja*, 724 Phil. 759 (2014).

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of **sexual assault** by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[32] (Emphasis ours)

Thus, rape under the RPC, as amended, can be committed in two ways:

(1) Article 266-A paragraph 1 refers to **rape through sexual intercourse**, also known as "organ rape" or "penile rape." The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt.

(2) Article 266-A paragraph 2 refers to **rape by sexual assault**, also called "instrument or object rape," or "gender-free rape." It must be attended by any of the circumstances enumerated in sub-paragraphs (a) to (d) of paragraph 1.[33] (Emphasis ours)

Through AAA's testimony, the prosecution was able to prove that Caoili molested his own daughter when he inserted his finger into her vagina and thereafter made a push and pull movement with such finger for 30 minutes,[34] thus, clearly establishing rape by sexual assault[35] under paragraph 2, Article 266-A of the RPC.

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[32] *Id*. at 781.

[33] *Id*. at 782.

[34] Records, p. 88.

[35] Rape by sexual assault has the following elements: (1) That the offender commits an act of sexual assault; (2) That the act of sexual assault is committed by any of the following means: (a) By inserting his penis into another person's mouth or anal orifice; or (b) **By inserting any instrument or object into the genital or anal orifice of another person**; (3) That the act of sexual assault is accomplished under any of the following circumstances: (a) By using force and intimidation; (b) When the woman is deprived of reason or otherwise unconscious; or (c) By means of fraudulent machination or grave abuse of authority; or (d) When the woman is under 12 years of age or demented. (*People v. Soria*, 698 Phil. 676 [2012])

Caoili, however, questions AAA's credibility, arguing that her testimony lacked veracity since she harbored hatred towards him due to the latter's strict upbringing.[36]

The Court however, oppugns the veracity of Caoili's claim.

It is settled that ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.[37]

AAA was a little over 15 years old when she testified,[38] and she categorically identified Caoili as the one who defiled her. She positively and consistently declared that Caoili inserted his finger into her vagina and that she suffered tremendous pain during the insertion. Her account of the incident, as found by the RTC[39] and the CA,[40] was clear, convincing and straightforward, devoid of any material or significant inconsistencies.

In People v. Pareja,[41] the Court held that:

> [T]he "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied the appellate courts, and when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court."[42]

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[36] *Rollo* (G.R. No. 196848), p. 28.

[37] *Rondina v. People*, 687 Phil. 274 (2012).

[38] Records, p. 96.

[39] The RTC's Decision states: "x x x this Court finds the testimony of AAA, who was little over fifteen years old at the time she testified, to be clear, convincing and straightforward, devoid of any material or significant inconsistencies. x x x." *Id*.

[40] The CA held: "We also find no cogent reason to disturb the findings of the trial court upholding [AAA]'s credibility. x x x."*Rollo* (G.R. No. 196342), p. 58.

[41] *Supra* note 31.

[42] *Id*. at 773.

While there are recognized exceptions to the rule, this Court has found no substantial reason to overturn the identical conclusions of the trial and appellate courts on the matter of AAA's credibility.[43]

When a rape victim's testimony on the manner she was molested is straightforward and candid, and is corroborated by the medical findings of the examining physician, as in this case, the same is sufficient to support a conviction for rape.[44] In a long line of cases,[45] this Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. Indeed, leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.[46]

It is likewise settled that in cases where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[47]

Verily, the prosecution has sufficiently proved the crime of rape by sexual assault as defined in paragraph 2 of Article 266-A of the RPC. Caoili, however, cannot be convicted of said crime.

Rape by sexual assault is not subsumed in rape through sexual intercourse.

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[43] *Id*.

[44] *People v. Soria*, *supra* note 35.

[45] *Ricalde v. People*, 751 Phil. 793, 805 (2015), citing *Pielago v. People*, 706 Phil. 460 (2013); *Campos v. People*, 569 Phil. 658, 671 (2008), quoting *People v. Capareda*, 473 Phil. 301, 330 (2004); *People v. Galigao*, 443 Phil. 246, 260 (2003).

[46] *Ricalde v. People*, *supra* note 45.

[47] *People v. Padua*, 661 Phil. 366 (2011); *People v. Corpuz*, 597 Phil. 459 (2009).

We cannot accept the OSG's argument that based on the variance doctrine,[48] Caoili can be convicted of rape by sexual assault because this offense is necessarily included in the crime of rape through sexual intercourse.

The variance doctrine, which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged, is embodied in Section 4, in relation to Section 5 of Rule 120 of the Rules of Court, which reads:

Sec. 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, **the accused shall be convicted of the offense proved which is included in the offense charged**, or of the offense charged which is included in the offense proved. (Emphasis ours)

Sec. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

By jurisprudence,[49] however, an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual assault, even though the latter crime was proven during trial. This is due to the substantial distinctions between these two modes of rape.[50]

The elements of rape through sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge

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[48] Embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Court.

[49] *People v. Abulon*, 557 Phil. 428 (2007); *People v. Pareja*, *supra* note 31; *People v. Cuaycong,* 718 Phil. 633 (2013).

[50] *People v. Pareja*, *supra* note 31.

of a woman; and (3) that such act is accomplished by using force or intimidation.[51] Rape by sexual intercourse is a crime committed by a man against a woman, and the central element is carnal knowledge.[52]

On the other hand, the elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.[53]

In the first mode (rape by sexual intercourse): (1) the offender is always a man; (2) the offended party is always a woman; (3) rape is committed through penile penetration of the vagina; and (4) the penalty is *reclusion perpertua*.[54]

In the second mode (rape by sexual assault): (1) the offender may be a man or a woman; (2) the offended party may be a man or a woman; (3) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) the penalty is *prision mayor*.[55]

The Court *en banc*'s categorical pronouncement in *People v. Abulon*,[56] thus, finds application:

> In view of the material differences between the two modes of rape, the first mode is not necessarily included in the second, and vice-versa. Thus, since the charge in the Information in Criminal

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[51] *People v. Alfredo*, 653 Phil. 435 (2010).

[52] *People v. Espera*, 718 Phil. 680 (2013).

[53] *People v. Alfredo*, *supra* note 51.

[54] *People v. Espera, supra* note 52, citing *People v. Abulon*, *supra* note 49.

[55] *Id*.

[56] *Supra* note 49.

Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven, without violating his constitutional right to be informed of the nature and cause of the accusation against him.[57]

Our esteemed colleague, Justice Marvic M.V.F. Leonen (Justice Leonen), is of the view that Caoili should be convicted of rape by sexual intercourse.[58] According to him, sexual intercourse encompasses a wide range of sexual activities, and is not limited to those involving penetration, genitals, and opposite sexes;[59] it may be penetrative or simply stimulative.[60] Thus, he maintains that Caoili's act of inserting his finger into his daughter's genitalia qualifies as carnal knowledge or sexual intercourse.[61]

The Court, however, cannot adopt Justice Leonen's theory.

The language of paragraphs 1 and 2 of Article 266-A of the RPC, as amended by R.A. No. 8353, provides the elements that substantially differentiate the two forms of rape, *i.e.*, rape by sexual intercourse and rape by sexual assault. It is through legislative process that the dichotomy between these two modes of rape was created. To broaden the scope of rape by sexual assault, by eliminating its legal distinction from rape through sexual intercourse, calls for judicial legislation which We cannot traverse without violating the principle of separation of powers. The Court remains steadfast in confining its powers within the constitutional sphere of applying the law as enacted by the Legislature.

In fine, given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if

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[57] *Id*. at 455.

[58] Dissenting Opinion of Justice Marvic M.V.F. Leonen; p. 6.

[59] *Id*. at 12.

[60] *Id*.

[61] *Id*. at 7.

the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.

The Court, thus, takes this occasion to once again remind public prosecutors of their crucial role in drafting criminal complaints or Information. They have to be more judicious and circumspect in preparing the Information since a mistake or defect therein may not render full justice to the State, the offended party and even the offender.

Thus, in *Pareja*,[62] the Court held that:

> The primary duty of a lawyer in public prosecution is to see that justice is done – to the State, that its penal laws are not broken and order maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his crime.[63]

Caoili can be convicted of the crime of lascivious conduct under Section 5(b) of R.A. No. 7610.

R.A. No. 7610[64] finds application when the victims of abuse, exploitation or discrimination are children or those "persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."[65]

It is undisputed that at the time of the commission of the lascivious act, AAA was fourteen (14) years, one (1) month and ten (10) days old. This calls for the application of Section 5(b) of R.A. No. 7610[66] which provides:

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[62] *Supra* note 31.

[63] *Id.* at 785.

[64] Special Protection of Children against Abuse, Exploitation and Discrimination Act.

[65] *People v. Chingh*, 661 Phil. 208, 223 (2011).

[66] *Id.*

SEC. 5. *Child Prostitution and Other Sexual Abuse*. Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse or **lascivious conduct**, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or **lascivious conduct with a child** exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period. (Emphasis ours.)

The elements of sexual abuse under Section 5(b) of R.A. No. 7610 are as follows:

(1) The accused commits the act of sexual intercourse or **lascivious conduct**;

(2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

(3) The child, whether male or female, is below 18 years of age.[67] (Emphasis ours)

The prosecution's evidence has sufficiently established the elements of lascivious conduct under Section 5(b) of R.A. No. 7610.

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[67] *Roallos v. People*, 723 Phil. 655 (2013); *Caballo v. People*, 710 Phil. 792 (2013); *People v. Rayon, Sr.*, 702 Phil. 672 (2013); *Garingarao v. People*, 669 Phil. 672 (2011); and *Olivarez v. CA and People*, 503 Phil. 421 (2005).

Caoili's lascivious conduct

The evidence confirms that Caoili committed lascivious acts against AAA when he kissed her lips, touched and mashed her breast, and inserted his finger into her vagina and made a push and pull movement with such finger for 30 minutes.

AAA's testimony during direct examination showed how her father, Caoili, committed lascivious acts against her:

(On Direct Examination)

Pros. Silvosa

Q Now, was there any unusual incident that happened at around 7:00 o'clock in the evening of October 23, 2005?
A Yes, sir.

Q What happened on October 23, 2005 at around 7:00 o'clock in the evening?
A **First, he kissed my lips, 2nd, he touched and mashed my breast and his 4th finger touched my private part**.

Court

Q **4th finger of what hand?**
A **Left, your Honor**.

x x x x x x x x x

Q Who has done this to you?
A Noel Go Caoili.

Pros. Silvosa

Q If that Noel Go Caoili is present in the courtroom, can you identify him?
A Yes, sir.

Court

Q **What is your relationship with Noel Caoili?**
A **My father**.

x x x x x x x x x

Pros. Silvosa

Q [AAA], you said that your father touched your vagina and

inserted his, the 4th finger of his left hand, for how many minutes, if you could still recall, when he inserted... I withdraw the question, your Honor... What specifically did he do with his 4th finger in your vagina?

A He inserted it in my vagina, sir.

Q While the finger was already inside your vagina, what did he do with his finger?

A He inserted it and pulled it, he inserted and pulled it inside my vagina.

Q Can you still recall or how many or for how long did he made [sic] the push and pull movement of his fingers inside you vagina?

A Thirty 30 minutes, sir.

Q Now, what did you feel while the finger of your father was inserted in your vagina?

A **Pain, sir**.[68] (Emphasis ours)

AAA likewise confirmed on cross examination[69] that Caoili molested her. She even recounted that her father threatened her not to tell anybody about the incident.

Caoili's acts are clearly covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2 of the rules and regulations[70] of R.A. No. 7610:

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or **coercion** of a child to engage in, or assist another person to engage in, sexual intercourse or **lascivious conduct** or the molestation, prostitution, or incest with children;

(h) "Lascivious conduct" means the **intentional touching**, either directly or through clothing, of the **genitalia**, anus, groin, **breast**, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to **abuse**, humiliate, harass, degrade, or arouse or

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[68] TSN, January 10, 2007, pp. 7-8, 12.

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

[70] Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Done in the City of Manila: October 1993).

gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (Emphasis ours)

It has been settled that Section 5(b) of R.A. No. 7610 does not require a prior or contemporaneous abuse that is different from what is complained of, or that a third person should act in concert with the accused.[71]

The victim's minority

AAA was a child below 18 years old at the time the lascivious conduct was committed against her. Her minority was both sufficiently alleged in the Information and proved.

Influence and coercion

"Influence" is the improper use of power or trust in any way that deprives a person of free will and substitutes another's objective. On the other hand, "coercion" is the improper use of power to compel another to submit to the wishes of one who wields it.[72]

In *People v. Leonardo*,[73] the Court ruled that:

> Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct. To repeat, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[74]

It cannot be denied that AAA, who is only a little over 14 years old at the time the offense was committed, was vulnerable

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[71] *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[72] *Caballo v. People*, *supra* note 67.

[73] 638 Phil. 161 (2010).

[74] *Id*. at 188.

and would have been easily intimidated by an attacker who is not only a grown man but is also someone exercising parental authority over her. Even absent such coercion or intimidation, Caoili can still be convicted of lascivious conduct under Section 5(b) of R.A. No. 7610 as he evidently used his moral influence and ascendancy as a father in perpetrating his lascivious acts against AAA. It is doctrinal that moral influence or ascendancy takes the place of violence and intimidation.[75]

It bears emphasis, too, that consent is immaterial in cases involving violation of Section 5 of R.A. No. 7610.[76] The mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense because it is a *malum prohibitum*, an evil that is proscribed.[77]

Clearly, therefore, all the essential elements of lascivious conduct under Section 5(b) of R.A. No. 7610 have been proved, making Caoili liable for said offense.

Variance doctrine applied

Caoili had been charged with rape through sexual intercourse in violation of Article 266-A of the RPC and R.A. No. 7610. Applying the variance doctrine under Section 4, in relation to Section 5 of Rule 120 of the Revised Rules of Criminal Procedure, Caoili can be held guilty of the lesser crime of acts of lasciviousness performed on a child, *i.e.*, lascivious conduct under Section 5(b) of R.A. No. 7610, which was the offense proved, because it is included in rape, the offense charged.[78] This echoes the Court's pronouncement in *Leonardo*, *viz.*:

> This Court holds that the lower courts properly convicted the appellant in Criminal Case Nos. 546-V-02, 547-V-02, 548-V-02, 554-V-02 and 555-V-02 for five counts of sexual abuse under Section

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[75] *People v. Deligero*, 709 Phil. 783 (2013).

[76] *Caballo* v. *People*, *supra* note 67.

[77] *Id.*

[78] See *People v. Leonardo*, *supra* note 73.

5(b), Article III of Republic Act No. 7610 even though the charges against him in the aforesaid criminal cases were for rape in relation to Republic Act No. 7610. The lower court['s] ruling is in conformity with the **variance doctrine** embodied in Section 4, in relation to Section 5, Rule 120 of the Revised Rules of Criminal Procedure, x x x:

x x x x x x x x x

With the aforesaid provisions, the **appellant can be held guilty of a lesser crime of acts of lasciviousness performed on a child, *i.e.*, sexual abuse under Section 5(b), Article III of Republic Act No. 7610, which was the offense proved because it is included in rape, the offense charged**.[79] (Emphasis ours)

The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not.[80] Nonetheless, the right is not transgressed if the information sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused,[81] which, in this case, is lascivious conduct under Section 5(b) of R.A. No. 7610.

Guidelines: Nomenclature of crime and penalties for lascivious conduct under Section 5(b) of R.A. No. 7610

The Court is aware of its previous pronouncements where, applying the variance doctrine, it convicted the accused, charged with the rape of a minor, for the offense designated not as "Lascivious Conduct under Section 5(b) of R.A. No. 7610" but as "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610."

Thus, in *People v. Bon*,[82] the accused was charged with having carnal knowledge of a six-year-old child against her will and with the use of force and intimidation. The trial court convicted

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[79] *Id*. at 197-198.

[80] *People v. Manansala*, 708 Phil. 66 (2013).

[81] *Id.*

[82] 444 Phil. 571 (2003).

the accused of rape. The evidence, however, merely showed that accused inserted his finger into the victim's vaginal orifice. Applying the variance doctrine, the Court *en banc* held that the accused could still be made liable for acts of lasciviousness under the RPC because said crime is included in rape. The accused was convicted of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610, since all the elements of the said offense were established.

Likewise, in *Navarrete v. People*,[83] the accused was charged with statutory rape for having sexual intercourse with a five-year-old girl. Absent clear and positive proof of the entry of accused's penis into the labia of the victim's vagina, the trial court convicted the accused of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610. The CA and this Court affirmed the conviction. In the case of *Bon*,[84] the Court held that the crime of acts of lasciviousness is included in rape. The Court likewise found that the victim's testimony established that accused committed acts of lewdness which amounted to lascivious conduct under R.A. No. 7610.

So also, in *People v. Rellota*,[85] the Court modified the accused's conviction for attempted rape[86] of a 12-year-old minor to a conviction for Acts of Lasciviousness as defined in the RPC in relation to Section 5 of R.A. No. 7610, holding that the accused's acts, while lascivious, did not exactly demonstrate an intent to have carnal knowledge with the victim. The Court applied the variance doctrine and reiterated that the crime of acts of lasciviousness is included in rape. The conviction was based on the Court's finding that the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct as defined in the rules and regulations of R.A. No. 7610 have been established.

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[83] 542 Phil. 496 (2007).

[84] *People vs. BON*, *supra* note 82.

[85] 640 Phil. 471 (2010).

[86] Accused in this case was also convicted of two (2) counts of consummated rape.

Based on the language of Section 5(b) of R.A. No. 7610, however, the offense designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed. This finds support in the first *proviso* in Section 5(b) of R.A. No. 7610 which requires that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct*, *as the case may be.*" Thus, pursuant to this *proviso*, it has been held that before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.[87]

Conversely, when the victim, at the time the offense was committed, is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition,[88] the nomenclature of the offense should be Lascivious Conduct under Section 5(b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.

In the case at bar, AAA was a little over 14 years old when the lascivious conduct was committed against her. Thus, We used the nomenclature "Lascivious Conduct" under Section 5(b) of R.A. No. 7610.

Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

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[87] *People v. Bonaagua*, 665 Phil. 750 (2011); *Navarrete v. People*, *supra* note 83, citing *Amployo v. People*, 496 Phil. 747 (2005).

[88] *See* Section 3(a), R.A. No. 7610.

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[89]

The CA's order to remand the case to the trial court is procedurally infirm.

The CA erred in remanding the case to the trial court for the purpose of filing the proper Information on the basis of the last paragraph of Section 14, Rule 110 and Section 19, Rule 119 of the Rules of Court, which read:

> **Sec. 14.** *Amendment or substitution.* — x x x
>
> x x x x x x x x x
>
> If it appears at any time **before judgment** that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

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[89] *People v. Bacus*, G.R. No. 208354, August 26, 2015, 768 SCRA 318; *People v. Baraga*, 735 Phil. 466 (2014); and *People v. Rayon*, 702 Phil. 672 (2013).

Sec. 19. *When mistake has been made in charging the proper offense*. — When it becomes manifest at any time **before judgment** that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information. (Emphasis ours)

It is clear that the rules are applicable only before judgment has been rendered. In this case, the trial has been concluded. The RTC already returned a guilty verdict, which has been reviewed by the CA whose decision, in turn, has been elevated to this Court.

The CA's judgment did not amount to an acquittal.

Contrary to Caoili's stance, the CA's decision did not amount to a judgment of acquittal. It is true the CA declared that given the substantial distinctions between rape through sexual intercourse, as charged, and rape by sexual assault, which was proved, "no valid conviction can be had without running afoul of the accused's Constitutional right to be informed of the charge." This statement, however, must be read alongside the immediately succeeding directive of the appellate court, remanding the case to the RTC **for further proceedings** pursuant to Section 14, Rule 110 and Section 19, Rule 119 of the Rules of Court. Said directive clearly shows that the CA still had cause to detain Caoili and did not discharge him; in fact, the CA would have Caoili answer for the proper Information which it directed the prosecution to file. These are not consistent with the concept of acquittal which denotes a discharge, a formal certification of innocence, a release or an absolution.[90] While the procedure adopted by the CA is certainly incorrect, its decision cannot be deemed to have the effect of an acquittal.

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[90] *See* definitions of "Acquittal" and "Acquitted" in *Black's Law Dictionary,* Fifth Edition.

Penalty and Damages

Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

Since the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated.[91] In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating.[92] With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e.*, *reclusion perpetua*,[93] without eligibility of parole.[94] This is in consonance with Section 31(c)[95] of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.

Likewise, Section 31(f)[96] of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of Php 15,000.[97]

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[91] *People v. Sumingwa,* 618 Phil. 650 (2009).

[92] *Id*.

[93] *People v. Gaduyon,* 720 Phil. 750 (2013); *People v. Sumingwa*, *supra* note 91.

[94] *People v. Bacus*, *supra* note 89.

[95] Article XII, Section 31. *Common Penal Provisions.—*

x x x x x x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

[96] Article XII, Section 31. *Common Penal Provisions*.—

x x x x x x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[97] *People v. Bacus, supra* note 89.

Parenthetically, considering the gravity and seriousness of the offense, taken together with the evidence presented against Caoili, this Court finds it proper to award damages.

In light of recent jurisprudential rules, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua*, the victim is entitled to civil indemnity, moral damages and exemplary damages each in the amount of Php 75,000.00, regardless of the number of qualifying aggravating circumstances present.[98]

The fine, civil indemnity and all damages thus imposed shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.[99]

WHEREFORE, both petitions are **DENIED.** The Court of Appeals' July 22, 2010 Decision and March 29, 2011 Resolution are **SET ASIDE**. Accused Noel Go Caoili alias *Boy Tagalog* is guilty of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole, and to pay a fine of Php 15,000.00. He is further ordered to pay the victim, AAA, civil indemnity, moral damages and exemplary damages each in the amount of Php 75,000.00. The fine, civil indemnity and damages so imposed are subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Peralta, J., see separate concurring opinion.

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

[99] *Id.*

Caguioa, J., see separate opinion.

Leonen and *Martires, JJ.,* see dissenting opinions.

SEPARATE CONCURRING OPINION

PERALTA, *J*.:

I concur with the *ponencia* in finding accused Noel Go Caoili *alias* "Boy Tagalog" guilty beyond reasonable doubt of sexual abuse under Section 5(b),[1] Article III of Republic Act (R.A.) No. 7610, or the "*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*," and not the crime of acts of lasciviousness under Article 336[2] of the Revised Penal Code (*RPC*) in relation to Section 5(b) of R.A. No. 7610.

First. While there is a variance between the offense charged [rape by sexual intercourse] and those offenses proved [sexual abuse under Section 5(b), Article III of R.A. No. 7610 and rape by sexual assault], Caoili can be convicted of sexual abuse under R.A. No. 7610 because it was the offense proved during

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[1] Section 5. *Child Prostitution and Other Sexual Abuse*.– Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: xxx

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be*: Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

[2] Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional.*

trial, and it is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in rape. However, due to the material differences between the two modes of committing rape, settled jurisprudence holds that rape by sexual intercourse is not necessarily included in rape by sexual assault, *vice-versa*, and that an accused cannot be found guilty of rape by sexual assault even though it was proved, if the charge is rape by sexual intercourse.

Second. Exception must be taken as to the applicability to this case of *People v. Nazareno*[3] where it was held that rape by sexual assault committed at the time when the Anti-Rape Law of 1997 (R.A. No. 8353) was already in effect, although proven, should not have been considered by the trial and appellate courts for lack of a proper allegation in the information, which only charged the accused with rape by sexual intercourse.

Third. Sexual abuse under Section 5(b), Article III of R.A. No. 7610 and acts of lasciviousness under Article 336 of the RPC are separate and distinct from each other, despite the fact that the essential elements or ingredients of both crimes barely have material or substantial differences.

Fourth. The penalty for sexual abuse under Section 5(b), Article III of R.A. No. 7610 varies if the age of the child victim is either below 12 years of age or between Twelve (12) to Seventeen (17) years of age, as well as Eighteen (18) and above but under special circumstances.[4]Also, the crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610, can only be committed against a victim who is less than 12 years old or one who cannot give intelligent consent.

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[3] 574 Phil. 175, 206 (2008).

[4] R.A. No. 7610, Section. 3. *Definition of Terms*. –

(a) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect

Fifth. In view of possible different opinions between and among the crimes of rape through carnal knowledge under Article 266, paragraph 1 of the RPC, rape by sexual assault under Article 266-A, paragraph 2, acts of lasciviousness under Article 336 of the RPC, and sexual abuse under Section 5(b), Article III of R.A. No. 7610, a copy of this Decision, including the Separate Opinions, should be furnished the President of the Republic of the Philippines, through the Department of Justice, as well as the President of the Senate and the Speaker of the House of Representatives, to enable them to review the said laws for possible amendments.

The antecedents are as follows:

On July 7, 2006, Caoili was indicted for rape by sexual intercourse committed against his fifteen (15)-year-old daughter, AAA. During trial, AAA testified that Caoili kissed her lips, touched and mashed her breasts, inserted the forefinger of his left hand into her vagina, then made a push-and-pull movement inside her for about thirty (30) minutes. The accusatory portion of the Information reads:

> That, on or about the 23rd day of October 2005, at 7:00 o'clock in the evening, more or less, in Purok [III], Barangay [JJJ], [KKK], [LLL], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom and intelligence, with lewd design, did then and there, willfully, unlawfully and feloniously had sexual intercourse with one [AAA], a minor, fifteen (15) years of age and the daughter of herein accused, through force, threat and intimidation and against her will, to her damage and prejudice in the amount as may be allowed by law.
>
> CONTRARY TO Article 266-A, in relation to Article 266-B of R.A. 8353, with the aggravating circumstance that the accused is the father of the victim and R.A. 7610.[5]

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themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

[5] Records, p. 1.

After trial, the Regional Trial Court of Surigao City, Branch 30,[6] found Caoili guilty of rape by sexual assault. On appeal, the Court of Appeals[7] set aside the decision, and ordered the immediate remand of the case for further proceedings, pursuant to Section 14, Rule 110, in relation to Section 19, Rule 119 of the Rules of Court.

Before us, the *ponencia* opined that even if the elements of rape by sexual assault have been proven by the prosecution, Caoili could not be held guilty of the crime proved during trial. Citing *People v. Pareja*[8] and *People v. Abulon*,[9] the *ponencia* held that due to the material differences and substantial distinctions between the two modes of committing rape, rape by sexual intercourse is not necessarily included in rape by sexual assault, and *vice-versa*. Nonetheless, under the variance doctrine embodied under Sections 4 and 5, Rule 120 of the Rules of Court, sufficient evidence exists to convict Caoili of the crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610. The *ponencia* sentenced Caoili to suffer *reclusion perpetua*, and to pay the victim a fine of ₱15,000.00, as well as civil indemnity, moral damages, and exemplary damages, in the amount of ₱75,000.00 each, plus interest rate of six percent (6%) *per annum* from finality of the judgment until fully paid.

I explain my concurrence with the *ponencia.*

To be sure, Caoili cannot be merely convicted of the lesser crime of acts of lasciviousness under Article 336 of the RPC in an information charging rape by sexual intercourse, because what were proved during trial are sexual abuse under Section 5(b), Article III of R.A. No. 7610 **and** rape by sexual assault

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[6] Penned by Presiding Judge Floripinas C. Buyser.

[7] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Leoncia R. Dimagiba and Nina G. Antonio-Valenzuela, concurring.

[8] 724 Phil. 759 (2014).

[9] 557 Phil. 428 (2007).

under Article 266-A, paragraph 2 of the RPC. Conviction for such lesser crime is not only unfair to the victim who is no less than his minor daughter, but also violates the declaration of state policy and principles under Section 2 of R.A. No. 7610 and Section 3(2), Article XV of the 1987 Constitution, which provide for special protection to children from all forms of abuse, neglect, cruelty, exploitation and other conditions prejudicial to their development.

I fully agree with the doctrine in *Abulon*[10] and *Pareja*[11] to the effect that an accused cannot be found guilty of rape by sexual assault although it was proven, if the charge in the information is rape by carnal knowledge in view of the material differences[12] between rape by sexual intercourse and rape by sexual assault, as well as the constitutional right to be informed of the nature and cause of the accusation against him. I also do not dispute the well-settled principles in the cases[13] cited by the *ponencia* that a charge of acts of lasciviousness is necessarily included in a complaint for rape, and that an accused charged with rape by carnal knowledge or sexual intercourse, can still be convicted of the lesser crime of acts of lasciviousness, pursuant

[10] *Supra* note 9.

[11] *Supra* note 8.

[12] The differences between the two modes of committing rape are the following:

(1) In the first mode, the offender is always a man, while in the second, the offender may be a man or a woman;

(2) In the first mode, the offended party is always a woman, while in the second, the offended party may be a man or a woman;

(3) In the first mode, rape is committed through penile penetration of the vagina, while the second is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and

(4) The penalty for rape under the first mode is higher than that under the second.

[13] *People v. Poras*, 626 Phil. 526 (2010); *People v. Rellota*, 640 Phil. 471 (2010); and *People v. Garcia*, 695 Phil 576 (2012).

to the variance doctrine under Section 4, in relation to Section 5, Rule 120[14] of the Rules of Court.

After a careful review of the relevant laws and jurisprudence, however, I find that Caoili should be convicted instead of sexual abuse under Section 5(b) of Article III of R.A. No. 7610, pursuant to the variance doctrine because it was the crime proved during trial, and it is necessarily included in acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in the crime of rape.

The 1987 Constitution mandates that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him.[15] From this fundamental law stems the rule that an accused can only be convicted of a crime charged in the information, and proved beyond reasonable doubt during trial.[16] To convict the accused of an offense other than that charged in the information would violate the Constitutional right to be informed of the nature and cause of the accusation, unless the crime is alleged or necessarily included in the information filed against him. [17]

For the variance doctrine to apply, it is required that (1) there is a variance between an offense charged and that proved,

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[14] SEC. 4. *Judgment in case of variance between allegation and proof.*— When there is variance between the offense charge in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.*—An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[15] Article III, Section 14 (2).

[16] *Parungao v. Sandiganbayan, et al.*, 274 Phil. 451, 459 (1991).

[17] *Patula v. People of the Philippines*, 685 Phil. 376, 388 (2012).

and (2) the offense as charged is included in or necessarily includes the offense proved. Under the variance doctrine, the accused shall either be convicted (1) of the offense proved which is included in the offense charged, or (2) of the offense charged which is included in the offense proved.

While there is a variance between the offense charged [rape by sexual intercourse] and that proved [sexual abuse under R.A. No. 7610 and rape by sexual assault], Caoili should be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610 because it was the offense proved during trial, and it is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in rape.

An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter, whereas an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.[18]

The elements of acts of lasciviousness under Article 336 of the RPC, on the one hand, are:

1. The offender commits any act of lasciviousness or lewdness;
2. That it is done under any of the following circumstances:
   a. By using force or intimidation; or
   b. When the offended party is deprived of reason or otherwise unconscious; or
   c. When the offended party is under 12 years of age; and
3. That the offended party is another person of either sex.

As correctly noted by the *ponencia*, lewdness is defined as an obscene, lustful, indecent, and lecherous act which signifies that form of immorality which has relation to moral impurity; or that which is carried in a wanton manner. Moreover, the

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[18] Sec. 5, Rule 120, Rules of Court.

presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.

The elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610, on the other hand, are:

1. The accused commits a sexual intercourse or lascivious conduct;
2. The said act was performed with a child exploited in prostitution or subjected to sexual abuse; and
3. The child, whether male or female, is below 18 years of age.

Promulgated in relation to Section 32 of R.A. No. 7610 are the Rules and Regulations (*IRR*) on the Reporting and Investigation of Child Abuse Cases which define the terms "sexual abuse" and "lascivious conduct":

Section 2. Definition of Terms. – As used in these Rules, unless the context requires otherwise –

x x x x x x x x x

g) "**Sexual Abuse**" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in sexual intercourse or **lascivious conduct** or the molestation, prostitution, or incest with children;

h) "**Lascivious conduct**" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person; x x x[19]

A comparison of the essential elements or ingredients of sexual abuse under Section 5(b), Article III of R.A. No. 7610 and acts lasciviousness under Article 336 of the RPC barely reveals any material or substantial difference between them. The first element of sexual abuse under R.A. No. 7610, which includes lascivious

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[19] Emphasis added.

conduct, lists the particular acts subsumed under the broad term "act of lasciviousness or lewdness" under Article 336. The second element of "*coercion and influence*" as appearing under R.A. No 7610 is likewise broad enough to cover "*force and intimidation*" as one of the circumstances under Article 336.[20] Anent the third element, the offended party under R.A. No. 7610 and Article 336 may be of either sex, save for the fact that the victim in the former must be a child. I, therefore, posit that the sexual abuse under Section 5(b), Article III of R.A. No. 7610 is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC.

Applying the variance doctrine in this case where the crime charged is rape by sexual intercourse, Caoili can still be convicted of sexual abuse under Section 5(b), Article III of R.A No. 7610. This is because the same crime was proved during trial and is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in a complaint for rape. For the same reason, the CA erred in applying Section 14,[21] Rule 110, in relation to Section 19,[22] Rule 119 of the Rules of Court, and ordering the remand of the case for further proceedings. Suffice it to stress that the provisions on substitution of information applies only

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[20] *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[21] SEC. 14. *Amendment or substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

x x x x x x x x x

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

[22] SEC. 19. *When mistake has been made in charging the proper offense.* – When it becomes manifest at any time before judgment that a mistake has

when (1) there is a mistake in charging the proper offense, and (2) the accused cannot be convicted of the offense charged or any other offense necessarily included in the offense charged. The second requisite is absent in this case.

As held in *Dimakuta v. People*,[23] if the victim of lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused may be held liable for:

x x x x x x x x x

2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. **In case the acts of lasciviousness is covered by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable.**

x x x x x x x x x[24]

Before an accused can be held criminally liable of lascivious conduct, which is included in sexual abuse under Section 5(b), Article III of R.A. No. 7610, the requisites of acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites of sexual abuse under the said Section 5(b), namely: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act was performed with a child exploited in prostitution or subjected to sexual abuse; and (3) the child, whether male or female, is below 18 years of age.[25] All these requisites are present in this case.

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been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information.

[23] G.R. No. 206513, October 20, 2015, 773 SCRA 228.

[24] *Dimakuta v. People*, *supra*, at 264. (Emphasis added).

[25] *Quimvel v. People*, *supra* note 20.

First. Caoili's lewd acts of kissing the victim's lips, mashing her breasts, inserting his finger into her vagina and making a push-and-pull movement inside her for thirty (30) minutes, constitute lascivious conduct as defined in the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases:

> Section 2. Definition of Terms. – As used in these Rules, unless the context requires otherwise—
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> x x x x x x x x x
>
> h) "Lascivious conduct" means the **intentional touching**, either directly or through clothing, of the genitalia, anus, groin, **breast**, inner thigh, or buttocks, or the **introduction of any object into the genitalia**, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person; x x x[26]

Second. Caoili clearly has moral ascendancy over the victim who is his minor daughter. It is settled that in cases where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of violence. It bears emphasis that a child is considered as sexually abused under Section 5(b), Article III of R.A. No. 7610 when he or she is subjected to lascivious conduct under the coercion or influence of any adult, and that moral ascendancy is equivalent to intimidation, which annuls or subdues the free exercise of the will by the offended party. *Apropos* is *Caballo v. People*:[27]

> As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "child exploited in prostitution and other sexual abuse." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and

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[26] Emphasis added.

[27] 710 Phil. 792, 805-806 (2013).

discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

The employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of . . . power to compel another to submit to the wishes of one who wields it."

Third. The victim was admitted and proved to be 14 years old at the time of the commission of the offense. Under Section 3(a) of R.A. No. 7610, "children" refers to persons below eighteen (18) years of age or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

Accordingly, Caoili should be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610, and not just acts of lasciviousness under Article 336 of the RPC, in relation to the same provision of R.A. No. 7610.

In *Quimvel v. People*,[28] (*Quimvel*) the Court held that Section 5(b), Article III of R.A. No. 7610 punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse, and covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or

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[28] *Supra* note 20.

lascivious conduct. The Court noted that the very definition of "child abuse" under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of, for it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Section 5(b) occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront. Moreover, the Court pointed out that it is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). As can be gleaned from Section 5, Article III of R.A. No. 7610, the offense can be committed against "**any adult**, syndicate or group," without qualification. The clear language of the special law, therefore, does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence.

It may not be amiss to state that the absence of the phrase "*exploited in prostitution or subject to other sexual abuse*" or even the specific mention of "*coercion*" or "*influence*" in the Information filed against Caoili, is not a bar to uphold the finding of guilt against an accused for violation of Section 5(b), Article III of R.A. No. 7610. As held in *Quimvel*:

> x x x Just as the Court held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of *"force and intimidation,"* the Court must also rule that the information in the case at bench does not suffer from the alleged infirmity.
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> So too did the Court find no impediment in *People v. Abadies, Malto v. People, People v. Ching, People v. Bonaagua,* and *Caballo v. People* to convict the accused therein for violation of Sec. 5, RA 7610 notwithstanding the non-mention in the information of "*coercion," influence,"* or *"exploited in prostitution or subject to other abuse."*[29]

[29] Citations omitted.

In seeking his acquittal, Caoili cites *People v. Nazareno*[30] and argues that he cannot be convicted of rape by sexual assault because even if it was proved during trial, the crime specifically alleged in the information is sexual intercourse, which is a separate and distinct crime. The accusatory portion of the said Information docketed as Criminal Case No. 2638 for violation of Article 266-A of the RPC, reads:

> That from sometime in January 1990 up to December 1998 in Barangay Codon, Municipality of San Andres, Catanduanes, and within the jurisdiction of the Honorable Court, the said accused, being the father of the complainant, did then and there willfully, feloniously and criminally repeatedly had sexual intercourse with her daughter AAA, then five years old up to the time when she was 15 years old against her will.
>
> CONTRARY TO LAW.

The Court ruled in *Nazareno* that considering that the Anti-Rape Law of 1997 (R.A. No. 8353) was already in force at the time of the insertion of appellant's finger in BBB's vagina on December 6, 1998, he should have been prosecuted and tried for rape by sexual assault and not under the traditional definition of rape. This is because under the Revised Rules of Criminal Procedure, the information must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances.[31] Stated otherwise, the accused cannot

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[30] *Supra* note 3.

[31] Rule 110, SEC. 8. *Designation of the offense.*—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

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

be convicted for the offense proved during trial if it was not properly alleged in the information. The Court, thus, held that in Criminal Case No. 2638, appellant should have been convicted only of qualified rape of BBB in January 1992, while the rape by sexual assault committed on December 6, 1998, although proven, should not have been considered by the trial and appellate courts for lack of a proper allegation in the information.

Contrary to Caoili's argument, *Nazareno* is inapplicable to this case for the simple reason that there is no allegation in the afore-quoted information docketed as Criminal Case No. 2638, which even remotely refers to acts constituting a violation of R.A. No. 7610. Caoili was sufficiently apprised of the offense being charged against him, and afforded opportunity to prepare his defense, because the designation of the offense appears in the Information filed against him, to wit:

> That, on or about the 23rd day of October 2005m at 7:00 o'clock in the evening, more or less, in Purok [III], Barangay [JJJ], [KKK], [LLL], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom and intelligence, with lewd design, did then and there, willfully, unlawfully and feloniously had **sexual intercourse** with one [AAA], a minor, fifteen (15) years of age and the daughter of herein accused, through force, threat and intimidation and against her will, to her damage and prejudice in the amount as may be allowed by law.
>
> **CONTRARY TO** Article 266-A, in relation to Art. 266-B of R.A. 8353, with aggravating circumstance that the accused is the father of the victim and **R.A. 7610**.[32]

In particular, Section 5, Article III of R.A. No. 7610 deals with sexual intercourse committed against a child exploited in prostitution and other sexual abuse:

> ARTICLE III
> *Child Prostitution and Other Sexual Abuse*
>
> SECTION 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other

[32] Emphasis added.

consideration or due to the coercion or influence of any adult, syndicate or group, indulge in **sexual intercourse** or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(b) Those who commit the act of **sexual intercourse** or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;[33]

Significantly, while *Nazareno* is silent on the application of the variance doctrine, I have discussed that applying the same doctrine in this case where the crime charged is rape by sexual intercourse, Caoili can still be convicted of sexual abuse committed against a child under Section 5(b), Article III of R.A No. 7610. This is because the latter crime was proved during trial and is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in a complaint for rape.

Since Caoili should be convicted of sexual abuse under R.A. No. 7610, the proper imposable penalty should be taken from *reclusion temporal* in its medium period to *reclusion perpetua* under Section 5(b), Article III thereof, and not *prisión correccional* under Article 336 of the RPC, because the victim was alleged [15 years old] and proved [14 years old] to be a child.

It bears stressing that sexual abuse under Section 5(b), Article III of R.A. No. 7610 and acts of lasciviousness under Article 336 of the RPC are separate and distinct from each other. With due indulgence, may I refer to my Separate Concurring Opinion

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[33] *Id*.

in *Quimvel* where I discussed the difference between the two crimes:

Violation of the first clause of Section 5(b), Article III of R.A. 7610 is separate and distinct from acts of lasciviousness under Article 336 of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements. On the one hand, the elements of violation of the first clause of Section 5(b) are: (1) accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. On the other hand, the elements of acts of lasciviousness under Article 336 are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation; or (b) when the offended party is deprived of reason or otherwise unconscious; or (c) When the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. x x x

I likewise opined that the penalty for sexual abuse under Section 5(b), Article III of R.A. No. 7610 varies if the age of the child victim is either below 12 years of age or between 12 to 17 years of age, as well as 18 and above but under special circumstances:

Moreover, while the first clause of Section 5(b), Article III of R.A. 7610 is silent with respect to the age of the victim, Section 3, Article I thereof defines "children" as those below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability. Notably, two provisos succeeding the first clause of Section 5(b) explicitly state a qualification that when the victims of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period. It is a basic rule in statutory construction that the office of the proviso qualifies or modifies only the phrase immediately preceding it or restrains of limits the generality of the clause that it immediately follows. A proviso is to be construed with

reference to the immediately preceding part of the provisions, to which it is attached, and not to the statute itself or the other sections thereof.[34]

In light of my foregoing, I found it necessary to restate in my Separate Concurring Opinion in *Quimvel* the applicable laws and imposable penalties for acts of lasciviousness committed against a child under Article 336 of the RPC, in relation to R.A. No. 7610:

1. Under 12 years old – Section 5(b), Article III of R.A. 7610, in relation to Article 336 of the RPC, as amended by R.A. 8353, applies and the imposable penalty is ***reclusion temporal*** **in its medium period**, instead of *prisión correccional*. x x x

2. **12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. 7610**[35] – Section 5(b), Article III of R.A. 7610 in relation to Article 336 of the RPC, as amended, applies and the penalty is ***reclusion temporal*** **in its medium period to** ***reclusion perpetua***. This is because the proviso under Section 5(b) apply only if the victim is under 12 years old, but silent as to those 12 years old and below 18; hence, the main clause thereof still applies in the absence of showing that the legislature intended a wider scope to include those belonging to the latter age bracket. xxx[36]

I further submit that the crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610 can only be committed against a victim who is less than 12 years old or one who cannot give intelligent consent. This theory is supported by the provisions of Section 5(b), in relation to Article 335(3), on rape and Article 336 on acts of lasciviousness of the RPC, which deal with statutory rape and statutory acts of lasciviousness, thus:

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[34] *Id.*

[35] Section. 3. *Definition of Terms.* –

(a) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

[36] *Quimvel v. People*, *supra* note 20. (Emphasis added.)

Art. 336, RPC, Act No. 3815 (December 8, 1930)	**R.A. 7610 (June 17, 1992)**
Chapter Two	ARTICLE III
RAPE AND ACTS OF LASCIVIOUSNESS **Art. 335.** ***When and how rape is committed.*** **— Rape is committed by having carnal knowledge of a woman under any of the following circumstances:** 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and **3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present**.	Child Prostitution and Other Sexual Abuse Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following: xxx
The crime of rape shall be punished by *reclusion perpetua.* xxx Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional.*	(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That **when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be***:* *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal in its medium period*; xxx

As can be gleaned from the foregoing provisions, if the victim of a lascivious conduct is from 12 to 17 years old, like in the case at bar, the crime should not be considered as "in relation to Article 336 of the RPC" because the circumstances of absence of consent of the victim, her being deprived of reason or consciousness, and the use of force or intimidation, should already be established in order to hold the accused liable. Thus, if the victim is from 12 years old to 17, or 18 years old, or over but under special circumstances,[37] the crime is sexual abuse under Section 5(b), Article III of R.A. No. 7610, which carries the penalty of *reclusion temporal* medium to *reclusion perpetua*. Note that it is only when the victim is under 12 years old that the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape, and Article 336 of the RPC, for rape or lascivious conduct, as the case may be. Equally noteworthy is the fact that Article 335, paragraph 3 and Article 336 have been amended by R.A. No. 8353, thus:

Chapter Three
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.
x x x x x x x x x

[37] R.A. No. 7610, Section 3. *Definition of Terms*. – (a)"Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

Section 4. *Repealing Clause*. — Article 336 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.[38]

There being no mitigating circumstance to offset the alternative aggravating circumstance of (paternal) relationship[39] as alleged in the Information and proved during trial, I therefore concur that Caoili should be sentenced to suffer the maximum period of the penalty, *i.e.*, *reclusion perpetua*.[40] I also agree with the *ponencia* that Caoili should also be ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each, pursuant to *People v. Jugueta*,[41] and a fine in the amount of ₱15,000.00, pursuant to Section 31(f),[42] Article XII of R.A. No. 7610, with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

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[38] Emphasis added on amended parts and underscoring added.

[39] Article 15 of the Revised Penal Code:

Art. 15. *Their concept.* — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to 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.

x x x x x x x x x

[40] See *People v. Sumingwa*, 618 Phil. 650 (2009).

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

[42] Section. 31. *Common Penal Provisions.* –

x x x x x x x x x

(f) A fine to be imposed by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

Needless to state, Caoili cannot be meted indeterminate sentence computed from the penalty of *prisión correccional* under Article 336 of the RPC, as it would defeat the purpose of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339,[43] which used to be punishable by *arresto mayor*, and now by *prisión correccional* pursuant to Section 10, Article VI of R.A. 7610. **Second**, it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prisión correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child an a probationable offense, pursuant to the Probation Law of 1976,[44] as amended by R.A.

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[43] ARTICLE 339. *Acts of Lasciviousness with the Consent of the Offended Party*. – The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in Articles 337 and 338.

ARTICLE 337. Qualified Seduction. – The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prisión correccional* in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

ARTICLE 338. Simple Seduction. – The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

[44] Presidential Decree No. 968.

No. 10707.[45] Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. No. 7610 and the Constitution on the special protection to children.

As reference for future corrective legislation and for guidance and information purposes, I find it necessary to reiterate the applicable laws and imposable penalties for acts of lasciviousness committed against a child under Article 336 of the RPC, in relation to R.A. No. 7610, as stated in my Separate Concurring Opinion in *Quimvel:*

1. **Under 12 years old** – Section 5(b), Article III of R.A. 7610, in relation to Article 336 of the RPC, as amended by R.A. 8353, applies and the imposable penalty is ***reclusion temporal* in its medium period**, instead of *prisión correccional*. In *People v. Fragante,*[46] *Nonito Imbo y Gamores v. People of the Philippines,*[47] and *People of the Philippines v. Oscar Santos y Encinas,*[48] the accused were convicted of acts of lasciviousness committed against victims under 12 years old, and were penalized under Section 5(b), Artcile III of R.A. 7610, and not under Article 336 of the RPC, as amended.

2. **12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. 7610**[49] – Section 5(b), Article III of R.A. 7610 in relation to Article 336 of the RPC, as

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[45] An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," as amended. Approved on November 26, 2015. Section 9 of the Decree, as amended, provides that the benefits thereof shall not be extended to those "(a) sentenced to serve a maximum term of imprisonment of more than six (6) years." Note: The duration of the penalty of *prisión correccional* is 6 months and 1 day to 6 years.

[46] 657 Phil. 577, 601 (2011).

[47] G.R. No. 197712, April 20, 2015, 756 SCRA 196.

[48] 753 Phil. 637 (2015).

[49] Section. 3. *Definition of Terms*. –

(b) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect from themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

amended, applies and the penalty is ***reclusion temporal*** **in its medium period to** ***reclusion perpetua***. This is because the proviso under Section 5(b) apply only if the victim is under 12 years old, but silent as to those 12 years old and below 18; hence, the main clause thereof still applies in the absence of showing that the legislature intended a wider scope to include those belonging to the latter age bracket. The said penalty was applied in *People of the Philippines v. Ricardo Bacus*[50] and *People of the Philippines v. Rolando Baraga y Arcilla*[51] where the accused were convicted of acts of lasciviousness committed against victims 12 years old and below 18, and were penalized under Section 5(b), Article III of R.A. 7610. But, if the acts of lasciviousness is not covered by lascivious conduct as defined in R.A. 7610, such as when the victim is 18 years old and above, acts of lasciviousness under Article 336 of the RPC applies and the penalty is *prisión correccional*.

Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty [***reclusion temporal*** **medium**] when the victim is under 12 years old is lower compared to the penalty [***reclusion temporal*** **medium to** ***reclusion perpetua***] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,[52] Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from

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[50] G.R. No. 208354, August 26, 2015, 768 SCRA 318.

[51] 735 Phil. 466 (2014).

[52] Section 31. *Common Penal Provisions.* –

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(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. (Emphasis added)

reclusion temporal minimum,[53] whereas as the minimum term in the case of the older victims shall be taken from *prisión mayor medium* to *reclusion temporal minimum.*[54] It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints,[55] but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law.[56] To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

Too, it bears emphasis that R.A. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. 8353, except in sexual assault as a form of rape. Hence, when the lascivious act is not covered by R.A. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. 7610.

In fact, R.A. 8353 only modified Article. 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances[57] applicable to rape, *viz.*: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing

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[53] Ranging from 12 years and 1 day to 14 years and 8 months.

[54] Ranging from 8 years 1 day to 14 years and 8 months.

[55] *Lamb v. Phipps*, 22 Phil. 456 (1912).

[56] *People v. De Guzman*, 90 Phil. 132 (1951).

[57] Aside from use of force or intimidation, or when the woman is deprived of reason or otherwise unconscious.

under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. In fine, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. 8353 for there is no irreconcilable inconsistency between their provisions.

Meanwhile, the Court is also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prisión mayor*. In ***People v. Chingh y Parcia***,[58] the Court noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. 8353 to have disallowed the applicability of R.A. 7610 to sexual abuses committed to children. The Court held that **despite the passage of R.A. 8353, R.A. 7610 is still good law**, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."[59]

Finally, as the Court stressed in ***Mustapha Dimakuta Maruhom v. People,***[60] where the lascivious conduct is covered by the definition under R.A. 7610 where the penalty is *reclusion temporal* medium and the said act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect from herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability

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[58] 661 Phil. 208, 224 (2011).

[59] Section 3 (a), Article I of R.A. 7610.

[60] *Supra* note 23.

or condition, in which case, the offender may still be held liable of sexual abuse under R.A. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.

Let a copy of this Decision and the Separate Opinions be furnished the President of the Republic of the Philippines, through the Department of Justice, pursuant to Article 5[61] of the RPC, the President of the Senate of the Philippines and the Speaker of the House of Representatives, as reference for possible amendments in light of the foregoing observations.

SEPARATE OPINION

CAGUIOA, *J.*:

Having found all the essential elements obtaining in this case, I concur in the result that the accused be convicted of Lascivious Conduct under Section 5(b) of RA 7610.

I differ from the *ponencia* only in the application of Section 5(b) to the facts of the case, specifically, in the requirement of the second element for a conviction under Section 5(b) (*i.e.*, that the *lascivious conduct* is performed with a child exploited in prostitution or subjected to other sexual abuse).

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[61] ARTICLE 5. Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

Section 5(b) reads:

SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or *lascivious conduct*, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period x x x.[1]

The essential elements of a violation of Section 5(b) are: (1) The accused commits the act of sexual intercourse or *lascivious conduct;* (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age.[2]

The phrase "a child exploited in prostitution or subjected to other sexual abuse" in the second element is defined by Section 5 of RA 7610 as "[a child], who (a) for money, profit or other consideration, or (b) due to coercion or influence by an adult, group, or syndicate, indulges in sexual intercourse or lascivious conduct.[3]

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[1] Underscoring supplied.

[2] *People v. Abello*, 601 Phil. 373, 392 (2009), as cited in *J*. Caguioa, Diss. Op. in *Quimvel v. People*, G.R. No. 214497, April 18, 2017, p. 6.

[3] SEC. 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in

This is what distinguishes the "common" or "ordinary" acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) from a violation of Section 5(b). In other words, it must be alleged and proved that:

a) the child is exploited in prostitution; OR
b) the child is subjected to other sexual abuse.

These should already be existing at the time of sexual intercourse or lascivious conduct complained of.

I have earlier stated in my dissent in *Quimvel v. People*[4] that a person can only be convicted of violation of Section 5(b), upon allegation and proof of the unique circumstances of the child — that he or she is exploited in prostitution or subject to other sexual abuse, drawing from Justice Carpio's dissenting opinion in *Olivarez v. Court of Appeals:*[5]

> Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to "**other sexual abuse**." Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance — that the child is either exploited in prostitution or subjected to "**other sexual abuse**."
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> x x x x x x x x x
>
> Section 5 of RA 7610 penalizes those "who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse." The act of sexual intercourse or lascivious conduct may be committed on a child **already exploited in prostitution**, whether the child engages in prostitution for profit or someone coerces her into prostitution against her will. The element of profit or coercion refers to the practice of prostitution, not to the sexual intercourse or lascivious conduct committed by the accused. A person may commit acts of lasciviousness even on a prostitute, as when a person mashes the private parts of a prostitute against her will.

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sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

[4] G.R. No. 214497, April 18, 2017.

[5] 503 Phil. 421 (2005).

The sexual intercourse or act of lasciviousness may be committed on a child **already subjected to other sexual abuse**. The child may be subjected to such **other** sexual abuse for profit or through coercion, as when the child is employed or coerced into pornography. A complete stranger, through force or intimidation, may commit acts of lasciviousness on such child in violation of Section 5 of RA 7610.

The phrase "**other sexual abuse**" plainly means that the child is already subjected to sexual abuse **other** than the crime for which the accused is charged under Section 5 of RA 7610. The "**other sexual abuse**" is an element separate and distinct from the acts of lasciviousness that the accused performs on the child. The majority opinion admits this when it enumerates the second element of the crime under Section 5 of RA 7610 — that the lascivious "act is performed with a child x x x subjected to other sexual abuse."[6]

The allegation of relationship and minority in the Information meets the element of coercion or influence under Section 5(b).

As I stated in *Quimvel*, the element of coercion or influence required by Section 5(b) is not met by the allegation in the Information of force and intimidation. I maintain this position. Several features distinguish this case from *Quimvel*, as the age of the child victim, the relationship of the offender and the child victim, and the manner of the commission of the lascivious conduct as supported by evidence on record.

The child victim in *Quimvel* is under twelve (12) years of age, falling within the first proviso of Section 5(b) — that the prosecution shall be under Article 336 of the Revised Penal Code. The child victim in this case was fifteen (15) years of age at the time complained of, such that the case falls within the general provision of Section 5(b). In this regard, I concur with Justice Peralta that the designation would properly be a violation of Section 5(b).

Here, the Information alleged the use of force, threat, or intimidation, along with the relationship and minority. The Information reads:

[6] *Id*. at 445-447; italics omitted, emphasis supplied.

That on or about the 23rd day of October 2005, at 7:00 o'clock in the evening, more or less, in Purok [III], Barangay [JJJ], [KKK], [LLL], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom and intelligence, with lewd design, did then and there, willfully, unlawfully and feloniously had sexual intercourse with one [AAA], a minor, fifteen (15) years of age and the daughter of the herein accused, through force, threat and intimidation and against her will, to her damage and prejudice in the amount as may be allowed by law.

CONTRARY to Article 266-A, in relation to Article 266-B of R.A. 8353, with the aggravating circumstance that the accused is the father of the victim and R.A. 7610.[7]

In *People v. Bayya*,[8] the Court explained the purpose of the right of the accused to be informed of the nature and cause of the accusation against him:

Elaborating on the defendant's right to be informed, the Court held in *Pecho vs. People* that the objectives of this right are:

1. To furnish the accused with such a description of the charge against him as will enable him to make the defense;

2. To avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and

3. To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.

It is thus imperative that the Information filed with the trial court be complete — to the end that the accused may suitably prepare his defense. Corollary to this, an indictment must fully state the elements of the specific offense alleged to have been committed as it is the recital of the essentials of a crime which delineates the nature and cause of accusation against the accused.[9]

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[7] Records, p. 1, as cited in the Decision, p. 2.

[8] 384 Phil. 519 (2000).

[9] *Id*. at 525-526; citations omitted.

More concretely, the Court explained what the accused must be informed of in *United States v. Lim San*:[10]

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder?" **If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named.** x x x[11]

The allegation of relationship and minority in the Information suffices to inform the accused of the nature and cause of the accusation against him and supports a conviction for Section 5(b) under the same Information because it meets the requirement of coercion and influence required to convert a child into one subjected to other sexual abuse as defined by Section 5. This, to me, forecloses any argument that the accused was not informed of the nature and cause of the accusation against him.

Neither does it offend against the variance doctrine to determine the existence of the elements of Section 5(b) in a

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[10] 17 Phil. 273 (1910).

[11] *Id*. at 278-279; emphasis and underscoring supplied.

charge of Article 336 or one wherein Article 336 is necessarily included, Section 5(b) being a subset of the universe of lascivious conduct covered by Article 336 of the RPC, is necessarily included in a charge of rape under Section 266-A(2) of the RPC if the specific circumstances required for Section 5(b) to operate can be fairly read into the allegations in the Information and thereafter proved.

There is sufficient showing that coercion or influence attended AAA's sexual abuse; otherwise, that AAA was a child subjected to other sexual abuse at the time of the lascivious conduct complained of.

The factual pattern of this case is analogous to that of *Larin v. People*[12] where the Court found the elements of Section 5(b) to be present. Larin, being an adult and the swimming trainor of his 14-year-old victim, had the influence and ascendancy to cow her into submission. Evidence was introduced to show that Larin employed psychological coercion upon his child victim by attacking her self-esteem and then pretending to be attentive to her needs and making himself out to be the only one who could accept her inadequacies.

To my mind, what was determinative of the existence of the second element of Section 5(b) in *Larin* was:

> The independent proof given of psychological coercion, prior to the first lascivious conduct against the child victim, coupled with the fact that the lascivious conduct happened on two separate occasions indubitably proved the second element — that the child victim was coerced or influenced by Larin to engage in lascivious conduct at the first instance of lascivious conduct, or, to be sure, on the second instance of lascivious conduct (as the first was already sufficient to convert the child victim into a child exploited in prostitution or subjected to other sexual abuse).[13]

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[12] 357 Phil. 987 (1998).

[13] *J.* Caguioa, Diss. Op. in *Quimvel v. People*, *supra* note 2, at 14.

Verily, this factual milieu of *Larin* that places it within the ambit of Section 5(b) involving coercion and influence is shared by this case. From the initial Sworn Statement filed by AAA, she already claimed that the abuse had begun as early as February 2003.[14] In fact, during AAA's direct testimony, she testified that she had told her mother about the sexual abuse as early as June 2005 but that her mother did not believe her.[15] Therefore, at the time the lascivious conduct was committed upon AAA on October 23, 2005, she was already a child subjected to other sexual abuse — meeting the second essential element.

Again, as I have said in Quimvel, this is not to say that in every instance, prior sexual affront upon the child must be shown to characterize the child as one "subjected to other sexual abuse". What is only necessary is to show that the child is already a child exploited in prostitution or subjected to other sexual abuse at the time the sexual intercourse or lascivious conduct complained of was committed or that circumstances obtained prior or during the first instance of abuse that constitutes such first instance of sexual intercourse or lascivious conduct as having converted the child into a child "exploited in prostitution or subjected to other sexual abuse."[16] Otherwise, it appears that without the circumstances of Section 5(a) or independent evidence of coercion or influence, a single instance of sexual intercourse or lascivious conduct may not be sufficient to meet the second element of Section 5(b).

Similarly, in *People v. Fragante*,[17] where the Court found the elements of Section 5(b) present in the several instances of sexual intercourse and lascivious conducted committed by the accused against his minor daughter, it was held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father

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[14] Sworn Statement, Annex "A", records (not paginated).

[15] TSN, January 10, 2007 pp. 30, 35.

[16] A more extensive discussion on this point is in my dissenting opinion in *Quimvel v. People*, *supra* note 2, at 10.

[17] 657 Phil. 577 (2011).

is sufficient to cow the victim into submission.[18] The appreciation of how the sexual intercourse and lascivious conduct in this case fell within the ambit of Section 5(b) is cogently explained thus: appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse.[19]

This is the same situation obtaining in this case, with evidence extant in the records that the child had already been subjected to sexual abuse under circumstances showing coercion and influence (otherwise termed "[a father's] moral and physical dominion" in *Fragante*) even prior to the act complained of.

As well, in *Malto v. People*,[20] the Court took pains to determine the existence of the second element, thus:

> The second element was likewise present here. The following pronouncement in *People v. Larin* is significant:
>
> > **A child is deemed** exploited in prostitution or **subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct** (a) for money, profit, or any other consideration; or (b) **under the** coercion or **influence of any adult**, syndicate or group. (emphasis supplied)
>
> On November 19, 1997, due to the influence of petitioner, AAA indulged in lascivious acts with or allowed him to commit lascivious acts on her. This was repeated on November 26, 1997 on which date AAA also indulged in sexual intercourse with petitioner as a result of the latter's influence and moral ascendancy. Thus, she was deemed to be a "child subjected to other sexual abuse" as the concept is defined in the opening paragraph of Section 5, Article III of RA 7610 and in *Larin*.[21]

This is consistent with my position that to secure a conviction for violation of Section 5(b), coercion or influence (or otherwise,

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[18] *Id*. at 592.

[19] *Id*. at 597.

[20] 560 Phil. 119 (2007).

[21] *Id*. at 137.

that the child indulged in sexual intercourse or lascivious conduct for money, profit or other consideration) is a textually-provided circumstance that must be shown. I find that this element of coercion or influence was shown in this case.

Still, RA 7610 was not intended to cover all sexual abuses against children.

This case does not detract from my position that RA 7610 does not cover all sexual abuses against children under its provisions to the exclusion of the RPC. RA 7610 affords protection to a special class of children without subsuming any and all offenses against children that are already covered by other penal laws such as the RPC and the Child and Youth Welfare Code.

To reiterate, by both literal and purposive tests, I find nothing in the language of the law or in the Senate deliberations that necessarily leads to the conclusion that RA 7610 subsumes all instances of sexual abuse against children. [22]

Given the foregoing, I concur in the result. The accused is, as he should be, convicted of Lascivious Conduct under Section 5(b) of RA 7610.

DISSENTING OPINION

LEONEN, *J*.:

Rape is no longer a crime simply against the chastity of a woman. It is a crime against her person. It is not simply a violation of a woman's moral preferences. It is a violation of her human dignity. Rape labels the violence done to her by another who inhumanely reduces her into an object of lust.

For his daughter, a father who kisses her, mashes her breasts, and then inserts his finger into her vagina not only betrays a sacred trust but burdens her life with coerced illicit sexual

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[22] My dissenting opinion in *Quimvel* extensively discusses this point.

intercourse. For her, and our legal order as well, it will not make sense to narrowly define sexual intercourse without conceding the impotence of our law to understand what happened to her. The depravity is the same, whether it was her father's penis or her father's finger that was forced upon her vagina.

When his daughter sought succor from a relative, Noel Go Caoili (Caoili) dragged her home. In an act of rage and cowardice, as a way to hide his dastardly act, as a continuation of the violation of his own daughter, he punched and beat his daughter.

Caoili raped his own daughter.

I do not see any procedural misstep that should take precedence over the proper label for this criminal act. The evidence shows that Caoili raped his own daughter by sexual intercourse, as charged.

I dissent.

On July 7, 2006, an Information was filed charging accused Caoili, alias "Boy Tagalog," of forcefully having sexual intercourse with his 15-year-old daughter.[1] The Information read:

> That, on or about the 23rd day of October 2005, at 7:00 o'clock in the evening, more or less, in Purok Masipag, Barangay Matin-ao, Mainit, Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom and intelligence, with lewd design, did then and there, willfully, unlawfully and feloniously had sexual intercourse with one AAA, a minor, fifteen (15) years of age and the daughter of the herein accused, through force, threat and intimidation and against her will, to her damage and prejudice in the amount as may be allowed by law.
>
> CONTRARY TO Article 266-A, in relation to Article 266-B of R.A. 8353, with the aggravating circumstance that the accused is the father of the victim and R.A. 7610.[2]

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[1] *Rollo* (G.R. No. 196342), pp. 52 and 68.

[2] *Id.*

Upon arraignment, the accused pleaded not guilty.[3]

The accused's daughter testified that on October 23, 2005, at 7:00 p.m., the accused kissed her lips, touched and mashed her breast, and inserted his left forefinger into her vagina, making a push and pull movement for 30 minutes.[4] She went to her uncle's house located 20 meters away from their house.[5] The accused dragged his daughter home to be beaten and punched.[6]

The daughter reported the incident to her high school guidance counselor and to the police.[7] Later, she underwent a medical examination administered by Dr. Ramie Hipe, who issued a medical certificate on October 26, 2005 stating:

> Pertinent Physical Findings/Physical Injuries:
>
> . . . .
>
> 1. Contusion, 5 inches in width, distal 3rd, lateral aspect, left thigh.
> 2. Contusion, 2 cms in width, distal 3rd, lateral aspect, left forearm
> 3. (+) tenderness, left parietal area, head
> 4. (+) tenderness, over the upper periumbilical area of abdomen
> 5. tenderness, over the hypogastric area
>
> . . . .
>
> Genital Examination
>
> . . . .
>
> Hymen
>
> - fimbriated in shape
> - with laceration on the following:
> - complete laceration – 12 o'clock position

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[3] *Id*. at 68.

[4] *Id*. at 52 and 69.

[5] *Id*.

[6] *Id*. at 52-53 and 69.

[7] *Id*.

- partial laceration – 3 o'clock position
- complete laceration – 6 o'clock position
- partial laceration – 8 o'clock position
- complete laceration – 9 o'clock position
- partial laceration – 11 o'clock position[8]

The daughter of the accused was also examined by Dr. Lucila Clerino, who issued a supplementary medical certificate on October 28, 2005, stating:

> Lacerations complete at 6 o'clock and 9 o'clock superficial laceration at 12 o'clock.[9]

The accused denied the charges against him. As a father, he was a disciplinarian. He claimed that his daughter resented his methods and became rebellious. His daughter talked back to him, lied, and exhibited bad temper when he forbade her from having a boyfriend.[10] The day he allegedly raped his daughter was the day he beat her with a piece of wood on her thigh because she lied to him about her whereabouts. She told him that she was at the house of her aunt, but he saw her in the dark under the cassava plants with a man.[11] Accused stopped beating his daughter when she cried. He asked her for forgiveness but she did not respond. Later, he went to sleep in a room with his son. His daughter slept in another room with her other siblings.[12]

The daughter's sister—accused's other daughter—testified that she was with her sister immediately before the time that the accused allegedly raped her sister. She manifested that she was there when accused beat her sister with a piece of wood. She later slept with her sister and her other siblings in a room. Her sister never told her that she was raped by their father.[13]

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[8] *Id*. at 53.

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

[10] *Id.* at 72.

[11] *Id*. at 73.

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

[13] *Id*. at 75-76.

On June 17, 2008, the trial court found accused guilty of sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, thus:

WHEREFORE, finding the accused NOEL GO CAOILI alias "Boy Tagalog" guilty beyond reasonable doubt, as principal, of the crime of rape, defined and penalized in paragraph 2 of Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and after considering the aggravating circumstance of being the parent of the complainant, who was fourteen (14) years, one (1) month and ten (10) days old at the time of the incident in question, there being no mitigating circumstance to off-set the same, this Court hereby sentences the said accused to suffer imprisonment for an indefinite period of TEN (10) YEARS and ONE (1) DAY of *Prision Mayor* in its maximum period, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Reclusion Temporal* in its maximum period, as maximum, and to pay the costs. Four-fifths (4/5) of the preventive detention of said accused shall be credited to his favor.

The same accused is hereby ordered to pay complainant ABC an indemnity *ex delictu* of ₱50,000.00; moral damages of ₱50,000.00; and exemplary damages of another ₱50,000.00.

SO ORDERED.[14]

The accused appealed the trial court's June 17, 2008 Decision finding him guilty of sexual assault. He argued that since the information charged him of rape by sexual intercourse, he could not be convicted of sexual assault.[15]

The Court of Appeals found that the accused was guilty of sexual assault. However, sexual assault was not charged in the Information. Thus, the case was remanded to the trial court in accordance with Rule 110, Section 14[16] and Rule 119, Section 19[17] of the Rules of Court, thus:

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[14] *Id*. at 54 and 79.

[15] *Id*. at 55.

[16] RULES OF COURT, Rule 110, Sec. 14 provides:

Section 14. Amendment or Substitution. – A complaint or information may be amended, in form or in substance, without leave of court, at any

FOR THESE REASONS, the appealed Decision of Branch 30 of the Regional Trial Court of Surigao City, in Criminal Case Nos. 7363, is SET ASIDE. Let this case be as it is **IMMEDIATELY REMANDED** to the trial court for further proceedings consistent with this opinion. *Costs de oficio.*

SO ORDERED.[18] (Emphasis in the original)

Both parties filed separate motions for reconsideration of the Court of Appeals' July 22, 2010 Decision. Both motions were denied in the Court of Appeals Resolution dated March 29, 2011.[19]

The accused and People of the Philippines filed their separate Petitions for Review on Certiorari under Rule 45 of the Rules of Court. The Accused argued that he was unjustly convicted of a crime that was not charged in the Information. This was a violation of his constitutional right to be informed of the nature

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time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

. . . .

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused would not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

[17] RULES OF COURT, Rule 119, Sec. 19 provides:

Section 19. When mistake has been made in charging the proper offense. –

When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the acused shall not be discharged if there appears good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information.

[18] *Rollo* (G.R. No. 196342), p. 61.

[19] *Id*. at 62-67.

and cause of the accusations against him.[20] In any case, the prosecution failed to prove his guilt beyond reasonable doubt of the allegations against him.[21]

The People of the Philippines argued that the accused was rightfully convicted of sexual assault, which was necessarily included in the offense charged in the information. The Court of Appeals may no longer remand the case to the trial court in accordance with Rule 110 and Rule 119 of the Rules of Court because a judgment had already been rendered in the case.[22]

The ponencia proposes that Caoili be convicted of the lesser crime of lascivious conduct under Article III, Section 5 (b) of Republic Act No. 7610. Although the Information accuses him of rape by sexual intercourse, the prosecution was able to prove rape by sexual assault, which, according to the ponencia, is materially different and substantially distinct from rape by sexual intercourse.[23]

I disagree.

I

The accused may be convicted of rape by sexual intercourse without violating his due process rights and his right to be informed of the nature and cause of the accusations against him as provided in Article III, Section 14 of the 1987 Constitution[24] and reproduced in Rule 115, Section 1(b) of our

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[20] *Rollo* (G.R. No. 196848), p. 26.

[21] *Rollo* (G.R. No. 196342), p. 28.

[22] *Id*. at 40.

[23] *Ponencia*, pp. 11-15.

[24] CONST., Art. III, Sec. 14 provides:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him,** to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory

Rules of Procedure.[25] The importance and purpose of this rule has been explained by this Court in *People v. Quitlong*:[26]

First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause, and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.[27]

The right to be informed of the nature and cause of the accusations against a person need not be alleged with the highest degree of particularity. It is satisfied as long as facts are alleged with sufficient clarity[28] that allows the accused to understand what acts he is being made liable for in order to enable him to make a defense.[29]

The ponencia insists that rape by sexual intercourse and sexual assault are so materially different and substantially distinct that an accused charged with one (1) mode cannot be convicted of the other mode without violating the accused's constitutional

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process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied).

[25] RULES OF COURT, Rule 115, Sec. 1(b) provides:

Section 1. *Rights of accused at the trial.* – In all criminal prosecutions, the accused shall be entitled to the following rights:

. . . .

(b) To be informed of the nature and cause of the accusation against him.

[26] 354 Phil. 372 (1998) [Per *J.* Vitug, First Division].

[27] *Id.* at 387 citing *US v. Karelsen*, 3 Phil. 223, 226 (1904) [Per *J.* Johnson, *En Banc*], cited in *Pecho vs. People*, 331 Phil. 1 (1996) [Per *J.* Davide, Jr., *En Banc*].

[28] See *Jurado v. Suy Yan*, 148 Phil. 677 (1971) [Per *J.* Makasiar, *En Banc*].

[29] *Id.* at 689.

right to be informed of the nature and cause of the accusations against a person.[30] Since the accused cannot be convicted of sexual assault, the ponencia proposes that he instead be convicted of the *lesser* offense of acts of lasciviousness under lascivious conduct under Article III, Section 5 (b) of Republic Act No. 7610,[31] which provide:

Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

. . . .

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]

The information substantially charged the accused with forced carnal knowledge or sexual intercourse. It is sufficiently clear to inform the accused what acts he is being made liable for. It is sufficient to enable him to form a defense.

Article 266-A(1) of the Revised Penal Code provides that carnal knowledge without valid consent constitutes 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:

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[30] *Ponencia*, p. 11.

[31] *Id.*

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. (Emphasis supplied)

Evidence of lack of valid consent and carnal knowledge is, therefore, already sufficient to convict an accused of rape by sexual intercourse under Article 266-A(1) of the Revised Penal Code. The prosecution already established that the accused inserted his finger in his daughter's vagina. This already qualifies as carnal knowledge or sexual intercourse.

This Court's refusal to convict the accused of rape by sexual intercourse despite the proper allegation in the information and the sufficiency of the prosecution's evidence is based on this Court's restrictive definition of sexual intercourse.

Carnal knowledge or sexual intercourse has been inaccurately and restrictively used to denote an activity that must necessarily involve penetration, genitals, and opposite sexes. Carnal knowledge or sexual intercourse is currently understood as involving penile penetration of the vaginal orifice. In *People v. Opong*:[32]

Carnal knowledge is synonymous with sexual intercourse. There is carnal knowledge if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male.[33]

Earlier, in *People v. Alib*:[34]

Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman; sexual intercourse. Ordinarily, this would

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[32] 577 Phil. 571 (2008) [Per *J*. Chico-Nazario, Third Division].

[33] *Id.* at 594 citing *People v. Almendral*, 477 Phil. 521 (2004) [Per *J*. Tinga, Second Division].

[34] 294 Phil. 509 (1993) [Per *J*. Davide, Jr., Third Division].

connote the complete penetration of the female sexual organ by the male sexual organ. In cases of rape, however, proof of the entrance of the male sexual organ into the labia of the pudendum, or lips of the female organ, is sufficient for conviction. Elsewise stated, the slightest penetration of the female's private organ is sufficient to consummate the crime of rape.[35]

In *People v. Almaden:*[36]

Carnal knowledge is, simply put, sexual intercourse between a man and a woman. With the slightest penetration, sexual intercourse is achieved, and the crime of rape is consummated.[37]

In *People v. Miclat:*[38]

Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connection with a woman.[39]

These interpretations, however, are residues of the archaic concept of rape as a crime against chastity.

Chastity is a virtue. It denotes abstinence from sexual activity before marriage or the limitation of one's sexual contact to his or her spouse after marriage.

Crimes against chastity under our current law include, among others, adultery, concubinage, seduction, corruption of minors, and abduction.[40] The criminalization of acts constituting these crimes is not only a declaration that chastity is something that must be protected by the State, but is also a revelation of the premium we put on abstinence before or outside marriage and our fixation on puritanical ideals.

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[35] *Id.* at 518.

[36] 364 Phil. 634 (1999) [Per *J*. Kapunan, First Division].

[37] *Id*. at 634-644.

[38] 435 Phil. 561 (2002) [Per *J*. Kapunan, *En Banc*].

[39] *Id*. at 575-576 citing *People v. Domantay,* 366 Phil. 459 (1999) [Per *J*. Mendoza, *En Banc*].

[40] REV. PEN. CODE, Title Eleven.

The brunt of the effects of this fixation is suffered to a significantly greater degree by women more than men. Between the two (2) sexes, women are expected to live out this ideal. Their adherence to this virtue is taken as a given.

What acts constitute the crimes against chastity and how they are crafted in our law reflect these unequal expectations.

Under Title Eleven or Crimes Against Chastity of the Revised Penal Code, punishment is generally directed at acts that contradict this expectation of virtue or acts that tend to give an appearance of diminished virtue. Married women may be convicted of adultery for having sexual intercourse with any man not her husband, regardless of the validity of her marriage.[41] On the other hand, sexual relations of a married man with a woman who is not his wife is not always a crime. It only becomes a crime if there is cohabitation, if it is committed under scandalous circumstances,[42] or if the sexual relations were committed with a married woman, and he had knowledge of that fact.[43]

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[41] 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 lower in degree than that provided in the next preceding paragraph shall be imposed.

[42] 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.*

[43] 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

Moreover, Title Eleven of the Revised Penal Code suggests that only females may be criminally seduced and abducted for lewd designs. Articles 337 and 343 emphasize virginity among their elements. Thus:

Article 337. *Qualified seduction.* — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.

. . . .

Article 343. *Consented abduction.* — The abduction of a virgin over twelve years and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of *prision correccional* in its minimum and medium periods.

Meanwhile, the crime of simple seduction emphasizes good reputation among females of 12 to 18 years, thus:

Article 338. *Simple seduction.* — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *Arresto mayor.*

These further highlight that the expectation to remain pure is real and that this expectation is not equal between sexes. It implies that while women necessarily adhere and must necessarily adhere to chastity as a virtue, men do not and have no need to. Hence, the State provides a means to protect that virtue presumably and expectedly held by all its women.

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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 lower in degree than that provided in the next preceding paragraph shall be imposed.

This underlying assumption exposes the real focal point of crimes against chastity. Unlike crimes against persons wherein acts are punished for the harm done to an individual person's being regardless of sex, crimes against chastity punishes persons for acts done against a virtue. Crimes against persons recognize that individuals are conscious beings who are sovereigns in their own right of their own bodies, thoughts, and lives.[44] Crimes against chastity emphasize the virtue more than the person. The person is nothing more than a vessel of an independent abstract concept that must be protected.

Republic Act No. 8353 has already reconceptualized rape as a crime against persons. However, until present, virginity of a woman—as opposed to men's virginity—is important to men. This is one (1) of the manifestations of gender imbalance that is apparent in the current wordings of our crimes against chastity. Women are seen as objects. A woman's value depends on whether the man she will marry will be the person who will first conquer her—the man to whom she will yield and for whom she will be owned.

Thus, under the old concept, what matters was what men wanted: the woman is reduced into a vagina and it must be intact for him. He owns her when he is first to violate her. She is not as worthy otherwise. She is unchaste.

Carnal knowledge or sexual intercourse is a broad term that can be subject to several interpretations. Understandably, albeit without sensitivity to gendered meanings, past decisions even of this Court reduced this broad term to penile penetration. A more enlightened gender and culturally sensitive meaning expands this concept especially since rape is now no longer a crime against chastity but a crime against persons.

Having carnal knowledge or sexual intercourse is a powerful expression of intimacy. It is an act which requires the shedding of all inhibitions and defenses to allow humans to explore each other in their most basic nakedness. It is an act that brings out

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[44] *See* JOHN STUART MILL, *ON LIBERTY (1859).*

the best in humanity when it is neither required nor coerced but chosen by the partners. This autonomy that begets choice is what is protected by law. It is that choice that can complete expression and can define him or her who makes that choice. After all, as social beings, humans are defined by how they choose to be intimate, with whom, and how deeply.

It is the violation of this choice—this autonomy—that inspires the punishment for rape. Penile penetration was the traditional way to determine whether sexual intercourse has happened. But it should no longer be exclusively so. We should increasingly take the point of view of the victim. For her most fundamental autonomy to choose her intimate partner was violated when her father kissed her, mashed her breasts, inserted her finger into her vagina, and satisfied his lust for her for 30 minutes. She is as much a victim of coerced sexual intercourse as any other woman would be if it was the penis that was inserted. Except that in this case, she is not simply a woman: she is the daughter of the accused.

The determination of whether chastity was violated, in past cases, may have required a clinical passing of the entire sexual act to privilege the penis and its entry into the vagina. Regardless of its doctrinal presentation in the past, our present, more gender sensitive law and legal lenses now require that we see the acts in sexual intercourse as a whole. To reduce them to their component parts would be to say that the violation of the human dignity of a person insofar as her sexuality is concerned can be understood as a matter of degree.

By maintaining fatuous classifications, this Court fails to recognize that we create, through our interpretation, a dissonance between the law and the actual scenarios to which they apply. In this case, we would be saying that this father did not rape his daughter as much as he would have raped another woman by forcing his penis in her vagina. We would then go back to the feudal concept of protecting the powerful and graduating his liabilities by traditional but irrational categories. Instead, we should look at the victim and read the law from her perspective as a human being.

Doing so means that we pronounce that the entirety of what this father did to his daughter was "sexual intercourse" as charged in the information equivalent to "carnal knowledge" in Article 266-A of the Revised Penal Code as amended.

In other words, we square the interpretation of the law with the victim's reality. She was raped by sexual intercourse.

The persistence of an archaic understanding of rape relates to our failure to disabuse ourselves of the notion that carnal knowledge or sexual intercourse is merely a reproductive activity. It is not. Sexual intercourse may be done for pleasure. It may be done for religious purposes. It may be a means to an end.

Hence, sexual intercourse encompasses a wide range of sexual activities not limited to those involving penetration, genitals, and opposite sexes. Sexual intercourse is a sexual activity that is participated in by at least two (2) individuals of the same or opposite sex for purposes of attaining erotic pleasure.[45] It may be penetrative or simply stimulative.[46] It may or may not involve persons of opposite sexes. When forced, sexual intercourse constitutes rape.

This understanding of sexual intercourse would prevent courts from unnecessarily and unjustly convicting persons of lesser crimes when they are undoubtedly guilty of rape.

II

Republic Act No. 8353's reconceptualization of rape as a crime against persons and the broadening of its definition to include its other forms point towards this understanding.

The reconceptualization of rape as a crime against persons is a recognition that rape may be committed to any person regardless of sex and gender. It is also a recognition that rape may be committed through various means. The diversity of

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[45] See also NIALL RICHARDSON, CLARISSA SMITH, AND ANGELA VERNDLY, STUDYING SEXUALITIES: THEORIES, REPRESENTATIONS, CULTURES 5 (2013).

[46] *Id*.

means by which rape can be committed allowed our lawmakers to create gradations for purposes of determining the appropriate punishment.

However, the imposition of different punishments for different manners of committing rape or sexual assault should not be read as a reflection of the actual heinousness of the corresponding acts for the victim. In *People v. Quintos y Badilla,*[47] this Court said:

The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable . . . [O]ne experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.

"The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.

Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.[48] (Citations omitted)

By involving the finger only as a means to violate Article 266-A, paragraph 2,[49] thereby equating it to an "instrument or

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[47] 746 Phil. 809 (2014) [Per *J.* Leonen, Second Division].

[48] *Id*. at 832-833.

[49] REV. PEN. CODE, Art. 266-A provides:

Article 266-A. Rape, When and How Committed. – Rape is committed –

object," this Court misunderstands the gravity and the power used by those who want to defile the person of another through rape. It misunderstands the crime.

Rape is not an act of pleasure. It is an illicit expression of power. It is not an act that simply addresses the uncontrolled instincts of the perpetrator. It is an act which fulfills a depraved desire to impose one's will on another, reducing the other to the status of a subordinate.

The finger is as much part of the human body as the penis. It is not a separate instrument or object. It is an organ that can act as a conduit to give both pleasure as well as raw control upon the body of another. At a certain age, when men have difficulty with erections, his finger or any other similar organ becomes a handy tool of oppression. This Court cannot maintain an artificially prudish construction of sexual intercourse. When it does, it becomes blind to the many ways that women's bodies are defiled by the patriarchy. To legally constitute the finger as a separate object not used in "sexual intercourse" or "carnal knowledge" not only defies reality, it undermines the purpose of the punishment under Article 266-A, paragraph 2.

III

Even if there is any deficiency in the form of the information, the remedy is not to prejudice the punishment for the wrong done to the victim. Rather it is to call the attention of the prosecutor who drafted the charge. Too often, the mistake of the same leads to acquittal or downgrading of the appropriate punishment. Whether this is due to lack of competence, supervision, design or consideration, the effect is the same. The consequent inability of our institutions to do what is right and just due to trivial technicalities erodes the public's confidence in what we are supposed to do: courageously do what is right

. . . .

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

and just. When we allow our system to be eroded in this way, rapists would be able to rely on the illicit graciousness of misguided prosecutors. After all, using "sexual intercourse" in lieu of "carnal knowledge" or "sexual assault" is so obviously simple but fraught with a lot of opportunities for the accused.

Laws should not be read so as to obfuscate reality. Its words should be able to reflect the ability of the state to correctly categorize the evil that men do. Clearly, in this case, the offense committed was rape by sexual intercourse. It was not rape by sexual assault or a mere lascivious conduct.

Accordingly, the accused should be convicted of rape under Article 266-A(1) of the Revised Penal Code and sentenced to suffer the penalty of *reclusion perpetua.*

DISSENTING OPINION

MARTIRES, *J.*:

Respectfully, I dissent from the majority opinion.

I am unable to accept that the act of "fingering," or the digital penetration of the vagina, should be appreciated as a mere act of lasciviousness. My refusal to accept this conclusion is grounded on the definition of carnal knowledge that this Court set forth in the 2011 case of *People vs. Butiong* [G.R. No. 168932, 19 October 2011]:

> Carnal knowledge is defined as the act of a man having **sexual bodily connections** with a woman. This explains why the slightest penetration of the female genitalia consummates the rape. [emphasis supplied]

The crux of carnal knowledge, then, is ***sexual bodily connection***.

The finger is a part of the body by which a sexual bodily connection may be attained. It is an organ that evokes sensations of pleasure, particularly in sexual situations; thus, it should not be deemed as an "object" within the contemplation of the second paragraph of Article 266-A. A man's use of his penis, the tongue, or his finger to penetrate a vagina for the purpose

of sexual stimulation or sensation undeniably creates a sexual bodily connection with a woman; thus, *carnal knowledge* of the woman is achieved.

I submit that the concept of *carnal knowledge* should not be limited exclusively to the contact between the penis and the vagina. The word *carnal*, as defined, describes "in or of the flesh" or "having to do with or preoccupied with bodily or sexual pleasure, sensual or sexual." [1] A perpetrator's use of *any* of his or her organs, such as the tongue or the finger, in order to create bodily pleasure or to *penetrate* a vagina constitutes *carnal knowledge*. Consequently, when such carnal knowledge is attained under any of the circumstances in the first paragraph of Article 266-A, the perpetrator should be convicted of Rape under such, to wit:

Article 266-A. Rape: When and How Committed. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman 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.

The use of a body organ in order to *penetrate* a vagina should be distinguished from the sexual *insertion* of an instrument or object into the genital or anal orifice of another. This latter act is defined and punished under the second paragraph of Article 266-A, *viz*:

Article 266-A. Rape: When and How Committed. — Rape is committed:

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[1] *Webster's Third New International Dictionary (Unabridged)*, p. 340; New World Dictionary of the American Language, p. 216

x x x x x x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Thus, under the two categories of rape created by the twin paragraphs under Article 266-A, when a perpetrator *inserts* into the genital or anal orifice of another an instrument or object that does not form part of the perpetrator's body, the offense committed is punishable under the second paragraph of Article 266-A; when a perpetrator *penetrates* a vagina with the use of any of his or her own body parts, the offense committed is punishable under the first paragraph.

With this disquisition, I respectfully submit that the majority unduly confines the concept of carnal knowledge under the first paragraph of Article 266-A to penile penetration and, correspondingly, unduly restricts the law's coverage. Such limitation disregards a vital premise in our rape jurisprudence, namely, that carnal knowledge is achieved when a person has *sexual bodily connection* with a woman. To reiterate: the penetration of a vagina by means of any bodily part such as the finger or tongue is a *sexual bodily connection*.

To limit the concept of carnal knowledge solely to penile penetration is contrary to human experience. Carnal knowledge occurs on a wanton field, and is achieved in sundry ways: vaginal, oral, anal, and fingering. Which brings us back to the case at hand. The majority may take notice that the act of "fingering" a woman, as it has been said time and again, is an act from which women may, unwittingly or not, derive pleasure in varied degrees. Rapists exploit this biological imperative. Our rape jurisprudence is replete with grievous narratives where the perpetrators, before attaining carnal knowledge of their victims through penile means, had already attained carnal knowledge of their victims through the use of their finger on their victim's vagina in a bid to arouse and confuse her, and in the belief that this would facilitate the penile intercourse to follow. The

fingering committed, in itself, is already carnal knowledge. In cases of rape, the forced penetration or entry into a woman's most private part by or with whatever means with the use of a bodily organ is carnal knowledge, and an outrage to the dignity of the victim. Fingering is no mere act of lasciviousness.

I humbly beg that the majority see and punish the crime committed in this case for what it is: Rape. The accused, having been found to have fingered his own daughter, should be convicted of Rape under the first paragraph of Article 266-A.

EN BANC

[G.R. No. 197146. August 8, 2017]

HON. MICHAEL L. RAMA, in his capacity as Mayor of Cebu City; METROPOLITAN CEBU WATER DISTRICT (MCWD), represented by its General Manager, ARMANDO PAREDES; THE BOARD OF DIRECTORS OF MCWD, represented by its chair, ELIGIO A. PACANA; JOEL MARI S. YU, in his capacity as Member of the MCWD Board; THE HONORABLE TOMAS R. OSMEÑA, in his capacity as Congressional Representative of the South District, Cebu City, *petitioners, vs.* **HON. GILBERT P. MOISES, in his capacity as Presiding Judge of the Regional Trial Court, Branch 18, Cebu City; and HON. GWENDOLYN F. GARCIA, in her capacity as Governor of the Province of Cebu,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; HIERARCHY OF COURTS; EXCEPTIONS;

APPLICABLE IN CASE WHERE VALIDITY OR CONSTITUTIONALITY OF P.D. NO. 198 IS BEING CHALLENGED.— The policy on the hierarchy of courts is not to be regarded as an iron-clad rule. In *The Diocese of Bacolod v. Commission on Elections* and *Querubin v. Commission on Elections*, the Court has enumerated the various specific instances when direct resort to the Court may be allowed, to wit: **(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance;** (c) cases of first impression; (d) when the constitutional issues raised are best decided by this Court; (e) when the time element presented in this case cannot be ignored; (f) when the petition reviews the act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (h) when public welfare and the advancement of public policy so dictates, or when demanded by the broader interest of justice; (i) when the orders complained of are patent nullities; and j) when appeal is considered as clearly an inappropriate remedy. This case falls under two of the aforestated exceptions considering that the validity or constitutionality of P.D. No. 198, a statute or decree, or a provision thereof is being challenged.

2. **ID.; ID.; ID.; REQUIREMENT OF LEGAL STANDING; MAY BE RELAXED IN CASES OF PARAMOUNT IMPORTANCE WHERE SERIOUS CONSTITUTIONAL QUESTIONS ARE INVOLVED.—** The standing of the petitioners to bring this suit is also being challenged on the basis that they would not suffer any direct injury from the enforcement of the assailed law. The challenge is unworthy of consideration. In *Imbong v. Ochoa, Jr.*, the Court, citing *Coconut Oil Refiners Association, Inc. v. Torres*, has held that the standing requirement may be relaxed in cases of paramount importance where serious constitutional questions are involved, and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. Moreover, the Court has held that a party's standing before the Court is a procedural technicality that it may, in the exercise of its discretion, set aside in view of the importance of the issues raised.

LEONARDO-DE CASTRO, *J.*, *dissenting opinion*:

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; FAILURE TO ESTABLISH THAT THE CONSTITUTIONAL ISSUES RAISED ARE OF TRANSCENDENTAL IMPORTANCE DOES NOT WARRANT RELAXATION OF THE DOCTRINE OF *LOCUS STANDI* AND THE PRINCIPLE OF HIERARCHY OF COURTS.—** Petitioners utterly failed to establish that the constitutional issues raised in the Petition at bar are of transcendental importance calling for urgent resolution, which would warrant the relaxation of the doctrine of *locus standi* and the principle of hierarchy of courts. Indeed, the constitutional issues presently before the Court relate to local water districts (LWDs) in charge of local water supply and waste water disposal; but as pointed out by now retired Associate Justice Arturo D. Brion, whom I joined in his Dissenting Opinion to the Decision dated December 6, 2016, none of the parties alleged that the operations of MCWD had been or would be paralyzed simply because the appointing power of the members of the MCWD Board of Directors shifted from one government official to the other. In addition, Section 18 of PD No. 198 specifically limits the power of the Board of Directors of an LWD, such as MCWD, to policy-making, hence, any question as to the appointment of its Board members will not have a direct and immediate effect upon the day-to-day operations of MCWD.

2. **ID.; PRESIDENTIAL DECREE 198; SECTION 3 (B); TO JUSTIFY NULLIFICATION THEREOF, THERE MUST BE A CLEAR AND UNEQUIVOCAL BREACH OF THE CONSTITUTION; CONSTITUTIONAL RIGHT TO DUE PROCESS OF PETITIONERS, NOT VIOLATED IN CASE AT BAR.—** As Justice Brion declared in his Dissenting Opinion to the Decision dated December 6, 2016, all laws, including Presidential Decrees issued by President Marcos, enjoy the presumption of constitutionality. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach. Laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt. I am still of the opinion that there is no clear and unequivocal breach of the Constitution by Section 3(b) of PD No. 198. Petitioners were unable to

establish beyond reasonable doubt that Section 3(b) of PD No. 198 violated their constitutional rights to due process and equal protection of the law. Section 3(b) of PD No. 198 does not deprive Cebu City of any property without due process of law. Indeed, majority of the assets and facilities of MCWD originated from the Osmeña Waterworks System (OWS), which was previously operated and maintained by Cebu City. Yet, in accordance with the provisions of PD No. 198 on the creation of an LWD, Cebu City, through Resolution No. 873, which was approved on May 9, 1974 by then Mayor Eulogio Borres, created the MCWD, and thereafter, transferred all the assets and facilities of OSW to MCWD. Once formed, the MCWD became a government-owned-and-controlled corporation which was no longer under the jurisdiction of any political subdivision, even of Cebu City. The assets and facilities of OSW are now owned by MCWD, and Cebu City no longer has any existing proprietary rights to the same.

3. **ID.; ID.; ID.; ID.; CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW OF PETITIONERS, NOT VIOLATED IN CASE AT BAR.—** Neither does Section 3(b) of PD No. 198 violate the right of Cebu City to equal protection of the law since it is based on a reasonable classification. Worth reproducing below is Justice Brion's ratiocination on the matter in his Dissenting Opinion to the Decision dated December 6, 2016: x x x By giving the Governor the power to appoint, Section 3(b) entrusts the appointing power to the highest local official who oversees the largest geography where the LWD may expand its operations. However, Section 3(b) also realizes that confining the appointing power to the Governor loses its relevance where the LWD operates almost entirely within a single city or municipality. Thus, as an alternative, Section 3(b) lodges the appointing power with the Mayor of the City or Municipality where 75% or 3/4 of the LWDs water connections are located. Neither was the 75% threshold created to favor Governors, as specific class, over Mayors; nor is it limited to conditions existing at the time PD 198 was enacted, or at the time an LWD is created. The phrase "In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality" signifies that the appointing power may shift at any time depending on the circumstances. To illustrate this dynamic,

while the province of Cebu now enjoys the appointing power, a future increase in MCWD's water connections within Cebu City may re-shift the appointing power to the Mayor.

APPEARANCES OF COUNSEL

Office of the City Attorney for petitioner Cebu City Mayor.

MCWD-LEGAL DEPARTMENT for petitioner MCWD & Board of Directors.

The Solicitor General for public respondents.

Benjamin R. Militar for petitioners Tomas R. Osmeña and Joel Mari S. Yu.

Provincial Legal Office for respondent Governor of the Province of Cebu.

R E S O L U T I O N

BERSAMIN, *J.*:

For resolution is the motion for reconsideration filed by the respondents vis-a-vis the decision promulgated on December 6, 2016[1] annulling and setting aside the decision rendered on November 16, 2010[2] by the Regional Trial Court (RTC), Branch 18, in Cebu City in Civil Case No. CEB-34459; and declaring Section 3(b) of Presidential Decree No. 198 unconstitutional to the extent that the provision applied to highly urbanized cities like Cebu City as well as to component cities with charters expressly providing for their voters not eligible to vote for the officials of the provinces to which they belong, and for being in violation of the express policy of the 1987 Constitution on local autonomy, among others.

The respondents claim that the petitioners have disregarded the principle of hierarchy of courts, and have resorted to the wrong remedy in assailing the decision of the RTC.[3] They explain

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[1] *Rollo*, pp. 503-522.

[2] *Id.* at 73-80.

[3] *Id.* at 576-580; penned by Judge Gilbert P. Moises.

that under the principle of hierarchy of courts, the petitioners should have filed their petition in the Court of Appeals instead of in this Court, which is a court of last resort. They also insist that the petitioners have no *locus standi* inasmuch as they — being officials of Cebu City - will never sustain direct injury from the application of Section 3(b) of P.D. 198.[4]

We deny the motion for reconsideration.

The policy on the hierarchy of courts is not to be regarded as an iron-clad rule. In *The Diocese of Bacolod v. Commission on Elections*[5] and *Querubin v. Commission on Elections*,[6] the Court has enumerated the various specific instances when direct resort to the Court may be allowed, to wit: **(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance;** (c) cases of first impression; (d) when the constitutional issues raised are best decided by this Court; (e) when the time element presented in this case cannot be ignored; (f) when the petition reviews the act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (h) when public welfare and the advancement of public policy so dictates, or when demanded by the broader interest of justice; (i) when the orders complained of are patent nullities; and (j) when appeal is considered as clearly an inappropriate remedy.

This case falls under two of the aforestated exceptions considering that the validity or constitutionality of P.D. No. 198 a statute or decree, or a provision thereof is being challenged. Moreover, the Court has full discretionary power to take cognizance of and assume jurisdiction over the special civil actions for *certiorari* and *mandamus* filed directly with it for exceptionally compelling reasons or when warranted by the

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[4] *Id*. at 568.

[5] G.R. No. 205728, January 21, 2015, 747 SCRA 1, 45-49.

[6] G.R. No. 218787, December 8, 2015, 776 SCRA 715, 754-755.

nature of the issues that are clearly and specifically raised in the petition.[7]

While this Court has often insisted on the strict application of the principle of hierarchy of courts in numerous cases, the application has not been absolute. When the issues involve the constitutionality of a statute or law, or when the issues involved are those of transcendental importance, procedural technicalities should yield in accordance with the well-entrenched principle that rules of procedure are not inflexible tools designed to hinder or delay, but rather to facilitate and promote the administration of justice.[8] And while it is true that laws are presumed to be constitutional, that presumption is not by any means conclusive and in fact may be rebutted. Indeed, if there be a clear showing of their invalidity, and of the need to declare them so, then "will be the time to make the hammer fall, and heavily, to recall Justice Laurel's trenchant warning. Stated otherwise, courts should not follow the path of least resistance by simply presuming the constitutionality of a law when it is questioned.[9]

The standing of the petitioners to bring this suit is also being challenged on the basis that they would not suffer any direct injury from the enforcement of the assailed law.

The challenge is unworthy of consideration. In *Imbong v. Ochoa, Jr.*,[10] the Court, citing *Coconut Oil Refiners Association, Inc. v. Torres*,[11] has held that the standing requirement may be

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[7] *Department of Foreign Affairs v. Falcon*, G.R. No. 176657, September 1, 2010, 629 SCRA 644, 669.

[8] *Jaworski v. Philippine Amusement and Gaming Corporation*, G.R. No. 144463, January 14, 2004, 419 SCRA 317, 323-324.

[9] *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659, 666.

[10] G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172, & 207563, April 8, 2014, 721 SCRA 146.

[11] G.R. No. 132527, July 29, 2005, 465 SCRA 47.

relaxed in cases of paramount importance where serious constitutional questions are involved, and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review.[12] Moreover, the Court has held that a party's standing before the Court is a procedural technicality that it may, in the exercise of its discretion, set aside in view of the importance of the issues raised.[13]

All the other issues raised by the respondent in the motion for reconsideration were already resolved and sufficiently discussed in the assailed decision.

WHEREFORE, the Court **DENIES** the motion for reconsideration for its lack of merit.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Peralta, Mendoza, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, and *Reyes, Jr., JJ.*, concur.

Carpio, del Castillo, and *Jardeleza, JJ.*, join the dissent of *J. Brion* in the main case.

Leonardo-de Castro, J., see dissenting opinion.

DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

I vote to grant the Motion for Reconsideration of respondent Governor of Cebu Province and maintain my position that Section 3(b) of Presidential Decree (PD) No. 198 is not unconstitutional and that the Court should not engage in judicial legislation by vesting the power to appoint a member of the Board of Directors of Metropolitan Cebu Water District (MCWD) upon petitioner Mayor of Cebu City.

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[12] *Imbong v. Ochoa*, *supra* note 10, at 284.

[13] *Kilosbayan, Incorporated v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 191.

The *ponente*, in his Resolution denying respondent Governor's Motion for Reconsideration, directly addressed only two procedural issues raised in said Motion, *i.e.*, the failure of petitioners to observe the hierarchy of courts and petitioners' lack of legal standing. Essentially, the *ponente* cited the exceptions to well-settled principles/doctrines to justify his giving due course to the instant Petition for *Certiorari* despite its procedural infirmities. The *ponente* then stated that all other issues raised by respondent Governor in the Motion for Reconsideration were already resolved and sufficiently discussed in the Decision dated December 6, 2016.

In my view, petitioners utterly failed to establish that the constitutional issues raised in the Petition at bar are of transcendental importance calling for urgent resolution, which would warrant the relaxation of the doctrine of *locus standi* and the principle of hierarchy of courts. Indeed, the constitutional issues presently before the Court relate to local water districts (LWDs) in charge of local water supply and waste water disposal; but as pointed out by now retired Associate Justice Arturo D. Brion, whom I joined in his Dissenting Opinion to the Decision dated December 6, 2016, none of the parties alleged that the operations of MCWD had been or would be paralyzed simply because the appointing power of the members of the MCWD Board of Directors shifted from one government official to the other. In addition, Section 18 of PD No. 198[1] specifically limits the power of the Board of Directors of an LWD, such as MCWD, to policy-making, hence, any question as to the appointment of its Board members will not have a direct and immediate effect upon the day-to-day operations of MCWD.

More importantly, respondent Governor's arguments in the Motion for Reconsideration on the substantive issues should be accorded more than just a cursory, pro-forma consideration. The constitutional issues at the crux of the present case deserve another thorough scrutiny.

[1] Sec. 18. *Functions Limited to Policy-Making*. — The function of the board shall be to establish policy. The Board shall not engage in the detailed management of the district.

As Justice Brion declared in his Dissenting Opinion to the Decision dated December 6, 2016, all laws, including Presidential Decrees issued by President Marcos, enjoy the presumption of constitutionality. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach. Laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt.[2]

I am still of the opinion that there is no clear and unequivocal breach of the Constitution by Section 3(b) of PD No. 198. Petitioners were unable to establish beyond reasonable doubt that Section 3(b) of PD No. 198 violated their constitutional rights to due process and equal protection of the law.

Section 3(b) of PD No. 198 does not deprive Cebu City of any property without due process of law. Indeed, majority of the assets and facilities of MCWD originated from the Osmeña Waterworks System (OWS), which was previously operated and maintained by Cebu City. Yet, in accordance with the provisions of PD No. 198 on the creation of an LWD, Cebu City, through Resolution No. 873, which was approved on May 9, 1974 by then Mayor Eulogio Borres, created the MCWD, and thereafter, transferred all the assets and facilities of OSW to MCWD. Once formed, the MCWD became a government-owned-and-controlled corporation which was no longer under the jurisdiction of any political subdivision, even of Cebu City. The assets and facilities of OSW are now owned by MCWD, and Cebu City no longer has any existing proprietary rights to the same.

Neither does Section 3(b) of PD No. 198 violate the right of Cebu City to equal protection of the law since it is based on a reasonable classification. Worth reproducing below is Justice Brion's ratiocination on the matter in his Dissenting Opinion to the Decision dated December 6, 2016:

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[2] *Dumlao v. Commission on Elections*, 184 Phil. 369, 382 (1980).

One substantial distinction between provinces, on one hand, and cities (whether component, highly urbanized, or independent) and municipalities, on the other, is the land areas they cover.

Under the Local Government Code, a province must have a contiguous territory of at least two thousand (2,000) square kilometers. On the other hand, a city or a municipality must have a contiguous territory of at least one hundred (100), and fifty (50) square kilometers, respectively.

By giving the Governor the power to appoint, Section 3(b) entrusts the appointing power to the highest local official who oversees the largest geography where the LWD may expand its operations.

However, Section 3(b) also realizes that confining the appointing power to the Governor loses its relevance where the LWD operates almost entirely within a single city or municipality. Thus, as an alternative, Section 3(b) lodges the appointing power with the Mayor of the City or Municipality where 75% or 3/4 of the LWDs water connections are located.

Neither was the 75% threshold created to favor Governors, as specific class, over Mayors; nor is it limited to conditions existing at the time PD 198 was enacted, or at the time an LWD is created.

The phrase "In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality" signifies that the appointing power may shift at any time depending on the circumstances.

To illustrate this dynamic, while the province of Cebu now enjoys the appointing power, a future increase in MCWD's water connections within Cebu City may re-shift the appointing power to the Mayor.

Finally, do I not see anything wrong in applying the 75% threshold to all cities, regardless of their respective status as a component, independent component or highly urbanized.

Ironically, what would consist of discrimination is to treat highly urbanized and independent component cities differently from component cities on the supposed reason that the former enjoys autonomy over its territory. The authority to appoint, as I will discuss below, does not equate to control over the other LGUs serviced by an LWD.

May I also reiterate herein the argument in my Dissenting Opinion to the Decision dated December 6, 2016 that the LGU does not surrender any of its powers under the Constitution or the Local Government Code to another LGU vested with the power to appoint Board members of the LWD since PD No. 198 explicitly provides that a district once formed shall not be under the jurisdiction of any political subdivision. The LWD has a separate juridical personality which is independent of the LGUs comprising it. Consequently, the power to appoint Board members of an LWD, which is vested upon the LGU determined in accordance with the formula or rule prescribed by Section 3(b) of PD No. 198, does not impair the autonomy of the other LGUs included in the LWD. Moreover, if a province can join an LWD and be subjected to the provisions of PD No. 198, there is no cogent reason why the change of status of a component city of a province, which would later become a highly urbanized city, should affect its powers, rights, and obligations under PD No. 198.

Finally, the Decision dated December 6, 2016 engaged in judicial legislation by substituting a rule or formula to that provided under Section 3(b) of PD No. 198 for determining the appointing authority for the Board members of MCWD. By granting the Petition and vesting the appointing authority on Cebu City, the Decision effectively reduced the threshold of 75% of total active water service connections within the boundary of any city or municipality, which is fixed under Section 3(b) of PD N6. 198, to just a majority (or 51%) of such total active water service connections, which is a totally arbitrary figure without basis in law. If Section 3(b) of PD No. 198 is no longer in keeping with the current status, socio-economic, and political conditions of the LGUs comprising the LWD, then the appropriate remedy is legislative amendment, not judicial legislation. It is not for the Court to prescribe another rule or formula to determine which LGU shall have the authority to appoint the Board members of the LWD.

For the aforementioned reasons, I vote to grant the Motion for Reconsideration and deny the Petition for *Certiorari* for lack of merit.

EN BANC

[G.R. No. 198146. August 8, 2017]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG NATIONAL GOVERNMENT OFFICES AND CORPORATIONS (PRESIDENTIAL DECREE NO. 242); IT IS MANDATORY THAT ALL DISPUTES AND CLAIMS "SOLELY" BETWEEN GOVERNMENT AGENCIES AND OFFICES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, INVOLVING ONLY QUESTIONS OF LAW, BE SUBMITTED TO AND SETTLED OR ADJUDICATED BY THE SECRETARY OF JUSTICE.—** We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists. However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants**. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and**

offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. x x x . The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims "**solely**" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

2. **ID.; ID.; ID.; ID.; CASES ALREADY PENDING IN COURT AT THE TIME OF THE EFFECTIVITY OF PD 242 ARE NOT COVERED BY THE LAW; P.D. NO. 242 IS NOT UNCONSTITUTIONAL, AS IT DOES NOT DIMINISH THE JURISDICTION OF THE COURTS BUT ONLY PRESCRIBES AN ADMINISTRATIVE PROCEDURE FOR THE SETTLEMENT OF CERTAIN TYPES OF DISPUTES BETWEEN OR AMONG DEPARTMENTS, BUREAUS, OFFICES, AGENCIES, AND INSTRUMENTALITIES OF THE NATIONAL GOVERNMENT, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, SO THAT THEY NEED NOT ALWAYS REPAIR TO THE COURTS FOR THE SETTLEMENT OF CONTROVERSIES ARISING FROM THE INTERPRETATION AND APPLICATION OF STATUTES, CONTRACTS OR AGREEMENTS.—** The law is clear and covers "***all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or**

agreements." When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law. The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts**. As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*: Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions.

3. **ID.; ID.; ID.; ID.; ID.; PD 242 WILL ONLY APPLY WHEN ALL THE PARTIES INVOLVED ARE PURELY GOVERNMENT OFFICES AND GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS; JURISDICTION OF THE SECRETARY OF JUSTICE OVER THE PARTIES IN CASE AT BAR, UPHELD.—** PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties**

involved are purely government offices and government-owned or controlled corporations. Since this case is a dispute between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case. In fact, the MOA executed by the BIR, NPC, and PSALM explicitly provides that "[a] ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM." Such provision indicates that the BIR and petitioner PSALM and the NPC acknowledged that the Secretary of Justice indeed has jurisdiction to resolve their dispute.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; EXECUTIVE DEPARTMENT; PRESIDENT; POWER OF CONTROL; THE PRESIDENT DECIDES THE DISPUTE BETWEEN TWO EXECUTIVE OFFICES, AND THE JUDICIARY SHOULD NOT INTRUDE IN THIS EXECUTIVE FUNCTION OF DETERMINING WHICH IS CORRECT BETWEEN THE OPPOSING GOVERNMENT OFFICES, AND IT CANNOT SUBSTITUTE ITS DECISION OVER THAT OF THE PRESIDENT; ONLY AFTER THE PRESIDENT HAS SETTLED THE DISPUTE CAN THE COURTS' JURISDICTION BE INVOKED.—** It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision**. Section 17, Article VII of the Constitution states unequivocally that: "**The President shall have control of all the executive departments, bureaus and offices.** He shall ensure that the laws be faithfully executed." In *Carpio v. Executive Secretary*, the Court expounded on the President's control over all the executive departments, bureaus and offices x x x. This power of control vested by the Constitution in the President cannot be diminished by law. As held in *Rufino v. Endriga*, Congress cannot by law deprive the President of his power of control x x x. Clearly, the President's constitutional power of control over all the executive departments, bureaus and offices cannot be curtailed or diminished by law. "Since the Constitution has given the President the power of control, with all its awesome implications, it is the Constitution alone

which can curtail such power." **This constitutional power of control of the President cannot be diminished by the CTA. Thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who under the Constitution has control over both offices or agencies in dispute, should resolve the dispute instead of the courts. The judiciary should not intrude in this executive function of determining which is correct between the opposing government offices or agencies, which are both under the sole control of the President. Under his constitutional power of control, the President decides the dispute between the two executive offices. The judiciary cannot substitute its decision over that of the President.** Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked. Until such time, the judiciary should not interfere since the issue is not yet ripe for judicial adjudication. Otherwise, the judiciary would infringe on the President's exercise of his constitutional power of control over all the executive departments, bureaus, and offices.

5. **ID.; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ONLY AFTER THE PRESIDENT HAS DECIDED THE DISPUTE BETWEEN GOVERNMENT OFFICES AND AGENCIES CAN THE LOSING PARTY RESORT TO THE COURTS, IF IT SO DESIRES; OTHERWISE, A RESORT TO THE COURTS WOULD BE PREMATURE FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.— [U]nder the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction.** A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust

administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in lack of cause of action, which is one of the grounds for the dismissal of a complaint.

6. **ID.; ID.; ID.; RATIONALE THEREFOR.—** The rationale of the doctrine of exhaustion of administrative remedies was aptly explained by the Court in *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*: The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of the controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed. In requiring parties to exhaust administrative remedies before pursuing action in a court, the doctrine prevents overworked courts from considering issues when remedies are available through administrative channels. Furthermore, the doctrine endorses a more economical and less formal means of resolving disputes, and promotes efficiency since disputes and claims are generally resolved more quickly and economically through administrative proceedings rather than through court litigations.

7. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); SECTION 4 OF THE NIRC HARMONIZED WITH PD 242; AS REGARDS PRIVATE ENTITIES AND THE BUREAU OF INTERNAL REVENUE (BIR), THE POWER TO DECIDE DISPUTED ASSESSMENTS, REFUNDS OF INTERNAL REVENUE TAXES, FEES OR OTHER CHARGES, PENALTIES IN RELATION THERETO, OR OTHER MATTERS ARISING UNDER THE NIRC OR OTHER LAWS ADMINISTERED BY THE BIR IS VESTED IN THE COMMISSIONER OF INTERNAL REVENUE (CIR) SUBJECT TO THE EXCLUSIVE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS, IN ACCORDANCE WITH SECTION 4 OF THE NIRC; ON THE OTHER HAND, WHERE THE DISPUTING PARTIES**

ARE THE BIR AND OTHER GOVERNMENT ENTITIES, THE CASE SHALL BE GOVERNED BY PD 242. — The first paragraph of Section 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is **subject to review by the Secretary of Finance, who is the alter ego of the President**. Thus, the constitutional power of control of the President over all the executive departments, bureaus, and offices is still preserved. The President's power of control, which cannot be limited or withdrawn by Congress, means the power of the President to alter, modify, nullify, or set aside the judgment or action of a subordinate in the performance of his duties. The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, **all** disputes and claims **solely** between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

8. **STATUTORY CONSTRUCTION; SPECIAL LAW AND GENERAL LAW, DISTINGUISHED; WHERE THERE ARE TWO ACTS, ONE OF WHICH IS SPECIAL AND PARTICULAR AND THE OTHER GENERAL WHICH, IF STANDING ALONE, WOULD INCLUDE THE SAME MATTER AND THUS CONFLICT WITH THE SPECIAL ACT, THE SPECIAL LAW MUST PREVAIL SINCE IT**

EVINCES THE LEGISLATIVE INTENT MORE CLEARLY THAN THAT OF A GENERAL STATUTE AND MUST NOT BE TAKEN AS INTENDED TO AFFECT THE MORE PARTICULAR AND SPECIFIC PROVISIONS OF THE EARLIER ACT, UNLESS IT IS ABSOLUTELY NECESSARY SO TO CONSTRUE IT IN ORDER TO GIVE ITS WORDS ANY MEANING AT ALL.— [I]t should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities.** The difference between a special law and a general law was clarified in *Vinzons-Chato v. Fortune Tobacco Corporation*: A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only. A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all. The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication.

9. **ID.; ID.; ID.; DISPUTES SOLELY BETWEEN OR AMONG GOVERNMENT AGENCIES MUST BE RESOLVED UNDER PD 242 WHICH IS A SPECIAL LAW AND NOT UNDER THE NIRC WHICH IS A GENERAL LAW.—**

[E]ven if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes. PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned. Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President. x x x. Since the amount involved in this case is more than one million pesos, the DOJ Secretary's decision may be appealed to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5 of PD 242. If the appeal to the Office of the President is denied, the aggrieved party can still appeal to the Court of Appeals under Section 1, Rule 43 of the 1997 Rules of Civil Procedure.

10. **TAXATION; THE NATIONAL INTERNAL REVENUE CODE; REFORMED VALUE ADDED TAX (REPUBLIC ACT NO. 9337); THE REPEAL OF THE NATIONAL POWER CORPORATION'S (NPC) VALUE ADDED TAX (VAT) EXEMPTION DOES NOT AFFECT POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), AS THE LATTER IS NOT A SUCCESSOR-IN-INTEREST OF THE FORMER.—** PSALM is not a successor-in-interest of NPC. Under its charter, NPC is mandated to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis." With the passage of the EPIRA law which restructured the electric power industry into generation, transmission, distribution, and supply sectors, the NPC is now primarily mandated to perform missionary electrification function through the Small Power Utilities Group (SPUG) and is responsible for providing power generation and associated power delivery systems in areas that are not connected to the transmission system. On the other hand, PSALM, a government-owned and controlled corporation, was created under

the EPIRA law to manage the orderly sale and privatization of NPC assets with the objective of liquidating all of NPC's financial obligations in an optimal manner. Clearly, NPC and PSALM have different functions. **Since PSALM is not a successor-in-interest of NPC, the repeal by RA 9337 of NPC's VAT exemption does not affect PSALM.**

11. **ID.; ID.; ID.; PSALM'S SALE OF THE POWER PLANTS IS NOT SUBJECT TO VAT, AS THE SALE OF THE POWER PLANTS IS NOT IN THE "COURSE OF TRADE OR BUSINESS" OR IN PURSUIT OF A COMMERCIAL OR ECONOMIC ACTIVITY, AS CONTEMPLATED UNDER SECTION 105 OF THE NIRC, BUT WAS AN EXERCISE OF A GOVERNMENTAL FUNCTION MANDATED BY LAW FOR THE PRIMARY PURPOSE OF PRIVATIZING NPC ASSETS IN ACCORDANCE WITH THE GUIDELINES IMPOSED BY THE EPIRA LAW.—** [E]ven if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Section 105 of the NIRC, and thus, not subject to VAT. **The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets.** PSALM was created primarily to liquidate all NPC financial obligations and stranded contract costs in an optimal manner. The purpose and objective of PSALM are explicitly stated in Section 50 of the EPIRA law x x x. PSALM is limited to selling only NPC assets and IPP contracts of NPC. The sale of NPC assets by PSALM is not "in the course of trade or business" but purely for the specific purpose of privatizing NPC assets in order to liquidate all NPC financial obligations. PSALM is tasked to sell and privatize the NPC assets within the term of its existence. The EPIRA law even requires PSALM to submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the total privatization of the NPC assets and IPP contracts. x x x. **Thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law.**

12. **ID.; ID.; ID.; PSALM'S SALE OF THE POWER PLANTS SHOULD NOT BE SUBJECT TO VAT, AS THE SALE OF THE POWER PLANTS CANNOT BE CONSIDERED AS AN INCIDENTAL TRANSACTION MADE IN THE COURSE OF NPC'S OR PSALM'S BUSINESS; REFUND OF THE DEFICIENCY VAT REMITTED BY PSALM UNDER PROTEST, WARRANTED.—** [T]he power plants are already owned by PSALM, not NPC. Under the EPIRA law, the ownership of these power plants was transferred to PSALM for sale, disposition, and privatization in order to liquidate all NPC financial obligations. Unlike the *Mindanao II* case, the power plants in this case were not previously used in PSALM's business. The power plants, which were previously owned by NPC were transferred to PSALM for the specific purpose of privatizing such assets. The sale of the power plants cannot be considered as an incidental transaction made in the course of NPC's or PSALM's business. Therefore, the sale of the power plants should not be subject to VAT. Hence, we agree with the Decisions dated 13 March 2008 and 14 January 2009 of the Secretary of Justice in OSJ Case No. 2007-3 that it was erroneous for the BIR to hold PSALM liable for deficiency VAT in the amount of ₱3,813,080,472 for the sale of the Pantabangan-Masiway and Magat Power Plants. The ₱3,813,080,472 deficiency VAT remitted by PSALM under protest should therefore be refunded to PSALM.

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

1. **POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; THE EXECUTIVE DEPARTMENT; PRESIDENT; POWER OF CONTROL; CONTROL, DEFINED; THE PRESIDENT HAS THE POWER TO REVERSE THE FINDING OF THE DEPARTMENT OF JUSTICE ACTING AS A QUASI-JUDICIAL BODY ON APPEAL.—** The authority of the President to review the ruling of the DOJ is part and parcel of his extensive power of control over the executive department and its officers, from Cabinet Secretary to the lowliest clerk, that is preserved in Article VII, Section 17 of the Philippine Constitution x x x. "Control," in this context, is defined in jurisprudence as "the power of [the President] to alter or modify or nullify or set aside what a

subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." With this definition in mind, it becomes apparent that Section 70, Chapter 14, Title I, Book IV of EO 292 had been crafted to enable the President to exercise this power of control over his alter-egos by allowing him to substitute their judgment with his own, which in this case permits the President to reverse the finding of the DOJ acting as a quasi-judicial body on appeal.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ALLOWS THE PRESIDENT TO CORRECT THE ACTIONS OF HIS SUBORDINATES, INCLUDING THOSE OF THE SECRETARY OF JUSTICE, BEFORE THE SAME CAN BE QUESTIONED IN A COURT OF LAW.—** Appeal to the Office of the President likewise finds support in the doctrine on exhaustion of administrative remedies. The rule calls for a party to first avail of all the means afforded him by administrative processes before seeking intervention of the court, so as not to deprive these agencies of their authority and opportunity to deliberate on the issues of the case. In the same vein, the doctrine allows the President to correct the actions of his subordinates, including those of the SOJ, before these can be questioned in a court of law.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT OF APPEALS HAS GENERAL APPELLATE JURISDICTION OVER JUDGMENTS OF QUASI-JUDICIAL BODIES, INCLUDING THE OFFICE OF THE PRESIDENT, EXCEPT TAX CONTROVERSIES BETWEEN GOVERNMENT INSTITUTIONS THAT HAVE BEEN RESOLVED BY THE OFFICE OF THE PRESIDENT, WHICH MAY BE APPEALED DIRECTLY WITH THE SUPREME COURT.—** Judicial recourse from the exercise of administrative agencies of quasi-judicial powers is to the Court of Appeals (CA), **save for those directly appealable to this Court**. This finds basis under Section 9 of *Batas Pambansa Blg*. 129, as amended by RA 7902, which grants the CA with general appellate jurisdiction over judgments of quasi-judicial bodies x x x. As identified in Section 1, Rule 43 of the Rules of Court, the Office of the President is among the governmental bodies whose rulings fall under the CA's

appellate jurisdiction. [B]y way of exception, direct recourse to this Court is justified insofar as tax controversies solely between government institutions that have been resolved by the Office of the President are concerned.

4. **TAXATION; REPUBLIC ACT NO. 1125, AS AMENDED BY RA 9282; JURISDICTION OF THE COURT OF TAX APPEALS; THE COURT OF TAX APPEALS DOES NOT HAVE APPELLATE JURISDICTION OVER TAX CONTROVERSIES RESOLVED BY THE OFFICE OF THE PRESIDENT.—** The CTA does not have appellate jurisdiction over tax controversies resolved by the Office of the President. [R]epublic Act No. (RA) 1125, as amended by RA 9282, delineates the jurisdiction of the CTA x x x. The CTA, as a specialized court, enjoys jurisdiction limited to those specifically mentioned in the law. Noteworthy is that the exhaustive enumeration aforequoted does not include appeals from the Office of the President. Thus, the CTA could not be deemed to have been bestowed with the authority to review the said rulings regardless of whether or not the dispute involves the interpretation of tax laws.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY WAY OF CERTIORARI BEFORE THE SUPREME COURT; PROPER REMEDY OVER RULING OF THE OFFICE OF THE PRESIDENT IN INTER-GOVERNMENTAL TAX DISPUTES.—** With both the CA and the CTA unable to exercise appellate jurisdiction over rulings of the Office of the President in tax-related controversies, it becomes evident that there is no plain, speedy, and adequate remedy available to the government agency aggrieved. Direct recourse to this Court *via certiorari* should then be permissible under such circumstances in fulfillment of Our role as the final arbiter and court of last resort, and of Our constitutional mandate and bounden duty to settle justiciable controversies.

DEL CASTILLO, *J., dissenting opinion*:

1. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); DISPUTED TAX ASSESSMENTS SOLELY INVOLVING GOVERNMENT ENTITIES FALL WITHIN THE EXCLUSIVE AND ORIGINAL JURISDICTION OF**

THE COMMISSIONER OF INTERNAL REVENUE (CIR) AND THE EXCLUSIVE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS (CTA).— Disputed tax assessments solely involving government entities fall within the exclusive and original jurisdiction of the Commissioner of Internal Revenue (CIR) and the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA). Section 4 of the 1997 National Internal Revenue Code (NIRC) states that **the CIR has the exclusive and original jurisdiction to interpret tax laws and to decide tax cases.** Thus, the CIR has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the Bureau of Internal Revenue (BIR). On the other hand, Section 7 of Republic Act No. (RA) 1125, as amended by RA 9282, provides that **decisions or inactions of the CIR in cases involving disputed assessments, refunds of internal revenue taxes,** fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the BIR **are under the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).** In this case, since what is involved is petitioner's disputed Value-Added Tax (VAT) assessment, which it paid under protest, it is the BIR and the CTA, not the Secretary of Justice, which have exclusive jurisdiction. In fact, the question of whether petitioner's sale of the power plants is subject to VAT is a tax issue that should be resolved by the CIR, subject to the review of the CTA. Unlike the Secretary of Justice, the BIR and the CTA have developed expertise on tax matters. It is only but logical that they should have exclusive jurisdiction to decide on these matters. The authority of the Secretary of Justice under PD 242 to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, therefore, does not include tax disputes, which are clearly under the jurisdiction of the BIR and the CTA.

2. **ID.; ID.; ID.; PD 242, WHICH IS A GENERAL LAW ON THE AUTHORITY OF THE SECRETARY OF JUSTICE TO SETTLE AND ADJUDICATE ALL DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG NATIONAL GOVERNMENT OFFICES, AGENCIES AND**

INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, MUST YIELD TO THE SPECIFIC PROVISIONS OF RA 1125 (AN ACT CREATING THE COURT OF TAX APPEALS), AS AMENDED BY RA 9282, WHICH IS A SPECIFIC LAW VESTING EXCLUSIVE AND PRIMARY JURISDICTION TO THE CIR AND THE CTA ON CASES PERTAINING TO DISPUTED TAX ASSESSMENTS, TAX LAWS AND REFUNDS OF INTERNAL REVENUE TAXES.— Worth mentioning x x x is the case of *National Power Corporation v. Presiding Judge, RTC, 10th Judicial Region, Br. XXV, Cagayan de Oro City,* where the Court affirmed the trial court's jurisdiction over a complaint for the collection of real property tax and special education fund tax filed under PD 464 (The Real Property Tax Code, enacted on July 1, 1974) by the Province of Misamis Oriental against National Power Corporation (NAPOCOR). In that case, NAPOCOR cited PD 242 and argued that it is the Secretary of Justice, not the trial court, which had jurisdiction over the case. Applying the rules on statutory construction, the Court, ruled that PD 242, a general law which deals with administrative settlement or adjudication of disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, must yield to PD 464, a special law which deals specifically with real property taxes. The same ruling must be applied in this case. Thus, PD 242, which is a **general law** on the authority of the Secretary of Justice to settle and adjudicate **all** disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, must yield to the specific provisions of RA 1125, as amended by RA 9282, which is a **specific law** vesting exclusive and primary jurisdiction to the CIR and the CTA on cases pertaining to **disputed tax assessments, tax laws and refunds of internal revenue taxes**.

3. **ID.; ID.; AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA) (REPUBLIC ACT No. 9282); THE COURT OF APPEALS HAS NO JURISDICTION TO REVIEW TAX CASES AS THESE ARE UNDER THE EXCLUSIVE JURISDICTION OF THE COURT OF TAX APPEALS.—** [T]his Court has already made

a pronouncement in the recent case of *Commissioner of Internal Revenue v. Secretary of Justice*, to the effect that the Secretary of Justice has no jurisdiction over disputed assessments issued by the BIR in light of the ruling of the Court in *Philippine National Oil Company v. Court of Appeals*. x x x There is no reason to reverse or abandon the x x x ruling. It must be stressed that what is involved in this case is a **tax issue**, that is, petitioner's disputed Value-Added Tax (VAT) assessment, which it paid under protest. The aggrieved party could no longer resort to an appeal under Rule 43 of the 1997 Rules of Civil Procedure; this is not allowed simply because t**he CA no longer has jurisdiction over tax cases**. To recall, Republic Act No. 9282, enacted on April 23, 2004, expanded the jurisdiction of the Court of Tax Appeals (CTA) and elevated its rank to the level of a collegiate court with special jurisdiction. **Thus, the CTA, a specialized court dedicated exclusively to the study and resolution of tax issues, is no longer under the appellate jurisdiction of the CA. Accordingly, the CA has no jurisdiction to review tax cases as these are under the exclusive jurisdiction of the CTA, a co-equal court.**

4. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* BEFORE THE SUPREME COURT; PROPER REMEDY OF A PARTY ADVERSELY AFFECTED BY A DECISION OF THE COURT OF TAX APPEALS EN BANC.—** [T]he remedy of a party adversely affected by a decision or ruling of the CTA *en banc* is to directly file with the Supreme Court, **not with the CA**, a verified petition for review on certiorari under Rule 45 of the Rules of Court within fifteen days from receipt of the copy of the decision or resolution of the CTA.

5. **TAXATION; COURT OF TAX APPEALS; THE COURT OF APPEALS (CA) SHOULD NOT BE ALLOWED TO RESOLVE TAX ISSUES, AS THIS WOULD DEPRIVE THE COURT OF TAX APPEALS (CTA) OF ITS EXCLUSIVE JURISDICTION, AND WOULD CREATE AN ABSURD SITUATION OF A SPLIT- JURISDICTION BETWEEN THE CTA AND THE CA, AND MIGHT CREATE CONFLICTING DECISIONS OR INTERPRETATIONS OF TAX LAWS.—** [I]n T*he City of Manila v. Judge Grecia-Cuerdo*, the Court ruled that it is the CTA, not the CA, which has

jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case. In that case, the Court explained that: x x x Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of certiorari against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of certiorari when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter. x x x Using the reasoning in the above-cited case, it is clear that the CA should not be allowed to resolve tax issues, such as the instant case, as this would deprive the CTA of its exclusive jurisdiction. It would create an absurd situation of a split- jurisdiction between the CTA and the CA. In addition, this might create conflicting decisions or interpretations of tax laws.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.

The Solicitor General for respondent.

Felix Paul R. Velasco III, Claro B. Ortiz and *BIR Litigation Division* for respondent Bureau of Internal Revenue.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 27 September 2010 Decision[2] and the 3 August 2011 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 108156. The Court of Appeals nullified the Decisions dated 13 March 2008 and 14 January 2009 of the Secretary of Justice in OSJ Case No. 2007-3 for lack of jurisdiction.

The Facts

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government-owned and controlled corporation created under Republic Act No. 9136 (RA 9136), also known as the Electric Power Industry Reform Act of 2001 (EPIRA).[4] Section 50 of RA 9136 states that the principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of the National Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (Vol. I), pp. 37-54. Penned by Associate Justice Bienvenido L. Reyes (a retired member of this Court), with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Elihu A. Ybañez concurring.

[3] *Id.* at 55-57.

[4] Section 49 of RA 9136 reads:

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

Power Producer (IPP) contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

PSALM conducted public biddings for the privatization of the Pantabangan-Masiway Hydroelectric Power Plant (Pantabangan-Masiway Plant) and Magat Hydroelectric Power Plant (Magat Plant) on 8 September 2006 and 14 December 2006, respectively. First Gen Hydropower Corporation with its $129 Million bid and SN Aboitiz Power Corporation with its $530 Million bid were the winning bidders for the Pantabangan-Masiway Plant and Magat Plant, respectively.

On 28 August 2007, the NPC received a letter[5] dated 14 August 2007 from the Bureau of Internal Revenue (BIR) demanding immediate payment of ₱3,813,080,472[6] deficiency value-added tax (VAT) for the sale of the Pantabangan-Masiway Plant and Magat Plant. The NPC indorsed BIR's demand letter to PSALM.

On 30 August 2007, the BIR, NPC, and PSALM executed a Memorandum of Agreement (MOA),[7] wherein they agreed that:

A) NPC/PSALM shall remit under protest to the BIR the amount of Php 3,813,080,472.00, representing basic VAT as shown in the BIR letter dated August 14, 2007, upon execution of this Memorandum of Agreement (MOA).

B) This remittance shall be without prejudice to the outcome of the resolution of the Issues before the appropriate courts or body.

C) NPC/PSALM and BIR mutually undertake to seek final resolution of the Issues by the appropriate courts or body.

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[5] *Rollo* (Vol. 1), pp. 96-99. The letter, signed by the OIC-Commissioner of Internal Revenue, informed NPC that it is liable for deficiency VAT and documentary stamp tax in the total amount of ₱5,819,110,335.81, inclusive of interests and penalties, for the sale of the Pantabangan-Masiway and Magat power plants.

[6] The amount represents only the total basic VAT due, excluding the 25% surcharge and interest.

[7] *Rollo* (Vol. I), pp. 100-103.

D) BIR shall waive any and all interests and surcharges on the aforesaid BIR letter, except when the case is elevated by the BIR before an appellate court.

E) Nothing contained in this MOA shall be claimed or construed to be an admission against interest as to any party or evidence of any liability or wrongdoing whatsoever nor an abandonment of any position taken by NPC/PSALM in connection with the Issues.

F) Each Party to this MOA hereto expressly represents that the authorized signatory hereto has the legal authority to bind [the] party to all the terms of this MOA.

G) Any resolution by the appropriate courts or body in favor of the BIR, other than a decision by the Supreme Court, shall not constitute as precedent and sufficient legal basis as to the taxability of NPC/PSALM's transactions pursuant to the privatization of NPC's assets as mandated by the EPIRA Law.

H) Any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM.

I) Either party has the right to appeal any adverse decision against it before any appropriate court or body.

J) In the event of failure by the BIR to fulfill the undertaking referred to in (H) above, NPC/PSALM shall assign to DOF its right to the refund of the subject remittance, and the DOF shall offset such amount against any liability of NPC/PSALM to the National Government pursuant to the objectives of the EPIRA on the application of the privatization proceeds.[8]

In compliance with the MOA, PSALM remitted under protest to the BIR the amount of ₱3,813,080,472, representing the total basic VAT due.

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[8] *Id*. at 101-102.

On 21 September 2007, PSALM filed with the Department of Justice (DOJ) a petition for the adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT. The case was docketed as OSJ Case No. 2007-3.

On 13 March 2008, the DOJ ruled in favor of PSALM, thus:

> In cases involving purely question[s] of law, such as in the instant case, between and among the government-owned and controlled corporation and government bureau, the issue is best settled in this Department. In the final analysis, there is but one party in interest, the Government itself in this litigation.
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> The instant petition is an original petition involving only [a] question of law on whether or not the sale of the Pantabangan-Masiway and Magat Power Plants to private entities under the mandate of the EPIRA is subject to VAT. It is to be stressed that this is not an appeal from the decision of the Commissioner of Internal Revenue involving disputed assessments, refunds of internal revenue taxes, fees or other charges, or other matters arising under the National Internal Revenue Code or other law.
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> Moreover, it must be noted that respondent already invoked this Office's jurisdiction over it by praying in respondent's Motion for Extension of Time to File Comment (On Petitioner's Petition dated 21 September 2007) and later, Omnibus Motion To Lift Order dated 22 October 2007 and To Admit Attached Comment. The Court has held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court. Having sought this Office to grant extension of time to file answer or comment to the instant petition, thereby submitting to the jurisdiction of this Court [sic], respondent cannot now repudiate the very same authority it sought.
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> When petitioner was created under Section 49 of R.A. No. 9136, for the principal purpose to manage the orderly sale, disposition,

and privatization of NPC generation assets, real estate and other disposable assets, IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner, there was, by operation of law, the transfer of ownership of NPC assets. Such transfer of ownership was not carried out in the ordinary course of transfer which must be accorded with the required elements present for a valid transfer, but in this case, in accordance with the mandate of the law, *that is*, EPIRA. Thus, respondent cannot assert that it was NPC who was the actual seller of the Pantabangan-Masiway and Magat Power Plants, because at the time of selling the aforesaid power plants, the owner then was already the petitioner and not the NPC. Consequently, petitioner cannot also be considered a successor-in-interest of NPC.

Since it was petitioner who sold the Pantabangan-Masiway and Magat Power Plants and not the NPC, through a competitive and public bidding to the private entities, Section 24(A) of R.A. No. 9337 cannot be applied to the instant case. Neither the grant of exemption and revocation of the tax exemption accorded to the NPC, be also affected to petitioner.

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Clearly, the disposition of Pantabangan-Masiway and Magat Power Plants was not in the regular conduct or pursuit of a commercial or an economic activity, but was effected by the mandate of the EPIRA upon petitioner to direct the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts, and afterward, to liquidate the outstanding obligations of the NPC.

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Verily, to subject the sale of generation assets in accordance with a privatization plan submitted to and approved by the President, which is a one time sale, to VAT would run counter to the purpose of obtaining optimal proceeds since potential bidders would necessarily have to take into account such extra cost of VAT.

WHEREFORE, premises considered, the imposition by respondent Bureau of Internal Revenue of deficiency Value-Added Tax in the amount of ₱3,813,080,472.00 on the privatization sale of the Pantabangan-Masiway and Magat Power Plants, done in accordance with the mandate of the Electric Power Industry Reform Act of 2001, is hereby declared NULL and VOID. Respondent is directed to refund

the amount of ₱3,813,080,472.00 remitted under protest by petitioner to respondent.[9]

The BIR moved for reconsideration, alleging that the DOJ had no jurisdiction since the dispute involved tax laws administered by the BIR and therefore within the jurisdiction of the Court of Tax Appeals (CTA). Furthermore, the BIR stated that the sale of the subject power plants by PSALM to private entities is in the course of trade or business, as contemplated under Section 105 of the National Internal Revenue Code (NIRC) of 1997, which covers incidental transactions. Thus, the sale is subject to VAT. On 14 January 2009, the DOJ denied BIR's Motion for Reconsideration.[10]

On 7 April 2009,[11] the BIR Commissioner (Commissioner of Internal Revenue) filed with the Court of Appeals a petition for certiorari, seeking to set aside the DOJ's decision for lack of jurisdiction. In a Resolution dated 23 April 2009, the Court of Appeals dismissed the petition for failure to attach the relevant pleadings and documents.[12] Upon motion for reconsideration, the Court of Appeals reinstated the petition in its Resolution dated 10 July 2009.[13]

The Ruling of the Court of Appeals

The Court of Appeals held that the petition filed by PSALM with the DOJ was really a protest against the assessment of deficiency VAT, which under Section 204[14] of the NIRC of

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[9] *Id*. at 203-209.

[10] *Id.* at 237-239.

[11] The Court of Appeals' Decision erroneously stated the date as "April 9, 2007," but the petition was in fact filed on 7 April 2009 through registered mail, as evidenced by Registry Receipt Nos. 397-L and 398-L. *Id*. at 285.

[12] *Rollo* (Vol. 1), p. 42.

[13] *Id*.

[14] Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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1997 is within the authority of the Commissioner of Internal Revenue (CIR) to resolve. In fact, PSALM's objective in filing the petition was to recover the ₱3,813,080,472 VAT which was allegedly assessed erroneously and which PSALM paid under protest to the BIR.

Quoting paragraph H[15] of the MOA among the BIR, NPC, and PSALM, the Court of Appeals stated that the parties in effect agreed to consider a DOJ ruling favorable to PSALM as the latter's application for refund.

Citing Section 4[16] of the NIRC of 1997, as amended by Section 3 of Republic Act No. 8424 (RA 8424)[17] and Section 7[18] of

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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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[15] H) x x x. A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM.

[16] SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[17] An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes.

[18] SEC. 7. Section 7 of the same Act [Republic Act No. 1125, as amended] is hereby amended to read as follows:

Republic Act No. 9282 (RA 9282),[19] the Court of Appeals ruled that the CIR is the proper body to resolve cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. The Court of Appeals stressed that jurisdiction is conferred by law or by the Constitution; the parties, such as in this case, cannot agree or stipulate on it by conferring jurisdiction in a body that has none. Jurisdiction over the person can be waived but not the jurisdiction over the subject matter which is neither subject to agreement nor conferred by consent of the parties. The Court of Appeals held that the DOJ Secretary erred in ruling that the CIR is estopped from assailing the jurisdiction of the DOJ after having agreed to submit to its jurisdiction. As a general rule, estoppel does not confer jurisdiction over a cause of action to a tribunal where none, by law, exists.

In conclusion, the Court of Appeals found that the DOJ Secretary gravely abused his discretion amounting to lack of jurisdiction when he assumed jurisdiction over OSJ Case No. 2007-3. The dispositive portion of the Court of Appeals' 27 September 2010 Decision reads:

WHEREFORE, premises considered, we hereby GRANT the petition. Accordingly: (1) the [D]ecision dated March 13, 2008, and the Decision dated January 14, 2009 both issued by the public

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Sec. 7. *Jurisdiction*. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x x x x

[19] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

respondent Secretary of Justice in [OSJ Case No.] 2007-3 are declared NULL and VOID for having been issued without jurisdiction.

No costs.

SO ORDERED.[20]

PSALM moved for reconsideration, which the Court of Appeals denied in its 3 August 2011 Resolution. Hence, this petition.

The Issues

Petitioner PSALM raises the following issues:

I. DID THE COURT OF APPEALS MISAPPLY THE LAW IN GIVING DUE COURSE TO THE PETITION FOR CERTIORARI IN CA-G.R. SP NO. 108156?

II. DID THE SECRETARY OF JUSTICE ACT IN ACCORDANCE WITH THE LAW IN ASSUMING JURISDICTION AND SETTLING THE DISPUTE BY AND BETWEEN THE BIR AND PSALM?

III. DID THE SECRETARY OF JUSTICE ACT IN ACCORDANCE WITH THE LAW AND JURISPRUDENCE IN RENDERING JUDGMENT THAT THERE SHOULD BE NO VAT ON THE PRIVATIZATION, SALE OR DISPOSAL OF GENERATION ASSETS?

IV. DOES PUBLIC RESPONDENT DESERVE THE RELIEF OF CERTIORARI?[21]

The Ruling of the Court

We find the petition meritorious.

I. Whether the Secretary of Justice has jurisdiction over the case.

The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the

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[20] *Rollo* (Vol. 1), p. 54.

[21] *Id*. at 13.

resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action.[22] Jurisdiction cannot be conferred by consent or acquiescence of the parties[23] or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government- owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants**. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242[24] (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies**

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[22] *Magno v. People*, 662 Phil. 726 (2011); *Republic of the Philippines v. Sandiganbayan*, 454 Phil. 504 (2003).

[23] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, 706 Phil. 442 (2013); *Cojuangco. Jr. v. Republic of the Philippines*, 699 Phil. 443 (2012).

[24] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES. Issued on 9 July 1973.

involved. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

> Section 1. **Provisions of law to the contrary notwithstanding, *all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, *shall* henceforth be administratively settled or adjudicated as provided hereinafter:** Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> Section 2. **In all cases involving only questions of law, the same *shall* be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and ex officio adviser of all government- owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**
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> Section 3. Cases involving mixed questions of law and of fact or only factual issues *shall* be submitted to and settled or adjudicated by:
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> (a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;
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> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
>
> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). (Emphasis supplied)

The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation.[25] Its use rendered the provisions

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[25] *Abakada Guro Party List v. Hon. Exec. Sec. Ermita,* 506 Phil. 1 (2005); *Enriquez v. Enriquez*, 505 Phil. 193 (2005); *Province of Batangas v. Hon. Romulo*, 473 Phil. 806 (2004).

mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims "**solely**" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers "***all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements**." When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts**. As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*:[26]

> Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts

[26] 276 Phil. 439 (1991).

or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions.[27]

PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.**[28] Since this case is a dispute between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case. In fact, the MOA executed by the BIR, NPC, and PSALM explicitly provides that "[a] ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM."[29] Such

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[27] *Id*. at 443.

[28] Under Section 66, Chapter 14, Book IV of the Administrative Code of 1987, which incorporated PD 242, not covered in the administrative settlement or adjudication are disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

[29] The pertinent provision in the MOA reads:

H) Any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. **A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve**

provision indicates that the BIR and petitioner PSALM and the NPC acknowledged that the Secretary of Justice indeed has jurisdiction to resolve their dispute.

This case is different from the case of *Philippine National Oil Company v. Court of Appeals*,[30] (*PNOC v. CA*) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government- owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of *PNOC v. CA*. Even the *ponencia in PNOC v. CA* stated that the dispute in that case is not covered by PD 242, thus:

> Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. .242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies *solely* between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. **While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen.** His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated the CTA Case No. 4249 by filing a Petition for Review.[31] (Emphasis supplied)

In contrast, since this case is a dispute **solely** between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case.

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the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM. (Emphasis supplied)

[30] 496 Phil. 506 (2005).

[31] *Id*. at 558.

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision**. Section 17, Article VII of the Constitution states unequivocally that: "**The President shall have control of all the executive departments, bureaus and offices.** He shall ensure that the laws be faithfully executed." In *Carpio v. Executive Secretary*,[32] the Court expounded on the President's control over all the executive departments, bureaus and offices, thus:

> This presidential power of control over the executive branch of government extends over all executive officers from Cabinet Secretary to the lowliest clerk and has been held by us, in the landmark case of *Mondano vs. Silvosa*, to mean "the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter." It is said to be at the very "heart of the meaning of Chief Executive."
>
> Equally well accepted, as a corollary rule to the control powers of the President, is the "Doctrine of Qualified Political Agency." As the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members.
>
> Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person on the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive."
>
> Thus, and in short, "the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and

[32] 283 Phil. 196 (1992).

by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department."[33]

This power of control vested by the Constitution in the President cannot be diminished by law. As held in *Rufino v. Endriga*,[34] Congress cannot by law deprive the President of his power of control, thus:

> The Legislature cannot validly enact a law that puts a government office in the Executive branch outside the control of the President in the guise of insulating that office from politics or making it independent. **If the office is part of the Executive branch, it must remain subject to the control of the President. Otherwise, the Legislature can deprive the President of his constitutional power of control over "all the executive x x x offices." If the Legislature can do this with the Executive branch, then the Legislature can also deal a similar blow to the Judicial branch by enacting a law putting decisions of certain lower courts beyond the review power of the Supreme Court.** This will destroy the system of checks and balances finely structured in the 1987 Constitution among the Executive, Legislative, and Judicial branches.[35] (Emphasis supplied)

Clearly, the President's constitutional power of control over all the executive departments, bureaus and offices cannot be curtailed or diminished by law. "Since the Constitution has given the President the power of control, with all its awesome implications, it is the Constitution alone which can curtail such power."[36] **This constitutional power of control of the President cannot be diminished by the CTA. Thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who under the Constitution has control over both offices or agencies in dispute, should resolve the dispute instead of the courts.**

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[33] *Id*. at 204-205.

[34] 528 Phil. 473 (2006).

[35] *Id.* at 506.

[36] J. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: A COMMENTARY 859 (2003).

The judiciary should not intrude in this executive function of determining which is correct between the opposing government offices or agencies, which are both under the sole control of the President. Under his constitutional power of control, the President decides the dispute between the two executive offices. The judiciary cannot substitute its decision over that of the President. Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked. Until such time, the judiciary should not interfere since the issue is not yet ripe for judicial adjudication. Otherwise, the judiciary would infringe on the President's exercise of his constitutional power of control over all the executive departments, bureaus, and offices.

Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction.[37] A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination.[38] PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in lack of cause of action,[39] which is one of the grounds for the dismissal of a complaint.

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[37] *Smart Communications, Inc. v. Aldecoa*, 717 Phil. 577 (2013); *Special People, Inc. Foundation v. Canda*, 701 Phil. 365 (2013); *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.*, 686 Phil. 76 (2012); *Laguna CATV Network, Inc. v. Hon. Maraan*, 440 Phil. 734 (2002).

[38] *Gov. Joson III v. Court of Appeals*, 517 Phil. 555 (2006).

[39] *Ejera v. Merto,* 725 Phil. 180 (2014).

The rationale of the doctrine of exhaustion of administrative remedies was aptly explained by the Court in *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*:[40]

> The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of the controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[41]

In requiring parties to exhaust administrative remedies before pursuing action in a court, the doctrine prevents overworked courts from considering issues when remedies are available through administrative channels.[42] Furthermore, the doctrine endorses a more economical and less formal means of resolving disputes,[43] and promotes efficiency since disputes and claims are generally resolved more quickly and economically through administrative proceedings rather than through court litigations.[44]

The Court of Appeals ruled that under the 1997 NIRC, the dispute between the parties is within the authority of the CIR to resolve. Section 4 of the 1997 NIRC reads:

> SEC 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*— The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.

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[40] 664 Phil. 754 (2011).

[41] *Id*. at 759-760.

[42] *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378, 110 S. Ct. 688, 107 L. Ed. 2D 796 (1990).

[43] *Rojo v. Kliger*, 52 Cal. 3D 65, 276 Cal Rptr. 130, 801 P.2d 373 (1990).

[44] *Woodford v. Ngo*, 126 S. Ct. 2378, 165 L. Ed. 2D 368 (2006).

The power to decide disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals. (Emphasis supplied)

The first paragraph of Section 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is **subject to review by the Secretary of Finance, who is the alter ego of the President**. Thus, the constitutional power of control of the President over all the executive departments, bureaus, and offices[45] is still preserved. The President's power of control, which cannot be limited or withdrawn by Congress, means the power of the President to alter, modify, nullify, or set aside the judgment or action of a subordinate in the performance of his duties.[46]

The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, **all** disputes and claims **solely** between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other

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[45] Section 17, Article VII of the Constitution unequivocally states that: "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

[46] *Orosa v. Roa*, 527 Phil. 347 (2006).

charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges.[47] **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities.** The difference between a special law and a general law was clarified in *Vinzons-Chato v. Fortune Tobacco Corporation*:[48]

A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.

A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.

The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of,

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[47] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 609 Phil. 695 (2009).

[48] 552 Phil. 101 (2007).

the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication.[49]

Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes. PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned. Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.[50]

Even the BIR, through its authorized representative, then OIC Commissioner of Internal Revenue Lilian B. Hefti, acknowledged in the MOA executed by the BIR, NPC, and PSALM, that the Secretary of Justice has jurisdiction to resolve its dispute with petitioner PSALM and the NPC. This is clear from the provision in the MOA which states:

H) Any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. **A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM.** (Emphasis supplied)

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

[50] *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*, *supra* note 26.

PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989.[51] The pertinent provisions read:

Chapter 14- Controversies Among Government Offices and Corporations

SEC. 66. *How Settled.* — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government- owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

SEC. 67. *Disputes Involving Questions of Law*. — All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

SEC. 68. *Disputes Involving Questions of Fact and Law*.— Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

> (1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and
>
> (2) The Secretary of Justice, in all other cases not falling under paragraph (1).

SEC. 69. *Arbitration*. — The determination of factual issues may be referred to an arbitration panel composed of one representative

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[51] *Dr. Pandi v. Court of Appeals*, 430 Phil. 239 (2002). Republic Act No. 6682 amended the effectivity clause of EO 292, directing that "[T]his Code shall take effect two years after its publication in the Official Gazette."

each of the parties involved and presided over by a representative of the Secretary of Justice or the Solicitor General, as the case may be.

SEC. 70. *Appeal*s. — The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

SEC. 71. *Rules and Regulations.* — The Secretary of Justice shall promulgate the rules and regulations necessary to carry out the provisions of this Chapter.

Since the amount involved in this case is more than one million pesos, the DOJ Secretary's decision may be appealed to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5[52] of PD 242. If the appeal to the Office of the President is denied, the aggrieved party can still appeal to the Court of Appeals under Section 1, Rule 43 of the 1997 Rules of Civil Procedure.[53] However, in order

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[52] Section 5. The decisions of the Secretary of Justice, as well as those of the Solicitor General or the Government Corporate Counsel, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may be taken to and entertained by the Office of the President only in cases wherein the amount of the claim or value of the property exceeds ₱1 million. The decisions of the Office of the President on appeal cases shall be final.

[53] Section 1, Rule 43 of the 1997 Rules of Civil Procedure reads:

RULE 43

APPEALS FROM THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS

SECTION 1. *Scope*.— This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, **Office of the President**, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications

not to further delay the disposition of this case, the Court resolves to decide the substantive issue raised in the petition.[54]

II. Whether the sale of the power plants is subject to VAT.

To resolve the issue of whether the sale of the Pantabangan-Masiway and Magat Power Plants by petitioner PSALM to private entities is subject to VAT, the Court must determine whether the sale is "in the course of trade or business" as contemplated under Section 105 of the NIRC, which reads:

> SEC 105. *Persons Liable*. — **Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.**
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act 7716.
>
> **The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.**
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphasis supplied)

Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[54] *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative*, 614 Phil. 222 (2009).

Under Section 50 of the EPIRA law, PSALM's principal purpose is to manage the orderly sale, disposition, and privatization of the NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

PSALM asserts that the privatization of NPC assets, such as the sale of the Pantabangan-Masiway and Magat Power Plants, is pursuant to PSALM's mandate under the EPIRA law and is not conducted in the course of trade or business. PSALM cited the 13 May 2002 BIR Ruling No. 020-02, that PSALM's sale of assets is not conducted in pursuit of any commercial or profitable activity as to fall within the ambit of a VAT-able transaction under Sections 105 and 106 of the NIRC. The pertinent portion of the ruling adverted to states:

2. *Privatization of assets by PSALM is not subject to VAT*

Pursuant to Section 105 in relation to Section 106, both of the Tax Code of 1997, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods, is collected from any person, who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, which tax shall be paid by the seller or transferor.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial activity, including transactions incidental thereto.

Since the disposition or sale of the assets is a consequence of PSALM's mandate to ensure the orderly sale or disposition of the property and thereafter to liquidate the outstanding loans and obligations of NPC, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the Universal Charge, and not conducted in pursuit of any commercial or profitable activity, including transactions incidental thereto, **the same will be considered an isolated transaction, which will therefore not be subject to VAT**. (BIR Ruling No. 113-98 dated July 23, 1998)[55] (Emphasis supplied)

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[55] *Rollo* (Vol. II), p. 624.

On the other hand, the CIR argues that the previous exemption of NPC from VAT under Section 13 of Republic Act No. 6395[56] (RA 6395) was expressly repealed by Section 24 of Republic Act No. 9337[57] (RA 9337), which reads:

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

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

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

(C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

As a consequence, the CIR posits that the VAT exemption accorded to PSALM under BIR Ruling No. 020-02 is also deemed revoked since PSALM is a successor-in-interest of NPC. Furthermore, the CIR avers that prior to the sale, NPC still owned the power plants and not PSALM, which is just considered as the trustee of the NPC properties. Thus, the sale made by NPC or its successors-in-interest of its power plants should be subject to the 10% VAT beginning 1 November 2005 and 12% VAT beginning 1 February 2007.

We do not agree with the CIR's position, which is anchored on the wrong premise that PSALM is a successor-in-interest of NPC. PSALM is not a successor-in-interest of NPC. Under

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[56] AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION.

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

its charter, NPC is mandated to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis."[58] With the passage of the EPIRA law which restructured the electric power industry into generation, transmission, distribution, and supply sectors, the NPC is now primarily mandated to perform missionary electrification function through the Small Power Utilities Group (SPUG) and is responsible for providing power generation and associated power delivery systems in areas that are not connected to the transmission system.[59] On the other hand, PSALM, a government-owned and controlled corporation, was created under the EPIRA law to manage the orderly sale and privatization of NPC assets with the objective of liquidating all of NPC's financial obligations in an optimal manner. Clearly, NPC and PSALM have different functions. **Since PSALM is not a successor-in-interest of NPC, the repeal by RA 9337 of NPC's VAT exemption does not affect PSALM.**

In any event, even if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Section 105 of the NIRC, and thus, not subject to VAT. **The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets.** PSALM was created primarily to

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[58] Section 1, RA 6395.

[59] Section 70 of the EPIRA law states:

SEC. 70. *Missionary Electrification*. — Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

liquidate all NPC financial obligations and stranded contract costs in an optimal manner. The purpose and objective of PSALM are explicitly stated in Section 50 of the EPIRA law, thus:

> SEC. 50. *Purpose and Objective, Domicile and Term of Existence.* — **The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.**
>
> The PSALM Corp. shall have its principal office and place of business within Metro Manila.
>
> The PSALM Corp. shall exist for a period of twenty-five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government. (Emphasis supplied)

PSALM is limited to selling only NPC assets and IPP contracts of NPC. The sale of NPC assets by PSALM is not "in the course of trade or business" but purely for the specific purpose of privatizing NPC assets in order to liquidate all NPC financial obligations. PSALM is tasked to sell and privatize the NPC assets within the term of its existence.[60] The EPIRA law even

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[60] Section 51 of the EPIRA law enumerates the powers of PSALM:

SEC. 51. *Powers.* — The Corporation shall, in the performance of its functions and for the attainment of its objectives, have the following powers:

(a) **To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.**

(b) **To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;**

(c) To take title to and possession of the NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administrators in accordance with this Act;

requires PSALM to submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the total privatization of the NPC assets and IPP contracts. Section 47 of the EPIRA law provides:

SEC 47. *NPC Privatization*. — Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in Paragraph (f) herein:

(d) To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;

(e) **To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;**

(f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

(g) To sue and be sued in its name;

(h) To appoint or hire, transfer, remove and fix the compensation of its personnel: *Provided, however*, That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;

(i) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;

(j) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided, however*, That all such debts or borrowings shall have been paid off before the end of its corporate life;

(k) To restructure existing loans of the NPC;

(l) To collect, administer, and apply NPC's portion of the universal charge; and

(m) **To structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale of said assets.** (Emphasis supplied)

(a) The privatization value to the National Government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized;

(b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged.

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas;

(c) The NPC plants and/or its IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting generation companies (gencos), ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of this Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:

> (1) A sufficient scale of operations and balance sheet strength to promote the financial viability of the restructured units
>
> (2) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power
>
> (3) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or the load curve; and
>
> (4) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.

(d) All assets of NPC shall be sold in open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;

(e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may direct

water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;

(f) The Agus and Pulangi complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and, except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangi complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;

(g) The steamfield assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;

(h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;

(i) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided*, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act; and

(j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

Thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law.

In the 2006 case of *Commissioner of Internal Revenue v. Magsaysay Lines, Inc. (Magsaysay)*,[61] the Court ruled that the sale of the vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. is not subject to VAT since it was not in the course of trade or business, as it was involuntary and made pursuant to the government's policy of privatization. The Court cited the CTA ruling that the phrase "course of business" or "doing business" connotes regularity of activity. Thus, since the sale of the vessels was an isolated transaction, made pursuant to the government's privatization policy, and which transaction could no longer be repeated or carried on with regularity, such sale was not in the course of trade or business and was not subject to VAT.

Similarly, the sale of the power plants in this case is not subject to VAT since the sale was made pursuant to PSALM's mandate to privatize NPC assets, and was not undertaken in the course of trade or business. In selling the power plants, PSALM was merely exercising a governmental function for which it was created under the EPIRA law.

The CIR argues that the *Magsaysay* case, which involved the sale in 1988 of NDC vessels, is not applicable in this case since it was decided under the 1986 NIRC. The CIR maintains that under Section 105 of the 1997 NIRC, which amended Section 99[62] of the 1986 NIRC, the phrase "in the course of trade or business" was expanded, and now covers incidental transactions.

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[61] 529 Phil. 64 (2006).

[62] Section 99 of the 1986 NIRC, as amended by Executive Order No. 273 (issued on 25 July 1987), reads:

Sec. 99. Persons liable. — Any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.

Since NPC still owns the power plants and PSALM may only be considered as trustee of the NPC assets, the sale of the power plants is considered an incidental transaction which is subject to VAT.

We disagree with the CIR's position. PSALM owned the power plants which were sold. PSALM's ownership of the NPC assets is clearly stated under Sections 49, 51, and 55 of the EPIRA law. The pertinent provisions read:

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation*. — **There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets**. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SEC 51. *Powers*. — The Corporation shall, in the performance of its functions and for the attainment of its objectives, have the following powers:

(a) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of the NPC debts and stranded costs, such liquidation to be completed within the term of existence of the PSALM Corp.;

(b) **To take title to and possession of, administer and conserve the assets transferred to it;** to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;

x x x x x x x x x

SEC. 55. *Property of PSALM Corp.*— **The following funds, assets, contributions and other property shall constitute the property of PSALM Corp.:**

(a) **The generation assets, real estate, IPP contracts, other disposable assets of NPC**, proceeds from the sale or disposition of such assets and residual assets from B-O-T, R-O-T, and other variations thereof;

(b) Transfers from the National Government;

(c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: *Provided, however,* That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;

(d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of the NPC;

(e) Net profit of NPC;

(f) Net profit of TRANSCO;

(g) Official assistance, grants, and donations from external sources; and

(h) Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes. (Emphasis supplied)

Under the EPIRA law, the ownership of the generation assets, real estate, IPP contracts, and other disposable assets of the NPC was transferred to PSALM. Clearly, PSALM is not a mere trustee of the NPC assets but is the owner thereof. Precisely, PSALM, as the owner of the NPC assets, is the government entity tasked under the EPIRA law to privatize such NPC assets.

In the more recent case of *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue (Mindanao 11)*[63] which was decided under the 1997 NIRC, the Court held that the sale of a fully depreciated vehicle that had been used in Mindanao II's business was subject to VAT, even if such sale may be considered isolated. The Court ruled that it does not follow that an isolated transaction cannot be an incidental transaction for VAT purposes. The Court then cited Section

[63] 706 Phil. 48 (2013).

105 of the 1997 NIRC which shows that a transaction "in the course of trade or business" includes "transactions incidental thereto." Thus, the Court held that the sale of the vehicle is an incidental transaction made in the course of Mindanao II's business which should be subject to VAT.

The CIR alleges that the sale made by NPC and/or its successors-in- interest of the power plants is an incidental transaction which should be subject to VAT. This is erroneous. As previously discussed, the power plants are already owned by PSALM, not NPC. Under the EPIRA law, the ownership of these power plants was transferred to PSALM for sale, disposition, and privatization in order to liquidate all NPC financial obligations. Unlike the *Mindanao II* case, the power plants in this case were not previously used in PSALM's business. The power plants, which were previously owned by NPC were transferred to PSALM for the specific purpose of privatizing such assets. The sale of the power plants cannot be considered as an incidental transaction made in the course of NPC's or PSALM's business. Therefore, the sale of the power plants should not be subject to VAT.

Hence, we agree with the Decisions dated 13 March 2008 and 14 January 2009 of the Secretary of Justice in OSJ Case No. 2007-3 that it was erroneous for the BIR to hold PSALM liable for deficiency VAT in the amount of ₱3,813,080,472 for the sale of the Pantabangan-Masiway and Magat Power Plants. The ₱3,813,080,472 deficiency VAT remitted by PSALM under protest should therefore be refunded to PSALM.

However, to give effect to Section 70, Chapter 14, Book IV of the Administrative Code of 1987 on appeals from decisions of the Secretary of Justice, the BIR is given an opportunity to appeal the Decisions dated 13 March 2008 and 14 January 2009 of the Secretary of Justice to the Office of the President within 10 days from finality of this Decision.[64]

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[64] Section 10 of the DOJ Administrative Order No. 121 (RULES IMPLEMENTING PRESIDENTIAL DECREE NO. 242 "PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the 27 September 2010 Decision and the 3 August 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 108156. The Decisions dated 13 March 2008 and 14 January 2009 of the Secretary of Justice in OSJ Case No. 2007-3 are **REINSTATED**. No costs.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Peralta, Mendoza, Leonen, Jardeleza, Caguioa, Martires, Tijam, and *Reyes, Jr., JJ.*, concur.

Velasco, Jr., J., see concurring opinion.

Bersamin, J., joins the dissent of *J.* del Castillo.

Del Castillo, J., see dissenting opinion.

Perlas-Bernabe, J., no part.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur in the ruling of the *ponencia,* but would like to underscore the procedural considerations underlying my concurrence. Specifically, the focal point of this elucidation is on how parties similarly situated to the ones herein are to proceed had the Court not opted to resolve the petition on the merits.

ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES") issued on 25 July 1973 reads:

SEC. 10. In cases where the movant of the claim or the value of the property involved exceeds one million pesos, an appeal may be taken to the Office of the President by filing a notice of appeal and serving the same upon all parties within a period of ten (10) days from receipt of a copy of the final action taken by the Secretary of Justice. In such event, the decision shall become final and executory only upon affirmation by the Office of the President. If no appeal is taken within the said period, the final decision taken in the case shall become immediately executory upon the expiration of the said period.

Having ruled that the DOJ properly exercised jurisdiction over the controversy pursuant to Presidential Decree No. (PD) 242 and Executive Order No. (EO) 292, it behooves the Court to require similarly situated agencies adversely affected by latter rulings of the DOJ in intra-governmental disputes to observe the procedural steps for appeal as prescribed by the very same statutes that conferred jurisdiction to it.

Moving forward, it is as Senior Associate Justice Antonio T. Carpio (Justice Carpio) proffered – rulings of the Secretary of Justice (SOJ) in the exercise of his jurisdiction over controversies solely involving government agencies ought to be appealed to the Office of the President. As per Section 70, Chapter 14, Title I, Book IV of EO 292:

> **Section 70.** *Appeals.* — The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

The authority of the President to review the ruling of the DOJ is part and parcel of his extensive power of control over the executive department and its officers, from Cabinet Secretary to the lowliest clerk,[1] that is preserved in Article VII, Section 17 of the Philippine Constitution, to wit:

> **Section 17.** The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

"Control," in this context, is defined in jurisprudence as "the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[2] With this definition in mind, it becomes

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[1] *Carpio v. Executive Secretary*, G.R. No. 96409, February 14, 1992, 206 SCRA 290, 295.

[2] *Mondano v. Silvosa*, 97 Phil. 143 (1955).

apparent that Section 70, Chapter 14, Title I, Book IV of EO 292 had been crafted to enable the President to exercise this power of control over his alter-egos by allowing him to substitute their judgment with his own, which in this case permits the President to reverse the finding of the DOJ acting as a quasi-judicial body on appeal.

Appeal to the Office of the President likewise finds support in the doctrine on exhaustion of administrative remedies. The rule calls for a party to first avail of all the means afforded him by administrative processes before seeking intervention of the court, so as not to deprive these agencies of their authority and opportunity to deliberate on the issues of the case.[3] In the same vein, the doctrine allows the President to correct the actions of his subordinates, including those of the SOJ, before these can be questioned in a court of law.

Judicial recourse from the exercise of administrative agencies of quasi-judicial powers is to the Court of Appeals (CA), **save for those directly appealable to this Court**. This finds basis under Section 9 of *Batas Pambansa* Blg. 129,[4] as amended by RA 7902,[5] which grants the CA with general appellate jurisdiction over judgments of quasi-judicial bodies, *viz*:

Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

x x x x x x x x x

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts **and quasi-judicial agencies, instrumentalities, boards or commissions**,

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[3] *Fua, Jr. v. Commission on Audit*, G.R. No. 175803, December 4, 2009, 607 SCRA 347, 352.

[4] AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[5] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF APPEALS, AMENDING FOR THE PURPOSE SECTION NINE OF BATAS PAMBANSA BLG. 129, AS AMENDED, KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980.

including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, **except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution**, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

As identified in Section 1, Rule 43 of the Rules of Court,[6] the Office of the President is among the governmental bodies whose rulings fall under the CA's appellate jurisdiction. Be that as it may and with all due respect to Justice Carpio, it is humbly submitted that, by way of exception, direct recourse to this Court is justified insofar as tax controversies solely between government institutions that have been resolved by the Office of the President are concerned.

A review of recent jurisprudence reveals that the thrust of the Court has been to divest the CA of jurisdiction over tax-related controversies. To illustrate, the Court *En Banc* in the recent case of *City of Manila v. Grecia-Cuerdo* ruled that it is not the CA, but the CTA, that is the proper forum for challenging interlocutory orders issued by the RTC in cases that would fall within the jurisdiction of the CTA on appeal.[7] In devolving

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[6] **Section 1.** *Scope*. — **This Rule shall apply to appeals from judgments or final orders of the** Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, **Office of the President**, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (emphasis added)

[7] G.R. No. 175723, February 4, 2014, 715 SCRA 182, 202.

from the CA the exercise of *certiorari* powers in favor of the CTA, the Court held that:

x x x x [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that 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.[8]

And in *Philippine American Life and General Insurance Company v. Secretary of Finance*, We recognized that there was a trend wherein both the CTA and the CA disclaim jurisdiction over tax cases: on the one hand, mere prayer for the declaration of a tax measure's unconstitutionality or invalidity before the CTA resulted in a petition's outright dismissal, and on the other hand, the CA would dismiss the same petition should it find that the primary issue is not the tax measure's validity but the assessment or taxability of the transaction or subject involved.[9] In punctuating the issue, We held that, pursuant to the CTA's power of *certiorari* recognized in *City of Manila v. Grecia-Cuerdo*, appeals from the ruling of the Secretary of Finance is to the CTA, not the CA, even though the case involved a challenge against the validity of a revenue regulation, thus:

x x x x [I]t is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.[10]

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[8] *Id*.

[9] G.R. No. 210987, November 24, 2014, 741 SCRA 578, 597.

[10] *Id*. at 600.

The policy has therefore been clear – to transfer appellate jurisdiction over tax-related controversies from the CA to the CTA. It would then be an act of regression for the Court to once again vest the CA with jurisdiction over cases concerning the interpretation of tax statutes, similar to the subject matter of the case at bar, simply because it was appealed from the Office of the President.

One may then be tempted to presume that judicial recourse from the ruling of the Office of the President over a tax-related dispute is to the CTA. However, We have already categorically ruled herein that it is the DOJ, rather than the CTA, that has jurisdiction over the controversy. To later on declare that the CTA may nevertheless exercise appellate jurisdiction over the ruling of the Office of the President would run counter to this earlier pronouncement, and would also unduly lengthen the proceedings by burdening the aggrieved party to appeal the case to two more bodies, the CTA Division and CTA *En Banc*, before the case reaches this Court.

Moreover, the CTA does not have appellate jurisdiction over tax controversies resolved by the Office of the President. To be sure, Republic Act No. (RA) 1125,[11] as amended by RA 9282,[12] delineates the jurisdiction of the CTA in the following manner:

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue

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[11] AN ACT CREATING THE COURT OF TAX APPEALS.

[12] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The CTA, as a specialized court, enjoys jurisdiction limited to those specifically mentioned in the law. Noteworthy is that the exhaustive enumeration aforequoted does not include appeals from the Office of the President. Thus, the CTA could not be deemed to have been bestowed with the authority to review the said rulings regardless of whether or not the dispute involves the interpretation of tax laws.

With both the CA and the CTA unable to exercise appellate jurisdiction over rulings of the Office of the President in tax-related controversies, it becomes evident that there is no plain, speedy, and adequate remedy available to the government agency aggrieved. Direct recourse to this Court *via certiorari* should then be permissible under such circumstances in fulfillment of Our role as the final arbiter and court of last resort, and of Our constitutional mandate and bounden duty to settle justiciable controversies.

In view of the foregoing, I reiterate my concurrence with the holding of the *ponencia* that the DOJ properly exercised jurisdiction over the controversy between the conflicting arms of the government, and that, for future reference, appeal should be taken by the aggrieved agency to the Office of the President. It is humbly submitted, however, that appeals from the Office of the President in inter-governmental tax disputes should be elevated to this Court, rather than the CA, by way of *certiorari*.

DISSENTING OPINION

DEL CASTILLO, *J.*:

The Majority Opinion opines that the Secretary of Justice has jurisdiction over the instant case pursuant to Sections 1, 2, and 3 of Presidential Decree No. (PD) 242.

With much regret, I am unable to give my concurrence.

Disputed tax assessments solely involving government entities fall within the exclusive and original jurisdiction of the Commissioner of Internal Revenue (CIR) and the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).

Section 4[1] of the 1997 National Internal Revenue Code (NIRC) states that **the CIR has the exclusive and original jurisdiction to interpret tax laws and to decide tax cases**. Thus, the CIR has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the Bureau of Internal Revenue (BIR).

On the other hand, Section 7[2] of Republic Act No. (RA) 1125, as amended by RA 9282, provides that **decisions or inactions of the CIR in cases involving disputed assessments, refunds of internal revenue taxes,** fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the BIR **are under the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA)**.

In this case, since what is involved is petitioner's disputed Value-Added Tax (VAT) assessment, which it paid under protest,

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[1] SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[2] SEC. 7. Jurisdiction. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, x x x.

it is the BIR and the CTA, not the Secretary of Justice, which have exclusive jurisdiction. In fact, the question of whether petitioner's sale of the power plants is subject to VAT is a tax issue that should be resolved by the CIR, subject to the review of the CTA. Unlike the Secretary of Justice, the BIR and the CTA have developed expertise on tax matters. It is only but logical that they should have exclusive jurisdiction to decide on these matters. The authority of the Secretary of Justice under PD 242 to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, therefore, does not include tax disputes, which are clearly under the jurisdiction of the BIR and the CTA.

Worth mentioning at this point is the case of *National Power Corporation v. Presiding Judge, RTC, 10th Judicial Region, Br. XXV, Cagayan de Oro City*,[3] where the Court affirmed the trial court's jurisdiction over a complaint for the collection of real property tax and special education fund tax filed under PD 464 (The Real Property Tax Code, enacted on July 1, 1974) by the Province of Misamis Oriental against National Power Corporation (NAPOCOR). In that case, NAPOCOR cited PD 242 and argued that it is the Secretary of Justice, not the trial court, which had jurisdiction over the case. Applying the rules on statutory construction, the Court, ruled that PD 242, a general law which deals with administrative settlement or adjudication of disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, must yield to PD 464, a special law which deals specifically with real property taxes.

The same ruling must be applied in this case. Thus, PD 242, which is a **general law** on the authority of the Secretary of Justice to settle and adjudicate **all** disputes, claims and controversies between or among national government offices,

[3] 268 Phil. 507 (1990).

agencies and instrumentalities, including government-owned or controlled corporations, must yield to the specific provisions of RA 1125, as amended by RA 9282, which is a **specific law** vesting exclusive and primary jurisdiction to the CIR and the CTA on cases pertaining to **disputed tax assessments**, **tax laws and refunds of internal revenue taxes**.

Moreover, this Court has already made a pronouncement in the recent case of *Commissioner of Internal Revenue v. Secretary of Justice*,[4] to the effect that the Secretary of Justice has no jurisdiction over disputed assessments issued by the BIR in light of the ruling of the Court in *Philippine National Oil Company v. Court of Appeals.*[5] For reference, I quote herein the ruling of the Court, *viz.*:

1. The Secretary of Justice has no jurisdiction to review the disputed assessments

The petitioner contends that it is the Court of Tax Appeals (CTA), not the Secretary of Justice, that has the exclusive appellate jurisdiction in this case, pursuant to Section 7 (1) of Republic Act No. 1125 (R.A. No. 1125), which grants the CTA the exclusive appellate jurisdiction to review, among others, the decisions of the Commissioner of Internal Revenue "in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other law or part of law administered by the Bureau of Internal Revenue."

PAGCOR counters, however, that it is the Secretary of Justice who should adjudicate the dispute by virtue of Chapter 14 of the Revised Administrative Code of 1987, which provides:

> CHAPTER 14. CONTROVERSIES AMONG GOVERNMENT OFFICES AND CORPORATIONS. SEC. 66. How settled. — All disputes/claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned and controlled corporations, such as those

[4] G.R. No. 177387, November 9, 2016.

[5] 496 Phil. 506 (2005).

arising from the interpretation and application of statutes, contracts or agreements shall be administratively settled or adjudicated in the manner provided for in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commission and local governments.

SEC. 67. Disputes Involving Questions of Law. — All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as ex officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

SEC. 68. Disputes Involving Questions of Fact and Law. — Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The Secretary of Justice, in all other cases not falling under paragraph (1).

Although acknowledging the validity of the petitioner's contention, the Secretary of Justice still resolved the disputed assessments on the basis that the prevailing doctrine at the time of the filing of the petitions in the Department of Justice (DOJ) on January 5, 2004 was that enunciated in Development Bank of the Philippines v. Court of Appeals, whereby the Court ruled that:

x x x (T)here is an "irreconcilable repugnancy x x between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the latter enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

Later on, the Court reversed itself in *Philippine National Oil Company v. Court of Appeals*, and held as follows:

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No.

> 242 should not affect R.A. No. 1125. R.A. No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of R.A. No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, x x x.

Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:

> While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA,* in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.

We disagree with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with

our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.

Nonetheless, the Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR [be] blame[d] in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals*. The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR. While a judicial interpretation becomes a part of the law as of the date that the law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.

There is no reason to reverse or abandon the above ruling.

To adopt the view espoused in the Majority Opinion would carry adverse effects on the jurisdiction of the CTA and on the CIR with regard to its available remedy. It must be pointed out that to allow the Secretary of Justice to have jurisdiction over the instant case would not only **deprive the CTA of its exclusive appellate jurisdiction but would also deprive respondent CIR of any judicial remedy**. The Majority Opinion recommends that "since the amount involved in this case is more than one million pesos, respondent CIR may appeal the DOJ Secretary's Decision to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5 of PD 242." **However, if the appeal to the Office of the President were denied, respondent CIR would have no judicial recourse. Respondent CIR would not be able to appeal the decision of the Office of the President to the Court of Appeals (CA) under Rule 43 of the Rules of Court because the CA has no jurisdiction to review tax cases. Neither can respondent CIR file a Petition with the CTA because the CTA has no jurisdiction over decisions of the Office of President or the Secretary of Justice**.

In his Reply, Justice Carpio states that "if the appeal to the Office of the President is denied, the aggrieved party can still appeal to the Court of Appeals (CA) under Section 1, Rule 43 of the 1997 Rules of Civil Procedure."

With due respect, this is specious. An appeal to the CA is not a remedy available to the aggrieved party.

It must be stressed that what is involved in this case is a **tax issue**, that is, petitioner's disputed Value-Added Tax (VAT) assessment, which it paid under protest. The aggrieved party could no longer resort to an appeal under Rule 43 of the 1997 Rules of Civil Procedure; this is not allowed simply because **the CA no longer has jurisdiction over tax cases**.

To recall, Republic Act No. 9282,[6] enacted on April 23, 2004, expanded the jurisdiction of the Court of Tax Appeals (CTA) and elevated its rank to the level of a collegiate court with special jurisdiction. **Thus, the CTA, a specialized court dedicated exclusively to the study and resolution of tax issues, is no longer under the appellate jurisdiction of the CA. Accordingly, the CA has no jurisdiction to review tax cases as these are under the exclusive jurisdiction of the CTA, a co-equal court**. In fact, the remedy of a party adversely affected by a decision or ruling of the CTA *en banc* is to directly file with the Supreme Court, **not with the CA**, a verified petition for review on certiorari under Rule 45 of the Rules of Court within fifteen days from receipt of the copy of the decision or resolution of the CTA.[7]

Furthermore, in *The City of Manila v. Judge Grecia-Cuerdo*,[8] the Court ruled that it is the CTA, not the CA, which has

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[6] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[7] REPUBLIC ACT NO. 9282, Section 12.

[8] 726 Phil. 9 (2014).

jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case. In that case, the Court explained that:

> If this Court were to sustain petitioners' contention that jurisdiction over their certiorari petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus, the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for certiorari seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.
>
> Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of certiorari against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of certiorari when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.
>
> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect

that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and

decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

x x x x x x x x x

Using the reasoning in the above-cited case, it is clear that the CA should not be allowed to resolve tax issues, such as the instant case, as this would deprive the CTA of its exclusive jurisdiction. It would create an absurd situation of a split-jurisdiction between the CTA and the CA. In addition, this might create conflicting decisions or interpretations of tax laws.

To prove this point, it is significant to mention that the ruling of the Secretary of Justice in this case that the sale of the power plants is not subject to VAT conflicts with the ruling of the CTA in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, CTA EB No. 1282, May 17, 2016, that the proceeds from sale of generating assets is subject to VAT. The said case, docketed as G.R. No. 226556, is now pending before this Court.

All told, I vote to **DENY** the Petition and maintain my view that **disputed tax assessments** solely involving government entities fall within the exclusive and original jurisdiction of the **CIR** and the exclusive appellate jurisdiction of the **CTA**. Thus, to allow the Secretary of Justice to have jurisdiction over the instant case would not only deprive the CTA of its exclusive appellate jurisdiction but would also deprive respondent CIR of any judicial remedy.

EN BANC

[G.R. No. 217965. August 8, 2017]

CONFEDERATION OF COCONUT FARMERS ORGANIZATIONS OF THE PHILIPPINES, INC. (CCFOP), *petitioner, vs.* **HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, ACTING COMMISSIONER RICHARD ROGER AMURAO of the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), CHAIRMAN CESAR L. VILLANUEVA of the GOVERNANCE COMMISSION FOR GOCCs (GCG), and SECRETARY LEILA M. DE LIMA of the DEPARTMENT OF JUSTICE,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; LABOR AND SOCIAL LEGISLATION; COCONUT LEVY FUNDS; COCONUT LEVY FUNDS, INCLUDING COCONUT CONSUMERS STABILIZATION FUND (CCSF) AND COCONUT INDUSTRY DEVELOPMENT FUND (CIDF), ARE PUBLIC FUNDS.—** Section 1(a) of P.D. No. 1234 x x x clearly characterizes the CCSF and the CIDF as public funds, which shall be remitted to the Treasury as Special Accounts in the General Fund. x x x In the landmark cases of *COCOFED and Republic*, the Court, in no uncertain terms, declared Section 5, Article III of P.D. No. 1468 unconstitutional and categorized coconut levy funds to be public in nature. In *Republic,* the Court expounded on why coconut levy funds are public in nature, x x x On the other hand, in COCOFED, the Court categorically struck down Section 5, Article III of P.D. No. 1468 for being unconstitutional because it converted the coconut levy funds into private funds, which may then be appropriated even without an enabling law, x x x Clearly, both cases had definitely settled the public nature of coconut levy funds, which included the CCSF and the CIDF. The most compelling reasons to treat coconut levy funds as public funds are the fact that it was raised through the State's taxing power and it was for the development of the coconut industry as a whole and not merely to benefit individual farmers

2. **ID.; ID.; ID.; ID.; RELEASE OF COCONUT LEVY ASSETS BY THE GOVERNMENT TO ENFORCE THE DECISION OF THE SANDIGANBAYAN DOES NOT REQUIRE A PRIOR WRIT OF EXECUTION.—** Petitioner also argues that the release of coconut levy assets held by the UCPB is in the nature of an execution. Thus, it surmises that there must be a writ of execution from the *Sandiganbayan* before the government may cause the release of the said assets. Execution has been defined as a remedy afforded by law for the enforcement of a judgment, its object being to obtain satisfaction of the judgment on which the writ is issued. Being a remedy, it is thus optional on the winning litigant and may avail it in case the judgment cannot be enforced. x x x A writ of execution was never meant to be a prerequisite before a judgment may be enforced. With the finality of the decision in *COCOFED*, there is no question that the coconut levy assets are public funds. Thus, the government may take the necessary steps to preserve them and to be able to utilize them. It does not deprive the courts with its power to issue writs of execution because the government may resort to it in case it encounters obstacles in the enforcement of the decision.

3. **ID.; ID.; ID.; E.O. NO. 179 AND 180 REITERATING THAT REVENUES ARISING OUT OF OR IN CONNECTION WITH THE PRIVATIZATION OF COCONUT LEVY FUNDS SHALL BE DEPOSITED IN THE SPECIAL ACCOUNTS IN THE GENERAL FUND (SAGF); LACK OF MECHANISM ON HOW THE SAGF IS TO BE DISBURSED CANNOT BE REMEDIED BY EXECUTIVE FIAT.—** The coconut levy funds are special funds allocated for a specific purpose and can never be used for purposes other than for the benefit of the coconut farmers or the development of the coconut industry. Any attempt to appropriate the said funds for another reason, no matter how noble or beneficial, would be struck down as unconstitutional. An appropriation measure may be defined as a statute the primary and specific purpose of which is to authorize the release of public funds. The assailed issuances (EO No. 179 calling for the inventory and privatization of all coco levy assets and EO No. 180 mandating the reconveyance and utilization of these assets for the benefit of coconut farmers and the development of the coconut industry), however, did not create a new special fund. They

were issued pursuant to previous laws and jurisprudence which declared coconut levy funds such as the CCSF and the CIDF as public funds for a special purpose. In fact, P.D. No. 1234 recognized that all funds collected and accruing to the Special Accounts in the General Fund (SAGF) shall be considered automatically appropriated for purposes authorized by law creating such fund. x x x Thus, E.O. No. 179 does not create a new special fund but merely reiterates that revenues arising out of or in connection with the privatization of coconut levy funds shall be deposited in the SAGF. An automatic appropriation law is not necessarily unconstitutional for as long as there are clear legislative parameters on how the amounts appropriated are to be disbursed. x x x On its own, E.O. Nos. 179 and 180 appears to have been executed within the legislative parameters set by *COCOFED*. P.D. No. 1234, however, does not actually provide a mechanism for how the SAGF is to be disbursed. x x x Considering that no statute provides for specific parameters on how the SAGF may be spent, Congress must first provide a law for the disbursements of the funds, in line with its constitutional authority. The absence of the requisite legislative authority in the disbursement of public funds cannot be remedied by executive fiat.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
The Solicitor General for respondents.

D E C I S I ON

MENDOZA, *J.*:

Through the subject Petition for Prohibition under Rule 65 of the Rules of Court *(Petition)*, the controversy surrounding the utilization of the contentious "coco levy funds" is once again put into the fore.

Before the Court proceeds, a brief restatement of the factual antecedents leading up to the present petition is in order.

The collection of what is known as the coconut levy funds all began on June 19, 1971, following the passage of Republic Act *(R.A)* No. 6260,[1] for the purpose of providing the necessary funds for the development of the coconut industry. The imposition, which was pooled to what was called the Coconut Investment Fund *(CIF)*, consisted of a sum equivalent to fifty-five centavos (₱0.55) on the first domestic sale by a coconut farmer for every 100 kilograms of copra or other coconut products. In exchange for the levy, the coconut farmer was to be issued a receipt which shall be converted into shares of stock of the Coconut Investment Company *(CIC)*.

Playing key roles in the collection, administration and/or use of the coconut levy funds were the Philippine Coconut Authority *(PCA)*, formerly the Philippine Coconut Administration *(PHILCOA)*, United Coconut Planters Bank *(UCPB)*, and Philippine Coconut Producers Federation, Inc., or the COCOFED. By legal mandate, COCOFED once received allocations from the coconut levy funds to finance its projects. Among the assets allegedly acquired thru the direct or indirect use of the Fund was a block of San Miguel Corporation *(SMC)* shares of stock.[2]

The declaration of martial law in September 1972 saw the issuance of several presidential decrees *(P.Ds.)*, purportedly designed to improve the coconut industry through the collection and use of the coconut levy funds. Among those issued included: [1] P.D. No. 276 which established the Coconut Consumers Stabilization Fund *(CCSF)* and declared the proceeds thereof as trust fund to be utilized to subsidize the sale of coconut-based products, thus, stabilizing the price of edible oil; [2] P.D. No. 582 which created the Coconut Industry Development Fund *(CIDF)* to finance the operation of a hybrid coconut seed farm; [3] P.D. No. 755 which approved the acquisition of a commercial bank (UCPB) for the benefit of the coconut farmers to enable

[1] Titled "An Act Instituting a Coconut Investment Fund and Creating a Coconut Investment Company for the Administration Thereof."

[2] *Republic v. Sandiganbayan*, 541 Phil. 24, 29-30 (2007).

such bank to promptly and efficiently realize the industry's credit policy; and [4] P.D. No. 961 *(Coconut Industry Code*), which codified and consolidated all existing laws and decrees relative to the coconut industry.

Apropos to the current controversy are the provisions in P.D. No. 755 and P.D. No. 961, which decreed that the coconut levy funds were not to be construed or interpreted as special and/or fiduciary funds, or as part of the general funds of the national government, the intention being that said funds and the disbursements thereof would be owned by the coconut farmers in their private capacities.

On November 8, 1977, P.D. No. 1234 was enacted. It decreed that all income and collections for special and fiduciary funds authorized by law, including the CCSF and the CIDF, shall be remitted to the Treasury and be treated as Special Accounts in the General Fund *(SAGF).*

Then, on June 11, 1978, P.D. No. 1468 *(Revised Coconut Industry Code)* was issued. It brought back the declarations made in P.D. Nos. 755 and 961 that the CCSF and the CIDF shall not form part of the SAGF or as part of the general funds of the national government, but shall be owned by the coconut farmers in their private capacities.

Through the years, a part of the coconut levy funds went directly or indirectly to various projects and/or was converted into different assets or investments.[3] Among these projects was the *Sagip Niyugan Program,* established sometime in November 2000 *via* Executive Order (*E.O.)* Nos. 312 and 313. It created a ₱1billion trust fund by disposing of assets acquired using coconut levy funds or assets of entities supported by those funds.

On January 24, 2012, in *COCOFED v. Republic (COCOFED),*[4] the Court struck down the provisions of P.D. Nos. 755, 961, and 1468 which declared the coconut levy funds as private assets. In doing so, the Court explained:

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[3] *Id.* at 29.

[4] 679 Phil. 508 (2012).

> In sum, not only were the challenged presidential issuances unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and, therefore, negating the public purpose declared by P.D. No. 276, *i.e.,* to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified, nay treated, the coconut levy fund as *private fund* to be disbursed and/or invested for the benefit of *private individuals* in their *private capacities*, contrary to the original purpose for which the fund was created. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made by law. The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of **P.D. Nos. 755, 961** and **1468** are **unconstitutional** for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund a special fund of the government to the coconut farmers, is therefore void.[5] [Emphasis supplied]

Reiterating the character of the coconut levy funds as public in character, the Court, in *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan v. Executive Secretary (PKSMMN),*[6] struck down E.O. Nos. 312 and 313, for being violative, among others, of, Section 29 (3), Article VI of the Constitution.

On March 18, 2015, then President Benigno S. Aquino III *(President Aquino)* issued E.O. Nos. 179[7] and 180.[8] Essentially, E.O. No. 179 calls for the inventory and privatization of all coco levy assets. E.O. No. 180, on the other hand, mandates the reconveyance and utilization of these assets for the benefit

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[5] *Id.* at 607-608.

[6] 685 Phil. 295 (2012).

[7] Titled "Providing the Administrative Guidelines for the Inventory and Privatization of Coco-Levy Assets."

[8] Titled "Providing the Administrative Guidelines for the Reconveyance and Utilization of Coco-Levy Assets for the Benefit of the Coconut Farmers and the Development of the Coconut Industry, and for Other Purposes."

of coconut farmers and the development of the coconut industry. Believing that the twin executive orders are invalid, petitioner Confederation of Coconut Farmers Organizations of the Philippines, Inc. *(CCFOP)* proceeded with the subject petition with this Court.

Hence, this petition raising the following issues:

ISSUES

I

WHETHER THE PRESIDENT, IN THE GUISE OF IMPLEMENTING THE LAWS RELATIVE TO COCONUT LEVY FUNDS AND ASSETS, GRAVELY ABUSED HIS DISCRETION IN ISSUING THE ASSAILED EXECUTIVE ORDERS WITHOUT PRIOR LEGISLATION;

II

WHETHER THE PRESIDENT GRAVELY ABUSED HIS DISCRETION WHEN HE ARROGATED UNTO HIMSELF, WITHOUT LEGISLATIVE AUTHORITY, THE POWER TO ALLOCATE, USE AND ADMINISTER THE SUBJECT COCONUT LEVY FUNDS AND ASSETS, WHICH POWERS IS EXCLUSIVELY LODGED WITH THE PCA; AND

III

WHETHER THE PRESIDENT GRAVELY ABUSED HIS DISCRETION WHEN HE ARROGATED UNTO HIMSELF THE EXCLUSIVE AUTHORITY OF THE JUDICIARY TO EXECUTE ITS FINAL AND EXECUTORY DECISION, IN VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS.[9]

Arguments of the Petitioner

Violation of the Constitution

Similar to the controversy laid down in *PKSMMN*, petitioner assails the constitutionality of E.O. Nos. 179 and 180 on the

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[9] *Rollo*, pp. 16-17.

argument that the presidential issuances violated Section 29(1) and (3), Article VI[10] of the Constitution. In this iteration, petitioner explains that the assailed executive orders were made without authority of law because they were based on P.D. No. 1234, a law that had ceased to exist when P.D. No. 1468 re-enacted provisions of the earlier P.D. No. 755 and 961, retaining the character of the funds as not part of the general funds of the government. According to petitioner, with the passage of P.D. No. 1468, it became evident that it was the intention of the legislature to no longer retain the character of the coconut levy funds as special public funds as mandated under P.D. No. 1234, but rather, treat the same as private funds which are owned by the coconut farmers in their private capacities. To further its argument, petitioner points out that P.D. No. 1234 expressly limits its application to "all other income accruing to the PCA *under existing laws*." Thus, it argues that because the CCSF and CIDF were covered by P.D. No. 1468, a law passed *after* P.D. No. 1234, the same cannot be considered as covered by P.D. 1234.

Although petitioner concedes that *COCOFED*[11] and Republic v. COCOFED, et al. *(Republic)*[12] [1] annulled Section 5, Article 3 of P.D. No. 1468, Section 2 of P.D. No. 755, as well as Section 3, Article 5 of P.D. No. 961; and [2] declared that coco-levy funds are public funds for a special purpose, petitioner opines the foregoing decisions of the Court: (a) did nothing more than invalidate the offending provisions of law; (b) did not *ipso facto* direct the transfer of the CCSF and CIDF to the SAGF pursuant

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[10] Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

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(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

[11] *Supra* note 4.

[12] 423 Phil. 735 (2001).

to P.D. No. 1234; and (c) did not authorize the President to create a special account in the general fund. Petitioner, thus, posits that the President assumed a legislative function when he issued the assailed executive orders directing the transfer of the CCSF and CIDF to the special account in the general law. Citing several bills pending in Congress, petitioner posits that Congress saw the need to pass a law in order to properly place the coconut levy funds in SAGF.

Violation of the mandate of the PCA

Petitioner also contends that E.O. Nos. 179 and 180 violate the mandate of the PCA under P.D. No. 232 to administer and utilize coconut levy funds, inasmuch as it directs the PCA, together with the Governance Commission for Government-Owned and Controlled Corporations *(GCG)*, the Department of Finance *(DOF)* and the Presidential Assistant for Food Security and Agricultural Modernization *(PAFSAM)*, to make recommendations to the President for approval of all non-cash coconut levy assets that will be divested, sold, alienated or disposed. Petitioner explains that, in effect, the questioned executive issuances would diminish the powers of the PCA by relegating it to only one of the recommendatory bodies for the privatization and utilization of coconut funds and assets.

On this point, petitioner, citing *PKSMMN,* averred that similar executive issuances empowering the President to allocate, use and dispose of coconut levy assets were struck down by the Court for being without legislative authorization and for being violative of P.D. No. 232.

Violation of the authority of the Judiciary

Finally, petitioner asserts that the questioned executive orders violate the Court's authority to execute its final and executory decisions. It insists that with the finality of *COCOFED*, the release, transfer and deposit of the government shares in UCPB to the Bureau of Treasury could only be done by the

Sandiganbayan which has the exclusive jurisdiction to execute the final judgment in the said case.

On June 30, 2015, the Court granted petitioner's prayer and issued a Temporary Restraining Order enjoining the respondents from implementing the assailed E.O. Nos. 179 and 180 and from using, disbursing and dispersing the subject coconut levy assets and funds.[13]

Arguments of the Respondents

Traversing the challenge mounted by petitioner, the respondents, through the Office of the Solicitor General *(OSG)*, first question the propriety of the filing of the subject suit on procedural grounds. *First*, on the improper inclusion of the President as a respondent, they claimed that the President, who was then in power at the time this case was initiated, enjoyed immunity pursuant to the principle of separation of powers.[14] The respondents likewise challenge petitioner's standing to bring the instant suit, not only because it had failed to establish any direct injury, but also because the questioned orders do not involve tax measures, negating any challenge *via* a taxpayer's suit.[15] They also point out that despite petitioner's claim that the twin executive orders had infringed on the powers of Congress, no member of Congress had joined petitioner in the filing of the present suit. Finally, the respondents assert that because members of Congress have "a more direct and specific interest in raising the questions being raised,"[16] the doctrine of transcendental importance cannot be used to justify petitioner's standing.[17]

As for the issues raised in the petition, the respondents counter that when the Court, in *COCOFED,* struck down P.D. No. 1468,

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[13] *Rollo*, pp. 107-110-L.

[14] *Id*. at 327.

[15] *Id*. at 327-328.

[16] *Id.* at 328.

[17] *Id*.

as well as P.D. Nos. 755 and 961, the result was as if the aforementioned laws did not exist at all. Consequently, they argue that, as declared in *COCOFED*, P.D. No. 1234 should be considered the operative law and that "coconut levies are special funds to be remitted to the Treasury in the General Fund of the State but treated as Special Accounts."[18]

As for petitioner's claim that there are pending bills in Congress providing for the disposition of the coconut levy funds, the respondents assert that until such bills become law, P.D. No. 1234 should be made to apply in treating the coconut levy funds as part of SAGF.

The Court's Ruling

Before delving on the substantial issues of this case, a resolution of procedural matters is in order.

Petitioner's legal standing

The Court upholds petitioner's assertion that it has legal standing to institute the present case. In *PKSMMN*, the Court recognized petitioner organization as among those representing coconut farmers on whom the burden of the coco levies attached. Considering that that the coconut levies were imposed primarily for the benefit of petitioner's members,[19] it behooves the Court to accord standing to petitioner to ensure that the subject grievance is given its due.

With the procedural issues settled, the Court finds that the present petition is partially meritorious.

Nature of Coco Levy Funds

Petitioner believes that notwithstanding P.D. No. 1234 and the Court's pronouncements in *COCOFED and Republic*, the CCSF and the CIDF remained to be private funds in nature. It insists that the legislative intent to treat the CIDF and the CCSF

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[18] *Id.* at 329.

[19] *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN) v. Executive Secretary*, *supra* note 6, at 307.

as private funds is evident with the passage of P.D. No. 1468 because it was a later law.

Section 1(a) of P.D. No. 1234 reads:

> SECTION 1. **All income and collections for Special or Fiduciary Funds authorized by law shall be remitted to the Treasury and treated as Special Accounts in the General Fund**, including the following:
>
> a. *Philippine Coconut Authority* — Coconut Development Fund, including all income derived therefrom under Sections 13 and 14 of Republic Act No. 1145; Coconut Investment Fund under Section 8 of Republic Act No. 6260, including earnings, profits, proceeds and interests derived therefrom; **Coconut Consumers Stabilization Fund under Section 3-A of PD No. 232, as inserted by Section 3 of P.D. No. 414 and under paragraph 1(a) of P.D. No. 276; Coconut Industry Development Fund under Section 3-B of P.D. No. 232, as inserted by Section 2 of P.D. No. 582;** and all other fees accruing to the Philippine Coconut Authority under the provisions of Section 19 of Republic Act No. 1365, in accordance with Section 2 of P.D. No. 755 and all other income accruing to the Philippine Coconut Authority under existing laws. [Emphasis supplied]

The above-cited provision clearly characterizes the CCSF and the CIDF as public funds, which shall be remitted to the Treasury as Special Accounts in the General Fund. Petitioner, however, insists that pursuant to P.D. No. 1468, the CIDF and the CCSF were excluded from the provisions of P.D. No. 1234. It noted Section 5 thereof which states that both the CIDF and the CCSF shall not be construed as special funds or part of the general funds of the national government. As such, petitioner concluded that P.D. No. 1468 takes precedence over P.D. No. 1234, it being the later law.

Petitioner's continuous reliance on Section 5, Article III of P.D. No. 1468 is gravely erroneous.

In the landmark cases of *COCOFED* and *Republic*, the Court, in no uncertain terms, declared Section 5, Article III of P.D. No. 1468 unconstitutional and categorized coconut levy funds to be public in nature.

In *Republic,* the Court expounded on why coconut levy funds are public in nature, *viz*:

> **To avoid misunderstanding and confusion, this Court will even be more categorical and positive than its earlier pronouncements: the coconut levy funds are not only affected with public interest; they are, in fact, prima facie public funds.**
>
> Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the *support of the government or for the discharge of its obligations. Undeniably, coconut levy funds satisfy this general definition of public funds, because of the following reasons:*
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> 1. Coconut levy funds are raised with the use of the police and taxing powers of the State.
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> 2. They are levies imposed by the State for the benefit of the coconut industry and its farmers.
>
> 3. Respondents have judicially admitted that the sequestered shares were purchased with public funds.
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> 4. The Commission on Audit (COA) reviews the use of coconut levy funds.
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> 5. The Bureau of Internal Revenue (BIR), with the acquiescence of private respondents, has treated them as public funds.
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> 6. The very laws governing coconut levies recognize their public character.
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> 1. Coconut Levy Funds Are Raised Through the State's Police and Taxing Powers.
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> Indeed, coconut levy funds partake of the nature of taxes which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs.
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> Court takes judicial notice of the fact that the coconut industry is one of the great economic pillars of our nation, and coconuts and

their by products occupy a leading position among the country's export products; that it gives employment to thousands of Filipinos; that it is a great source of the State's wealth; and that it is one of the important sources of foreign exchange needed by our country and, thus, pivotal in the plans of a government committed to a policy of currency stability.

Taxation is done not merely to raise revenues to support the government, but also to provide means for the rehabilitation and the stabilization of a threatened industry, which is so affected with public interest as to be within the police power of the State, as held in Caltex Philippines v. COA and Osmeña v. Orbos.

Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In Cocofed v. PCGG, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship . . . with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly.• The Court continued: ". . . . It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability.

2. Coconut Funds Are Levied for the Benefit of the Coconut Industry and Its Farmers.

Just like the sugar levy funds, the coconut levy funds constitute state funds even though they may be held for a special public purpose.

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Thus, the coconut levy funds — like the sugar levy and the oil stabilization funds, as well as the monies generated by the On-line Lottery System — are funds exacted by the State. Being enforced contributions, they are prima facie public funds.

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6. Laws Governing Coconut Levies

Recognize Their Public Nature.

Finally and tellingly, the very laws governing the coconut levies recognize their public character. Thus, the third Whereas clause of P.D. No. 276 treats them as special funds for a specific public purpose. Furthermore, P.D. No. 711 transferred to the general funds of the State all existing special and fiduciary funds including the CCSF. On the other hand, P.D. No. 1234 specifically declared the CCSF as a special fund for a special purpose, which should be treated as a special account in the National Treasury.

Moreover, even President Marcos himself, as the sole legislative/ executive authority during the martial law years, struck off the phrase which is a private fund of the coconut farmers from the original copy of Executive Order No. 504 dated May 31, 1978, and we quote:

"WHEREAS, by means of the Coconut Consumers Stabilization Fund (˜CCSF'), which is the private fund of the coconut farmers (deleted), essential coconut-based products are made available to household consumers at socialized prices.• (Italics supplied)

The phrase in bold face — which is the private fund of the coconut farmers — was crossed out and duly initialed by its author, former President Marcos. This deletion, clearly visible in "Attachment C of petitioner's Memorandum, was a categorical legislative intent to regard the CCSF as public, not private, funds. [20] [Emphasis supplied]

On the other hand, in *COCOFED,* the Court categorically struck down Section 5, Article III of P.D. No. 1468 for being unconstitutional because it converted the coconut levy funds into private funds, which may then be appropriated even without an enabling law, to wit:

In sum, not only were the challenged presidential issuances unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and, therefore, negating the public purpose declared by P.D. No. 276, *i.e.*, to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified, nay treated, the coconut levy fund as *private fund* to be disbursed and/or invested for the benefit of *private individuals* in their *private capacities*, contrary to the original purpose for which the fund was created. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of

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[20] *Republic v. COCOFED, supra* note 12, at 762-772.

public funds which normally can be paid out only pursuant to an appropriation made by law. **The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution**. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund — a special fund of the government — to the coconut farmers, is therefore void.[21] [Emphasis supplied]

Clearly, both cases had definitely settled the public nature of coconut levy funds, which included the CCSF and the CIDF. The most compelling reasons to treat coconut levy funds as public funds are the fact that it was raised through the State's taxing power and it was for the development of the coconut industry as a whole and not merely to benefit individual farmers.

In addition, petitioner cannot use Article III, Section 5 of P.D. No. 1468 as basis to classify the CCSF and the CIDF as private funds because it was struck down as unconstitutional. It must be remembered that as a rule, an unconstitutional act is not a law to such an extent that it is inoperative as if it has not been passed at all.[22] Consequently, the perceived legislative intent espoused by Section 5, Article III of P.D. No. 1468 is inoperative because it is unconstitutional. Hence, the characterization of P.D. No. 1234 of coconut levy funds, including the CCSF and the CIDF, as public funds stands.

No usurpation of judicial power to execute its own decision

Petitioner also argues that the release of coconut levy assets held by the UCPB is in the nature of an execution. Thus, it surmises that there must be a writ of execution from the *Sandiganbayan* before the government may cause the release of the said assets.

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[21] *COCOFED v. Republic, supra* note 4, at 607-608.

[22] *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 627 (2011).

Execution has been defined as a remedy afforded by law for the enforcement of a judgment, its object being to obtain satisfaction of the judgment on which the writ is issued.[23] Being a remedy, it is thus optional on the winning litigant and may avail it in case the judgment cannot be enforced. In other words, a party litigant may choose to have a judgment enforced and if for some reason he cannot do so, he may decide to avail of the coercive measure of execution in order for the judgment to be realized. A writ of execution was never meant to be a prerequisite before a judgment may be enforced.

With the finality of the decision in *COCOFED*, there is no question that the coconut levy assets are public funds. Thus, the government may take the necessary steps to preserve them and to be able to utilize them. It does not deprive the courts with its power to issue writs of execution because the government may resort to it in case it encounters obstacles in the enforcement of the decision.

Existing appropriation law treating coconut levy funds as special funds

The power of the purse lies with Congress.[24] This power is categorically and explicitly stated by the fundamental law itself. Article VI, Section 29 of the Constitution reads:

SECTION 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

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[23] *Cagayan de Oro Coliseum, Inc. v. CA*, 378 Phil. 498, 522 (1999).

[24] *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506.

(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

The said provision provides for two classification of appropriation measures—general and special appropriation. A general appropriation law is one passed annually to provide for the financial operations of the entire government during one fiscal period, whereas a special appropriation is designed for a specific purpose.[25] The revenue collected for a special purpose shall be treated as a special fund to be used exclusively for the stated purpose. This serves as a deterrent for abuse in the disposition of special funds.[26] The coconut levy funds are special funds allocated for a specific purpose and can never be used for purposes other than for the benefit of the coconut farmers or the development of the coconut industry. Any attempt to appropriate the said funds for another reason, no matter how noble or beneficial, would be struck down as unconstitutional.

An appropriation measure may be defined as a statute the primary and specific purpose of which is to authorize the release of public funds.[27] The assailed issuances, however, did not create a new special fund. They were issued pursuant to previous laws and jurisprudence which declared coconut levy funds such as the CCSF and the CIDF as public funds for a special purpose. In fact, P.D. No. 1234 recognized that all funds collected and accruing to the SAGF shall be considered automatically appropriated for purposes authorized by law creating such fund.

Sections 1(a) and 2 of P.D. No. 1234 expressly provide:

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[25] Cruz, *Philippine Political Law* (2002), p. 167.

[26] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (1996), p. 725.

[27] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* 256 Phil. 777 (1989).

SECTION 1. All income and collections for Special or Fiduciary Funds authorized by law shall be remitted to the Treasury and treated as Special Accounts in the General Fund, including the following:

a. *Philippine Coconut Authority* — Coconut Development Fund, including all income derived therefrom under Sections 13 and 14 of Republic Act No. 1145; Coconut Investment Fund under Section 8 of Republic Act No. 6260, including earnings, profits, proceeds and interests derived therefrom; Coconut Consumers Stabilization Fund under Section 3-A of PD No. 232, as inserted by Section 3 of P.D. No. 414 and under paragraph 1(a) of P.D. No. 276; Coconut Industry Development Fund under Section 3-B of P.D. No. 232, as inserted by Section 2 of P.D. No. 582; and all other fees accruing to the Philippine Coconut Authority under the provisions of Section 19 of Republic Act No. 1365, in accordance with Section 2 of P.D. No. 755 and all other income accruing to the Philippine Coconut Authority under existing laws.

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SECTION 2. The amounts collected and accruing to Special or Fiduciary Funds shall be considered as being automatically appropriated for the purposes authorized by law creating the said Funds, except as may be otherwise provided in the General Appropriations Decree.

Accordingly, in *COCOFED*,[28] the Court emphasized that the coconut levy funds were special funds which do not form part of the general fund, to wit:

If only to stress the point, P.D. No. 1234 expressly stated that coconut levies are special funds to be remitted to the Treasury in the General Fund of the State, but treated as Special Accounts:

Section 1. All income and collections for Special or Fiduciary Funds authorized by law shall be remitted to the Treasury and treated as Special Accounts in the General Fund,including the following:

(a) *[PCA] Development Fund, including all income derived therefrom under Sections 13 and 14 of [RA] No. 1145; Coconut Investments Fund under Section 8 of [RA] No. 6260, including earnings, profits,*

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[28] *COCOFED v. Republic*, *supra* note 4.

proceeds and interests derived therefrom; Coconut Consumers Stabilization Funds under Section 3-A of PD No. 232, as inserted by Section 3 of P.D. No. 232, as inserted by Section 2 of P.D. No. 583; and all other fees accruing to the [PCA] under the provisions of Section 19 of [RA] No. 1365, in accordance with Section 2 of P.D. No. 755 and all other income accruing to the [PCA] under existing laws.

Moreover, the Court, in *Gaston,* stated the observation that the character of a stabilization fund as a special fund "is emphasized by the fact that the funds are deposited in the Philippine National Bank [PNB] and not in the Philippine Treasury, moneys from which may be paid out only in pursuance of an appropriation made by law." Similarly in this case, Sec. 1 (a) of P.D. No. 276 states that the proceeds from the coconut levy shall be deposited with the PNB, then a government bank, or any other government bank under the account of the CCSF, *as a separate trust fund,* which shall not form part of the government's general fund. And even assuming *arguendo* that the coconut levy funds were transferred to the general fund pursuant to P.D. No. 1234, it was with the specific directive that the same be treated as *special accounts* in the general fund.[29] [Emphasis in the original]

Thus, E.O. No. 179 does not create a new special fund but merely reiterates that revenues arising out of or in connection with the privatization of coconut levy funds shall be deposited in the SAGF. An automatic appropriation law is not necessarily unconstitutional for as long as there are clear legislative parameters on how the amounts appropriated are to be disbursed.[30] The president should not have unlimited discretion as to its disbursement[31] since the funds are allocated for a specific purpose. In *Edu v. Ericta*,[32] the Court explained when a valid delegation of legislative power may be done, *viz:*

It is a fundamental principle flowing from the doctrine of separation of powers that Congress may not delegate its legislative power to

[29] *Id.* at 603-604.

[30] *Guingona v. Carague*, 273 Phil. 443 (1991).

[31] *Id*.

[32] 146 Phil. 469 (1970).

the two other branches of the government, subject to the exception that local governments may over local affairs participate in its exercise. What cannot be delegated is the authority under the Constitution to make laws and to alter and repeal them; the test is the completeness of the statute in all its term and provisions when it leaves the hands of the legislature. To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. The legislature does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority. For a complex economy, that may indeed be the only way in which the legislative process can go forward. A distinction has rightfully been made between delegation of power to make the laws which necessarily involves a discretion as to what it shall be, which constitutionally may not be done, and delegation of authority or discretion as to its execution to be exercised under and in pursuance of the law, to which no valid objection can be made. The Constitution is thus not to be regarded as denying the legislature the necessary resources of flexibility and practicability.[33]

COCOFED held that the CCSF and the CIDF are to be utilized for the benefit of coconut farmers and for the development of the coconut industry. Pursuant to this, E.O. 180 provides:

SECTION 1. *Reiteration of Policy.* — All Coco Levy Funds and Coco Levy Assets reconveyed to the Government, whether voluntarily or through lawful order from a competent court, and all proceeds of any privatization of the Coco Levy Assets, shall be used solely and exclusively for the benefit of all the coconut farmers and for the development of the coconut industry.

Any disposition and utilization shall be guided by the following objectives:

a. Improving coconut farm productivity, developing coconut-based enterprises, and increasing the income of coconut farmers;

b. Strengthening coconut farmers' organizations; and

c. Attaining a balanced, equitable, integrated, and sustainable growth, rehabilitation and development of the coconut industry.

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[33] *Id*. at 485-486.

On its own, E.O. Nos. 179 and 180 appears to have been executed within the legislative parameters set by *COCOFED*. P.D. No. 1234, however, does not actually provide a mechanism for how the SAGF is to be disbursed. Thus, the assailed issuances do not just implement P.D. No. 1234— it implements P.D. No. 755 and P.D. No. 1468 as well.

Article III, Sections 2 and 3 of P.D. No. 1468, in particular, provides the specific purpose for how the CCSF and the CIDF should be utilized, to wit:

> SECTION 2. *Utilization of Fund*. — All collections of the Coconut Consumers Stabilization Fund Levy shall be utilized by the Authority for the following purposes:
>
> a) When the national interest so requires, to provide a subsidy for coconut-based products the amount of which subsidy shall be determined on the basis of the base price of *copra* or its equivalent as fixed by the Authority and the prices of coconut-based products as fixed by the Price Control Council; *Provided, however,* that when the coconut farmers, who in effect shoulder the burden of the levies herein imposed, shall have owned or controlled, under Section 9 and 10 hereof, oil mills and/or refineries which manufacture coconut-based consumer products, only such oil mills and/or refineries shall be entitled to the subsidy herein authorized;
>
> b) To refund wholly or in part any premium duty collected on *copra* or its equivalent sold prior to February 17, 1974;
>
> c) To finance the developmental and operating expenses of the Philippine Coconut Producers Federation including projects such as scholarships for the benefit of deserving children of the coconut farmers; and
>
> d) To finance the establishment and operation of industries and commercial enterprises relating to the coconut and other palm oil industry as described in Section 9 hereof; and
>
> e) To finance the Coconut Farmers Refund which is hereby constituted as the pooled savings of the coconut farmers, to be utilized for their mutual assistance, protection and relief in the form of social benefits, such as life and accident insurance coverage of the farmers.

SECTION 3. *Coconut Industry Development Fund*. — There is hereby created a permanent fund to be known as the Coconut Industry Development Fund, which shall be administered and utilized by the bank acquired for the benefit of the coconut farmers under PD 755 for the following purposes:

a) To finance the establishment, operation and maintenance of a hybrid coconut seednut farm under such terms and conditions that may be negotiated by the National Investment and Development Corporation (NIDC) with any private person, corporation, firm or entity as would insure that the country shall have, at the earliest possible time, a proper, adequate and continuous supply of selected high-yielding hybrid as well as indigenous precocious seednuts and, for this purpose, the contract, including the amendments and supplements thereto as provided for herein, entered into by NIDC as herein authorized is hereby confirmed and ratified, and the bank acquired for the benefit of the coconut farmers under the PD 755 shall administer the said contract, including its amendments and supplements, and perform all the rights and obligations of NIDC thereunder, utilizing for that purpose the Coconut Industry Development Fund;

b) To purchase all of the seednuts produced by the hybrid coconut seednut farm which shall be distributed, for free, by the Authority to coconut farmers on a voluntary basis as well as for new areas opened for coconut planting in accordance with, and in the manner prescribed in, the nationwide coconut replanting program, provided, that farmers who have been paying the levy herein authorized shall be given priority;

c) To defray the cost of implementing the nationwide replanting program which, including the activities described in sub-paragraphs (b) and (d) of this Section, shall upon prior approval of the President of the Philippines, be implemented by the Authority through a private non-profit foundation owned by the coconut farmers in the manner prescribed by Sections 9 and 10 hereof;

d) To finance the establishment, operation and maintenance of extension services, model plantations and other activities as would insure that the coconut farmers shall be informed of the proper methods of replanting; and

e) The balance, if any, shall be utilized for investments for the benefit of the coconut farmers as prescribed in Section 9 hereof. [Emphasis supplied]

While most of the provisions are aligned with the avowed purpose to benefit the coconut Industry, Section 3(e), Article III provides that any remaining balance may be used by UCPB to purchase shares and stocks in corporations related to the coconut industry, *viz:*

SECTION 9. *Investments For the Benefit of the Coconut Farmers*. — Notwithstanding any law to the contrary, the bank acquired for the benefit of the coconut farmers under PD 755 is hereby given full power and authority to make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of a research into the commercial and industrial uses of coconut and other oil industry. For that purpose, the Authority shall, from time to time, ascertain how much of the collections of the Coconut Consumers Stabilization Fund and/or the Coconut Industry Development Fund is not required to finance the replanting program and other purposes herein authorized and such ascertained surplus shall be utilized by the bank for the investments herein authorized.

The surplus created by this particular Section of P.D. No. 1468 eventually became known as the Coconut Industry Investment Fund *(CIIF)*. With the use of the CIIF, UCPB acquired coconut oil mills corporation, 14 holding companies, and San Miguel Corporation shares.[34] In short, Section 9 of P.D. No. 1468 allowed Marcos cronies to grow their wealth - to the detriment of the coconut industry.

A law which provides this kind of open-ended provision cannot be considered a law which provides clear legislative parameters. Too much unbridled discretion is given for any surplus or balance that remains unutilized from the CIDF.

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[34] E.O. No. 179.

The provision of P.D. No. 1468 are simply too broad to limit the amount of spending that may be done by the implementing authority. Considering that no statute provides for specific parameters on how the SAGF may be spent, Congress must first provide a law for the disbursements of the funds, in line with its constitutional authority.[35] The absence of the requisite legislative authority in the disbursement of public funds cannot be remedied by executive fiat.

For this reason, Sections 6, 7, 8, and 9[36] of E.O. No. 180 are declared void because they are not in conformity with the law.

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[35] Article VI, Section 29 of the Constitution.

[36] SECTION 6. *Approval of Roadmap.* — The PCA, in coordination with the Office of the Presidential Assistant for Food, Security, and Agricultural Modernization, is hereby directed to develop and submit the Roadmap, for the approval of the President.

SECTION 7. *Funding Source.* — The initial funding for the Roadmap shall be sourced from the money and funds constituting the Coconut Levy and Coco Levy Assets.

The initial funding shall be released upon approval of the Roadmap by the President, and upon compliance with all existing applicable laws and budgetary, accounting, and auditing rules and regulations.

SECTION 8. *Utilization of Funds.* — The funds, once released, shall be utilized by the PCA together with the government agencies involved in the Roadmap only for the purpose for which such funds have been allocated and released, and in all cases only for the benefit of the coconut farmers and for the development of the coconut industry.

The PCA shall prepare a monthly cash program and shall render an annual report to the President, which shall be considered in the preparation of the annual budget for the Roadmap.

SECTION 9. *Implementing Rules.* — The PCA may issue such implementing rules and regulations as may be necessary to ensure the fulfilment of its mandate and the purposes of this Order.

To ensure the implementation, coordination, and integration of national efforts and programs towards the total development of the coconut industry for the ultimate benefit of the coconut farmers, the PCA, in carrying out its responsibilities, shall conduct consultations with the coconut farmers, farm workers and other key stakeholders. Government agencies shall extend such assistance to the PCA as may be necessary for the successful implementation of this Order.

Through these sections, the President went beyond the authority delegated by law in the disbursement of the coconut levy funds.

WHEREFORE, the Petition for Prohibition is **PARTIALLY GRANTED**. The Court finds, and declares, that Section 6, Section 7, Section 8 and Section 9 of Executive Order No. 180, series of 2015, are not in conformity with law.

In accordance with the foregoing, it is hereby reiterated that the coconut levy funds are to be deposited in the Special Accounts in the General Fund and are to be appropriated only for the benefit of the coconut farmers and for the development of the coconut industry.

The Temporary Restraining Order issued by the Court on June 30, 2015 is **LIFTED** effective immediately.

SO ORDERED.

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

Carpio, J., no part, prior inhibition in related cases.

Jardeleza and *Caguioa, JJ.,* no part.

EN BANC

[G.R. No. 224302. August 8, 2017]

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP), *petitioners, vs.* **HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO,** *respondents,* **JUDICIAL AND BAR COUNCIL**, *intervenor.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION (MR); MR-RESOLUTION AND SUPPLEMEN-MR-RESOLUTION (FOR THE NOVEMBER 29, 2016 DECISION DECLARING THE CLUSTERING OF NOMINEES BY THE JBC UNCONSTITUTIONAL) FILED BY THE JUDICIAL AND BAR COUNCIL (JBC) LACK MERIT.— In its Decision dated November 29, 2016, the Court *En Banc* held: **WHEREFORE,** premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL,** and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID.** The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition. x x x Presently

for resolution of the Court are the following Motions of the JBC: (a) Motion for Reconsideration of the Resolution dated 21 February 2017 (MR-Resolution), filed on March 17, 2017; and (b) Motion to Admit Attached Supplement to Motion for Reconsideration of the Resolution dated 21 February 2017 and the Supplement to Motion for Reconsideration of the Resolution dated 21 February 2017 (Supplement-MR-Resolution) filed on March 24, 2017. The aforementioned MR-Resolution and Supplement-MR-Resolution lack merit given the admission of the JBC itself in its previous pleadings of lack of consensus among its own members on the validity of the clustering of nominees for the six simultaneous vacancies in the Sandiganbayan, further bolstering the unanimous decision of the Court against the validity of such clustering.

APPEARANCES OF COUNSEL

Vicente M. Joyas for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

In its Decision dated November 29, 2016, the Court *En Banc* held:

WHEREFORE, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID**. The Court further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules

of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35 to 40 of this Decision. The Court finally **DIRECTS** the Judicial and Bar Council to file its comment on said Item Nos. 2 and 3 within thirty (30) days from notice.

The Judicial and Bar Council (JBC) filed a Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) on December 27, 2016 and a Motion for Reconsideration-in-Intervention (of the Decision dated 29 November 2016) on February 6, 2017.

The Court, in a Resolution dated February 21, 2017, denied both Motions in this wise:

> **WHEREFORE**, premises considered, except for its motion/prayer for intervention, which the Court has now granted, the Motion for Reconsideration (with Motion for the Inhibition of the *Ponente*) and the Motion for Reconsideration-in-Intervention (Of the Decision dated 29 November 2016) of the Judicial and Bar Council are **DENIED** for lack of merit.[1] (Underscoring supplied.)

Presently for resolution of the Court are the following Motions of the JBC: (a) Motion for Reconsideration of the Resolution dated 21 February 2017 (MR-Resolution), filed on March 17, 2017; and (b) Motion to Admit Attached Supplement to Motion for Reconsideration of the Resolution dated 21 February 2017 and the Supplement to Motion for Reconsideration of the Resolution dated 21 February 2017 (Supplement-MR-Resolution) filed on March 24, 2017.

The aforementioned MR-Resolution and Supplement-MR-Resolution lack merit given the admission of the JBC itself in its previous pleadings of lack of consensus among its own members on the validity of the clustering of nominees for the six simultaneous vacancies in the Sandiganbayan, further bolstering the unanimous decision of the Court against the validity of such clustering. The lack of consensus among JBC

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[1] *Rollo*, p. 358.

members on the validity of the clustering also shows that the *ponente's* decision in this case did not arise from personal hostility – or any other personal consideration – but solely from her objective evaluation of the adverse constitutional implications of the clustering of the nominees for the vacant posts of Sandiganbayan Associate Justice.

The JBC contends in its MR-Resolution that since JBC consultants receive monthly allowance from the JBC, then "[o]bviously, JBC consultants should always favor or take [the] side [of] the JBC. Otherwise, there will be conflict of interest on their part."[2] While the *ponente* indeed received monthly allowance from the JBC for the period she served as consultant, her objectivity would have been more questionable and more of a ground for her inhibition if she had received the allowance **and** decided the instant case in favor of the JBC.

It bears to stress that the Court also unanimously held in its Resolution dated February 21, 2017 that there is no factual or legal basis for the *ponente* to inhibit herself from the present case. Worth reiterating below is the *ponente's* explanation in the Resolution dated February 21, 2017 that there was no conflict of interest on her part in rendering judgment in this case, and even in her voting in *Jardeleza v. Sereno,*[3] considering that she had absolutely no participation in the decisions made by the JBC that were challenged before this Court in both cases:

> As previously mentioned, it is the practice of the JBC to hold executive sessions when taking up sensitive matters. The *ponente* and Associate Justice Velasco, incumbent Justices of the Supreme Court and then JBC consultants, as well as other JBC consultants, were excluded from such executive sessions. Consequently, the *ponente* and Associate Justice Velasco were unable to participate in and were kept in the dark on JBC proceedings/decisions, particularly, on matters involving the nomination of candidates for vacancies in the appellate courts and the Supreme Court. The matter of the nomination to the Supreme Court of now Supreme Court Associate

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[2] *Id*. at 384.

[3] 741 Phil. 460 (2014).

Justice Francis H. Jardeleza (Jardeleza), which became the subject matter of *Jardeleza v. Sereno*, was taken up by the JBC in such an executive session. This *ponente* also does not know when and why the JBC deleted from JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council," what was Rule 8, Section 1 of JBC-009, the former JBC Rules, which gave due weight and regard to the recommendees of the Supreme Court for vacancies in the Court. The amendment of the JBC Rules could have been decided upon by the JBC when the *ponente* and Associate Justice Velasco were already relieved by Chief Justice Sereno of their duties as consultants of the JBC. The JBC could have similarly taken up and decided upon the clustering of nominees for the six vacant posts of Sandiganbayan Associate Justice during one of its executive sessions prior to October 26, 2015.

Hence, even though the *ponente* and the other JBC consultants were admittedly present during the meeting on October 26, 2015, the clustering of the nominees for the six simultaneous vacancies for Sandiganbayan Associate Justice was already *fait accompli*. Questions as to why and how the JBC came to agree on the clustering of nominees were no longer on the table for discussion during the said meeting. As the minutes of the meeting on October 26, 2015 bear out, the JBC proceedings focused on the voting of nominees. It is stressed that the crucial issue in the present case pertains to the clustering of nominees and not the nomination and qualifications of any of the nominees. This *ponente* only had the opportunity to express her opinion on the issue of the clustering of nominees for simultaneous and closely successive vacancies in collegiate courts in her *ponencia* in the instant case. As a Member of the Supreme Court, the *ponente* is duty-bound to render an opinion on a matter that has grave constitutional implications.[4]

Since all the basic issues raised in the case at bar had been thoroughly passed upon by the Court in its Decision dated November 29, 2016 and Resolution dated February 21, 2017, the Court need not belabor them any further.

Considering the foregoing, the Court resolves to **DENY** for lack of merit the Motion for Reconsideration of the Resolution

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[4] *Rollo*, pp. 343-344.

dated 21 February 2017 and Supplement to Motion for Reconsideration of the Resolution dated 21 February 2017 of the Judicial and Bar Council.

No further pleadings will be entertained.

Let entry of judgment be made in due course.

SO ORDERED.

Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Jardeleza, Martires, and *Reyes, Jr., JJ.,* concur.

Leonen and *Caguioa, JJ.,* see separate opinions in the main case.

Sereno, C.J, and *Tijam, J.,* no part.

EN BANC

[G.R. No. 225442. August 8, 2017]

SAMAHAN NG MGA PROGRESIBONG KABATAAN (SPARK),[*] JOANNE ROSE SACE LIM, JOHN ARVIN NAVARRO BUENAAGUA, RONEL BACCUTAN, MARK LEO DELOS REYES, and CLARISSA JOYCE VILLEGAS, minor, for herself and as represented by her father, JULIAN VILLEGAS, JR., *petitioners, vs.* **QUEZON CITY, as represented by MAYOR HERBERT BAUTISTA, CITY OF MANILA, as represented by MAYOR JOSEPH ESTRADA, and NAVOTAS CITY, as represented by MAYOR JOHN REY TIANGCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL POWER, INCLUDES THE

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[*] Or *"Samahan ng Progresibong Kabataan", rollo*, p. 4.

DUTY TO DETERMINE WHETHER OR NOT THERE HAS BEEN GRAVE ABUSE OF DISCRETION ON THE PART OF ANY BRANCH OF THE GOVERNMENT; SPECIAL CIVIL ACTIONS OF CERTIORARI AND PROHIBITION USED AS THE MEDIUM FOR PETITIONS INVOKING THE COURTS' EXPANDED JURISDICTION.— Under the 1987 Constitution, judicial power includes the duty of the courts of justice 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 or instrumentality of the Government". x x x In *Araullo v. Aquino III*, it was held that petitions for *certiorari* and prohibition filed before the Court "are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution." It was explained that "[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition 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***. This application is expressly authorized by the text of the second paragraph of Section 1, Article VIII of the 1987 Constitution. In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, it was expounded that "[m]eanwhile that no specific procedural rule has been promulgated to enforce [the] 'expanded' constitutional definition of judicial power and because of the commonality of 'grave abuse of discretion' as a ground for review under Rule 65 and the courts' expanded jurisdiction, the Supreme Court – based on its power to relax its rules – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction[.]"

2. **REMEDIAL LAW; DOCTRINE OF HIERARCHY OF COURTS; DIRECT RESORT TO THE COURT'S**

JURISDICTION IS ALLOWED WHERE THE ISSUE OF CONSTITUTIONALITY OF A LAW OR REGULATION IS OF PARAMOUNT IMPORTANCE AND IMMEDIATELY AFFECTS THE SOCIAL, ECONOMIC, AND MORAL WELL-BEING OF THE PEOPLE.— The doctrine of hierarchy of courts "[r]equires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*. While this jurisdiction is shared with the Court of Appeals [(CA)] and the [Regional Trial Courts], **a direct invocation of this Court's jurisdiction is allowed when there are special and important reasons therefor, clearly and especially set out in the petition**[.]" This Court is tasked to resolve "**the issue of constitutionality of a law or regulation at the first instance [if it] is of paramount importance and immediately affects the social, economic, and moral well-being of the people**," as in this case. Hence, petitioners' direct resort to the Court is justified.

3. **POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES.—** "The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (*a*) there must be an **actual case or controversy** calling for the exercise of judicial power; (*b*) the person challenging the act must have the **standing** to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case."

4. **ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY.—** "Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual case or controversy." "[A]n actual case or controversy is one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.' In other words, '**there must be a contrariety of legal rights that can be interpreted and enforced on the basis of**

existing law and jurisprudence.'" According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "**by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act**." "Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. **For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action**. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of."

5. **ID.; ID.; ID.; ID.; ID.; LEGAL STANDING.—** "The question of *locus standi* or legal standing focuses on the determination of whether those assailing the governmental act have the right of appearance to bring the matter to the court for adjudication. [Petitioners] must show that they have **a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, some direct injury as a consequence of the enforcement of the challenged governmental act**." "'[I]nterest' in the question involved must be material — an interest that is in issue and will be affected by the official act — as distinguished from being merely incidental or general." "The gist of the question of [legal] standing is whether a party alleges **such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions**. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing."

6. **ID.; ID.; ID.; ID.; ID.; ID.; RULE ON STANDING REQUIREMENT, RELAXED IN VIEW OF THE TRANSCENDENTAL IMPORTANCE OF THE ISSUES INVOLVED; HERE, THE CONSTITUTIONALITY OF JUVENILE CURFEW ORDINANCES IS PLACED UNDER JUDICIAL REVIEW.—** [T]his Court finds it proper to relax

the standing requirement insofar as all the petitioners are concerned, in view of the transcendental importance of the issues involved in this case. "In a number of cases, this Court has taken a liberal stance towards the requirement of legal standing, especially when paramount interest is involved. **Indeed, when those who challenge the official act are able to craft an issue of transcendental significance to the people, the Court may exercise its sound discretion and take cognizance of the suit**. It may do so in spite of the inability of the petitioners to show that they have been personally injured by the operation of a law or any other government act." This is a case of first impression in which the constitutionality of juvenile curfew ordinances is placed under judicial review. Not only is this Court asked to determine the impact of these issuances on the right of parents to rear their children and the right of minors to travel, it is also requested to determine the extent of the State's authority to regulate these rights in the interest of general welfare. Accordingly, this case is of overarching significance to the public, which, therefore, impels a relaxation of procedural rules, including, among others, the standing requirement.

7. **POLITICAL LAW; STATUTORY CONSTRUCTION; WHEN A STATUTE SUFFERS FROM THE DEFECT OF VAGUENESS; THE VOID FOR VAGUENESS DOCTRINE IS PREMISED ON DUE PROCESS CONSIDERATIONS.—** "A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two (2) respects: (1) **it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid;** and (2) **it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle**." In this case, petitioners' invocation of the void for vagueness doctrine is improper, considering that they do not properly identify any provision in any of the Curfew Ordinances, which, because of its vague terminology, fails to provide fair warning and notice to the public of what is prohibited or required so that one may act accordingly. **The void for vagueness doctrine is premised on due process considerations**, which are absent from this particular claim. x x x Essentially, petitioners only bewail the

lack of enforcement parameters to guide the local authorities in the proper apprehension of suspected curfew offenders. **They do not assert any confusion as to what conduct the subject ordinances prohibit or not prohibit but only point to the ordinances' lack of enforcement guidelines**.

8. ID.; 1987 CONSTITUTION; THE STATE AS *PARENS PATRIAE*, HAS THE INHERENT RIGHT AND DUTY TO AID PARENTS IN THE MORAL DEVELOPMENT OF THEIR CHILDREN; THE CURFEW ORDINANCES FOR MINORS ARE EXAMPLES OF LEGAL RESTRICTIONS DESIGNED TO AID PARENTS IN THEIR ROLE OF PROMOTING THEIR CHILDREN'S WELL-BEING.— Section 12, Article II of the 1987 Constitution articulates the State's policy relative to the rights of parents in the rearing of their children: x x x [But] [w]hile parents have the primary role in child-rearing, it should be stressed that "**when actions concerning the child have a relation to the public welfare or the well-being of the child, the [S]tate may act to promote these legitimate interests**." Thus, "**[i]n cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, these legitimate state interests may override the parents' qualified right to control the upbringing of their children**." As our Constitution itself provides, the State is mandated to **support** parents in the exercise of these rights and duties. **State authority is therefore, not exclusive of, but rather, complementary to parental supervision**. In *Nery v. Lorenzo*, this Court acknowledged the State's role as *parens patriae* in protecting minors. x x x **As *parens patriae*, the State has the inherent right and duty to aid parents in the moral development of their children**, and, thus, assumes a supporting role for parents to fulfill their parental obligations. x x x The Curfew Ordinances are but examples of legal restrictions designed to aid parents in their role of promoting their children's well-being. x x x Minors, because of their peculiar vulnerability and lack of experience, are not only more exposed to potential physical harm by criminal elements that operate during the night; their moral well-being is likewise imperiled as minor children are prone to making detrimental decisions during this time.

9. ID.; ID.; ID.; RESTRICTION OF RIGHT TO TRAVEL JUSTIFIED AS THE PURPOSE (PROMOTION OF

PUBLIC SAFETY AND PREVENTION OF JUVENILE CRIME) SERVES THE INTEREST OF PUBLIC SAFETY.— Petitioners further assail the constitutionality of the Curfew Ordinances based on the minors' right to travel. x x x The right to travel is recognized and guaranteed as a fundamental right under Section 6, Article III of the 1987 Constitution. x x x Nevertheless, grave and overriding considerations of public interest justify restrictions even if made against fundamental rights. Specifically on the freedom to move from one place to another, jurisprudence provides that this right is not absolute. As the 1987 Constitution itself reads, the State may impose limitations on the exercise of this right, provided that they**: (1)** **serve the interest of national security, public safety, or public health**; and **(2)** **are provided by law**. The stated purposes of the Curfew Ordinances, specifically the promotion of juvenile safety and prevention of juvenile crime, inarguably serve the interest of public safety. The restriction on the minor's movement and activities within the confines of their residences and their immediate vicinity during the curfew period is perceived to reduce the probability of the minor becoming victims of or getting involved in crimes and criminal activities. As to the second requirement, *i.e.*, that the limitation "be provided by law," our legal system is replete with laws emphasizing the State's duty to afford special protection to children.

10. **ID.; STATUTORY CONSTRUCTION; CLASSIFICATIONS; THREE TESTS OF JUDICIAL SCRUTINY TO DETERMINE THE REASONABLENESS OF CLASSIFICATION.—** Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The **strict scrutiny test** applies when a classification either (*i*) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (*ii*) burdens suspect classes. The **intermediate scrutiny test** applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the **rational basis test** applies to all other subjects not covered by the first two tests.

11. **ID.; ID.; ID.; ID.; STRICT SCRUTINY TEST AS APPLIED TO MINORS; REQUIRES THAT THE CLASSIFICATION**

WAS NECESSARY TO ACHIEVE A COMPELLING STATE INTEREST AND IS THE LEAST RESTRICTIVE MEANS TO PROTECT SUCH INTEREST.— Considering that the right to travel is a fundamental right in our legal system guaranteed no less by our Constitution, the strict scrutiny test is the applicable test. x x x **The strict scrutiny test as applied to minors** entails a consideration of the peculiar circumstances of minors x x x *vis-à-vis* the State's duty as *parens patriae* to protect and preserve their well-being with the compelling State interests justifying the assailed government act. Under the strict scrutiny test, a legislative classification that interferes with the exercise of a fundamental right or operates to the disadvantage of a suspect class is presumed unconstitutional. **Thus, the government has the burden of proving that the classification (*i*) is necessary to achieve a compelling State interest, and (*ii*) is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest**.

12. **ID.; ID.; ID.; ID.; ID.; ID.; COMPELLING STATE INTEREST; THE CHILDREN'S WELFARE AND THE STATE'S MANDATE TO PROTECT AND CARE FOR THEM AS *PARENS PATRIAE* CONSTITUTE COMPELLING INTERESTS TO JUSTIFY THE CURFEW ORDINANCES FOR MINORS.—** Jurisprudence holds that compelling State interests include constitutionally declared policies. **This Court has ruled that children's welfare and the State's mandate to protect and care for them as *parens patriae* constitute compelling interests to justify regulations by the State**. It is akin to the paramount interest of the state for which some individual liberties must give way. x x x In this case, respondents have sufficiently established that the ultimate objective of the Curfew Ordinances is to keep unsupervised minors during the late hours of night time off of public areas, so as to reduce – if not totally eliminate – their exposure to potential harm, and to insulate them against criminal pressure and influences which may even include themselves. x x x A compelling State interest exists for the enactment and enforcement of the Curfew ordinances.

13. **ID.; ID.; ID.; ID.; ID.; ID.; LEAST RESTRICTIVE MEANS GOVERNMENTAL REGULATIONS MUST BE SO**

NARROWLY DRAWN TO AVOID CONFLICTS WITH CONSTITUTIONAL RIGHTS.— The second requirement of the strict scrutiny test stems from the fundamental premise that citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional rights. While rights may be restricted, the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest. **When it is possible for governmental regulations to be more narrowly drawn to avoid conflicts with constitutional rights, then they must be so narrowly drawn**.

14. **CRIMINAL LAW; JUVENILE JUSTICE UNDER RA 9344; IMPOSITION OF PENALTIES ON MINORS FOR STATUS OFFENSES SUCH AS CURFEW VIOLATIONS ARE PROHIBITED; APPROPRIATE INTERVENTION PROGRAM SUCH AS COMMUNITY-BASED PROGRAMS ARE ALLOWED.—** [T]hese provisions [however,] do not prohibit the *enactment of regulations* that curtail the conduct of minors, when the similar conduct of adults are not considered as an offense or penalized (*i.e*., status offenses). Instead, what they prohibit is the *imposition of **penalties*** on minors for violations of these regulations. Consequently, the enactment of curfew ordinances on minors, without penalizing them for violations thereof, is not violative of Section 57-A. "Penalty" is defined as "[p]unishment imposed on a wrongdoer usually in the form of imprisonment or fine"; "[p]unishment imposed by lawful authority upon a person who commits a deliberate or negligent act." Punishment, in turn, is defined as "[a] sanction – such as fine, penalty, confinement, or loss of property, right, or privilege – assessed against a person who has violated the law." The provisions of RA 9344, as amended, should not be read to mean that all the actions of the minor in violation of the regulations are without legal consequences. Section 57-A thereof empowers local governments to adopt appropriate intervention programs, such as **community-based programs** recognized under Section 54 of the same law. In this regard, requiring the minor to perform community service is a valid form of intervention program that a local government (such as Navotas City in this case) could appropriately adopt in an ordinance to promote the welfare of minors. For one, the community service programs provide minors an alternative mode of rehabilitation as they promote accountability for their

delinquent acts without the moral and social stigma caused by jail detention. In the same light, these programs help inculcate discipline and compliance with the law and legal orders. More importantly, they give them the opportunity to become productive members of society and thereby promote their integration to and solidarity with their community.

15. **ID.; ID.; DISCIPLINARY MEASURES OF COMMUNITY-BASED PROGRAMS AND ADMONITION ARE NOT PENALTIES AND THEY ARE ALLOWED UNDER RA 9344.—** The sanction of **admonition** imposed by the City of Manila is likewise consistent with Sections 57 and 57-A of RA 9344 as it is merely a formal way of giving warnings and expressing disapproval to the minor's misdemeanor. Admonition is generally defined as a "gentle or friendly reproof" or "counsel or warning against fault or oversight." x x x Notably, the Revised Rules on Administrative Cases in the Civil Service (RRACCS) and our jurisprudence in administrative cases explicitly declare that "a warning or admonition shall not be considered a penalty." In other words, the disciplinary measures of community-based programs and admonition are clearly not penalties – as they are not punitive in nature – and are generally less intrusive on the rights and conduct of the minor. To be clear, their objectives are to formally inform and educate the minor, and for the latter to understand, what actions must be avoided so as to aid him in his future conduct.

16. **ID.; ID.; REPRIMAND, FINES AND/OR IMPRISONMENT ARE PENALTIES AND THEY ARE PROHIBITED UNDER RA 9344.— Reprimand** is generally defined as "a severe or formal reproof." x x x It is more than just a warning or admonition." In other words, reprimand is a formal and public pronouncement made to denounce the error or violation committed, to sharply criticize and rebuke the erring individual, and to sternly warn the erring individual including the public against repeating or committing the same, and thus, may unwittingly subject the erring individual or violator to unwarranted censure or sharp disapproval from others. In fact, the RRACCS and our jurisprudence explicitly indicate that reprimand is a penalty, hence, prohibited by Section 57-A of RA 9344, as amended. **Fines and/or imprisonment**, on the other hand, undeniably constitute penalties – as provided in

our various criminal and administrative laws and jurisprudence – that Section 57-A of RA 9344, as amended, evidently prohibits.

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

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ORDINANCES; ARE PRESUMED CONSTITUTIONAL; PRESUMPTION MAY BE CHALLENGED BY A CLEAR, UNEQUIVOCAL SHOWING OF THE BASES FOR INVALIDATING A LAW.—** Ordinances are products of "derivative legislative power" in that legislative power is delegated by the national legislature to local government units. They are presumed constitutional and, until judicially declared invalid, retain their binding effect. x x x The presumption of constitutionality is rooted in the respect that the judiciary must accord to the legislature. x x x The same respect is proper for acts made by local legislative bodies, whose members are equally presumed to have acted conscientiously and with full awareness of the constitutional and statutory bounds within which they may operate. x x x The presumption of constitutionality may, of course, be challenged. Challenges, however, shall only be sustained upon a clear and unequivocal showing of the bases for invalidating a law.
2. **ID.; ID.; ID.; ID.; TEST FOR DETERMINING THE VALIDITY OF AN ORDINANCE.—** Consistent with the exacting standard for invalidating ordinances, *Hon. Fernando v. St. Scholastica's College*, outlined the test for determining the validity of an ordinance: The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable. The first consideration hearkens to the primacy of the Constitution, as well as to the basic nature of ordinances as products of a power that was merely delegated to local government units.

3. ID.; ID.; ID.; ID.; APPRAISING THE VALIDITY OF GOVERNMENT REGULATION IN RELATION TO DUE PROCESS AND EQUAL PROTECTION CLAUSES INVOKES THREE (3) LEVELS OF ANALYSIS: THE RATIONAL BASIS TEST, INTERMEDIATE REVIEW AND STRICT SCRUTINY.— An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest. The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it. Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] *considered*." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is *conceptually* the least restrictive mechanism that the government may apply. Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, actually—not only conceptually—being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms. x x x Cases involving strict scrutiny innately favor the preservation of fundamental rights and the non-discrimination of protected classes. Thus, in these cases, the burden falls upon the government to prove that it was impelled by a compelling

state interest and that there is actually no other less restrictive mechanism for realizing the interest that it invokes: x x x.

4. **ID.; ID.; ID.; ID.; ID.; CURFEW ORDINANCES WHICH IMPOSE SANCTIONS ON MERE PRESENCE OF MINORS IN PUBLIC PLACES AT GIVEN TIMES; VALIDITY THEREOF MUST BE STRICTLY SCRUTINIZED.—** By definition, a curfew restricts mobility. As effected by the assailed ordinances, this restriction applies daily at specified times and is directed at minors, who remain under the authority of their parents. Thus, petitioners correctly note that at stake in the present Petition is the right to travel. x x x Apart from impinging upon fundamental rights, the assailed ordinances define status offenses. They identify and restrict offenders, not purely on the basis of prohibited acts or omissions, but on the basis of their inherent personal condition. Altogether and to the restriction of all other persons, minors are exclusively classified as potential offenders. What is potential is then made real on a passive basis, as the commission of an offense relies merely on presence in public places at given times and not on the doing of a conclusively noxious act. The assailed ordinances' adoption and implementation concern a prejudicial classification. The assailed ordinances are demonstrably incongruent with the Constitution's unequivocal nurturing attitude towards the youths and whose mandate is to "promote and protect their physical, moral, spiritual, intellectual, and social well-being." This attitude is reflected in Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, which takes great pains at a nuanced approach to children. x x x The assailed ordinances' broad and sweeping determination of presence in the streets past defined times as delinquencies warranting the imposition of sanctions tend to run afoul of the carefully calibrated attitude of Republic Act No. 9344 and the protection that the Constitution mandates. For these, a strict consideration of the assailed ordinances is equally proper.

5. **ID.; ID.; CURFEW ORDINANCES; IMPOSING A CURFEW ON MINORS MERELY ON THE ASSUMPTION THAT IT CAN KEEP THEM SAFE FROM CRIME IS NOT THE LEAST RESTRICTIVE MEANS TO ACHIEVE THIS OBJECTIVE.—** The strict scrutiny test not only requires that the challenged law be narrowly tailored in order to

achieve *compelling governmental interests*, it also requires that the mechanisms it adopts are the least burdensome or least drastic means to achieve its ends: x x x The governmental interests to be protected must not only be reasonable. They must be *compelling*. Certainly, the promotion of public safety is compelling enough to restrict certain freedoms. It does not, however, suffice to make a generic, sweeping averment of public safety. To reiterate, respondents have not shown adequate data to prove that an imposition of curfew lessens the number of Children in Conflict with the Law (CICLs). Respondents further fail to provide data on the frequency of crimes against unattended minors during curfew hours. Without this data, it cannot be concluded that the safety of minors is better achieved if they are not allowed out on the streets during curfew hours. x x x Imposing a curfew on minors merely on the assumption that it can keep them safe from crime is not the least restrictive means to achieve this objective.

6. **ID.; ID.; ID.; THE LACK OF SUFFICIENT GUIDELINES GIVES LAW ENFORCERS "UNBRIDLED DISCRETION" IN CARRYING OUT THE ASSAILED ORDINANCES.—** The assailed ordinances are deficient x x x also in failing to articulate safeguards and define limitations that foreclose abuses. x x x Contrary to the ponencia's position, the lack of specific provisions in the assailed ordinances indeed made them vague, so much so that actual transgressions into petitioner's rights were made. x x x The ponencia asserts that Republic Act No. 9344, Section 7 addresses the lacunae as it articulates measures for determining age. However, none of the assailed ordinances actually refers law enforcers to extant statutes. Their actions and prerogatives are not actually limited whether by the assailed ordinances' express provisions or by implied invocation. True, Republic Act No. 9344 states its prescriptions but the assailed ordinances' equivocation by silence reduces these prescriptions to mere suggestions, at best, or to mere afterthoughts of a justification, at worst. Thus, the lack of sufficient guidelines gives law enforcers "unbridled discretion in carrying out [the assailed ordinances'] provisions." The present Petition illustrates how this has engendered abusive and even absurd situations.

7. **ID.; ID.; ID.; THE DOCTRINE OF *PARENS PATRIAE* DOES NOT SUSTAIN THE ASSAILED ORDINANCES.—** The

doctrine of *parens patriae* fails to justify the intrusions into parental prerogatives made by the assailed ordinances. The State acts as *parens patriae* in the protection of minors only when there is a clear showing of neglect, abuse, or exploitation. It cannot, on its own, decide on how children are to be reared, supplanting its own wisdom to that of parents. x x x Article II, Section 12 of the 1987 Philippine Constitution provides: The natural and *primary* right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government. x x x The addition of the qualifier "primary" unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. x x x [T]he State acts as *parens patriae* only when parents cannot fulfill their role, as in cases of neglect, abuse, or exploitation: x x x In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was *without* subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children.

APPEARANCES OF COUNSEL

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D E C I S I O N

PERLAS-BERNABE, *J.*:

This petition for *certiorari* and prohibition[1] assails the constitutionality of the curfew ordinances issued by the local governments of Quezon City, Manila, and Navotas. The petition prays that a temporary restraining order (TRO) be issued ordering

[1] *Id.* at 3-36.

respondents Herbert Bautista, Joseph Estrada, and John Rey Tiangco, as Mayors of their respective local governments, to prohibit, refrain, and desist from implementing and enforcing these issuances, pending resolution of this case, and eventually, declare the City of Manila's ordinance as *ultra vires* for being contrary to Republic Act No. (RA) 9344,[2] or the "Juvenile Justice and Welfare Act," as amended, and all curfew ordinances as unconstitutional for violating the constitutional right of minors to travel, as well as the right of parents to rear their children.

The Facts

Following the campaign of President Rodrigo Roa Duterte to implement a nationwide curfew for minors, several local governments in Metro Manila started to strictly implement their curfew ordinances on minors through police operations which were publicly known as part of "Oplan Rody."[3]

Among those local governments that implemented curfew ordinances were respondents: (*a*) Navotas City, through *Pambayang Ordinansa Blg*. 99-02,[4] dated August 26, 1999, entitled "*Nagtatakda ng* 'Curfew' *ng mga Kabataan na Wala Pang Labing Walong* (18) *Taong Gulang sa Bayan ng Navotas, Kalakhang Maynila,*" as amended by *Pambayang Ordinansa Blg*. 2002-13,[5] dated June 6, 2002 (Navotas Ordinance); (*b*) City of Manila, through Ordinance No. 8046[6] entitled "An

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[2] Entitled "AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES," approved on April 28, 2006.

[3] *Rollo*, p. 6.

[4] *Id*. at 37-40.

[5] *Id*. at 41-43. Entitled "*Ordinansa na Nag-aamyenda sa Ilang Bahagi ng Tuntunin 1, 2 at Tuntunin 4 ng Pambayang Ordinansa Blg. 99-02, Kilala Bilang Ordinansang Nagtatakda ng* 'Curfew' *ng mga Kabataan na Wala Pang Labing Walong*(18) *Taong Gulang sa Bayan ng Navotas, Kalakhang Maynila.*"

[6] *Id*. at 44-47.

Ordinance Declaring the Hours from 10:00 P.M. to 4:00 A.M. of the Following Day as 'Barangay Curfew Hours' for Children and Youths Below Eighteen (18) Years of Age; Prescribing Penalties Therefor; and for Other Purposes" dated October 14, 2002 (Manila Ordinance); and (*c*) Quezon City, through Ordinance No. SP-2301,[7] Series of 2014, entitled "An Ordinance Setting for a [sic] Disciplinary Hours in Quezon City for Minors from 10:00 P.M. to 5:00 A.M., Providing Penalties for Parent/ Guardian, for Violation Thereof and for Other Purposes" dated July 31, 2014 (Quezon City Ordinance; collectively, Curfew Ordinances).[8]

Petitioners,[9] spearheaded by the *Samahan ng mga Progresibong Kabataan* (SPARK) – an association of young adults and minors that aims to forward a free and just society, in particular the protection of the rights and welfare of the youth and minors[10] – filed this present petition, arguing that the Curfew Ordinances are unconstitutional because they: (*a*) result in arbitrary and discriminatory enforcement, and thus, fall under the void for vagueness doctrine; (*b*) suffer from overbreadth by proscribing or impairing legitimate activities of minors during curfew hours; (*c*) deprive minors of the right to liberty and the right to travel without substantive due process; and (*d*) deprive parents of their natural and primary right in rearing the youth without substantive due process.[11] In addition, petitioners assert that the Manila Ordinance contravenes RA 9344, as amended by RA 10630.[12]

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[7] *Id*. at 48-60.

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

[9] Namely, herein petitioners Joanne Rose Sace Lim and John Arvin Navarro Buenaagua, and Ronel Baccutan, Mark Leo Delos Reyes, and Clarissa Joyce Villegas, minor, for herself and as represented by her father, Julian Villegas, Jr, as leaders and members of the SPARK, respectively. *Id*. at 4-5.

[10] *Id*. at 4.

[11] See *id.* at 16.

[12] Entitled "AN ACT STRENGTHENING THE JUVENILE JUSTICE SYSTEM IN THE PHILIPPINES, AMENDING FOR THE PURPOSE

More specifically, petitioners posit that the Curfew Ordinances encourage arbitrary and discriminatory enforcement as there are no clear provisions or detailed standards on how law enforcers should apprehend and properly determine the age of the alleged curfew violators.[13] They further argue that the law enforcer's apprehension depends only on his physical assessment, and, thus, subjective and based only on the law enforcer's visual assessment of the alleged curfew violator.[14]

While petitioners recognize that the Curfew Ordinances contain provisions indicating the activities exempted from the operation of the imposed curfews, *i.e.*, exemption of working students or students with evening class, they contend that the lists of exemptions *do not cover the range and breadth of legitimate activities* or reasons as to why minors would be out at night, and, hence, proscribe or impair the legitimate activities of minors during curfew hours.[15]

Petitioners likewise proffer that the Curfew Ordinances: (*a*) are unconstitutional as they deprive minors of the right to liberty and the right to travel without substantive due process;[16] and (*b*) fail to pass the strict scrutiny test, for not being narrowly tailored and for employing means that bear no reasonable relation to their purpose.[17] They argue that the prohibition of minors on streets during curfew hours will not *per se* protect and promote the social and moral welfare of children of the community.[18]

REPUBLIC ACT NO. 9344, OTHERWISE KNOWN AS THE 'JUVENILE JUSTICE AND WELFARE ACT OF 2006' AND APPROPRIATING FUNDS THEREFOR," APPROVED ON OCTOBER 3, 2013.

[13] See *rollo*, pp. 20-21.

[14] See *id.*

[15] See *id*. at 21-22.

[16] *Id*. at 23.

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

[18] *Id*. at 25.

Furthermore, petitioners claim that the Manila Ordinance, particularly Section 4[19] thereof, contravenes Section 57-A[20] of RA 9344, as amended, given that the cited curfew provision imposes on minors the penalties of imprisonment, reprimand, and admonition. They contend that the imposition of penalties contravenes RA 9344's express command that no penalty shall be imposed on minors for curfew violations.[21]

Lastly, petitioners submit that there is no compelling State interest to impose curfews contrary to the parents' prerogative

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[19] Sec. 4. Sanctions and Penalties for Violation. Any child or youth violating this ordinance shall be sanctioned/punished as follows:

(a) If the offender is fifteen (15) years of age and below, the sanction shall consist of a REPRIMAND for the youth offender and ADMONITION to the offender's parent, guardian or person exercising parental authority.

(b) If offender is Fifteen (15) years and under Eighteen (18) years of age, the sanction/penalty shall be:

1. for the FIRST OFFENSE, Reprimand and Admonition;

2. for the SECOND OFFENSE, Reprimand and Admonition, and a warning about the legal impositions in case of a third and subsequent violation; and

3. for the THIRD OFFENSE AND SUBSEQUENT OFFENSES, Imprisonment of one (1) day to ten (10) days, or a Fine of TWO THOUSAND PESOS (Php2,000.00), or both at the discretion of the Court: *PROVIDED,* That the complaint shall be filed by the Punong Barangay with the office of the City Prosecutor.(See *id.* at 45.)

[20] Section 57-A. *Violations of Local Ordinances.* – Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. No penalty shall be imposed on children for said violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided for in such ordinances. The child shall also be recorded as a "child at risk" and not as a "child in conflict with the law." The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars.

[21] See *rollo*, pp. 18-19.

to impose them in the exercise of their natural and primary right in the rearing of the youth, and that even if a compelling interest exists, less restrictive means are available to achieve the same. In this regard, they suggest massive street lighting programs, installation of CCTVs (closed-circuit televisions) in public streets, and regular visible patrols by law enforcers as other viable means of protecting children and preventing crimes at night. They further opine that the government can impose more reasonable sanctions, *i.e.,* mandatory parental counseling and education seminars informing the parents of the reasons behind the curfew, and that imprisonment is too harsh a penalty for parents who allowed their children to be out during curfew hours. [22]

The Issue Before the Court

The primordial issue for the Court's resolution in this case is whether or not the Curfew Ordinances are unconstitutional.

The Court's Ruling

The petition is **partly granted.**

I.

At the onset, the Court addresses the procedural issues raised in this case. Respondents seek the dismissal of the petition, questioning: (*a*) the propriety of *certiorari* and prohibition under Rule 65 of the Rules of Court to assail the constitutionality of the Curfew Ordinances; (*b*) petitioners' direct resort to the Court, contrary to the hierarchy of courts doctrine; and (*c*) the lack of actual controversy and standing to warrant judicial review.[23]

A. Propriety of the Petition for Certiorari and Prohibition.

Under the 1987 Constitution, judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable,"

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

[23] See *id.* at 243-248.

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 or instrumentality of the Government."[24] Section 1, Article VIII of the 1987 Constitution reads:

ARTICLE VIII
JUDICIAL DEPARTMENT

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **<u>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</u>**. (Emphasis and underscoring supplied)

Case law explains that the present Constitution has "expanded the concept of judicial power, which up to then was confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable."[25]

In *Araullo v. Aquino III*,[26] it was held that petitions for *certiorari* and prohibition filed before the Court "are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution."[27] It was explained that "[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition 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 **<u>to set right, undo[,] and restrain any act of grave abuse of discretion</u>**

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[24] *Araullo v. Aquino III*, 737 Phil. 457, 525 (2014).

[25] *Id*.

[26] *Id*.

[27] *Id*. at 528.

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*. This application is expressly authorized by the text of the second paragraph of Section 1, [Article VIII of the 1987 Constitution cited above]."[28]

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,[29] it was expounded that "[m]eanwhile that no specific procedural rule has been promulgated to enforce [the] 'expanded' constitutional definition of judicial power and because of the commonality of 'grave abuse of discretion' as a ground for review under Rule 65 and the courts' expanded jurisdiction, the Supreme Court – based on its power to relax its rules – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction[.]"[30]

In this case, petitioners question the issuance of the Curfew Ordinances by the legislative councils of Quezon City, Manila, and Navotas in the exercise of their delegated legislative powers on the ground that these ordinances violate the Constitution, specifically, the provisions pertaining to the right to travel of minors, and the right of parents to rear their children. They also claim that the Manila Ordinance, by imposing penalties against minors, conflicts with RA 9344, as amended, which prohibits the imposition of penalties on minors for status offenses. It has been held that "[t]here is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias."[31] In light of the foregoing, petitioners correctly availed of the remedies

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[28] *Id*. at 531; emphasis and underscoring supplied.

[29] See G.R. Nos. 207132 and 207205, December 6, 2016.

[30] See *id*.

[31] See *Ocampo v. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, and 226294, November 8, 2016.

of *certiorari* and prohibition, although these governmental actions were not made pursuant to any judicial or quasi-judicial function.

B. Direct Resort to the Court.

Since petitions for *certiorari* and prohibition are allowed as remedies to assail the constitutionality of legislative and executive enactments, the next question to be resolved is whether or not petitioners' direct resort to this Court is justified.

The doctrine of hierarchy of courts "[r]equires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. While this jurisdiction is shared with the Court of Appeals [(CA)] and the [Regional Trial Courts], **a direct invocation of this Court's jurisdiction is allowed when there are special and important reasons therefor, clearly and especially set out in the petition**[.]"[32] This Court is tasked to resolve "**the issue of constitutionality of a law or regulation at the first instance [if it] is of paramount importance and immediately affects the social, economic, and moral well-being of the people**,"[33] as in this case. Hence, petitioners' direct resort to the Court is justified.

C. Requisites of Judicial Review.

"The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (*a*) there must be an **actual case or controversy** calling for the exercise of judicial power; (*b*) the person challenging the act must have the **standing** to question the validity of the subject act or issuance; (*c*) the question of constitutionality

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[32] *Arroyo v. Department of Justice*, 695 Phil. 302, 334 (2012); emphasis and underscoring supplied.

[33] *Id.* at 335; emphasis and underscoring supplied.

must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case."[34] In this case, respondents assail the existence of the first two (2) requisites.

1. Actual Case or Controversy.

"Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual case or controversy."[35] "[A]n actual case or controversy is one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.' In other words, '**there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence**.'"[36] According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "**by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act**."[37]

"Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. **For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action**. He must show

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[34] *Belgica v. Ochoa*, *Jr*., 721 Phil. 416, 518-519 (2013).

[35] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, *supra* note 29.

[36] *Belgica v. Ochoa*, *Jr.*, *supra* note 34, at 519; emphasis and underscoring supplied.

[37] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, *supra* note 29; emphasis and underscoring supplied.

that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of."[38]

Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila Ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have – as will be gleaned from the substantive discussions below – conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the Court issued the TRO[39] enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.

2. Legal Standing.

"The question of *locus standi* or legal standing focuses on the determination of whether those assailing the governmental act have the right of appearance to bring the matter to the court for adjudication. [Petitioners] must show that they have **a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, some direct injury as a consequence of the enforcement of the challenged governmental act**."[40] "'[I]nterest' in the question involved must be material — an interest that is in issue and will be affected by the official act — as distinguished from being merely incidental or general."[41]

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[38] *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123-124 (2014); emphasis and underscoring supplied.

[39] See TRO dated July 26, 2016 issued by Clerk of Court Felipa B. Anama; *rollo*, pp. 67-70.

[40] *Saguisag v. Ochoa, Jr.*, G.R. Nos. 212426 and 212444, January 12, 2016, 779 SCRA 241, 327-328; emphasis and underscoring supplied.

[41] *Id*. at 328.

"The gist of the question of [legal] standing is whether a party alleges **such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions**. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing."[42]

As abovementioned, the petition is anchored on the alleged breach of two (2) constitutional rights, namely: (**1**) the right of minors to freely travel within their respective localities; and (**2**) the primary right of parents to rear their children. Related to the first is the purported conflict between RA 9344, as amended, and the penal provisions of the Manila Ordinance.

Among the five (5) individual petitioners, only Clarissa Joyce Villegas (Clarissa) has legal standing to raise the issue affecting the minor's right to travel,[43] because: (*a*) she was still a minor at the time the petition was filed before this Court,[44] and, hence, a proper subject of the Curfew Ordinances; and (*b*) as alleged, she travels from Manila to Quezon City at night after school and is, thus, in imminent danger of apprehension by virtue of the Curfew Ordinances. On the other hand, petitioners Joanne Rose Sace Lim, John Arvin Navarro Buenaagua, Ronel Baccutan (Ronel), and Mark Leo Delos Reyes (Mark Leo) admitted in the petition that they are all of legal age, and therefore, beyond the ordinances' coverage. Thus, they are not proper subjects of the Curfew Ordinances, for which they could base any direct injury as a consequence thereof.

None of them, however, has standing to raise the issue of whether the Curfew Ordinances violate the parents' right to

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[42] *Belgica v. Ochoa*, *Jr.*, *supra* note 34, at 527; emphasis and underscoring supplied.

[43] *Rollo,* p. 5.

[44] Clarissa was seventeen (17) years old (see Certificate of Live Birth; *id*. at 63) at the time the petition was filed on July 22, 2016 (see *id*. at 3).

rear their children as they have not shown that they stand before this Court as parent/s and/or guardian/s whose constitutional parental right has been infringed. It should be noted that Clarissa is represented by her father, Julian Villegas, Jr. (Mr. Villegas), who could have properly filed the petition for himself for the alleged violation of his parental right. But Mr. Villegas did not question the Curfew Ordinances based on his primary right as a parent as he only stands as the representative of his minor child, Clarissa, whose right to travel was supposedly infringed.

As for SPARK, it is an unincorporated association and, consequently, has no legal personality to bring an action in court.[45] Even assuming that it has the capacity to sue, SPARK still has no standing as it failed to allege that it was authorized by its members who were affected by the Curfew Ordinances, *i.e.,* the minors, to file this case on their behalf.

Hence, save for Clarissa, petitioners do not have the required personal interest in the controversy. More particularly, Clarissa has standing only on the issue of the alleged violation of the minors' right to travel, but not on the alleged violation of the parents' right.

These notwithstanding, this Court finds it proper to relax the standing requirement insofar as all the petitioners are concerned, in view of the transcendental importance of the issues involved in this case. "In a number of cases, this Court has taken a liberal stance towards the requirement of legal standing, especially when paramount interest is involved. **Indeed, when those who challenge the official act are able to craft an issue of transcendental significance to the people, the Court may exercise its sound discretion and take cognizance of the suit**. It may do so in spite of the inability of the petitioners to show that they have been personally injured by the operation of a law or any other government act."[46]

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[45] *Association of Flood Victims v. Commission on Elections* (*COMELEC*), G.R. No. 203775, August 5, 2014, 732 SCRA 100, 106.

[46] *Saguisag v. Ochoa, Jr.*, *supra* note 40, at 335-336; emphasis and underscoring supplied.

This is a case of first impression in which the constitutionality of juvenile curfew ordinances is placed under judicial review. Not only is this Court asked to determine the impact of these issuances on the right of parents to rear their children and the right of minors to travel, it is also requested to determine the extent of the State's authority to regulate these rights in the interest of general welfare. Accordingly, this case is of overarching significance to the public, which, therefore, impels a relaxation of procedural rules, including, among others, the standing requirement.

That being said, this Court now proceeds to the substantive aspect of this case.

II.

A. Void for Vagueness.

Before resolving the issues pertaining to the rights of minors to travel and of parents to rear their children, this Court must first tackle petitioners' contention that the Curfew Ordinances are void for vagueness.

In particular, petitioners submit that the Curfew Ordinances are void for not containing sufficient enforcement parameters, which leave the enforcing authorities with unbridled discretion to carry out their provisions. They claim that the lack of procedural guidelines in these issuances led to the questioning of petitioners Ronel and Mark Leo, even though they were already of legal age. They maintain that the enforcing authorities apprehended the suspected curfew offenders based only on their physical appearances and, thus, acted arbitrarily. Meanwhile, although they conceded that the Quezon City Ordinance requires enforcers to determine the age of the child, they submit that nowhere does the said ordinance require the law enforcers to ask for proof or identification of the child to show his age.[47]

The arguments are untenable.

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[47] See *rollo*, pp. 19-21.

"A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two (2) respects: (1) **it violates <u>due process</u> for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid**; and (2) **it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle**."[48]

In this case, petitioners' invocation of the void for vagueness doctrine is improper, considering that they do not properly identify any provision in any of the Curfew Ordinances, which, because of its vague terminology, fails to provide fair warning and notice to the public of what is prohibited or required so that one may act accordingly.[49] **<u>The void for vagueness doctrine is premised on due process considerations</u>**, which are absent from this particular claim. In one case, it was opined that:

> [T]he vagueness doctrine is a specie of "unconstitutional uncertainty," which may involve "procedural due process uncertainty cases" and "substantive due process uncertainty cases." "Procedural due process uncertainty" involves cases where the statutory language was so obscure that it failed to give adequate warning to those subject to its prohibitions as well as to provide proper standards for adjudication. Such a definition encompasses the vagueness doctrine. This perspective rightly integrates the vagueness doctrine with the due process clause, a necessary interrelation since there is no constitutional provision that explicitly bars statutes that are "void-for-vagueness."[50]

Essentially, petitioners only bewail the lack of enforcement parameters to guide the local authorities in the proper apprehension of suspected curfew offenders. **<u>They do not assert</u>**

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[48] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 488 (2010); emphases and underscoring supplied.

[49] See *Smith v. Goguen*, 415 U.S. 566; 94 S. Ct. 1242; 39 L. Ed. 2d 605 (1974) U.S. LEXIS 113.

[50] Dissenting Opinion of Retired Associate Justice Dante O. Tinga in *Spouses Romualdez v. COMELEC*, 576 Phil. 357, 432 (2008).

any confusion as to what conduct the subject ordinances prohibit or not prohibit but only point to the ordinances' lack of enforcement guidelines. The mechanisms related to the implementation of the Curfew Ordinances are, however, matters of policy that are best left for the political branches of government to resolve. Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited. In this regard, that ambiguous provision of law contravenes due process because agents of the government cannot reasonably decipher what conduct the law permits and/or forbids. In *Bykofsky v. Borough of Middletown*,[51]it was ratiocinated that:

> A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on *ad hoc* and subjective basis, and vague standards result in erratic and arbitrary application based on individual impressions and personal predilections.[52]

As above-mentioned, petitioners fail to point out any ambiguous standard in any of the provisions of the Curfew Ordinances, but rather, lament the lack of detail on how the age of a suspected minor would be determined. Thus, without any correlation to any vague legal provision, the Curfew Ordinances cannot be stricken down under the void for vagueness doctrine.

Besides, petitioners are mistaken in claiming that there are no sufficient standards to identify suspected curfew violators. While it is true that the Curfew Ordinances do not explicitly state these parameters, law enforcement agents are still bound to follow the prescribed measures found in statutory law when

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[51] 401 F. Supp. 1242 (1975) U.S. Dist. LEXIS 16477.

[52] *Id*., citation omitted.

implementing ordinances. Specifically, RA 9344, as amended, provides:

Section 7. *Determination of Age.* – x x x The age of a child may be determined **from the child's birth certificate, baptismal certificate or any other pertinent documents**. In the absence of these documents, age may be based on **information from the child himself/herself, testimonies of other persons, the physical appearance** of the child and other relevant evidence. (Emphases supplied)

This provision should be read in conjunction with the Curfew Ordinances because RA 10630 (the law that amended RA 9344) repeals all ordinances inconsistent with statutory law.[53] Pursuant to Section 57-A of RA 9344, as amended by RA 10630,[54] **minors caught in violation of curfew ordinances are children at risk** and, therefore, covered by its provisions.[55] It is a long-standing principle that "**[c]onformity with law is one of the essential requisites for the validity of a municipal ordinance**."[56] Hence,

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[53] Section 16 of RA 10630 provides:

Section 16. *Repealing Clause*.– All laws, decrees, ordinances and rules inconsistent with the provisions of this Act are hereby modified or repealed accordingly.

[54] Section 11 of RA 10630 provides:

Section. 57-A. *Violations of Local Ordinances*. – Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. x x x **The child shall also be recorded as a 'child at risk' and not as a 'child in conflict with the law**.**'** x x x. (Emphasis and underscoring supplied)

[55] Section 1. *Short Title and Scope*. – This Act shall be known as the "Juvenile Justice and Welfare Act of 2006." It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

[56] *People v. Chong Hong*, 65 Phil. 625, 628 (1938); emphasis and underscoring supplied.

by necessary implication, ordinances should be read and implemented in conjunction with related statutory law.

Applying the foregoing, any person, such as petitioners Ronel and Mark Leo, who was perceived to be a minor violating the curfew, may therefore prove that he is beyond the application of the Curfew Ordinances by simply presenting any competent proof of identification establishing their majority age. In the absence of such proof, the law authorizes enforcement authorities to conduct a visual assessment of the suspect, which – needless to state – should be done ethically and judiciously under the circumstances. Should law enforcers disregard these rules, the remedy is to pursue the appropriate action against the erring enforcing authority, and not to have the ordinances invalidated.

All told, petitioners' prayer to declare the Curfew Ordinances as void for vagueness is denied.

B. Right of Parents to Rear their Children.

Petitioners submit that the Curfew Ordinances are unconstitutional because they deprive parents of their natural and primary right in the rearing of the youth without substantive due process. In this regard, they assert that this right includes the right to determine whether minors will be required to go home at a certain time or will be allowed to stay late outdoors. Given that the right to impose curfews is primarily with parents and not with the State, the latter's interest in imposing curfews cannot logically be compelling.[57]

Petitioners' stance cannot be sustained.

Section 12, Article II of the 1987 Constitution articulates the State's policy relative to the rights of parents in the rearing of their children:

> Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life

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[57] See *rollo*, pp. 26-28.

of the unborn from conception. **The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government**. (Emphasis and underscoring supplied.)

As may be gleaned from this provision, the rearing of children (*i.e.*, referred to as the "youth") for civic efficiency and the development of their moral character are characterized not only as parental rights, but also as parental duties. This means that parents are not only given the privilege of exercising their authority over their children; they are equally obliged to exercise this authority conscientiously. The duty aspect of this provision is a reflection of the State's independent interest to ensure that the youth would eventually grow into free, independent, and well-developed citizens of this nation. For indeed, it is during childhood that minors are prepared for additional obligations to society. "**[T]he duty to prepare the child for these [obligations] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship**."[58] "This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens."[59]

By history and tradition, "the parental role implies a substantial measure of authority over one's children."[60] In *Ginsberg v. New York*,[61] the Supreme Court of the United States (US) remarked that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is **basic in the structure of our society**."[62] As in our Constitution, the right and duty of

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[58] *Wisconsin v. Yoder*, 406 U.S. 205; 92 S. Ct. 1526; 32 L. Ed. 2d 15 (1972) U.S. LEXIS 144; emphasis and underscoring supplied.

[59] *Bellotti v. Baird*, 443 U.S. 622; 99 S. Ct. 3035; 61 L. Ed. 2d 797 (1979) U.S. LEXIS 17.

[60] *Id*.

[61] 390 U.S. 629; 88 S. Ct. 1274; 20 L. Ed. 2d 195 (1968) U.S. LEXIS 1880; 1 Media L. Rep. 1424; 44 Ohio Op. 2d 339.

[62] *Id.*; emphasis and underscoring supplied.

parents to rear their children is not only described as "natural," but also as "primary." **The qualifier "primary" connotes the parents' superior right over the State in the upbringing of their children**.[63] The rationale for the State's deference to parental control over their children was explained by the US Supreme Court in *Bellotti v. Baird* (*Bellotti*),[64] as follows:

> [T]he guiding role of parents in their upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. **But an additional and more important justification for state deference to parental control over children is that "the child is not [a] mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.**"[65] (Emphasis and underscoring supplied)

While parents have the primary role in child-rearing, it should be stressed that "**when actions concerning the child have a relation to the public welfare or the well-being of the child, the [S]tate may act to promote these legitimate interests**."[66] Thus, "**[i]n cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, these legitimate state interests may override the parents' qualified right to control the upbringing of their children**."[67]

As our Constitution itself provides, the State is mandated to **support** parents in the exercise of these rights and duties. **State authority is therefore, not exclusive of, but rather, complementary to parental supervision**. In *Nery v. Lorenzo,*[68]

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[63] See *Spouses Imbong v. Ochoa, Jr.*, *supra* note 38, at 192 and 195.

[64] *Bellotti v. Baird*, *supra* note 59.

[65] See *id.*

[66] *Bykofsky v. Borough of Middletown*, *supra* note 51; emphasis supplied.

[67] *Id.*; emphasis and underscoring supplied.

[68] 150-A Phil. 241 (1972).

this Court acknowledged the State's role as *parens patriae* in protecting minors, *viz.*:

> **[W]here minors are involved, the State acts as *parens patriae*. To it is cast the duty of protecting the rights of persons or individual who because of age or incapacity are in an unfavorable position, *vis-a-vis* other parties.** Unable as they are to take due care of what concerns them, they have the political community to look after their welfare. This obligation the state must live up to. It cannot be recreant to such a trust. As was set forth in an opinion of the United States Supreme Court: "**This prerogative of *parens patriae* is inherent in the supreme power of every State**, x x x."[69] (Emphases and underscoring supplied)

As *parens patriae*, the State has the inherent right and duty to aid parents in the moral development of their children,[70] and, thus, assumes a supporting role for parents to fulfill their parental obligations. In *Bellotti*, it was held that "[l]egal restriction on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding. **Under the Constitution, the State can properly conclude that parents and others, teachers for example, who have the primary responsibility for children's well-being are entitled to the support of the laws designed to aid discharge of that responsibility**."[71]

The Curfew Ordinances are but examples of legal restrictions designed to aid parents in their role of promoting their children's well-being. As will be later discussed at greater length, these ordinances further compelling State interests (particularly, the promotion of juvenile safety and the prevention of juvenile

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[69] *Id.* at 248, citing *Mormon Church v. US*, 136 U.S. 1 (1890).

[70] See *Spouses Imbong v. Ochoa*, *Jr., supra* note 38, at 195-196.

[71] *Bellotti*, *supra* note 59, citing See *Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Children to Their* "*Rights*," 1976 B. Y. U. L. Rev. 605 and *Ginsberg v. New York*, *supra* note 61; emphasis and underscoring supplied.

crime), which necessarily entail limitations on the primary right of parents to rear their children. Minors, because of their peculiar vulnerability and lack of experience, are not only more exposed to potential physical harm by criminal elements that operate during the night; their moral well-being is likewise imperiled as minor children are prone to making detrimental decisions during this time.[72]

At this juncture, it should be emphasized that the Curfew Ordinances apply only when the minors are not – whether actually or constructively (as will be later discussed) – accompanied by their parents. This serves as an explicit recognition of the State's deference to the primary nature of parental authority and the importance of parents' role in child-rearing. Parents are effectively given unfettered authority over their children's conduct during curfew hours when they are able to supervise them. Thus, in all actuality, **the only aspect of parenting that the Curfew Ordinances affects is the parents' prerogative to allow minors to remain in public places without parental accompaniment during the curfew hours**.[73]In this respect, **the ordinances neither dictate an over-all plan of discipline for the parents to apply to their minors nor force parents to abdicate their authority to influence or control their minors' activities**.[74] As such, the Curfew Ordinances only amount to a minimal – albeit reasonable – infringement upon a parent's right to bring up his or her child.

Finally, it may be well to point out that the Curfew Ordinances positively influence children to spend more time at home. Consequently, this situation provides parents with better opportunities to take a more active role in their children's

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[72] See *Schleifer v. City of Charlottesville*, 159 F.3d 843 (1998) U.S. App. LEXIS 26597.

[73] See *Qutb v. Strauss*, 11 F.3d 488 (1993) U.S. App. LEXIS 29974.

[74] See *Bykofsky v. Borough of Middletown*, *supra* note 51; and *City of Panora v. Simmons*, 445 N.W.2d 363; 1989 Iowa Sup. LEXIS 254; 83 A.L.R. 4th 1035.

upbringing. In *Schleifer v. City of Charlottesvillle* (*Schleifer*),[75] the US court observed that the city government "was entitled to believe x x x that a nocturnal curfew would promote parental involvement in a child's upbringing. A curfew aids the efforts of parents who desire to protect their children from the perils of the street but are unable to control the nocturnal behavior of those children."[76] Curfews may also aid the "efforts of parents who prefer their children to spend time on their studies than on the streets."[77] Reason dictates that these realities observed in *Schleifer* are no less applicable to our local context. Hence, these are additional reasons which justify the impact of the nocturnal curfews on parental rights.

In fine, the Curfew Ordinances should not be declared unconstitutional for violating the parents' right to rear their children.

C. Right to Travel.

Petitioners further assail the constitutionality of the Curfew Ordinances based on the minors' right to travel. They claim that the liberty to travel is a fundamental right, which, therefore, necessitates the application of the strict scrutiny test. Further, they submit that even if there exists a compelling State interest, such as the prevention of juvenile crime and the protection of minors from crime, there are other less restrictive means for achieving the government's interest.[78] In addition, they posit that the Curfew Ordinances suffer from overbreadth by proscribing or impairing legitimate activities of minors during curfew hours.[79]

Petitioner's submissions are partly meritorious.

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[75] *Supra* note 72.

[76] *Id*.

[77] *Id.*

[78] See *rollo*, pp. 23-25.

[79] See *id*. at 21-23.

At the outset, the Court rejects petitioners' invocation of the overbreadth doctrine, considering that petitioners have not claimed any transgression of their rights to free speech or any inhibition of speech-related conduct. In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council* (*Southern Hemisphere*),[80] this Court explained that "the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases,"[81] *viz.*:

> **By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech**, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.
>
> The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. **The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit**. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." **An overbreadth ruling is designed to remove that deterrent effect**

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[80] *Supra* note 48.

[81] *Id*. at 490; emphasis in the original omitted, citation omitted.

on the speech of those third parties.[82] (Emphases and underscoring supplied)

In the same case, it was further pointed out that "[i]n restricting the overbreadth doctrine to free speech claims, the Court, in at least two [(2)] cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment,[83] and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks*,[84] it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the 'transcendent value to all society of constitutionally protected expression.'"[85]

In the more recent case of *Spouses Imbong v. Ochoa, Jr.*,[86] it was opined that "**[f]acial challenges can only be raised on the basis of overbreadth** and not on vagueness. *Southern Hemisphere* demonstrated how vagueness relates to violations of due process rights, **whereas facial challenges are raised on the basis of overbreadth and limited to the realm of freedom of expression**."[87]

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[82] *Id*. at 490-491.

[83] First Amendment (US Constitution). Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[84] 539 U.S. 113; 123 S. Ct. 2191; 156 L. Ed. 2d 148 (2003) U.S. LEXIS 4782; 71 U.S.L.W. 4441; 2003 Cal. Daily Op. Service 5136; 16 Fla. L. Weekly Fed. S 347.

[85] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 48, at 491.

[86] *Supra* note 38.

[87] See Associate Justice Marvic M.V. F. Leonen's Dissenting Opinion; *id*. at 583-584; emphases and underscoring supplied.

That being said, this Court finds it improper to undertake an overbreadth analysis in this case, there being no claimed curtailment of free speech. On the contrary, however, this Court finds proper to examine the assailed regulations under the strict scrutiny test.

The right to travel is recognized and guaranteed as a fundamental right[88] under Section 6, Article III of the 1987 Constitution, to wit:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired except in the interest of** national security, **public safety**, or public health, **as may be provided by law**. (Emphases and underscoring supplied)

Jurisprudence provides that this right refers to the right to move freely from the Philippines to other countries or within the Philippines.[89] It is a right embraced within the general concept of liberty.[90] Liberty - a birthright of every person - includes the power of locomotion[91] and the right of citizens to be free to use their faculties in lawful ways and to live and work where they desire or where they can best pursue the ends of life.[92]

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[88] See *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino, Jr. v. Enrile*, 158-A Phil. 1 (1974); *Kwong v. Presidential Commission on Good Government*, 240 Phil. 219 (1987).

[89] In *Marcos v. Manglapus*, 258 Phil. 479, 497-498 (1989), the Court ruled that the right to travel under our Constitution refers to the right to move within the country, or to another country, but not the right to return to one's country. The latter right, however, is provided under the Universal Declaration of Human Rights to which the Philippines is a signatory.

[90] UP Law Center Constitutional Revision Project 61 (1970). See *Kent v. Dulles*, 357 U.S. 116; 78 S. Ct. 1113; 2 L. Ed. 2d 1204 (1958) U.S. LEXIS 814. See also *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 705-706 (1919), where the Court stated that the right of locomotion is one of the chief elements of the guaranty of liberty.

[91] See *Duran v. Abad Santos*, 75 Phil. 410, 431-432 (1945).

[92] See Salvador H. Laurel, *Proceedings of the Philippine Constitutional Convention*. As Faithfully Reproduced from the Personal Record of Jose P.

The right to travel is essential as it enables individuals to access and exercise their other rights, such as the rights to education, free expression, assembly, association, and religion.[93] The inter-relation of the right to travel with other fundamental rights was briefly rationalized in *City of Maquoketa v. Russell*,[94] as follows:

> Whenever the First Amendment rights of freedom of religion, speech, assembly, and association require one to move about, such movement must necessarily be protected under the First Amendment. **Restricting movement** in those circumstances **to the extent that First Amendment Rights cannot be exercised without violating the law is equivalent to a denial of those rights**. One court has eloquently pointed this out:
>
> **We would not deny the relatedness of the rights guaranteed by the First Amendment to freedom of travel and movement.** If, for any reason, people cannot walk or drive to their church, their freedom to worship is impaired. If, for any reason, people cannot walk or drive to the meeting hall, freedom of assembly is effectively blocked. If, for any reason, people cannot safely walk the sidewalks or drive the streets of a community, opportunities for freedom of speech are sharply limited. **Freedom of movement is inextricably involved with freedoms set forth in the First Amendment.** (Emphases supplied)

Nevertheless, grave and overriding considerations of public interest justify restrictions even if made against fundamental rights. Specifically on the freedom to move from one place to another, jurisprudence provides that this right is not absolute.[95]

Laurel, Vol. III, 652 (1966). See also *Rubi v. Provincial Board of Mindoro*, *supra* note 90, at 705.

[93] See *City of Maquoketa v. Russell*, 484 N.W.2d 179 (1992) Iowa Sup. LEXIS 91.

[94] *Id.*

[95] See *Leave Division, Office of Administrative Services-Office of the Court Administrator (OAS-OCA) v. Heusdens*, 678 Phil. 328, 399 (2011) and *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 752 (2006). See also *Marcos v. Manglapus*, *supra* note 89, at 504. In *Silverio v. CA* (273 Phil. 128, 133 [1991]), the Court held that "the [State is] not armed with arbitrary discretion to impose limitations [on this right]," and

As the 1987 Constitution itself reads, the State[96] may impose limitations on the exercise of this right, provided that they: **(1)** **serve the interest of national security, public safety, or public health**; and **(2)** **are provided by law**.[97]

The stated purposes of the Curfew Ordinances, specifically the promotion of juvenile safety and prevention of juvenile crime, inarguably serve the interest of public safety. The restriction on the minor's movement and activities within the confines of their residences and their immediate vicinity during the curfew period is perceived to reduce the probability of the minor becoming victims of or getting involved in crimes and criminal activities. As to the second requirement, *i.e.,* that the limitation "be provided by law," our legal system is replete with laws emphasizing the State's duty to afford special protection to children, *i.e.,* RA 7610,[98] as amended, RA 9775,[99] RA 9262,[100]

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in *Rubi v. Provincial Board of Mindoro* (*supra* note 90, at 716), it was held that "citizens [do] not possess an absolute freedom of locomotion."

[96] The State under Section 6, Article III of the 1987 Constitution pertains to executive officers or administrative authorities (see *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651).

[97] *Silverio v. CA*, *supra* note 95, at 133.

[98] See Section 2 of RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," OTHERWISE KNOWN AS "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT" (July 27, 1992).

[99] See Section 2 of RA 9775, entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF CHILD PORNOGRAPHY, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES," otherwise known as the "ANTI-CHILD PORNOGRAPHY ACT OF 2009," approved on November 17, 2009.

[100] See Sections 2 and 4 of RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," otherwise known as the "ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004" (March 27, 2004).

RA 9851,[101] RA 9344,[102] RA 10364,[103] RA 9211,[104] RA 8980,[105] RA 9288,[106] and Presidential Decree (PD) 603, [107] as amended.

Particularly relevant to this case is Article 139 of PD 603, which explicitly authorizes local government units, through their city or municipal councils, to set curfew hours for children. It reads:

Article 139. *Curfew Hours for Children*. – **City or municipal councils may prescribe such curfew hours for children as may be warranted**

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[101] See Section 2 of RA 9851, entitled "AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES" otherwise known as the "PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY," approved on December 11, 2009.

[102] See Section 2 of RA 9344.

[103] See Sections 3 (a) and (b) of RA 10364, entitled "AN ACT EXPANDING REPUBLIC ACT NO. 9208, entitled 'AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER PURPOSES," OTHERWISE KNOWN AS THE "EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2012," approved on February 6, 2013.

[104] See Section 32 (b) of RA 9211, entitled "AN ACT REGULATING THE PACKAGING, USE, SALE, DISTRIBUTION AND ADVERTISEMENTS OF TOBACCO PRODUCTS AND FOR OTHER PURPOSES," otherwise known as "TOBACCO REGULATION ACT OF 2003" (September 2, 2003).

[105] See Sections 2 and 3 of RA 8980, entitled "AN ACT PROMULGATING A COMPREHENSIVE POLICY AND A NATIONAL SYSTEM FOR EARLY CHILDHOOD CARE AND DEVELOPMENT (ECCD), PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES," OTHERWISE KNOWN AS "ECCD ACT" (May 22, 2001).

[106] See Sections 2 and 3 of RA 9288, entitled "An Act Promulgating a Comprehensive Policy and a National System for Ensuring Newborn Screening," otherwise known as the "NEWBORN SCREENING ACT OF 2004" (May 10, 2004).

[107] See Articles 1, 3, and 8 of PD 603, entitled "THE CHILD AND YOUTH WELFARE CODE," approved on December 10, 1974.

by local conditions. The duty to enforce curfew ordinances shall devolve upon the parents or guardians and the local authorities.

x x x x (Emphasis and underscoring supplied)

As explicitly worded, city councils are authorized to enact curfew ordinances (as what respondents have done in this case) and enforce the same through their local officials. In other words, PD 603 provides sufficient statutory basis – as required by the Constitution – to restrict the minors' exercise of the right to travel.

The restrictions set by the Curfew Ordinances that apply solely to minors are likewise constitutionally permissible. In this relation, this Court recognizes that minors do possess and enjoy constitutional rights,[108] **but the exercise of these rights is not co-extensive as those of adults**.[109] They are always subject to the authority or custody of another, such as their parent/s and/or guardian/s, and the State.[110] As *parens patriae*, the State regulates and, to a certain extent, restricts the minors' exercise of their rights, such as in their affairs concerning the right to vote,[111] the right to execute contracts,[112] and the right to engage in gainful employment.[113] With respect to the right

[108] See *Bellotti*, *supra* note 59. See also Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution 97 Harv. L. Rev. 1163 (March 1984), stating that minors enjoy a myriad of constitutional rights shared with adults. Indeed, the Bill of Rights under the Constitution is not for adults alone; hence, the State should not afford less protection to minors' right simply because they fall below the age of majority.

[109] See *Hutchins v. District of Columbia*, 188 F.3d 531; 338 U.S. App. D.C. 11 (1999) U.S. App. LEXIS 13635; *Schleifer v. City of Charlottesville*, *supra* note 72, citing *Bethel School District No. 403 v. Fraser*, 478 U.S. 675; 106 S. Ct. 3159; 92 L. Ed. 2d 549 (1986) U.S. LEXIS 139; 54 U.S.L.W. 5054; *Bellotti*, *supra* note 59; *Ginsberg v. New York*, *supra* note 61; and *Prince v. Massachusetts*, 321 U.S. 804; 64 S. Ct. 784; 88 L. Ed. 1090 (1944) U.S. LEXIS 942.

[110] See *Vernonia School District 47J v. Acton*, 515 U.S. 646; 115 S. Ct. 2386; 132 L. Ed. 2d 564 (1995) U.S. LEXIS 4275; 63 U.S.L.W. 4653; 95 Cal. Daily Op. Service 4846; 9 Fla. L. Weekly Fed. S 229.

[111] 1987 CONSTITUTION, Article V, Section 1.

[112] CIVIL CODE OF THE PHILIPPINES, Article 1327.

[113] LABOR CODE OF THE PHILIPPINES, as renumbered, Articles 137 and 138.

to travel, minors are required by law to obtain a clearance from the Department of Social Welfare and Development before they can travel to a foreign country by themselves or with a person other than their parents.[114] These limitations demonstrate that the State has broader authority over the minors' activities than over similar actions of adults,[115] and overall, reflect the State's general interest in the well-being of minors.[116] Thus, the State may impose limitations on the minors' exercise of rights even though these limitations do not generally apply to adults.

In *Bellotti*,[117] the US Supreme Court identified three (3) justifications for the differential treatment of the minors' constitutional rights. These are: ***first***, **the peculiar vulnerability of children**; ***second*,** **their inability to make critical decisions in an informed and mature manner**; and ***third*,** **the importance of the parental role in child rearing**:[118]

> [On the first reason,] our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, **the State is entitled to adjust its legal system to account for children's vulnerability** and their needs for concern, …sympathy, and ... paternal attention. x x x.
>
> [On the second reason, this Court's rulings are] grounded [on] the recognition that, during the formative years of childhood and

[114] See Section 8 (a) of RA 7610 and Section 5 (f) of RA 8239, entitled "PHILIPPINE PASSPORT ACT OF 1996," approved on November 22, 1996.

[115] *Schleifer v. City of Charlottesville*, *supra* note 72, citing *Prince v. Massachusetts*, *supra* note 109.

[116] *Schleifer v. City of Charlottesville* ; *id*.

[117] *Supra* note 59.

[118] *Bellotti*, *id*.; to wit: "The unique role in our society of the family x x x requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. **We have recognized three [(3)] reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: [1] the peculiar vulnerability of children; [2] their inability to make critical decisions in an informed, mature manner; and [3] the importance of the parental role in child rearing**." (Emphases and underscoring supplied)

adolescence, **minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them**. x x x.

x x x x x x x x x

[On the third reason,] the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. x x x.

x x x x x x x x x

x x x **Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity** that make eventual participation in a free society meaningful and rewarding.[119] (Emphases and underscoring supplied)

Moreover, in *Prince v. Massachusetts,*[120] the US Supreme Court acknowledged the heightened dangers on the streets to minors, as compared to adults:

A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers within a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment, more especially in public places, and the **possible harms arising from other activities subject to all the diverse influences of the [streets].** It is too late now to doubt that legislation appropriately designed to reach such evils is within the state's police power, whether against the parent's claim to control of the child or one that religious scruples dictate contrary action.

It is true children have rights, in common with older people, in the primary use of highways. But even in such use **streets afford dangers for them not affecting adults. And in other uses, whether in work or in other things, this difference may be magnified**.[121] (Emphases and underscoring supplied)

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[119] *Id*.

[120] *Supra* note 109.

[121] *Id*., citations omitted.

For these reasons, the State is justified in setting restrictions on the minors' exercise of their travel rights, provided, they are singled out on reasonable grounds.

Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications.[122] The **strict scrutiny test** applies when a classification either (*i*) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (*ii*) burdens suspect classes.[123] The **intermediate scrutiny test** applies when a classification does not involve

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[122] See *Central Bank Employees Association, Inc. v. BSP (BSP)*, 487 Phil. 531 (2004); *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009); *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 77 (2010), citing Joaquin Bernas, S.J. *The 1987 Constitution of the Philippines: A Commentary* 139-140 (2009). See also Concurring Opinion of Associate Justice Teresita J. Leonardo-De Castro in *Garcia v. Drilon*, 712 Phil. 44, 124-127 (2013); and *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 97-98 (2014).

[123] In *Central Bank Employees Association, Inc. v. BSP* (*id.* at 693-696, citations omitted), it was opined that, "in the landmark case of *San Antonio Independent School District v. Rodriguez* (411 U.S. 1; 93 S. Ct. 1278; 36 L. Ed. 2d 16 [1973] U.S. LEXIS 91), the U.S. Supreme Court in identifying a 'suspect class' as a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process, articulated that suspect classifications were not limited to classifications based on race, alienage or national origin but could also be applied to other criteria such as religion. Thus, the U.S. Supreme Court has ruled that suspect classifications deserving of Strict Scrutiny include those based on race or national origin, [alienage], and religion while classifications based on gender, illegitimacy, financial need, conscientious objection and age have been held not to constitute suspect classifications." See also *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*, G.R. Nos. 189185 and 189305, August 16, 2016. See further *White Light Corporation v. City of Manila* (*id.* at 463), where it was held that "[s[trict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race[,] as well as other fundamental rights as expansion from its earlier applications to equal protection. The [US] Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access, and interstate travel."

suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy.[124] Lastly, the **rational basis test** applies to all other subjects not covered by the first two tests.[125]

Considering that the right to travel is a fundamental right in our legal system guaranteed no less by our Constitution, the strict scrutiny test[126] is the applicable test.[127] At this juncture, it should be emphasized that minors enjoy the same constitutional rights as adults; the fact that the State has broader authority over minors than over adults does not trigger the application

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[124] See Dissenting Opinion of Retired Chief Justice Artermio V. Panganiban in *Central Bank Employees Association, Inc. v. BSP*, *id.* at 648.

[125] See *id*.

[126] See *White Light Corporation v. City of Manila*, *id*.

[127] In the US, courts have made several, albeit conflicting, rulings in determining the applicable level of scrutiny in cases involving minors' constitutional rights, specifically on the right to travel (see *Bykofsky v. Borough of Middletown*, *supra* note 51; *Johnson v. City of Opelousas*, 658 F.2d 1065 [1981] U.S. App. LEXIS 16939; 32 Fed. R. Serv. 2d [Callaghan] 879; *McCollester v. City of Keene*, 586 F. Supp. 1381 [1984] U.S. Dist. LEXIS 16647; *Waters v. Barry*, 711 F. Supp. 1125 [1989] U.S. Dist. LEXIS 5707; *Qutb v. Strauss*, *supra* note 73; *Hutchins v. District of Columbia*, *supra* note 109; *Nunez v. City of San Diego*, 114 F.3d 935 [1997] U.S. App. LEXIS 13409; 97 Cal. Daily Op. Service 4317, 97 Daily Journal DAR 7221; *Schleifer v. City of Charlottesville*, *supra* note 72; *Ramos v. Town of Vernon*, 353 F.3d 171 [2003] U.S. App. LEXIS 25851; and *Hodgkins v. Peterson*, 355 F.3d 1048 [2004] U.S. App. LEXIS 910). These conflicting rulings spring from the uncertainty on whether the right to interstate travel under US laws is a fundamental right (see *US v. Wheeler*, 254 U.S. 281; 41 S. Ct. 133; 65 L. Ed. 270 [1920] U.S. LEXIS 1159; and *Shapiro v. Thompson*, 394 U.S. 618; 89 S. Ct. 1322; 22 L. Ed. 2d 600 [1969] U.S. LEXIS 3190). **In contrast, the right to travel is clearly a fundamental right under Philippine law; thus, the strict scrutiny test is undeniably the applicable level of scrutiny**.

See also *In Re Mosier*, 59 Ohio Misc. 83; 394 N.E.2d 368 [1978] Ohio Misc. LEXIS 94; citing earlier cases involving curfew ordinances on minors; *People in the Interest of J.M.*, 768 P.2d 219 [1989] Colo. LEXIS 10; 13 BTR 93; *City of Panora v. Simmons*, *supra* note 74; and *City of Maquoketa v. Russell*, *supra* note 93.

of a lower level of scrutiny. [128] In *Nunez v. City of San Diego* (*Nunez*),[129] the US court illumined that:

> Although many federal courts have recognized that juvenile curfews implicate the fundamental rights of minors, the parties dispute whether strict scrutiny review is necessary. **The Supreme Court teaches that rights are no less "fundamental" for minors than adults, but that the analysis of those rights may differ:**
>
> Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. **Minors, as well as adults, are protected by the Constitution and possess constitutional rights.** The Court[,] indeed, however, [has long] recognized that the State has somewhat broader authority to regulate the activities of children than of adults. x x x. Thus, minors' rights are not coextensive with the rights of adults because the **state has a greater range of interests that justify the infringement of minors' rights.**
>
> The Supreme Court has articulated three specific factors that, when applicable, warrant differential analysis of the constitutional rights of minors and adults: x x x. **The *Bellotti* test [however] does not establish a lower level of scrutiny for the constitutional rights of minors in the context of a juvenile curfew.** Rather, the *Bellotti* framework enables courts to determine whether the state has a compelling state interest justifying greater restrictions on minors than on adults. x x x.
>
> x x x **Although the state may have a compelling interest in regulating minors differently than adults, we do not believe that [a] lesser degree of scrutiny is appropriate to review burdens on minors' fundamental rights**. x x x.
>
> Accordingly, we apply strict scrutiny to our review of the ordinance. x x x.[130] (Emphases supplied)

<u>The strict scrutiny test as applied to minors</u> entails a consideration of the peculiar circumstances of minors as

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[128] See *In Re Mosier*, *id*. citing *People v. Chambers*, 32 Ill. App. 3d 444; 335 N.E.2d 612 (1975) Ill. App. LEXIS 2993.

[129] *Nunez v. City of San Diego*, *supra* note 127.

[130] *Id*.

enumerated in *Bellotti* vis-à-vis the State's duty as *parens patriae* to protect and preserve their well-being with the compelling State interests justifying the assailed government act. Under the strict scrutiny test, a legislative classification that interferes with the exercise of a fundamental right or operates to the disadvantage of a suspect class is presumed unconstitutional.[131] **Thus, the government has the burden of proving that the classification (*i*) is necessary to achieve a compelling State interest, and (*ii*) is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest**.[132]

a. Compelling State Interest.

Jurisprudence holds that compelling State interests include constitutionally declared policies.[133] **This Court has ruled that children's welfare and the State's mandate to protect and care for them as *parens patriae* constitute compelling interests to justify regulations by the State**.[134] It is akin to the paramount interest of the state for which some individual liberties must give way.[135] As explained in *Nunez*, the *Bellotti* framework shows that the State has a compelling interest in imposing greater restrictions on minors than on adults. The limitations on minors under Philippine laws also highlight this compelling interest of the State to protect and care for their welfare.

In this case, respondents have sufficiently established that the ultimate objective of the Curfew Ordinances is to keep

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[131] *Disini*, *Jr. v. Secretary of Justice*, *supra* note 122, at 98. See also *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 282 (2009).

[132] *Disini*, *Jr. v. Secretary of Justice*, *id*. See also Dissenting Opinion of Ret. Chief Justice Panganiban and Senior Associate Justice Antonio T. Carpio in *Central Bank Employees Association, Inc. v. BSP*, *supra* note 122, at 644 and 688-689, respectively.

[133] See *The Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 97-98, citing 1987 CONSTITUTION, Art. II, Secs. 12 and 13 and *Soriano v. Laguardia*, 605 Phil. 43, 106 (2009).

[134] *Id*.

[135] *Serrano v. Gallant Maritime Services, Inc.*, *supra* note 131, at 298.

unsupervised minors during the late hours of night time off of public areas, so as to reduce – if not totally eliminate – their exposure to potential harm, and to insulate them against criminal pressure and influences which may even include themselves. As denoted in the "whereas clauses" of the Quezon City Ordinance, the State, in imposing nocturnal curfews on minors, recognizes that:

> [b] x x x children, particularly the minors, appear to be neglected of their proper care and guidance, education, and moral development, which [lead] them into exploitation, drug addiction, and become vulnerable to and at the risk of committing criminal offenses;
>
> x x x x x x x x x
>
> [d] as a consequence, most of minor children become out-of-school youth, unproductive by-standers, street children, and member of notorious gangs who stay, roam around or meander in public or private roads, streets or other public places, whether singly or in groups without lawful purpose or justification;
>
> x x x x x x x x x
>
> [f] reports of barangay officials and law enforcement agencies reveal that minor children roaming around, loitering or wandering in the evening are the frequent personalities involved in various infractions of city ordinances and national laws;
>
> [g] it is necessary in the interest of public order and safety to regulate the movement of minor children during night time by setting disciplinary hours, protect them from neglect, abuse or cruelty and exploitation, and other conditions prejudicial or detrimental to their development;
>
> [h] to strengthen and support parental control on these minor children, there is a need to put a restraint on the tendency of growing number of youth spending their nocturnal activities wastefully, especially in the face of the unabated rise of criminality and to ensure that the dissident elements of society are not provided with potent avenues for furthering their nefarious activities[.][136]

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[136] *Rollo*, pp. 48-49.

The US court's judicial demeanor in *Schleifer*,[137] as regards the information gathered by the City Council to support its passage of the curfew ordinance subject of that case, may serve as a guidepost to our own treatment of the present case. Significantly, in *Schleifer*, the US court recognized the entitlement of elected bodies to implement policies for a safer community, in relation to the proclivity of children to make dangerous and potentially life-shaping decisions when left unsupervised during the late hours of night:

> Charlottesville was constitutionally justified in believing that its curfew would materially assist its first stated interest—that of reducing juvenile violence and crime. The City Council acted on the basis of information from many sources, including records from Charlottesville's police department, a survey of public opinion, news reports, data from the United States Department of Justice, national crime reports, and police reports from other localities. **On the basis of such evidence, elected bodies are entitled to conclude that keeping unsupervised juveniles off the streets late at night will make for a safer community**. **The same streets may have a more volatile and less wholesome character at night than during the day. Alone on the streets at night children face a series of dangerous and potentially life-shaping decisions**. Drug dealers may lure them to use narcotics or aid in their sale. Gangs may pressure them into membership or participation in violence. "[D]uring the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." **Those who succumb to these criminal influences at an early age may persist in their criminal conduct as adults**. Whether we as judges subscribe to these theories is beside the point. Those elected officials with their finger on the pulse of their home community clearly did. In attempting to reduce through its curfew the opportunities for children to come into contact with criminal influences, **the City was directly advancing its first objective of reducing juvenile violence and crime**.[138] (Emphases and underscoring supplied; citations omitted)

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[137] *Supra* note 72.

[138] *Id.*

Similar to the City of Charlottesville in *Schleifer*, the local governments of Quezon City and Manila presented statistical data in their respective pleadings showing the alarming prevalence of crimes involving juveniles, either as victims or perpetrators, in their respective localities.[139] Based on these findings, their city councils found it necessary to enact curfew

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[139] In its Comment dated August 18, 2016 (see *rollo*, pp. 270-313), the local government of Quezon City attached statistical data on "Children in Conflict with Law" (CICL) incidents from the various *barangays* of its six (6) districts for the years 2013, 2014, and 2015 (see *id*. at 330-333). The information is summarized as follows:

YEAR	NUMBER OF CICL
2013	2677
2014	5106
2015	4778

In 2014 and 2015, most of the reported CICL incidents were related to Theft, Curfew violations, and Physical Injury. The local government claimed that the decline of CICL incidents in 2015 was due to the enforcement of the curfew ordinance (id. at 298).

Also, together with its Comment dated August 16, 2016 (*id*. at 85-111), the local government of Manila submitted data reports of the Manila Police District (MPD) on CICL incidents, in Manila from 2014, 2015, and half of the year 2016 (*id*. at 116-197), as follows:

YEAR	NUMBER OF CICL
2014	74*
2015	30
January to July 2016	75**

* It includes a minor who violated RA 4136 or the "Land Transportation and Traffic Code" (June 20, 1964) and RA 10586 or the "Anti-Drunk and Drugged Driving Act of 2013," approved on May 27, 2013.

* It includes the number of minors who violated curfew hours.

A number from these reports involve incidents of Robbery (43), Theft (43), Physical Injuries (12), Rape (9), and Frustrated Homicide (6).

The local government of Manila likewise attached the Department of Social Welfare and Development's (DSWD) report on CICL for the years 2015 and half of the year 2016, summed as follows *(id*. at 198-199):

ordinances pursuant to their police power under the general welfare clause.[140] In this light, the Court thus finds that **the local governments have not only conveyed but, in fact, attempted to substantiate legitimate concerns on public welfare, especially with respect to minors**. As such, a compelling State interest exists for the enactment and enforcement of the Curfew Ordinances.

With the first requirement of the strict scrutiny test satisfied, the Court now proceeds to determine if the restrictions set forth in the Curfew Ordinances are narrowly tailored or provide the least restrictive means to address the cited compelling State interest – the second requirement of the strict scrutiny test.

b. Least Restrictive Means/ Narrowly Drawn.

The second requirement of the strict scrutiny test stems from the fundamental premise that citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional rights. While rights may be restricted, the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest. **When it is possible for governmental regulations to be more narrowly drawn to avoid conflicts with constitutional rights, then they must be so narrowly drawn**.[141]

YEAR	NUMBER OF CICL
2015	845
January to June 2016	524

Further, it attached DSWD's report on minors who were at risk of running in conflict with law and CICL as a result of the local government of Manila's Campaign on Zero Street Dwellers in the City of Manila for the year 2016 (*id*. at 200-202):

Reached out Cases	2,194
**Reached out Cases with Offenses (CICL)	480

** For the period January to August 2016 only.

See also *id*. at 98-99 and 298.

[140] See *id.* at 296-298.

[141] See *In Re Mosier*, *supra* note 127.

Although treated differently from adults, the foregoing standard applies to regulations on minors as they are still accorded the freedom to participate in any legitimate activity, whether it be social, religious, or civic.[142] Thus, in the present case, each of the ordinances must be narrowly tailored as to ensure minimal constraint not only on the minors' right to travel but also on their other constitutional rights.[143]

In *In Re Mosier*,[144] a US court declared a curfew ordinance unconstitutional impliedly for not being narrowly drawn, resulting in unnecessary curtailment of minors' rights to freely exercise their religion and to free speech.[145] It observed that:

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[142] See *People in Interest of J.M.*, *supra* note 127.

[143] Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution, 97 Harv. L. Rev. 1163 (March 1984).

[144] Note that the court in this US case used "no compelling interest" as the ground to declare the ordinance unconstitutional. The reasons set forth in its discussion, however, relates to the failure of the ordinance to be narrowly drawn as to infringe on constitutional rights (see *supra* note 127).

[145] See *Qutb v. Strauss* (*supra* note 73), wherein a US court ruled that the assailed curfew ordinance employed the least restrictive means of accomplishing its objectives as it **contained various defenses or exceptions that narrowly tailored the ordinance and allowed the local government to meet its goals while respecting the rights of minors.** In effect, the ordinance placed only minimal burden on the minors' constitutional rights. It held:

Furthermore, we are convinced that this curfew ordinance also **employs the least restrictive means of accomplishing its goals.** The ordinance **contains various "defenses"** that allow affected minors to remain in public areas during curfew hours. x x x **To be sure, the defenses are the most important consideration in determining whether this ordinance is narrowly tailored.**

x x x x x x x x x

x x x It is true, of course, that the curfew ordinance would restrict some late-night activities of juveniles; if indeed it did not, then there would be no purpose in enacting it. **But when balanced with the compelling interest sought to be addressed— protecting juveniles and preventing juvenile crime —the impositions are minor**. x x x. Thus, after carefully examining the juvenile curfew ordinance enacted by the city of Dallas, **we conclude that it is narrowly tailored to address the city's compelling interest and any burden this ordinance places upon minors' constitutional rights will be minimal**. (Emphases supplied)

The ordinance **prohibits the older minor from attending alone Christmas Eve Midnight Mass at the local Roman Catholic Church or Christmas Eve services at the various local Protestant Churches.** It would likewise prohibit them from attending the New [Year's] Eve watch services at the various churches. Likewise it would prohibit grandparents, uncles, aunts or adult brothers and sisters from taking their minor relatives of any age to the above mentioned services. x x x.

x x x x x x x x x

Under the ordinance, during nine months of the year a minor **could not even attend the city council meetings** if they ran past 10:30 (which they frequently do) **to express his views** on the necessity to repeal the curfew ordinance, **clearly a deprivation of his First Amendment right to freedom of speech.**

x x x x x x x x x

[In contrast, the ordinance in *Bykofsky v. Borough of Middletown* (*supra* note 52)] was [a] very narrowly drawn ordinance of many pages with eleven exceptions and was very carefully drafted in an attempt to pass constitutional muster. **It specifically excepted** [**the**] **exercise of First Amendment rights, travel in a motor vehicle and returning home by a direct route from religious, school, or voluntary association activities.** (Emphases supplied)

After a thorough evaluation of the ordinances' respective provisions, this Court finds that only the Quezon City Ordinance meets the above-discussed requirement, while the Manila and Navotas Ordinances do not.

The Manila Ordinance cites only four (4) exemptions from the coverage of the curfew, namely: (*a*) minors accompanied by their parents, family members of legal age, or guardian; (*b*) those running lawful errands such as buying of medicines, using of telecommunication facilities for emergency purposes and the like; (*c*) night school students and those who, by virtue of their employment, are required in the streets or outside their residence after 10:00 p.m.; and (*d*) those working at night.[146]

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[146] *Rollo*, p. 44.

Sec. 2. During curfew hours, no children and youths below eighteen (18) years of age shall be allowed in the streets, commercial establishments,

For its part, the Navotas Ordinance provides more exceptions, to wit: (*a*) minors with night classes; (*b*) those working at night; (*c*) those who attended a school or church activity, in coordination with a specific barangay office; (*d*) those traveling towards home during the curfew hours; (*e*) those running errands under the supervision of their parents, guardians, or persons of legal age having authority over them; (*f*) those involved in accidents, calamities, and the like. It also exempts minors from the curfew during these specific occasions: Christmas eve, Christmas day, New Year's eve, New Year's day, the night before the barangay fiesta, the day of the fiesta, All Saints' and All Souls' Day, Holy Thursday, Good Friday, Black Saturday, and Easter Sunday.[147]

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recreation centers, malls or any other area outside the immediate vicinity of their residence, EXCEPT:

(a) those accompanied by their parents, family members of legal age, or guardian;

(b) those running lawful errands such as buying of medicines, using of telecommunication facilities for emergency purposes and the like;

(c) students of night schools and those who, by virtue of their employment, are required to stay in the streets or outside their residence after 10:00 P.M.; and

(d) those working at night: *PROVIDED*, That children falling under categories c) and d) shall secure a certification from their *Punong Barangay* exempting them from the coverage of this Ordinance, or present documentation/identification proving their qualification under such category.

[147] *Id*. at 38.

Tuntunin 3. *Mga Eksemsyon*

a. *Eksemsyon dahil sa Gawain*[:]

a.1 *Mga mag-aaral na may klase sa gabi;*

a.2 *Mga kabataang naghahanapbuhay sa gabi;*

a.3 *Mga kabataang dumalo sa gawain/pagtitipon ng paaralan o simbahan na may pakikipag-ugnayan sa Tanggapan ng Sangguniang Barangay.*

Ang lahat ng kabataan sa sakop ng Bayan ng Navotas, Kalakhang Maynila na nag-aaral o naghahanapbuhay na ang oras ng pagpasok o pag-uwi ay sakop ng "curfew" *ay kailangang kumuha ng katibayan* (certification) mula

This Court observes that these two ordinances are not narrowly drawn in that their exceptions are inadequate and therefore, run the risk of overly restricting the minors' fundamental freedoms. To be fair, both ordinances protect the rights to education, to gainful employment, and to travel at night from school or work.[148] However, even with those safeguards, the Navotas Ordinance and, to a greater extent, the Manila Ordinance still do not account for the reasonable exercise of the minors' rights of association, free exercise of religion, rights to peaceably assemble, and of free expression, among others.

The exceptions under the Manila Ordinance are too limited, and thus, unduly trample upon protected liberties. The Navotas Ordinance is apparently more protective of constitutional rights than the Manila Ordinance; nonetheless, it still provides insufficient safeguards as discussed in detail below:

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sa paaralan/tanggapan/pagawaan na pinapasukan ng may pagpapatunay ng *Punong Barangay na sumasakop sa mga kinauukulan, upang ito ay magamit sa oras ng* "curfew" *sa kanilang pag-uwi o pagpasok.*

b. *Eskemsyong* [sic] *Insidental:*

b.1 *Mga kabataang may mga gawain sa ilalim ng superbisyon o pamamahala ng kanilang mga magulang/tagapag-alaga o mga indibiduwal na nasa hustong gulang* (18 *taon at pataas*) *na may awtoridad sa kanila.*

b.2 *Mga kabataang napasama sa mga aksidente, kalamidad at mga tulad nito.*

k. *Eksemsyong tuwing may okasyon:*

k.1 *Bisperas at Araw ng Pasko*;
k.2 *Bisperas at Araw ng Bagong Taon*;
k.3 *Bisperas at Araw ng Pistang Barangay*;
k.4 *Araw ng Santo/Araw ng mga Kaluluwa*;
k.5 *Huwebes Santo*;
k.6 *Biyernes Santo*;
k.7 *Sabado de Gloria*; *at*
k.8 *Pasko ng Pagkabuhay*.

[148] The Curfew Ordinances exempt minors from the curfews when they are engaged in night school, night work, or emergency situations (see *id.* at 38, 44, and 53-54).

First, although it allows minors to engage in school or church activities, it hinders them from engaging in legitimate non-school or non-church activities in the streets or going to and from such activities; thus, their freedom of association is effectively curtailed. It bears stressing that participation in legitimate activities of organizations, other than school or church, also contributes to the minors' social, emotional, and intellectual development, yet, such participation is not exempted under the Navotas Ordinance.

Second, although the Navotas Ordinance does not impose the curfew during Christmas Eve and Christmas day, it effectively prohibits minors from attending traditional religious activities (such as *simbang gabi*) at night without accompanying adults, similar to the scenario depicted in *Mosier*.[149] This legitimate activity done pursuant to the minors' right to freely exercise their religion is therefore effectively curtailed.

Third, the Navotas Ordinance does not accommodate avenues for minors to engage in political rallies or attend city council meetings to voice out their concerns in line with their right to peaceably assemble and to free expression.

Certainly, minors are allowed under the Navotas Ordinance to engage in these activities outside curfew hours, but the Court finds no reason to prohibit them from participating in these legitimate activities during curfew hours. Such proscription does not advance the State's compelling interest to protect minors from the dangers of the streets at night, such as becoming prey or instruments of criminal activity. These legitimate activities are merely hindered without any reasonable relation to the State's interest; hence, the Navotas Ordinance is not narrowly drawn. More so, the Manila Ordinance, with its limited exceptions, is also not narrowly drawn.

In sum, the Manila and Navotas Ordinances should be completely stricken down since their exceptions, which are essentially determinative of the scope and breadth of the curfew

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[149] *Supra* note 127.

regulations, are inadequate to ensure protection of the above-mentioned fundamental rights. While some provisions may be valid, the same are merely ancillary thereto; as such, they cannot subsist independently despite the presence[150] of any separability clause.[151]

The Quezon City Ordinance stands in stark contrast to the first two (2) ordinances as it sufficiently safeguards the minors' constitutional rights. It provides the following exceptions:

Section 4. *EXEMPTIONS* – Minor children under the following circumstances shall not be covered by the provisions of this ordinance;

(a) **Those accompanied by their parents or guardian**;
(b) **Those on their way to or from a party, graduation ceremony, religious mass, and/or other extra-curricular activities of their school or organization wherein their attendance are required or otherwise indispensable, or when such minors are out and unable to go home early**

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[150] See *Tuntunin 4* of the Navotas Ordinance (*rollo*, p. 42); and Section 12 of the Manila Ordinance (*rollo*, p. 46).

[151] The *general rule* is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. x x x.

The *exception to the general rule* is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them. (*Tatad v. The Secretary of the Department of Energy*, 346 Phil. 321, 371 [1997], citing Agpalo, *Statutory Construction,* 1986 Ed., pp. 28-29.)

due to circumstances beyond their control as verified by the proper authorities concerned; and

(c) Those attending to, or in experience of, an emergency situation such as conflagration, earthquake, hospitalization, road accident, law enforcers encounter, and similar incidents[;]

(d) When the minor is engaged in an authorized employment activity, or going to or returning home from the same place of employment activity without any detour or stop;

(e) When the minor is in [a] motor vehicle or other travel accompanied by an adult in no violation of this Ordinance;

(f) When the minor is involved in an emergency;

(g) **When the minor is out of his/her residence attending an official school, religious, recreational, educational, social, community or other similar private activity sponsored by the city, barangay, school, or other similar private civic/religious organization/group (recognized by the community) that supervises the activity or when the minor is going to or returning home from such activity, without any detour or stop**; and

(h) When the minor can present papers certifying that he/she is a student and was dismissed from his/her class/es in the evening or that he/she is a working student.[152] (Emphases and underscoring supplied)

As compared to the first two (2) ordinances, the list of exceptions under the Quezon City Ordinance is more narrowly drawn to sufficiently protect the minors' rights of association, free exercise of religion, travel, to peaceably assemble, and of free expression.

Specifically, the inclusion of items (*b*) and (*g*) in the list of exceptions guarantees the protection of these aforementioned rights. **These items uphold the right of association by enabling minors to attend both official and extra-curricular activities not only of their school or church but also of other legitimate organizations**. **The rights to peaceably assemble and of free expression are also covered by these items given that the minors' attendance in the official activities of civic or religious**

[152] *Rollo*, pp. 53-54.

organizations are allowed during the curfew hours. Unlike in the Navotas Ordinance, the right to the free exercise of religion is sufficiently safeguarded in the Quezon City Ordinance **by exempting attendance at religious masses even during curfew hours**. In relation to their right to travel, the ordinance **allows the minor-participants to move to and from the places where these activities are held**. Thus, with these numerous exceptions, **the Quezon City Ordinance, in truth, only prohibits unsupervised activities that hardly contribute to the well-being of minors who publicly loaf and loiter within the locality at a time where danger is perceivably more prominent**.

To note, there is no lack of supervision when a parent duly authorizes his/her minor child to run lawful errands or engage in legitimate activities during the night, notwithstanding curfew hours. As astutely observed by Senior Associate Justice Antonio T. Carpio and Associate Justice Marvic M.V.F. Leonen during the deliberations on this case, parental permission is implicitly considered as an exception found in Section 4, item (a) of the Quezon City Ordinance, *i.e.*, "[t]hose accompanied by their parents or guardian", as accompaniment should be understood not only in its actual but also in its constructive sense. As the Court sees it, this should be the reasonable construction of this exception so as to reconcile the juvenile curfew measure with the basic premise that State interference is not superior but only complementary to parental supervision. After all, as the Constitution itself prescribes, the parents' right to rear their children is not only natural but primary.

Ultimately, it is important to highlight that this Court, in passing judgment on these ordinances, is dealing with the welfare of minors who are presumed by law to be incapable of giving proper consent due to their incapability to fully understand the import and consequences of their actions. In one case it was observed that:

> A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the

obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.[153]

Under our legal system's own recognition of a minor's inherent lack of full rational capacity, and balancing the same against the State's compelling interest to promote juvenile safety and prevent juvenile crime, this Court finds that the curfew imposed under the Quezon City Ordinance is reasonably justified with its narrowly drawn exceptions and hence, constitutional. Needless to say, these exceptions are in no way limited or restricted, as the State, in accordance with the lawful exercise of its police power, is not precluded from crafting, adding, or modifying exceptions in similar laws/ordinances for as long as the regulation, overall, passes the parameters of scrutiny as applied in this case.

D. Penal Provisions of the Manila Ordinance.

Going back to the Manila Ordinance, this Court deems it proper – as it was raised – to further discuss the validity of its penal provisions in relation to RA 9344, as amended.

To recount, the Quezon City Ordinance, while penalizing the parent/s or guardian under Section 8 thereof,[154] does not impose any penalty on the minors. For its part, the Navotas Ordinance requires the minor, along with his or her parent/s or guardian/s, to render social civic duty and community service either in lieu of – should the parent/s or guardian/s of the minor be unable to pay the fine imposed – or in addition to the fine imposed therein.[155] **Meanwhile, the Manila Ordinance imposed various sanctions to the minor based on the age and frequency of violations**, to wit:

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[153] *Malto v. People*, 560 Phil. 119, 139-140 (2007).

[154] *Rollo*, pp. 57-59.

[155] See amended Navotas Ordinance; *id*. at 41-42.

Tuntunin 1. *PAMPATAKARANG KAPARUSAHAN AT MULTA.*

SEC. 4. Sanctions and Penalties for Violation. Any child or youth violating this ordinance shall be sanctioned/punished as follows:

(a) If the offender is Fifteen (15) years of age and below, **the sanction shall consist of a REPRIMAND for the youth offender** and ADMONITION to the offender's parent, guardian or person exercising parental authority.

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a) *Unang Paglabag – ang mahuhuli ay dadalhin sa Tanggapan ng Kagalingang Panlipunan at Pagpapaunlad* (MSWDO). *Ipapatawag ang magulang o tagapag-alaga sa kabataang lumabag at pagkuha ng tala hinggil sa pagkatao nito* (*Pangalan, Edad, Tirahan, Pangalan ng Magulang o Tagapag-alaga*), *at pagpapaalala, kasunod ang pagbabalik sa kalinga ng magulang o tagapagalaga ng batang nahuli.*

b) *Pangalawang Paglabag – Ang batang lumabag ay* [*dadalhin*] *sa MSWDO, pagmumultahin ang magulang/tagapag-alaga ng halagang* 300.00 *piso, dahil sa kapabayaan* ***o apat* (4) *na oras na gawaing sibiko-sosyal o pangkomunidad*** *ng magulang/tagapag-alaga* ***at ang batang nahuli***.

k) *Ikatlong Paglabag – pagmumulta ng magulang/tagapag-alaga ng halagang* 300.00 *piso dahil sa kapabayaan at* ***apat* (4) *na oras ng gawaing sibiko-sosyal o pangkomunidad*** *ng magulang/tagapag-alaga* ***at ang batang nahuli***.

d) *Para sa pang-apat at paulit-ulit na lalabag ay papatawan ng kaparusahang doble sa itinakda ng Tuntuning* 1.k *ng ordinansang ito.*

1.1. *Sa pagkakataong walang multang* [maibibigay] *ang magulang/tagapag-alaga ng kabataang* [*nahuli*], *ang Tanggapan ng Kagalingang Panlipunan at Pagpapaunlad* (MSDWO) *ay* ***magpapataw ng gawaing sibiko-social o pangkomunidad sa magulang at ang batang nahuli*** *katumbas ng nasabing multa tulad ng mga sumusunod*:

a. *Apat* (4) *na oras na paglilinis ng kanal o lansangan na itinakda ng nasabing tanggapan.*
b. *Apat* (4) *na oras na pagtatanim ng puno sa lugar na itatakda ng nasabing tanggapan.*
c. *Apat* (4) *na oras na gawaing pagpapaganda ng komunidad bilang suporta sa programang* "Clean and Green" *ng Pamahalaang Bayan*. (Emphases and underscoring supplied.)

(b) If the offender is Fifteen (15) years of age and under Eighteen (18) years of age, the sanction/penalty shall be:

1. For the FIRST OFFENSE, **Reprimand and Admonition**;

2. For the SECOND OFFENSE, **Reprimand and Admonition**, and a warning about the legal impostitions in case of a third and subsequent violation; and

3. For the THIRD AND SUBSEQUENT OFFENSES, **Imprisonment of one (1) day to ten (10) days, or a Fine of TWO THOUSAND PESOS (Php2,000.00), or both at the discretion of the Court**, *PROVIDED*, That the complaint shall be filed by the *Punong Barangay* with the office of the City Prosecutor.[156] (Emphases and underscoring supplied).

Thus springs the question of whether local governments could validly impose on minors these sanctions – *i.e.*, (*a*) community service; (*b*) reprimand and admonition; (*c*) fine; and (*d*) imprisonment. **Pertinently, Sections 57 and 57-A of RA 9344, as amended, prohibit the imposition of penalties on minors for status offenses such as curfew violations**, *viz.*:

SEC. 57. *Status Offenses.* — **Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child**.

SEC. 57-A. *Violations of Local Ordinances.* — **Ordinances enacted by local governments concerning juvenile status offenses such as**, but not limited to, **curfew violations**, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, **shall be for the protection of children**. **No penalty shall be imposed on children for said violations**, and they shall instead be brought to their residence or to any barangay official at the barangay hall to

[156] *Rollo*, p. 45.

be released to the custody of their parents. **Appropriate intervention programs shall be provided for in such ordinances**. The child shall also be recorded as a "child at risk" and not as a "child in conflict with the law." The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars. (Emphases and underscoring supplied.)

To clarify, these provisions do not prohibit the *enactment of regulations* that curtail the conduct of minors, when the similar conduct of adults are not considered as an offense or penalized (*i.e.*, status offenses). Instead, what they prohibit is the *imposition of* ***penalties*** on minors for violations of these regulations. Consequently, the enactment of curfew ordinances on minors, without penalizing them for violations thereof, is not violative of Section 57-A.

"Penalty"[157] is defined as "[p]unishment imposed on a wrongdoer usually in the form of imprisonment or fine";[158] "[p]unishment imposed by lawful authority upon a person who commits a deliberate or negligent act."[159] Punishment, in turn, is defined as "[a] sanction – such as fine, penalty, confinement, or loss of property, right, or privilege – assessed against a person who has violated the law."[160]

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[157] Penalties (as punishment) are imposed either: (1) to "satisfy the community's retaliatory sense of indignation that is provoked by injustice" (*Black's Law Dictionary*, 8th Ed., p. 1270) – or for retribution following the classical or juristic school of thought underlying the criminal law system (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., p. 9); (2) to "change the character of the offender" (*Black's Law Dictionary*, Eight Ed., p. 1270) – or for reformation pursuant to the positivist or realistic school of thought (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., pp. 9-10); (3) to "prevent the repetition of wrongdoing by disabling the offender" (*Black's Law Dictionary*, 8th Ed., p. 1270) – following the utilitarian theory (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., p. 11); or (4) for both retribution and reformation pursuant to the eclectic theory (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., p. 11).

[158] *Black's Law Dictionary*, 8th Ed., p. 1168.

[159] *Philippine Law Dictionary*, 3rd Ed., p. 688.

[160] *Black's Law Dictionary*, 8th Ed., p. 1269.

The provisions of RA 9344, as amended, should not be read to mean that all the actions of the minor in violation of the regulations are without legal consequences. Section 57-A thereof empowers local governments to adopt appropriate intervention programs, such as **community-based programs**[161] recognized under Section 54[162] of the same law.

In this regard, requiring the minor to perform community service is a valid form of intervention program that a local government (such as Navotas City in this case) could appropriately adopt in an ordinance to promote the welfare of minors. For one, the community service programs provide minors an alternative mode of rehabilitation as they promote accountability for their delinquent acts without the moral and social stigma caused by jail detention. In the same light, these programs help inculcate discipline and compliance with the law and legal orders. More importantly, they give them the opportunity to become

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[161] Section 4 (f) of RA 9344 reads:

Section 4. Definition of Terms – x x x.

x x x x x x x x x

(f) "Community-based Programs" refers to the programs provided in a community setting developed for purposes of intervention and diversion, as well as rehabilitation of the child in conflict with the law, for reintegration into his/her family and/or community.

[162] Section 54 of RA 9344 reads:

Section 54. Objectives of Community-Based Programs. — The objectives of community-based programs are as follows:

(a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;

(b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;

(c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and

(d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

productive members of society and thereby promote their integration to and solidarity with their community.

The sanction of **admonition** imposed by the City of Manila is likewise consistent with Sections 57 and 57-A of RA 9344 as it is merely a formal way of giving warnings and expressing disapproval to the minor's misdemeanor. Admonition is generally defined as a "gentle or friendly reproof" or "counsel or warning against fault or oversight."[163] The Black's Law Dictionary defines admonition as "[a]n authoritatively issued warning or censure";[164] while the Philippine Law Dictionary defines it as a "gentle or friendly reproof, a mild rebuke, warning or reminder, [counseling], on a fault, error or oversight, an expression of authoritative advice or warning."[165] Notably, the Revised Rules on Administrative Cases in the Civil Service (RRACCS) and our jurisprudence in administrative cases explicitly declare that "a warning or admonition shall not be considered a penalty."[166]

In other words, the disciplinary measures of community-based programs and admonition are clearly not penalties – as they are not punitive in nature – and are generally less intrusive on the rights and conduct of the minor. To be clear, their objectives are to formally inform and educate the minor, and for the latter

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[163] <https://www.merriam-webster.com/dictionary/admonition> (last accessed on March 14, 2017).

[164] 8th Ed., p. 52.

[165] 3rd Ed., p. 36.

[166] See Section 52 (g), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) (promulgated on November 18, 2011), which states that: "[a] warning or admonition shall not be considered a penalty." See also *In the Matter of the Contempt Orders Against Lt. Gen. Calimlim*, 584 Phil. 377, 384 (2008), citing *Tobias v. Veloso*, 188 Phil. 267, 274-275 (1980); *Re: Anonymous Complaint Against Ms. Bayani for Dishonesty*, 656 Phil. 222, 228 (2011); and *Dalmacio-Joaquin v. Dela Cruz,* 690 Phil. 400, 409 (2012), to name a few.

See also Section 58 (i), Rule IV of Memorandum Circular No. 19, Series of 1999 or the "Revised Uniform Rules on Administrative Cases in the Civil Service" (RURACCS) (September 27, 1999). The RRACCS (Section 46 (f), Rule 10) and its predecessor RURACCS (Section 52 (c), Rule IV), however, consider reprimand (or censure) as a penalty imposed for light offenses.

to understand, what actions must be avoided so as to aid him in his future conduct.

A different conclusion, however, is reached with regard to reprimand and fines and/or imprisonment imposed by the City of Manila on the minor. **Reprimand** is generally defined as "a severe or formal reproof."[167] The Black's Law Dictionary defines it as "a mild form of lawyer discipline that does not restrict the lawyer's ability to practice law";[168] while the Philippine Law Dictionary defines it as a "public and formal censure or severe reproof, administered to a person in fault by his superior officer or body to which he belongs. It is more than just a warning or admonition."[169] In other words, reprimand is a formal and public pronouncement made to denounce the error or violation committed, to sharply criticize and rebuke the erring individual, and to sternly warn the erring individual including the public against repeating or committing the same, and thus, may unwittingly subject the erring individual or violator to unwarranted censure or sharp disapproval from others. In fact, the RRACCS and our jurisprudence explicitly indicate that reprimand is a penalty,[170] hence, prohibited by Section 57-A of RA 9344, as amended.

Fines and/or imprisonment, on the other hand, undeniably constitute penalties – as provided in our various criminal and administrative laws and jurisprudence – that Section 57-A of RA 9344, as amended, evidently prohibits.

As worded, the prohibition in Section 57-A is clear, categorical, and unambiguous. It states that "**[n]o penalty shall be imposed on children for x x x violations [of] juvenile status offenses]**." Thus, for imposing the sanctions of reprimand, fine, and/or imprisonment on minors for curfew violations,

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167 <https://www.merriam-webster.com/dictionary/reprimand> (last accessed on March 14, 2017).

168 8th Ed., p. 1329.

169 3rd Ed., p. 818.

170 See Section 52 (f) Rule 10 of the RRACCS: "[t]he *penalty* of reprimand x x x." See also *Tobias v. Veloso*, *supra* note 166, at 275.

portions of Section 4 of the Manila Ordinance directly and irreconcilably conflict with the clear language of Section 57-A of RA 9344, as amended, and hence, invalid. On the other hand, the impositions of community service programs and admonition on the minors are allowed as they do not constitute penalties.

CONCLUSION

In sum, while the Court finds that all three Curfew Ordinances have passed the first prong of the strict scrutiny test – that is, that the State has sufficiently shown a compelling interest to promote juvenile safety and prevent juvenile crime in the concerned localities, only the Quezon City Ordinance has passed the second prong of the strict scrutiny test, as it is the only issuance out of the three which provides for the least restrictive means to achieve this interest. In particular, the Quezon City Ordinance provides for adequate exceptions that enable minors to freely exercise their fundamental rights during the prescribed curfew hours, and therefore, narrowly drawn to achieve the State's purpose. Section 4 (a) of the said ordinance, *i.e.*, "[t]hose accompanied by their parents or guardian", has also been construed to include parental permission as a constructive form of accompaniment and hence, an allowable exception to the curfew measure; the manner of enforcement, however, is left to the discretion of the local government unit.

In fine, the Manila and Navotas Ordinances are declared unconstitutional and thus, null and void, while the Quezon City Ordinance is declared as constitutional and thus, valid in accordance with this Decision.

For another, the Court has determined that the Manila Ordinance's penal provisions imposing reprimand and fines/ imprisonment on minors conflict with Section 57-A of RA 9344, as amended. Hence, following the rule that ordinances should always conform with the law, these provisions must be struck down as invalid.

WHEREFORE, the petition is **PARTLY GRANTED**. The Court hereby declares Ordinance No. 8046, issued by the local government of the City of Manila, and *Pambayang Ordinansa*

Blg. No. 99-02, as amended by *Pambayang Ordinansa Blg*. 2002-13 issued by the local government of Navotas City, **UNCONSTITUTIONAL** and, thus, **NULL** and **VOID**; while Ordinance No. SP-2301, Series of 2014, issued by the local government of the Quezon City is declared **CONSTITUTIONAL** and, thus, **VALID** in accordance with this Decision.

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 opinion.

SEPARATE OPINION

LEONEN, *J.:*

I concur in the result. All of the assailed ordinances should have been struck down for failing to ground themselves on demonstrated rational bases, for failing to adopt the least restrictive means to achieve their aims, and for failing to show narrowly tailored enforcement measures that foreclose abuse by law enforcers. The doctrine of *parens patriae* fails to justify these ordinances. While this doctrine enables state intervention for the welfare of children, its operation must not transgress the constitutionally enshrined natural and primary right of parents to rear their children.

However, the adoption by this Court of the interpretation of Section 4, item (a) of the Quezon City Ordinance to the effect that parental permission in any form for any minor is also an exception will have the effect of narrowly tailoring the application of that curfew regulation.

The assailed ordinances are not novel. Navotas City Pambayang Ordinansa Blg. 99-02[1] was passed on August 26,

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[1] Entitled "*Nagtatakda ng* 'Curfew' *ng mga Kabataan na Wala Pang Labing Walong (18) Taong Gulang sa Bayan ng Navotas, Kalakhang Maynila.*" See *rollo,* pp. 37-40.

1999. City of Manila Ordinance No. 8046[2] was passed on October 14, 2002. Quezon City Ordinance No. SP-2301[3] was passed on July 31, 2014.

The present controversy was spurred by the revitalized, strict implementation of these curfew ordinances as part of police operations under the broad umbrella of "Oplan Rody." These operations were in fulfillment of President Rodrigo Duterte's campaign promise for a nationwide implementation of a curfew for minors.[4]

Samahan ng mga Progresibong Kabataan (SPARK), an association of youths and minors for "the protection of the rights and welfare of youths and minors," and its members Joanne Rose Sace Lim, John Arvin Navarro Buenaagua, Ronel Baccutan (Baccutan), Mark Leo Delos Reyes (Delos Reyes), and Clarissa Joyce Villegas (Villegas) filed the present Petition for Certiorari and Prohibition alleging that the ordinances are unconstitutional and in violation of Republic Act No. 9344.[5]

I

Constitutional challenges against local legislation

Petitioners submit a multi-faceted constitutional challenge against the assailed ordinances.

They assert that the assailed ordinances should be declared unconstitutional as the lack of expressed standards for the identification of minors facilitates arbitrary and discriminatory enforcement.[6]

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[2] Entitled "An Ordinance Declaring the Hours from 10:00 P.M. to 4:00 A.M. of the Following Day as 'Barangay Curfew Hours' for Children and Youths Below Eighteen (18) Years of Age; Prescribing Penalties Therefor; and for Other Purposes." See *rollo,* pp. 44-47.

[3] Entitled "An Ordinance Setting for a Disciplinary Hours [sic] in Quezon City for Minors from 10:00 P.M. to 5:00 A.M., Providing Penalties for Parent/ Guardian, for Violation Thereof and for Other Purposes." See *rollo,* pp. 48-60.

[4] *Rollo,* p. 6, Petition.

[5] *Id.* at 4-5, Petition.

[6] *Id.* at 20, Petition.

Petitioners further argue that the assailed ordinances unduly restrict a minor's liberty, in general, and right to travel, in particular.[7]

Likewise, petitioners assert that, without due process, the assailed ordinances intrude into or deprive parents of their "natural and primary right"[8] to rear their children.

Ordinances are products of "derivative legislative power"[9] in that legislative power is delegated by the national legislature to local government units. They are presumed constitutional and, until judicially declared invalid, retain their binding effect. In *Tano v. Hon. Gov. Socrates:*[10]

It is of course settled that laws (including ordinances enacted by local government units) enjoy the presumption of constitutionality. To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt. Where doubt exists, even if well-founded, there can be no finding of unconstitutionality. To doubt is to sustain.[11]

The presumption of constitutionality is rooted in the respect that the judiciary must accord to the legislature. In *Estrada v. Sandiganbayan:*[12]

This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been

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[7] *Id*. at 23, Petition.

[8] *Id*. at 26, Petition.

[9] *City of Manila v. Hon. Laguio,* 495 Phil. 289, 308 (2005) [Per *J.* Tinga, *En Banc*].

[10] 343 Phil. 670 (1997) [Per *J.* Davide, Jr., *En Banc*].

[11] *Id*. at 700-701, citing *La Union Electric Cooperative v. Yaranon,*259 Phil. 457 (1989) [Per *J*. Gancayco, First Division] and *Francisco v. Permskul,* 255 Phil. 311 (1989) [Per *J*. Cruz, *En Banc*].

[12] 421 Phil. 290 (2001) [Per *J*. Bellosillo, *En Banc*].

said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.

> If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance.[13]

The same respect is proper for acts made by local legislative bodies, whose members are equally presumed to have acted conscientiously and with full awareness of the constitutional and statutory bounds within which they may operate. *Ermita-Malate Hotel and Motel Operators Association v. City of Manila*[14] explained:

> As was expressed categorically by Justice Malcolm: "The presumption is all in favor of validity . . . The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitates action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation."[15]

The presumption of constitutionality may, of course, be challenged. Challenges, however, shall only be sustained upon a clear and unequivocal showing of the bases for invalidating a law. In *Smart Communications v. Municipality of Malvar*:[16]

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[13] *Id*. at 342.

[14] 128 Phil. 473 (1967) [Per *J.* Fernando, *En Banc*].

[15] *Id*. at 475-476.

[16] 727 Phil. 430 (2014) [Per *J.* Carpio, *En Banc*].

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on . . . baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[17]

Consistent with the exacting standard for invalidating ordinances, *Hon. Fernando v. St. Scholastica's College*,[18] outlined the test for determining the validity of an ordinance:

The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[19]

The first consideration hearkens to the primacy of the Constitution, as well as to the basic nature of ordinances as products of a power that was merely delegated to local government units. In *City of Manila v. Hon. Laguio*:[20]

Anent the first criterion, ordinances shall only be valid when they are not contrary to the Constitution and to the laws. The Ordinance must satisfy two requirements: it must pass muster under the test of

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[17] *Id.* at 447.

[18] 706 Phil. 138 (2013) [Per *J*. Mendoza, *En Banc*].

[19] *Id.* at 157.

[20] 495 Phil. 289 (2005) [Per *J*. Tinga, *En Banc*].

constitutionality and the test of consistency with the prevailing laws. That ordinances should be constitutional uphold the principle of the supremacy of the Constitution. The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature. The delegate cannot be superior to the principal or exercise powers higher than those of the latter.[21] (Citations omitted)

II

Appraising due process and equal protection challenges

At stake here is the basic constitutional guarantee that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."[22] There are two (2) dimensions to this: first, is an enumeration of objects of protection—life, liberty and property; second, is an identification and delimitation of the legitimate mechanism for their modulation or abnegation—due process and equal protection. The first dimension lists specific objects whose bounds are amorphous; the second dimension delineates action, and therefore, requires precision.

Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.

"Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person"[23] and the

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[21] *Id*. at 308.

[22] CONST., Art. III, Sec. 1.

[23] Universal Declaration of Human Rights, Art. 3.

American formulation of "life, liberty and the pursuit of happiness."[24] As the American Declaration of Independence postulates, they are "unalienable rights" for which "[g]overnments are instituted among men" in order that they may be secured.[25] Securing them denotes pursuing and obtaining them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.

"Life," then, is more appropriately understood as the fullness of human potential: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence.[26] "Life and liberty," placed in the context of a constitutional aspiration, it then becomes the duty of the government to facilitate this empowering existence. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions. As Justice George Malcolm, speaking for this Court in 1919, articulated:

> Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the

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[24] American Declaration of Independence (1776).

[25] In the words of the American Declaration of Independence:"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men[.]"

[26] See Abraham H. Maslow's, *A Theory of Human Motivation*, PSYCHOLOGICAL REVIEW, 50, 370-396 (1943).

right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.[27]

It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty encompasses a penumbra of cognate rights that is not fixed but evolves—expanding liberty—alongside the contemporaneous reality in which the Constitution operates. *People v. Hernandez*[28] illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause:

[T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of Section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said Section (1)[29]

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[27] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 705 (1919) [Per *J.* Malcolm, *En Banc*].

[28] 99 Phil. 515 (1956) [Per *J.* Concepcion, *En Banc*].

[29] CONST. (1935), Art. III, Sec. 1 provides:

Section 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

. . . .

(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

(4) The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.

(5) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.

to the protection of several aspects of freedom.[30]

While the extent of the constitutional protection of life and liberty is dynamic, evolving, and expanding with contemporaneous realities, the mechanism for preserving life and liberty is

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(6) The right to form associations or societies for purposes not contrary to law shall not be abridged.

(7) No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

(8) No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

. . . .

(11) No ex post facto law or bill of attainder shall be enacted.

(12) No person shall be imprisoned for debt or non-payment of a poll tax.

(13) No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted.

(14) The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.

(15) No person shall be held to answer for a criminal offense without due process of law.

(16) All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required.

(17) In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf.

(18) No person shall be compelled to be a witness against himself.

. . . .

(21) Free access to the courts shall not be denied to any person by reason of poverty.

[30] *People v. Hernandez*, 99 Phil. 515, 551-552 (1956) [Per *J.* Concepcion, *En Banc*]. This enumeration must not be taken as an exhaustive listing of the extent of constitutional protection *vis-à-vis* liberty. Emphasis is placed on how the penumbra of cognate rights evolves and expands with the times.

immutable: any intrusion into it must be with due process of law and must not run afoul of the equal protection of the laws.

Appraising the validity of government regulation in relation to the due process and equal protection clauses invokes three (3) levels of analysis. Proceeding similarly as we do now with the task of appraising local ordinances, *White Light Corporation v. City of Manila*[31] discussed:

The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.

A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.

We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of

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[31] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[32] (Citations omitted)

An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest.

The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.

Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] *considered*."[33] This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is *conceptually* the least restrictive mechanism that the government may apply.

Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, *actually*—not only conceptually—being the least restrictive means for

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[32] *Id*. at 462-463.

[33] *Id*. at 463.

effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.

Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas[34] further explained:

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict*. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.[35] (Emphasis supplied)

Cases involving strict scrutiny innately favor the preservation of fundamental rights and the non-discrimination of protected classes. Thus, in these cases, the burden falls upon the government to prove that it was impelled by a compelling state interest and that there is actually no other less restrictive mechanism for realizing the interest that it invokes:

> Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of

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[34] 487 Phil. 531 (2004). [Per *J.* Puno, *En Banc*].

[35] *Id*. at 599-600.

less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.[36]

III

The present Petition entails fundamental rights and defines status offenses. Thus, strict scrutiny is proper.

By definition, a curfew restricts mobility. As effected by the assailed ordinances, this restriction applies daily at specified times and is directed at minors, who remain under the authority of their parents.

Thus, petitioners correctly note that at stake in the present Petition is the right to travel. Article III, Section 6 of the 1987 Constitution provides:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

While a constitutionally guaranteed fundamental right, this right is not absolute. The Constitution itself states that the right may be "impaired" in consideration of: national security, public safety, or public health.[37] The ponencia underscores

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[36] *Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/221318.pdf> [Per *J.* Perlas-Bernabe, *En Banc*] citing *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*]; Concurring Opinion of *J*. Leonardo-De Castro in *Garcia v. Drilon*, 712 Phil. 44, 11-143 (2013) [Per *J.* Perlas-Bernabe, *En Banc*]; and Separate Concurring Opinion of *C.J*. Reynato S. Puno in *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 106 (2010) [Per *J.* Del Castillo, *En Banc*].

[37] CONST., Art. II, Sec. 12.

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

that the avowed purpose of the assailed ordinances is "the promotion of juvenile safety and prevention of juvenile crime."[38] The assailed ordinances, therefore, seem to find justification as a valid exercise of the State's police power, regulating—as opposed to completely negating—the right to travel.

Given the overlap of the state's prerogatives with those of parents, equally at stake is the right that parents hold in the rearing of their children.

There are several facets of the right to privacy. *Ople v. Torres*[39] identified the right of persons to be secure "in their persons,

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[38] *Ponencia*, p. 20.

[39] 354 Phil. 948 (1998) [Per *J*. Puno, *En Banc*] states:

[T]he right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights:

"Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

Other facets of the right to privacy are protected in various provisions of the *Bill of Rights*, *viz:*

"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 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.

. . . .

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

. . . .

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

houses, papers, and effects,"[40] the right against unreasonable searches and seizures,[41] liberty of abode,[42] the right to form associations,[43] and the right against self-incrimination[44] as among these facets.

While not among the rights enumerated under Article III of the 1987 Constitution, the rights of parents with respect to the family is no less a fundamental right and an integral aspect of liberty and privacy. Article II, Section 12 characterizes the right of parents in the rearing of the youth to be "natural and primary."[45] It adds that it is a right, which shall "receive the support of the Government."[46]

Imbong v. Ochoa,[47] affirms the natural and primary rights of parents in the rearing of children as a facet of the right to privacy:

> To insist on a rule that interferes with the right of parents to exercise parental control over their minor-child or the right of the spouses to mutually decide on matters which very well affect the very purpose

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. . . .

Section 17. No person shall be compelled to be a witness against himself." (Citations omitted)

[40] CONST., Art. III, Sec. 2.

[41] CONST., Art. III, Sec. 2.

[42] CONST., Art. III, Sec. 6.

[43] CONST., Art. III, Sec. 8.

[44] CONST., Art. III, Sec. 17.

[45] CONST., Art. II, Sec. 12:

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[46] CONST., Art. II, Sec. 12.

[47] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

of marriage, that is, the establishment of conjugal and family life, would result in the violation of one's privacy with respect to his family.[48]

This Court's 2009 Decision in *White Light*[49] unequivocally characterized the right to privacy as a fundamental right. Thus, alleged statutory intrusion into it warrants strict scrutiny.[50]

If we were to take the myopic view that an Ordinance should be analyzed strictly as to its effect only on the petitioners at bar, then it would seem that the only restraint imposed by the law which we are capacitated to act upon is the injury to property sustained by the petitioners, an injury that would warrant the application of the most deferential standard – the rational basis test. Yet as earlier stated, we recognize the capacity of the petitioners to invoke as well the constitutional rights of their patrons – those persons who would be deprived of availing short time access or wash-up rates to the lodging establishments in question.

. . . .

The rights at stake herein fall within the same fundamental rights to liberty which we upheld in *City of Manila v. Hon. Laguio, Jr.* We expounded on that most primordial of rights, thus:

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[48] *Id.* at 193.

[49] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[50] *White Light* is notable, not only for characterizing privacy as a fundamental right whose intrusions impel strict scrutiny. It is also notable for extending a similar inquiry previously made by this Court in 1967, in *Ermita-Malate Hotel and Motel Operators Association, et al. v. City of Manila*, 128 Phil. 473 (1967) [Per *J.* Fernando, *En Banc*].

There, operators of motels assailed a supposed infringement of their property rights by an ordinance increasing license fees for their motels. In upholding the validity of the ordinance, this Court distinguished between "freedom of the mind" and property rights and held that "*if the liberty involved were freedom of the mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting*, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measure is wider." Since the case only involved property rights, this Court found that the state interest of curbing "an admitted deterioration of the state of public morals" sufficed. White Light extended the consideration of rights involved in similar establishments by examining, not only motel owners' property rights but also their clientele 's privacy rights.

> Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." . . . In accordance with this case, the rights of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; and to pursue any avocation are all deemed embraced in the concept of liberty . . .

It cannot be denied that the primary animus behind the ordinance is the curtailment of sexual behavior. The City asserts before this Court that the subject establishments "have gained notoriety as venue of 'prostitution, adultery and fornications' in Manila since they provide the necessary atmosphere for clandestine entry, presence and exit and thus became the 'ideal haven for prostitutes and thrill-seekers'". Whether or not this depiction of a mise-en-scene of vice is accurate, it cannot be denied that legitimate sexual behavior among consenting married or consenting single adults which is constitutionally protected will be curtailed as well, as it was in the City of Manila case. Our holding therein retains significance for our purposes:

> The concept of liberty compels respect for the individual whose claim to privacy and interference demands respect . . .
>
> Indeed, the right to privacy as a constitutional right was recognized in Morfe, the invasion of which should be justified by a compelling state interest. Morfe accorded recognition to the right to privacy independently of its identification with liberty; in itself it is fully deserving of constitutional protection. Governmental powers should stop short of certain intrusions into the personal life of the citizen.[51] (Citations omitted)

In determining that the interest invoked by the State was not sufficiently compelling to justify intrusion of the patrons' privacy rights, this Court weighed the State's need for the "promotion of public morality" as against the individual patrons' "liberty to make the choices in [their] lives," thus:

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[51] *White Light Corp. v. City of Manila,* 596 Phil. 444, 464-466 (2009) [Per *J*. Tinga, *En Banc*].

The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measures do not trample rights this Court is sworn to protect . . .

. . . .

[T]he continuing progression of the human story has seen not only the acceptance of the right-wrong distinction, but also the advent of fundamental liberties as the key to the enjoyment of life to the fullest. Our democracy is distinguished from non-free societies not with any more extensive elaboration on our part of what is moral and immoral, but from our recognition that the individual liberty to make the choices in our lives is innate, and protected by the State.[52] (Citation omitted)

Apart from impinging upon fundamental rights, the assailed ordinances define status offenses. They identify and restrict offenders, not purely on the basis of prohibited acts or omissions, but on the basis of their inherent personal condition. Altogether and to the restriction of all other persons, minors are exclusively classified as potential offenders. What is potential is then made real on a passive basis, as the commission of an offense relies merely on presence in public places at given times and not on the doing of a conclusively noxious act.

The assailed ordinances' adoption and implementation concern a prejudicial classification. The assailed ordinances are demonstrably incongruent with the Constitution's unequivocal nurturing attitude towards the youths and whose mandate is to "promote and protect their physical, moral, spiritual, intellectual, and social well-being."[53]

This attitude is reflected in Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, which takes great pains at a nuanced approach to children. Republic Act No. 9344 meticulously defines a "child at risk" and a "child in conflict with the law" and distinguishes them from the generic identification of a "child" as any "person under the age of eighteen

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[52] *Id*. at 469-471.

[53] CONST. Art. II, Sec. 13.

(18) years."[54] These concepts were adopted precisely to prevent a lackadaisical reduction to a wholesale and indiscriminate concept, consistent with the protection that is proper to a vulnerable sector. The assailed ordinances' broad and sweeping determination of presence in the streets past defined times as delinquencies warranting the imposition of sanctions tend to run afoul of the carefully calibrated attitude of Republic Act No. 9344 and the protection that the Constitution mandates. For these, a strict consideration of the assailed ordinances is equally proper.

IV

The apparent factual bases for the assailed ordinances are tenuous at best.

To prove the necessity of implementing curfew ordinances, respondents City of Manila and Quezon City provide statistical

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[54] Section 4. Definition of Terms. – The following terms as used in this Act shall be defined as follows:

. . . .

(c) "Child" refers to a person under the age of eighteen (18) years.

(d) "Child at Risk" refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

(1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;

(2) being exploited including sexually or economically;

(3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;

(4) coming from a dysfunctional or broken family or without a parent or guardian;

(5) being out of school;

(6) being a streetchild;

(7) being a member of a gang;

(8) living in a community with a high level of criminality or drug abuse; and

(9) living in situations of armed conflict.

(e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

data on the number of Children in Conflict with the Law (CICL).[55] Quezon City's data is summarized as follows:[56]

Year	No. of Barangays	Barangay with submissions	Barangays without submissions	No. of Barangays with Zero CICL	Total no. of CICL
2013	142	102(January to June)44(July to December)	14 (January to June)98(July to December)	Not provided	2677
2014	142	119(January to June)82(July to December)	23(January to June)60(July to December)	32(January to June) 25 (July to December)	2937
2015	142	142	0	51	4778

The data submitted, however, is inconclusive to prove that the city is so overrun by juvenile crime that it may as well be totally rid of the public presence of children at specified times. While there is a perceptively raised number of CICLs in Quezon City, the data fails to specify the rate of these figures in relation to the total number of minors and, thus, fails to establish the extent to which CICLs dominate the city. As to geographical prevalence that may justify a city-wide prohibition, a substantial number of barangays reported not having CICLs for the entire year. As to prevalence that stretches across the relative maturity of all who may be considered minors (e.g., grade-schoolers as against adolescents), there was also no data showing the average age of these CICLs.

The City of Manila's data, on the other hand, is too conflicting to be authoritative. The data reports of the Manila Police Department, as summarized in the ponencia,[57] state:

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[55] Rep. Act No. 9344, Sec. 4 (e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

[56] *Rollo*, pp. 330-333.

[57] *Ponencia*, p. 28, fn 139.

YEAR	NUMBER OF CICL
2014	74
2015	30
January to June 2016	75

The Department of Social Welfare and Development of the City of Manila has vastly different numbers. As summarized in the ponencia:[58]

YEAR	NUMBER OF CICL
2015	845
January to June 2016	524

The Department of Social Welfare of Manila submits that for January to August 2016, there was a total of 480 CICLs as part of their Zero Street Dwellers Campaign.[59] Of the 480 minors, 210 minors were apprehended for curfew violations, not for petty crimes.[60] Again, the data fails to account for the percentage of CICLs as against the total number of minors in Manila.

The ponencia cites *Shleifer v. City of Charlottesville*,[61] a United States Court of Appeals case, as basis for examining the validity of curfew ordinances in Metro Manila. Far from supporting the validity of the assailed ordinances, *Shleifer* discounts it. *Shleifer* relies on unequivocally demonstrated scientific and empirical data on the rise of juvenile crime and the emphasis on juvenile safety during curfew hours *in Charlottesville, Virginia*. Here, while local government units adduced data, there does not appear to have been a well-informed effort as to these data's processing, interpretation, and correlation with avowed policy objectives.

With incomplete and inconclusive bases, the concerned local government units' justifications of reducing crime and sweeping

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[58] *Id*.

[59] *Rollo,* p. 201, Annex 5 of City of Manila Comment.

[60] *Id*. at 202, Annex 5 of City of Manila Comment.

[61] 159 F.3d 843 (1998).

averments of "peace and order" hardly sustain a rational basis for the restriction of minors' movement during curfew hours. If at all, the assertion that curfew restrictions ipso facto equate to the reduction of CICLs appears to be a gratuitous conclusion. It is more sentimental than logical. Lacking in even a rational basis, it follows that there is no support for the more arduous requirement of demonstrating that the assailed ordinances support a compelling state interest.

V

It has not been demonstrated that the curfews effected by the assailed ordinances are the least restrictive means for achieving their avowed purposes.

The strict scrutiny test not only requires that the challenged law be narrowly tailored in order to achieve *compelling governmental interests*, it also requires that the mechanisms it adopts are the least burdensome or least drastic means to achieve its ends:

Fundamental rights which give rise to Strict Scrutiny include the right of procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote.

Because Strict Scrutiny involves statutes which either classifies on the basis of an inherently suspect characteristic or infringes fundamental constitutional rights, the presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise. The government must show that the statute is supported by a compelling governmental interest and the means chosen to accomplish that interest are narrowly tailored. Gerald Gunther explains as follows:

> . . . The intensive review associated with the new equal protection imposed two demands a demand not only as to means but also as to ends. Legislation qualifying for strict scrutiny required a far closer fit between classification and statutory purpose than the rough and ready flexibility traditionally tolerated by the old equal protection: means had to be shown "necessary" to achieve statutory ends, not merely "reasonably related." Moreover, equal protection became a source of ends scrutiny as well: legislation in the areas of the new equal protection had to be justified by "compelling" state interests, not merely the wide spectrum of "legitimate" state ends.

Furthermore, the legislature must adopt the least burdensome or least drastic means available for achieving the governmental objective.[62] (Citations omitted)

The governmental interests to be protected must not only be reasonable. They must be *compelling*. Certainly, the promotion of public safety is compelling enough to restrict certain freedoms. It does not, however, suffice to make a generic, sweeping averment of public safety.

To reiterate, respondents have not shown adequate data to prove that an imposition of curfew lessens the number of CICLs. Respondents further fail to provide data on the frequency of crimes against unattended minors during curfew hours. Without this data, it cannot be concluded that the safety of minors is better achieved if they are not allowed out on the streets during curfew hours.

While the ponencia holds that the Navotas and Manila Ordinances tend to restrict minors' fundamental rights, it found that the Quezon City Ordinance is narrowly tailored to achieve its objectives. The Quezon City Ordinance's statement of its objectives reads:

WHEREAS . . . the children, particularly the minors, appear to be neglected of their proper care and guidance, education, and moral development, which led them into exploitation, drug addiction, and become vulnerable to and at the risk of committing criminal offenses;

. . . .

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[62] Dissenting Opinion of *J*. Carpio Morales in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 697-701 (2004) [Per *J*. Puno, *En Banc*] citing *Skinner v. State of Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942); *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 12 (1967); *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 666 (1990); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903-904 (1986); *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995); Chapter 9 of G. GUNTHER, *CONSTITUTIONAL LAW* (12th Ed., 1991); and Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 21 (1972).

WHEREAS, as a consequence, most of minor children become out-of-school youth, unproductive by-standers, street children, and member of notorious gangs who stay, roam around or meander in public or private roads, streets or other public places, whether singly or in groups, without lawful purpose or justification;

WHEREAS, to keep themselves away from the watch and supervision of the barangay officials and other authorities, these misguided minor children preferred to converge or flock together during the night time until the wee hours of the morning resorting to drinking on the streets and other public places, illegal drug use and sometimes drug peddling, engaging in troubles and other criminal activities which often resulted to bodily injuries and loss of lives;

WHEREAS, reports of barangay officials and law enforcement agencies reveal that minor children roaming around, loitering or wandering in the evening are the frequent personalities involved in various infractions of city ordinances and national laws;

WHEREAS, it is necessary in the interest of public order and safety to regulate the movement of minor children during night time by setting disciplinary hours, protect them from neglect, abuse, cruelty and exploitation, and other conditions prejudicial or detrimental to their development;

WHEREAS, to strengthen and support parental control on these minor children, there is a need to put a restraint on the tendency of a growing number of the youth spending their nocturnal activities wastefully, especially in the face of the unabated rise of criminality and to ensure that the dissident elements in society are not provided with potent avenues for furthering their nefarious activities[.][63]

In order to achieve these objectives,[64] the ponencia cites the ordinances' exemptions, which it found to be "sufficiently safeguard[ing] the minors' constitutional rights":[65]

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[63] *Rollo*, pp. 317-318.

[64] It should be pointed out that the statement "most of minor children become out-of-school youth, unproductive by-standers, street children, and member of notorious gangs" is an absurd generalization without any basis.

[65] *Ponencia*, p. 33.

SECTION 4. EXEMPTIONS – Minor children under the following circumstances shall not be covered by the provisions of this ordinance:

(a) Those accompanied by their parents or guardian;

(b) Those on their way to or from a party, graduation ceremony, religious mass, and/or other extra-curricular activities of their school or organization wherein their attendance are required or otherwise indispensable, or when such minors are out and unable to go home early due to circumstances beyond their control as verified by the proper authorities concerned; and

(c) Those attending to, or in experience of, an emergency situation such as conflagration, earthquake, hospitalization, road accident, law enforcers encounter, and similar incidents;

(d) When the minor is engaged in an authorized employment activity, or going to or returning home from the same place of employment activity, without any detour or stop;

(e) When the minor is in motor vehicle or other travel accompanied by an adult in no violation of this Ordinance;

(f) When the minor is involved in an emergency;

(g) When the minor is out of his/her residence attending an official school, religious, recreational, educational, social, community or other similar private activity sponsored by the city, barangay, school or other similar private civic/religious organization/group (recognized by the community) that supervises the activity or when the minor is going to or returning home from such activity, without any detour or stop; and

(h) When the minor can present papers certifying that he/she is a student and was dismissed from his/her class/es in the evening or that he/she is a working student.[66]

The ponencia states:

[T]he Quezon City Ordinance, in truth, only prohibits unsupervised activities that hardly contribute to the well-being of minors who publicly loaf and loiter within the locality at a time where danger is perceivably more prominent.[67]

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[66] *Rollo*, pp. 322-323.

[67] *Ponencia*, p. 34.

The ponencia unfortunately falls into a hasty generalization. It generalizes unattended minors out in the streets during curfew hours as potentially, if not actually, engaging in criminal activities, merely on the basis that they are not within the bounds of the stated exemptions. It is evident, however, that the exemptions are hardly exhaustive.

Consider the dilemma that petitioner Villegas faces when she goes out at night to buy food from a convenience store because the rest of her family is already asleep.[68] As a Quezon City resident, she violates the curfew merely for wanting to buy food when she gets home from school.

It may be that a minor is out with friends or a minor was told to make a purchase at a nearby sari-sari store. None of these is within the context of a "party, graduation ceremony, religious mass, and/or other extra-curricular activities of their school and organization" or part of an "official school, religious, recreational, educational, social, community or other similar private activity." Still, these activities are not criminal or nefarious. To the contrary, socializing with friends, unsavorily portrayed as mere loafing or loitering as it may be, contributes to a person's social and psychological development. Doing one's chores is within the scope of respecting one's elders.

Imposing a curfew on minors merely on the assumption that it can keep them safe from crime is not the least restrictive means to achieve this objective. Petitioners suggest street lighting programs, installation of CCTVs in street corners, and visible police patrol.[69] Public safety is better achieved by effective police work, not by clearing streets of children en masse at night. Crimes can just as well occur in broad daylight and children can be just as susceptible in such an environment. Efficient law enforcement, more than sweeping, generalized measures, ensures that children will be safe regardless of what time they are out on the streets.

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[68] *Rollo,* p. 7, Petition.

[69] *Id.* at 24, Petition.

The assailed ordinances' deficiencies only serve to highlight their most disturbing aspect: the imposition of a curfew only burdens minors who are living in poverty.

For instance, the Quezon City Ordinance targets minors who are not traditionally employed as the exemptions require that the minor be engaged in "an *authorized* employment activity." Curfew violators could include minors who scour garbage at night looking for food to eat or scraps to sell. The Department of Social Welfare and Development of Manila reports that for 2016, 2,194 minors were turned over as part of their Zero Street Dwellers Campaign.[70] The greater likelihood that most, if not all, curfew violators will be street children—who have no place to even come home to—than actual CICLs. So too, those caught violating the ordinance will most likely have no parent or guardian to fetch them from barangay halls.

An examination of Manila Police District's data on CICLs show that for most of the crimes committed, the motive is poverty, not a drive for nocturnal escapades.[71] Thus, to lessen the instances of juvenile crime, the government must first alleviate poverty, not impose a curfew. Poverty alleviation programs, not curfews, are the least restrictive means of preventing indigent children from turning to a life of criminality.

VI

The assailed ordinances give unbridled discretion to law enforcers.

The assailed ordinances are deficient not only for failing to provide the least restrictive means for achieving their avowed ends but also in failing to articulate safeguards and define limitations that foreclose abuses.

In assailing the lack of expressed standards for identifying minor, petitioners invoke the void for vagueness doctrine.[72]

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[70] *Id.* at 200, Annex 5 of City of Manila Comment.

[71] See *rollo,* pp. 116-197, Annexes "1", "2", and "3" of City of Manila Comment.

[72] *Rollo,* p. 19, *Petition.*

The doctrine is explained in *People v. Nazario*:[73]

As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[74]

While facial challenges of a statute on the ground of vagueness is permitted only in cases involving alleged transgressions against the right to free speech, penal laws may nevertheless be invalidated for vagueness "as applied." In *Estrada v. Sandiganbayan*:[75]

[T]he doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.[76]

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[73] 247-A Phil. 276 (1988) [Per *J*. Sarmiento, *En Banc*].

[74] *Id*. at 286 *citing* TRIBE, AMERICAN CONSTITUTIONAL LAW 718 (1978) and *Connally v. General Construction Co*., 269 U.S. 385 (1926).

[75] 421 Phil. 290 (2001) [Per *J*. Bellosillo, *En Banc*].

[76] *Id*. at 354-355 *citing United States v. Raines*, 362 U.S. 17, 21, 4 L. Ed. 2d 524, 529 (1960); *Yazoo & Mississippi Valley RR. v. Jackson Vinegar Co*., 226 U.S. 217, 57 L. Ed. 193 (1912); and G. GUNTHER & K. SULLIVAN, *CONSTITUTIONAL LAW* 1299 (2001).

The difference between a facial challenge and an as-applied challenge is settled. As explained in *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*:[77]

> Distinguished from an as-applied challenge which considers only extant facts affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.[78] (Citation omitted)

Thus, to invalidate a law with penal provisions, such as the assailed ordinances, as-applied parties must assert actual violations of their rights and not prospective violations of the rights of third persons. In *Imbong v. Ochoa*:[79]

> In relation to locus standi, the "as applied challenge" embodies the rule that one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. The rule prohibits one from challenging the constitutionality of the statute grounded on a violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.[80]

The ponencia states that petitioners' invocation of the void for vagueness doctrine is improper. It reasons that petitioners failed to point out any ambiguous provision in the assailed ordinances.[81] It then proceeds to examine the provisions of the ordinances, vis-à-vis their alleged defects, while discussing how these defects may affect minors and parents who are not

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[77] 646 Phil. 452 (2010) [Per *J*. Carpio Morales, *En Banc*].

[78] *Id*. at 489 *citing David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[79] 732 Phil. 1 (2014) [Per *J*. Mendoza, *En Banc*].

[80] *Id*. at 127 *citing* the Dissenting Opinion of *J*. Carpio in *Romualdez v. Commission on Elections*, 576 Phil. 357, 406 (2008) [Per *J*. Chico-Nazario, *En Banc*].

[81] *Ponencia*, pp. 11-12.

parties to this case. In effect, the ponencia engaged in a facial examination of the assailed ordinances. This facial examination is an improper exercise for the assailed ordinances, as they are penal laws that do not ostensibly involve the right to free speech.

The more appropriate stance would have been to examine the assailed ordinances, not in isolation, but in the context of the specific cases pleaded by petitioners. Contrary to the ponencia's position, the lack of specific provisions in the assailed ordinances indeed made them vague, so much so that actual transgressions into petitioner's rights were made.

The questioned Navotas and City of Manila Ordinances do not state any guidelines on how law enforcement agencies may determine if a person apprehended is a minor.

For its part, Section 5(h) of the Quezon City ordinance provides:

> (h) Determine the age of the child pursuant to Section 7 of this Act;[82]

However, the Section 7 it refers to provides no guidelines on the identification of age. It merely states that any member of the community may call the attention of barangay officials if they see minors during curfew hours:

> SECTION 7. COMMUNITY INVOLVEMENT/PARTICIPATION – Any person who has personal knowledge of the existence of any minor during the wee hours as provided under Section 3 hereof, must immediately call the attention of the barangay.[83]

The ponencia asserts that Republic Act No. 9344, Section 7[84] addresses the lacunae as it articulates measures for determining

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[82] *Rollo*, p. 324.

[83] *Id*. at 326.

[84] Rep. Act No. 9344, Sec. 7. Determination of Age. – The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent

age. However, none of the assailed ordinances actually refers law enforcers to extant statutes. Their actions and prerogatives are not actually limited whether by the assailed ordinances' express provisions or by implied invocation. True, Republic Act No. 9344 states its prescriptions but the assailed ordinances' equivocation by silence reduces these prescriptions to mere suggestions, at best, or to mere afterthoughts of a justification, at worst.

Thus, the lack of sufficient guidelines gives law enforcers "unbridled discretion in carrying out [the assailed ordinances'] provisions."[85] The present Petition illustrates how this has engendered abusive and even absurd situations.

Petitioner Mark Leo Delos Reyes (Delos Reyes), an 18-year-old—no longer a minor—student, recalled that when he was apprehended for violating the curfew, he showed the barangay tanod his registration card. Despite his presentation of an official document, the barangay tanod refused to believe him. Delos Reyes had to resort to showing the barangay tanod his hairy legs for the tanod to let him go.[86]

Petitioner Baccutan likewise alleged that he and his friends were apprehended by 10 barangay tanods for violating curfew even though he was already 19 years old at that time. He alleged that he and his friends were told to perform 200 squats and if they refused, they would be framed up for a crime. They were released only when the aunt of one (1) of his friends arrived.[87]

These instances illustrate how predicaments engendered by enforcing the assailed ordinances have not been resolved by

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documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

[85] *People v. Nazario*, 247-A Phil. 276, 286 (1988) [Per *J.* Sarmiento, *En Banc*].

[86] *Rollo,* p. 7, Petition.

[87] *Id*. at 6.

"simply presenting any competent proof of identification"[88] considering that precisely, the assailed ordinances state no mandate for law enforcers to check proof of age before apprehension. Clear and explicit guidelines for implementation are imperative to foreclose further violations of petitioners' due process rights. In the interim, the assailed statutes must be invalidated on account of their vagueness.

VII

The doctrine of *parens patriae* does not sustain the assailed ordinances.

The doctrine of *parens patriae* fails to justify the intrusions into parental prerogatives made by the assailed ordinances. The State acts as *parens patriae* in the protection of minors only when there is a clear showing of neglect, abuse, or exploitation. It cannot, on its own, decide on how children are to be reared, supplanting its own wisdom to that of parents.

The doctrine of *parens patriae* is of Anglo-American, common law origin. It was understood to have "emanate[d] from the right of the Crown to protect those of its subjects who were unable to protect themselves."[89] It was the King's "royal prerogative"[90] to "take responsibility for those without capacity to look after themselves."[91] At its outset, *parens patriae* contemplated situations where vulnerable persons had no means

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[88] *Ponencia*, p. 13.

[89] Kay Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO STATE L. J. 519, 526 (1996).

[90] J. Ryan and D. Sampen, *Suing on Behalf of the State: A Parens Patriae Primer*, 86 ILL. BAR J. 684 (1998), *citing Hawaii v. Standard Oil Co. of California*, 405 U.S. 251, 257 (172).

[91] Margaret Hall, *The Vulnerability Jurisdiction: Equity, Parens Patriae, and the Inherent Jurisdiction of the Court*, 2(1) CAN. J. OF COMP. & CONTEMP. L. 185, 190-191 (2016), *citing* Sir James Munby, *Protecting the Rights of Vulnerable and Incapacitous Adults – the Role of the Courts: An Example of Judicial Law-making*, 26 CHILD & FAMILY LAW QUARTERLY 64, 66 (2014).

to support or protect themselves. Given this, it was the duty of the State, as the ultimate guardian of the people, to safeguard its citizens' welfare.

The doctrine became entrenched in the United States, even as it gained independence and developed its own legal tradition. In *Late Corporation of Church of Jesus Christ v. United States*,[92] the United States Supreme Court explained *parens patriae* as a beneficent state power and not an arbitrary royal prerogative:

> This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarch to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and **for the prevention of injury to those who cannot protect themselves**.[93] (Emphasis supplied.)

In the same case, the United States Supreme Court emphasized that the exercise of *parens patriae* applies "to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority."[94] It is from this reliance and expectation of the people that a state stands as "parent of the nation."[95]

American colonial rule and the adoption of American legal traditions that it entailed facilitated our own jurisdiction's adoption of the doctrine of *parens patriae*.[96] Originally, the

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[92] 136 U.S. 1, 57 (1890).

[93] *Id*.

[94] *Id*.

[95] J. Ryan and D. Sampen, *Suing on Behalf of the State: A Parens Patriae Primer*, 86 ILL. BAR J. 684 (1998); see also *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, G.R. No. 199669, April 25, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/199669.pdf> [Per *J.* Reyes, *En Banc*].

[96] See *Government of the Philippine Islands v. El Monte de Piedad*, 35 Phil. 728 (1916) [Per *J.* Trent, Second Division].

doctrine was understood as "the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*."[97]

However, significant developments have since calibrated our own understanding and application of the doctrine.

Article II, Section 12 of the 1987 Philippine Constitution provides:

> Section 12. . . . The natural and *primary* right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government. (Emphasis supplied.)

It is only the 1987 Constitution which introduced the qualifier "primary." The present Article II, Section 12's counterpart provision in the 1973 Constitution merely referred to "[t]he natural right and duty of parents":

> Section 4. . . . The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the Government.[98]

As with the 1973 Constitution, the 1935 Constitution also merely spoke of "[t]he natural right and duty of parents":

> Section 4. The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the government.[99]

The addition of the qualifier "primary" unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution

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[97] *Vasco v. Court of Appeals*, 171 Phil. 673, 677 (1978) [Per *J.* Aquino, Second Division], *citing* 67 C.J.S. 624; and *Government of the Philippine Islands v. El Monte de Piedad*, 35 Phil. 728 (1916) [Per *J.* Trent, Second Division].

[98] CONST. (1973), Art. II, Sec. 4.

[99] CONST. (1935), Art. II, Sec. 4.

now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have failed or have become incapable of performing their duties.

Shifts in constitutional temperament contextualize *Nery v. Lorenzo*,[100] the authority cited by ponencia in explaining the State's role in the upbringing of children.[101] In *Nery*, this Court alluded to the State's supreme authority to exercise *parens patriae*. *Nery* was decided in 1972, when the 1935 Constitution was in operation.[102] It stated:

> [W]here minors are involved, the State acts as *parens patriae*. To it is cast the duty of protecting the rights of persons or individual[s] who because of age or incapacity are in an unfavorable position, vis-a-vis other parties. Unable as they are to take due care of what concerns them, they have the political community to look after their welfare. This obligation the state must live up to. It cannot be recreant to such a trust.[103]

This outmoded temperament is similarly reflected in the 1978 case of *Vasco v. Court of Appeals*,[104] where, without moderation or qualification, this Court asserted that "the State is considered the *parens patriae* of minors."[105]

In contrast, *Imbong v. Ochoa*,[106] a cased decided by this Court in 2014, unequivocally characterized parents' rights as being "superior" to the state:

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[100] 150-A Phil. 241 (1972) [Per *J*. Fernando, Second Division].

[101] *Ponencia*, p. 15.

[102] CONST. (1935), Art. II, Sec. 4 was worded almost as similarly as the 1973 Constitution.

[103] *Nery v. Lorenzo*, 150-A Phil. 241, 248 (1972) [Per *J*. Fernando, Second Division].

[104] 171 Phil. 673 (1978) [Per *J.* Aquino, Second Division].

[105] *Id*. at 677.

[106] 732 Phil. 1 (2014) [Per *J*. Mendoza, *En Banc*].

Section 12, Article II of the 1987 Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive the support of the Government. Like the 1973 Constitution and the 1935 Constitution, the 1987 Constitution affirms the State recognition of the invaluable role of parents in preparing the youth to become productive members of society. *Notably, it places more importance on the role of parents in the development of their children by recognizing that said role shall be "primary," that is, that the right of parents in upbringing the youth is superior to that of the State*.[107] (Emphasis supplied)

Thus, the State acts as *parens patriae* only when parents cannot fulfill their role, as in cases of neglect, abuse, or exploitation:

The State as *parens patriae* affords special protection to children from abuse, exploitation and other conditions prejudicial to their development. It is mandated to provide protection to those of tender years. Through its laws, the State safeguards them from everyone, even their own parents, to the end that their eventual development as responsible citizens and members of society shall not be impeded, distracted or impaired by family acrimony.[108]

As it stands, the doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children. It operates only when parental authority is established to be absent or grossly deficient. The wisdom underlying this doctrine considers the existence of harm *and* the subsequent inability of the person to protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.

To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily

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[107] *Id*. at 195 *citing* Records, 1986 Constitutional Convention, Volume IV, pp. 401-402.

[108] *Concepcion v. Court of Appeals*, 505 Phil. 529, 546 (2005) [Per *J.* Corona, Third Division]. *See also Dela Cruz v. Gracia*, G.R. No. 177728, July 31, 2009 [Per *J*. Carpio Morales, Second Division].

exercise its *parens patriae* power might as well render the superior Constitutional right of parents inutile.

More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was *without* subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children.

Thus, in *Bernabe v. Alejo*,[109] *parens patriae* was exercised in order to give the minor his day in court. This is a matter beyond the conventional capacities of parents, and therefore, it was necessary for the State to intervene in order to protect the interests of the child.

In *People v. Baylon*[110] and other rape cases,[111] this Court held that a rigorous application of the penal law is in order, since "[t]he state, as *parens patriae*, is under the obligation to minimize the risk of harm to those, who, because of their minority, are as yet unable to take care of themselves fully."[112] In these criminal cases where minor children were victims, this Court, acting as the representative of the State exercising its *parens patriae* power, was firm in imposing the appropriate penalties for the crimes—no matter how severe—precisely because it was the only way to mitigate further harm to minors. *Parens patriae* is also the reason why "a child is presumed by law to be incapable of giving rational consent to any lascivious act or

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[109] 424 Phil. 933 (2000) [Per *J.* Panganiban, Third Division].

[110] 156 Phil. 87 (1974) [Per *J.* Fernando, Second Division].

[111] *See also People v. Cabodac*, 284-A Phil. 303, 312 (1992) [Per *J.* Melencio-Herrera, Second Division]; *People v. Dolores*, 266 Phil. 724 (1990) [Per *J.* Melencio-Herrera, Second Division]; *People v. Cawili*, 160 Phil. 25 (1975) [Per *J.* Fernando, Second Division]; and *People v. Evangelista,* 346 Phil. 717 (1997) [Per *J.* Belosillo, First Division]; *People v. Malto*, 560 Phil. 119 (2007) [Per *J.* Corona, First Division].

[112] *People v. Baylon*, 156 Phil. 87, 95 (1974) [Per *J.* Fernando, Second Division].

sexual intercourse," as this Court held in *People v. Malto*.[113] Again, these State actions are well outside the conventional capabilities of the parents and in no way encroach on the latter's authority.

Such assistive and justified regulation is wanting in this case.

VIII

In my view, the interpretation that this Court gives to Section 4, item (a) of the Quezon City Ordinance will sufficiently narrowly tailor its application so as to save it from its otherwise apparent breach of fundamental constitutional principles. Thus, in the ponencia of Justice Estela Perlas-Bernabe:

> To note, there is no lack of supervision when a parent duly authorizes his/her minor child to run lawful errands or engage in legitimate activities during the night, notwithstanding curfew hours. As astutely observed by Senior Associate Justice Antonio T. Carpio and Associate Justice Marvic M.V.F. Leonen during the deliberations on this case, parental permission is implicitly considered as an exception found in Section 4, item (a) of the Quezon City Ordinance, *i.e.*, "[t]hose accompanied by their parents or guardian", as accompaniment should be understood not only in its actual but also in its constructive sense. As the Court sees it, this should be the reasonable construction of this exception so as to reconcile the juvenile curfew measure with the basic premise that State interference is not superior but only complementary to parental supervision. After all, as the Constitution itself prescribes, the parents' right to rear their children is not only natural but primary.

Of course, nothing in this decision will preclude a stricter review in a factual case whose factual ambient will be different.

Accordingly, for these reasons, I concur in the result.

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[113] 560 Phil. 119 (2007) [Per *J.* Corona, First Division].

EN BANC

[G.R. No. 225973 August 8, 2017]

SATURNINO C. OCAMPO, TRINIDAD H. REPUNO, BIENVENIDO LUMBERA, BONIFACIO P. ILAGAN, NERI JAVIER COLMENARES, MARIA CAROLINA P. ARAULLO, M.D., SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA), represented by DIONITO CABILLAS, CARMENCITA M. FLORENTINO, RODOLFO DEL ROSARIO, FELIX C. DALISAY, AND DANILO M. DELA FUENTE,[*] *petitioners, vs.* **REAR ADMIRAL ERNESTO C. ENRIQUEZ (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), The Grave Services Unit (Philippine Army), and GENERAL RICARDO R. VISAYA (in his capacity as the Chief of Staff, Armed Forces of the Philippines), DEFENSE SECRETARY DELFIN LORENZANA, and HEIRS OF FERDINAND E. MARCOS, represented by his surviving spouse IMELDA ROMUALDEZ MARCOS,** *respondents.* **RENE A.V. SAGUISAG, SR., RENE A.Q. SAGUISAG, JR., RENE A.C. SAGUISAG III,** *intervenors.*

[G.R. No. 225984. August 8, 2017]

REP. EDCEL C. LAGMAN, in his personal and official capacities and as a Member of Congress and as the Honorary Chairperson of the Families of Victims of Involuntary Disappearance (FIND); FAMILIES OF VICTIMS OF INVOLUNTARY DISAPPEARANCES, Represented by its Co-Chairperson, NILDA L. SEVILLA; REP. TEDDY BRAWNER BAGUILAT,

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[*] Rene A.V. Saguisag, *et al*. filed a petition for *certiorari*-in-intervention.

JR.; REP. TOMASITO S. VILLARIN; REP. EDGAR R. ERICE; and REP. EMMANUEL A. BILLONES, *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA; DEFENSE SECRETARY DELFIN N. LORENZANA; AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA; AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ; and PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) ADMINISTRATOR LT. GEN. ERNESTO G. CAROLINA (RET.),** *respondents.*

[G.R. No. 226097. August 8, 2017]

LORETTA ANN PARGAS-ROSALES, HILDA B. NARCISO, AIDA F. SANTOS-MARANAN, JO-ANN Q. MAGLIPON, ZENAIDA S. MIQUE, FE B. MANGAHAS, MA. CRISTINA P. BAWAGAN, MILA D. AGUILAR, MINERVA G. GONZALES, MA. CRISTINA V. RODRIGUEZ, LOUIE G. CRISMO, FRANCISCO E. RODRIGO, JR., LIWAYWAY D. ARCE, and ABDULMARI DE LEON IMAO, JR., *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, and HEIRS OF FERDINAND E. MARCOS, represented by his surviving spouse IMELDA ROMUALDEZ MARCOS,** *respondents.*

[G.R. No. 226116. August 8, 2017]

HEHERSON T. ALVAREZ, JOEL C. LAMANGAN, FRANCIS X. MANGLAPUS, EDILBERTO C. DE JESUS, BELINDA O. CUNANAN, CECILIA GUIDOTE ALVAREZ, REX DEGRACIA LORES, SR.,

ARNOLD MARIE NOEL, CARLOS MANUEL, EDMUND S. TAYAO, DANILO P. OLIVARES, NOEL F. TRINIDAD, JESUS DELA FUENTE, REBECCA M. QUIJANO, FR. BENIGNO BELTRAN, SVD, ROBERTO S. VERZOLA, AUGUSTO A. LEGASTO, JR., and JULIA KRISTINA P. LEGASTO, *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ, and PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) of the DND,** *respondents.*

[G.R. No. 226117]

ZAIRA PATRICIA B. BANIAGA, JOHN ARVIN BUENAAGUA, JOANNE ROSE SACE LIM, JUAN ANTONIO RAROGAL MAGALANG, *petitioners, vs.* **SECRETARY OF NATIONAL DEFENSE DELFIN N. LORENZANA, AFP CHIEF OF STAFF RICARDO R. VISAYA, ADMINISTRATOR OF THE PHILIPPINE VETERANS AFFAIRS OFFICE ERNESTO G. CAROLINA,** *respondents.*

[G.R. No. 226120. August 8, 2017]

ALGAMAR A. LATIPH, *petitioner, vs.* **SECRETARY DELFIN N. LORENZANA, sued in his capacity as Secretary of National Defense, LT. GEN. RICARDO R. VISAYA, in his capacity as Chief of Staff of the Armed Forces of the Philippines and LT. GEN. ERNESTO G. CAROLINA (ret.), in his capacity as Administrator, Philippine Veterans Affairs Office (PVAO),** *respondents.*

[G.R. No. 226294. August 8, 2017]

LEILA M. DE LIMA, in her capacity as SENATOR OF THE REPUBLIC and as TAXPAYER, *petitioner, vs.* **HON. SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, UNDERSECRETARY ERNESTO G. CAROLINA, in his capacity as PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) ADMINISTRATOR and B/GEN. RESTITUTO L. AGUILAR, in his capacity as SHRINE CURATOR AND CHIEF, VETERANS MEMORIAL AND HISTORICAL DIVISION and HEIRS OF FERDINAND EDRALIN MARCOS,** *respondents.*

[G.R. No. 228186. August 8, 2017]

SATURNINO C. OCAMPO, TRINIDAD H. REPUNO, BONIFACIO P. ILAGAN, MARIA CAROLINA P. ARAULLO, M.D., SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA) represented by ANGELINA BISUNA, CARMENCITA M. FLORENTINO, RODOLFO DEL ROSARIO, FELIX C. DALISAY, DANILO M. DELA FUENTE, *petitioners, vs.* **REAR ADMIRAL ERNESTO C. ENRIQUEZ (in his capacity as the Deputy Chief Of Staff For Reservist And Retiree Affairs, Armed Forces of the Philippines), The Grave Services Unit (Philippine Army) And GENERAL RICARDO R. VISAYA (in his capacity as The Chief of Staff, Armed Forces of the Philippines), DEFENSE SECRETARY DELFIN LORENZANA, and HEIRS OF FERDINAND E. MARCOS, SR., represented by his surviving spouse IMELDA ROMUALDEZ MARCOS and legitimate children IMEE, IRENE and FERDINAND, JR.,** *respondents.*

[G.R. No. 228245. August 8, 2017]

LORETTA ANN PARGAS-ROSALES, HILDA B. NARCISO, AIDA F. SANTOS-MARANAN, JO-ANN Q. MAGLIPON, ZENAIDA S. MIQUE, FE B. MANGAHAS, MA. CRISTINA P. BAWAGAN, MILA D. AGUILAR, MINERVA G. GONZALES, MA. CRISTINA V. RODRIGUEZ, LOUIE G. CRISMO, FRANCISCO E. RODRIGO, JR., LIWAYWAY D. ARCE, and ABDULMARI DE LEON IMAO, JR., *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, REAR ADMIRAL ERNESTO C. ENRIQUEZ (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), GENERAL RICARDO R. VISAYA (in his capacity as Chief of Staff, Armed Forces of the Philippines), and HEIRS OF FERDINAND E. MARCOS, represented by IMELDA ROMUALDEZ MARCOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW ON POLITICAL QUESTION; IF THERE ARE CONSTITUTIONALLY IMPOSED LIMITS ON THE POWERS OR FUNCTIONS CONFERRED UPON POLITICAL BODIES, OUR COURTS ARE DUTY-BOUND TO EXAMINE WHETHER THE POLITICAL BODIES ACTED WITHIN SUCH LIMITS; IN CASE AT BAR, THERE WAS NO VIOLATION OF THE CONSTITUTION NOR GRAVE ABUSE OF DISCRETION WHEN PRESIDENT DUTERTE MADE AN ORDER THAT AUTHORIZED THE MARCOS' BURIAL AT THE LIBINGAN NG MGA BAYANI (LNMB).— In *Francisco, Jr. v. The House of Representatives,* x x x We resolved that, "[i]n our jurisdiction, the determination of whether an issue involves a truly political and non-justiciable question lies in

the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits." The Court sees no cogent reason to depart from the standard set in *Francisco, Jr.* Applying that in this case, We hold that petitioners failed to demonstrate that the constitutional provisions they invoked delimit the executive power conferred upon President Duterte. x x x [P]etitioners failed to show as well that President Duterte violated the due process and equal protection clauses in issuing a verbal order to public respondents that authorized Marcos' burial at the LNMB. x x x More so, even if subject to review by the Court, President Duterte did not gravely abuse his discretion when he allowed Marcos' burial at the LNMB because it was already shown that the latter is qualified as a Medal of Valor Awardee, a war veteran, and a retired military personnel, and not disqualified due to dishonorable separation/revertion/discharge from service or conviction by final judgment of an offense involving moral turpitude.

2. **ID.; ID.; JUDICIAL REVIEW; *LOCUS STANDI*; REQUISITES; THE DIRECTIVE ALLOWING MARCOS BURIAL AT THE LNMB DID NOT CAUSE PETITIONERS DIRECT INJURY AND NEITHER WAS THE ISSUE OF TRANSCENDENTAL IMPORTANCE.—** *Locus standi* or legal standing has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. Generally, a party will be allowed to litigate only when he or she can demonstrate that (1) he or she 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. Petitioners have not clearly shown the direct injury they suffered or would suffer on account of the assailed memorandum and directive allowing Marcos' burial at the LNMB. x x x While the Court has adopted a liberal attitude and recognized the legal standing of concerned citizens who have invoked a public right allegedly breached by a governmental act, there must be showing that the issues raised are of *transcendental importance* which must

be settled early. Since the term has no exact definition, the Court has provided the following instructive guides to determine whether a matter is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. As held in the assailed Decision and further elucidated below, petitioners are unable to satisfy all three determinants.

3. **REMEDIAL LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; PRIOR TO PETITION FOR *CERTIORARI*, A MOTION FOR RECONSIDERATION MUST BE FILED TO THE ADMINISTRATIVE BODY WHICH ISSUED THE ASSAILED DECISION.—** The purpose behind the settled rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari* is to grant the court or administrative body which issued the assailed decision, resolution or order the opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. Even if the challenged issuance of public respondents were rendered upon the verbal order of President Duterte, it cannot be denied that the concerned AFP officials still have the power to enforce compliance with the requirements of AFP Regulations G 161-375, as amended. The logical and reasonable remedy to question the burial procedures and the allocation of plots should be with public respondents who issued the directives.

4. **REMEDIAL LAW; HIERARCHY OF COURTS; WHERE THE CONSTITUTIONALITY OF AN EXECUTIVE ORDER WAS CHALLENGED, RESOLUTION MAY BE MADE BY THE PROPER REGIONAL TRIAL COURT, SUBJECT ONLY TO REVIEW BY THE HIGHEST TRIBUNAL.—** Under the law, the proper Regional Trial Court exercises concurrent jurisdiction over extraordinary remedies such as petitions for *certiorari,* prohibition and/or mandamus and equally wields the power to grant provisional relief/s. In a case where the constitutionality of an executive order was challenged, the Court stressed that while lower courts should observe a becoming modesty in examining constitutional

questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal.

5. **ID.; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC ISSUE; THE EXECUTION OF DECISION DID NOT MOOT THE PENDING MOTION FOR RECONSIDERATION AS THE EXECUTION MAY STILL BE VOIDED IN CASE OF MERIT IN THE MOTION.—** An issue becomes moot and academic when any declaration thereon would be of no practical use or value such that there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the claim. On this basis, the Court holds that the MRs filed by petitioners-movants have not been mooted by Marcos' burial at the LNMB. There is still a live controversy between the parties. The MRs were not rendered illusory considering that the execution pending their resolution may still be voided in the event that We find merit in the contentions of petitioners-movants. In that sense, a declaration sustaining their motions and granting their prayer for relief would still be of practical value.

6. **ID.; ID.; EXECUTION OF JUDGMENTS; EXECUTION PENDING APPEAL; THE LIFTING OF A STATUS QUO ANTE ORDER (SQAO) DUE TO THE DISMISSAL OF THE PETITION IS IMMEDIATELY EXECUTORY EVEN IF THE DISMISSAL IS PENDING APPEAL.—** While the Court concedes that execution takes place only when decisions become final and executory, there are cases that may be executed pending appeal or are immediately executory pursuant to the provisions of the *Rules* and the statutes as well as by court order. Yet, the fact that a decision is immediately executory does not prevent a party from questioning the decision before a court of law. As regards the Status Quo Ante Order (SQAO), [the case of] *Buyco v. Baraquia* ruled that the lifting of a Writ of Preliminary Injunction (WPI) due to the dismissal of the complaint is immediately executory even if the dismissal of the complaint is pending appeal. x x x By nature, a SQAO is similar to the provisional remedies of Temporary Restraining Order (TRO) and WPI. Thus, when the Court dismissed the petitions in Our Decision, the SQAO, in effect, became *functus officio;* it could not stand independent of the main proceeding. Such dismissal

necessarily carried with it the lifting of the SQAO issued during the pendency of the action. Being interlocutory and ancillary in character, the order automatically dissolved upon dismissal of the main case. The SQAO is effective immediately upon its issuance and upon its lifting despite the existence of the right to file and the actual filing of a Motion for Reconsideration (MR) or appeal.

7. **POLITICAL LAW; ADMINISTRATIVE CODE OF 1987; PUBLICATION REQUIREMENT IN THE OFFICE OF THE NATIONAL ADMINISTRATIVE REGISTER (ONAR); AFP REGULATIONS G 161-375 (USED AS A BASIS TO JUSTIFY MARCOS BURIAL AT THE LNMB), RELATING TO ARMED FORCES PERSONNEL, IS EXEMPTED THEREFROM.—** Lagman *et al.* propound[ed] that AFP Regulations 161-375 cannot be used as basis to justify Marcos' burial at the LNMB [because] x x x AFP Regulations G 161-371 to 161-375 were not filed with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Complex x x x [as required under the] Administrative Code of 1987. x x x The publication requirement in the ONAR is confined to issuances of administrative agencies under the Executive Branch of the government. **Exempted from this prerequisite are** the military establishments in all matters relating exclusively to Armed Forces personnel. A plain reading of AFP Regulations G 161-371 to 161-375 reveals that they are internal in nature as that they were issued merely for the guidance of the concerned AFP units which are tasked to administer the LNMB. x x x Assuming that AFP Regulations G 161-375 is invalid for non-compliance with the publication requirement in the ONAR, x x x President Duterte may apply AFP Regulations G 161-373 issued on April 9, 1986 as legal basis to justify the exercise of his presidential prerogative. Under this earlier regulation, Marcos may be buried at the LNMB because he is a Medal of Valor Awardee, President and AFP Commander-in-Chief, Minister of National Defense, Veteran, and Statesman. Moreover, unlike the succeeding regulations, AFP Regulations G 161-373 contains no provisions on disqualification for interment.

8. **STATUTORY CONSTRUCTION; A STATUTE PLAIN AND UNAMBIGUOUS MUST BE GIVEN ITS LITERAL**

MEANING.— Considering that the Court may not ascribe to the Constitution meanings and restrictions that would unduly burden the powers of the President, its plain and unambiguous language with respect to his power of control as Chief Executive and Commander-in-Chief should be construed in a sense that will allow its full exercise. x x x If a statute is plain and free from ambiguity, it must be given its literal meaning or applied according to its express terms, without any attempted interpretation, and leaving the court no room for any extended ratiocination or rationalization. When the letter of the law is clear, to seek its spirit elsewhere is simply to venture vainly, to no practical purpose, upon the boundless domains of speculations. x x x The function of the courts is *jus dicere and not jus dare;* to interpret law, and not to make law or give law. Our duty is not to amend the law by enlarging or abridging the same. This Court should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms. We cannot interpose our own views as to alter them.

9. **POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; THE INTERNATIONAL HUMAN RIGHTS (IHR) LAWS WERE NOT CONSIDERED AS RESTRICTION TO PRESIDENTIAL PREROGATIVE OF MARCOS' BURIAL AT THE LNMB.—** The *Basic Principles and Guidelines* and the *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity ("UN Principles on Impunity")* are neither a treaty nor have attained the status of generally accepted principles of international law and/or international customs. Justice Arturo D. Brion fittingly observed in his Separate Concurring Opinion that they do not create legally binding obligations because they are not international agreements but are considered as "'soft law" that cannot be interpreted as constraints on the exercise of presidential prerogative. Consistent with *Pharmaceutical and Health Care Assoc. of the Phils. v. Health Sec. Duque III,* the *Basic Principles and Guidelines* and the UN *Principles on Impunity* are merely expressions of non-binding norms, principles, and practices that influence state behavior; therefore, they cannot be validly considered as sources of international law that is binding upon the Philippines under Art. 38 (1), Chapter II of the Statute of

the International Court of Justice. It is evident from the plain text of the *Basic Principles and Guidelines* and the UN *Principles on Impunity* that they are recommendatory in character.

10. **ID.; ID.; ID.; MARCOS' BURIAL AT THE LNMB UPHELD IN THE ABSENCE OF ANY DISQUALIFICATION (DISHONORABLE DISCHARGE AND MORAL TURPITUDE) UNDER THE AFP REGULATIONS G 161-375.—** The Court subscribes to the OSG's contention that the two instances of disqualification under AFP Regulations G 161-375 apply only to military personnel in "active service" x x x [which] covers the military and civilian service rendered prior to the date of separation or retirement from the AFP. Once separated or retired, the military person is no longer considered as in "active service." In addition, the term dishonorable discharge in AFP Regulations G 161-375 refers to an administrative military process. Petitioners-movants have not shown that Marcos was dishonorably discharged from military service under the law or rules prevailing at the time his active service was terminated or as set forth by any of the grounds and pursuant to the procedures described in AFP Circular 17, Series of 1987 issued on October 2, 1987. x x x [Then,] [t]he complaints, denunciations, and charges against [Marcos] no matter how numerous and compelling do not amount to conviction by final judgment of an offense involving moral turpitude. Neither mere presence of an offense involving moral turpitude nor conviction by final judgment of a crime not involving moral turpitude would suffice. The twin elements of "conviction by final judgment" and "offense involving moral turpitude" must concur in order to defeat one's entitlement for burial at the LNMB. The conviction by final judgment referred to is a criminal conviction rendered by a civil court, not one that is handed down by a general court martial.

11. **ID.; ID.; ID.; MARCOS' BURIAL AT THE LNMB IS A PRESIDENTIAL PREROGATIVE THAT WILL NOT BE INVALIDATED BY THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THEN PRES. RAMOS AND THE MARCOSES (WAIVING THE ENTITLEMENT OF MARCOS TO BE BURIED AT THE LNMB).—** [Under] [t]he 1992 Memorandum of Agreement *(MOA)* executed

[with] the Government of the Republic of the Philippines, x x x the Marcos family has irrevocably waived any entitlement of the late president to be buried at the LNMB. x x x [However,] the decision of former President Fidel V. Ramos in disallowing Marcos' burial at the LNMB is not etched in stone; it may be modified by succeeding administrations x x x [T]he MOA expressly provides that *"any transfer of burial grounds shall be with prior clearance with the Philippine Government taking into account socio-political climate.* " When President Duterte issued his verbal directive, he effectively gave the required prior government clearance bearing in mind the current socio-political climate that is different from the one prevailing at the time of former President Ramos. His factual foundation, which is based on his presumed wisdom and possession of vital information as Chief Executive and Commander-in-Chief, cannot be easily defeated by petitioners-movants' naked assertions.

12. **ID.; ID.; ID.; MARCOS' BURIAL AT THE LNMB ON THE HEALING OF THE NATION AND RECONCILIATION IS ANOTHER MATTER IMMATERIAL TO THE ISSUE.—** As long as it is proven that Marcos' burial at the LNMB is not contrary to the prevailing Constitution, laws, and jurisprudence, public respondents need not show exactly how such act would promote the declared policy of national healing and reconciliation. Regardless of petitioners-movants' disagreement with it, the rationale for the assailed directives pertains to the wisdom of an executive action which is not within the ambit of Our judicial review. As well, the disputed act, just like a law that is being challenged, is tested not by its supposed or actual result but by its conformity to existing Constitution, laws, and jurisprudence. Hence, whether or not Marcos' burial at the LNMB would in fact cause the healing of the nation and reconciliation of the parties is another matter that is immaterial for purposes of resolving this case and irrelevant to the application of AFP Regulations G 161-375.

13. **ID.; ID.; ID.; MARCOS' BURIAL AT THE LNMB PURSUANT TO AFP REGULATIONS G 161-375 RENDERS THE APPEAL TO EQUITY A FUTILE RECOURSE.—** Equity is "justice outside legality," It is applied only in the absence of and never against statutory law or, as in this case, appropriate AFP regulations. Courts exercising equity

jurisdiction are bound and circumscribed by law or rules and have no arbitrary discretion to disregard them. Here, while there is no provision of the Constitution, law, or jurisprudence expressly allowing or disallowing Marcos' burial at the LNMB, there is a rule, particularly AFP Regulations G 161-375, that is valid and existing. It has the force and effect of law because it was duly issued pursuant to the rule-making power of the President that was delegated to his subordinate official. Hence, it is the sole authority in determining who may or may not be buried at the LNMB. To conclude, let it be emphasized that Supreme Court decisions do not have to be popular as long as the Constitution and the law are followed.

SERENO, *C.J.*, *dissenting opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; STAY OF EXECUTION; THE PENDENCY OF A MOTION FOR RECONSIDERATION SHALL STAY THE EXECUTION OF THE JUDGMENT; THERE WERE NO GOOD REASONS TO JUSTIFY EXEMPTIONS TO THE RULE.—** ***Respondents had no authority to execute the Decision pending its finality.*** Rule 52, Sections 1 and 4 of the 1997 Rules of Court, provides the guidelines for the finality and execution of judgments of the Supreme Court: **RULE 52 MOTION FOR RECONSIDERATION** Section 1. Period for filing. A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party. x x x x Sec. 4. Stay of execution. The **pendency of a motion for reconsideration** filed on time and by the proper party shall **stay the execution of the judgment or final resolution** sought to be reconsidered unless the court, **for good reasons,** shall otherwise direct. x x x Following Rule 52, Section 4, the Court must first order the immediate execution of a decision for good reasons, in order to warrant an exception to the general rule on the stay of execution. x x x Here, no order for the immediate execution of the Decision was made. Accordingly, the general principle applies – the execution of the ruling must be considered deferred until its finality. This was how it should have been in this case, since there were no "good reasons" to justify the immediate execution of the ruling.

2. **ID.; ID.; EXECUTION OF JUDGMENTS; THE EXPIRATION OF THE *STATUS QUO ANTE ORDER* (SQAO) CANNOT JUSTIFY THE PREMATURE EXECUTION OF THE DECISION.—** The mere expiration of the period specified in the SQAO cannot justify the premature execution of the Decision. While it may be true that the SQAO had been lifted, the non-finality of the ruling prohibited the parties from implementing the judgment by proceeding with the burial. x x x Furthermore, the Court clearly stated the particular reason for the issuance of the SQAO – to prevent the parties from doing anything that would render the petitions moot and academic. x x x By prematurely executing the Decision, respondents failed to respect the rationale for the ruling.

3. **POLITICAL LAW; ADMINISTRATIVE CODE OF 1987; PUBLICATION REQUIREMENT IN THE OFFICE OF THE NATIONAL ADMINISTRATIVE REGISTER (ONAR); NON-COMPLIANCE RENDERED AFP REGULATIONS G 171-375 INVALID AND INEFFECTIVE.—** Section 3, Chapter 2, Book VII of the Administrative Code of 1987, requires every agency to submit to the ONAR three certified copies of every rule it adopts. As defined by the Administrative Code, the term "agency" includes "any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases." The AFP is clearly within the scope of this comprehensive definition; accordingly, it is bound to comply with the ONAR requirement. It is true that a narrow exception to the foregoing general rule is provided in Section 1, Chapter 1, Book VII of the same Code, for issuances of military establishments on **"matters relating <u>exclusively</u> to Armed Forces personnel."** AFP Regulations G 161-375, however, does not fall within the exception. ***AFP Regulations G 161-375 does not pertain exclusively to armed forces personnel.*** x x x [I]n order for the exemption under the Administrative Code to apply, the subject regulations issued by military establishments must deal with matters that affect only AFP personnel, **to the exclusion** of any other group or member of the populace. x x x [W]hile the regulations are addressed to officials tasked to administer the *Libingan,* the subject matter of the issuance is **not** confined to matters relating exclusively to AFP personnel. As such, the regulations

cannot be considered exempt from the ONAR requirement. x x x The *ponente* also advances x x x there would still be sufficient justification for the interment of Marcos at the *Libingan,* because the President could still apply AFP Regulations G 161-373 issued on 9 April 1986. x x x [However,] AFP Regulations G 161-373 has already been superseded by AFP Regulations G 161-374, x x x [then] superseded by AFP Regulations G 161-375. Consequently, AFP Regulations G 161-373 cannot be the source of any legal right.

CAGUIOA, *J*., *dissenting opinion*:

1. **POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; THE DIRECTIVE OF PRESIDENT DUTERTE TO BURY THE REMAINS OF FORMER PRESIDENT MARCOS IN THE LNMB PRESENTS A JUSTICIABLE ISSUE.—** I maintain my position that the directive of President Duterte to bury or inter the remains of former President Marcos in the LNMB presents a justiciable, not political, issue. The wisdom of his oral directive is not being questioned. Rather, the question is whether the issuance of the directive is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction because, among others, it runs counter to the Constitution, national and international law, public policy on national shrines and national historic shrines, and jurisprudence. The Court is not called upon to determine former President Marcos' rightful place in Philippine history. Rather, it is called upon to determine whether LNMB, given LNMB's history, nature, purpose and the public policy behind its establishment, administration and development, should be the rightful resting place of former President Marcos.

2. **ID.; ID.; ID.; WHEN THE COURT IS CALLED UPON TO DISCHARGE ITS DUTY TO INTERPRET THE NATURE AND EXTENT OF REPARATIONS OWED TO HUMAN RIGHTS VIOLATIONS VICTIMS (HRVVs), IT MUST DO SO BY INTERPRETING DOMESTIC LAW IN ACCORDANCE WITH THE VERY INTERNATIONAL LAW OBLIGATIONS UNDERLYING ITS PASSAGE.—** When the Court is called upon to discharge its duty to interpret the nature and extent of reparations owed to HRVVs as in this case, it must do so by interpreting domestic law *(i.e.,* R.A. 10368) ***in accordance with, and in light of,*** the very international law

obligations underlying, and even compelling, its passage. **It is the solemn duty of this Court to ensure that laws are interpreted in a manner consistent with the letter, spirit and intent of the Constitution and the law.** The argument that the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (U.N. Principles on Reparation) do not in any way bind the Philippines is extremely *erroneous,* as it is based on the wrong premise that the HRVVs' rights flow solely and directly from the U.N. Principles on Reparation. They do not. Such an isolated reading of HRVVs' rights under international law fails to consider: *first,* that the obligation to provide reparation is anchored upon customary international law itself — and not the U.N. Principles on Reparation by and of themselves — which, pursuant to Article II, Section 2 of the 1987 Constitution, **automatically** forms part of the law of the land, and *second,* that the obligation to provide reparation ***includes*** the obligation to provide full and effective remedy, among which is satisfaction. Thus, the HRVVs' right to an effective remedy emanates from customary international law which forms part of the law of the land.

3. **ID.; ID.; ID.; DENIAL OF MARCOS' BURIAL AT THE LNMB IS A PART OF THE HRVVs' RIGHT TO REPARATION.—** To my mind, the obligation to uphold the HRVVs' right to an effective remedy, and consequently, the right to all forms of reparation, is beyond question. The only question left to be asked is whether the HRVVs' right to reparation includes the right not to have the perpetrator of the violations of the human rights of these victims interred at the LNMB. x x x As correctly pointed out by Petitioners, satisfaction, as an aspect of reparation, requires upholding the imprescriptible right to truth, public apologies, and judicial sanctions. By allowing the interment of former President Marcos' remains in no less than the *Libingan ng mga Bayani* and adopting a selective interpretation of the term "reparation," **the Court effectively rendered inutile the very laws passed to give due recognition to the HRVVs' victimhood.**

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R E S O L U T I O N

PERALTA, *J.*:

On November 8, 2016, the Court dismissed the petitions challenging the intended burial of the mortal remains of Ferdinand E. Marcos *(Marcos),* former President of the Republic of the Philippines, at the *Libingan ng mga Bayani (LNMB).* As the Filipino public witnessed through the broadcast media and as the Office of the Solicitor General *(OSG)* manifested[1] based on the letter sent by the Philippine Veterans Affairs Office *(PVAO)* of the Department of National Defense *(DND),* Marcos was finally laid to rest at the LNMB around noontime of November 18, 2016, which was ten (10) days after the promulgation of the judgment and prior to the filing of petitioners' separate motions for reconsideration.

Now before Us are the following matters for resolution:

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[1] *Rollo* (G.R. No. 225973), pp. 2983-2990.

1. Motions for reconsideration *(MRs)* filed by Ocampo *et al.,*[2] Lagman *et al.,*[3] Rosales *et al.,*[4] Latiph,[5] and De Lima;[6]
2. Urgent motion or petition for the exhumation of Marcos' remains at the LNMB filed by Lagman *et al.*;[7] and
3. Petitions to cite respondents in contempt of court filed by Ocampo *et al.*[8] and Rosales *et al.,*[9] which were consolidated[10] with the case and docketed as G.R. No. 228186 and G.R. No. 228245, respectively.

Respondents were ordered to file their Comment to the above-mentioned pleadings, as to which they complied in due time.

We shall first tackle the procedural issues raised.

Political question doctrine

Petitioners argue that the main issue of the petitions does not deal on the wisdom of the actions of President Rodrigo R. Duterte *(Duterte)* and the public respondents but their violation of the 1987 Constitution *(Constitution),* laws, and jurisprudence. They posit that, under its expanded jurisdiction, the Court has the duty to exercise judicial power to review even those decisions or exercises of discretion that were formerly considered political questions in order to determine whether there is grave abuse of

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[2] *Id.* at 3076-3130.

[3] *Id.* at 3015-3067.

[4] *Id.* at 3177-3267.

[5] *Id.* at 3139-3154.

[6] *Id.* at 3165-3174.

[7] *Id.* at 2960-2967.

[8] *Rollo* (G.R. No. 228186), pp. 2-18.

[9] *Rollo* (G.R. No. 228245), pp. 3-14.

[10] See Resolution dated November 29, 2016 and December 6, 2016 *(Rollo* (G.R. No. 225973), pp. 3138-A - 3138-F and *Rollo* (G.R. No. 228245), pp. 23-26.

discretion amounting to lack or excess of jurisdiction on the part of a public officer.

From the records of the proceedings of the 1986 Constitutional Commission, it is clear that judicial power is not only a power but also a duty which cannot be abdicated by the mere invocation of the political question doctrine.[11] Nonetheless, Chief Justice Roberto Concepcion clarified that Section 1, Article VIII of the Constitution was not intended to do away with "truly political questions," which are beyond judicial review due to the doctrine of separation of powers.[12] In *Francisco, Jr. v. The House of Representatives,*[13] this Court conceded that Section 1 Article VIII does not define what are "truly political questions" and "those which are not truly political," and that identification of these two species may be problematic since there has been no clear standard. In the end, however, We resolved that, "[i]n our jurisdiction, the determination of whether an issue involves a truly political and non-justiciable question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits."[14]

The Court sees no cogent reason to depart from the standard set in *Francisco, Jr.* Applying that in this case, We hold that petitioners failed to demonstrate that the constitutional provisions they invoked delimit the executive power conferred upon President Duterte. Significantly, AFP Regulations G 161-375 was issued by order of the DND Secretary, who, as the *alter ego* of the President, has supervision and control over the Armed Forces of the Philippines *(AFP)* and the PVAO. The Veterans Memorial Historical Division of the PVAO is tasked to

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[11] *Francisco, Jr. v. The House of Representatives,* 460 Phil. 830, 910 (2003).

[12] *Id.*

[13] *Id.*

[14] *Id.* at 912.

administer, develop and maintain military shrines such as the LNMB, As held in Our Decision, AFP Regulations G 161-375 is presumptively valid and has the force and effect of a law and that, until set aside by the Court, is binding upon executive and administrative agencies like public respondents, including the President as the chief executor of the laws.

While the Bill of Rights stands primarily as a limitation not only against legislative encroachments on individual liberties but also against presidential intrusions,[15] petitioners failed to show as well that President Duterte violated the due process and equal protection clauses in issuing a verbal order to public respondents that authorized Marcos' burial at the LNMB. To note, if the grant of presidential pardon to one who is totally undeserving cannot be set aside under the political question doctrine,[16] the same holds true with respect to the President's power to faithfully execute a valid and existing AFP regulation governing the LNMB as a national military cemetery and military shrine.

More so, even if subject to review by the Court, President Duterte did not gravely abuse his discretion when he allowed Marcos' burial at the LNMB because it was already shown that the latter is qualified as a Medal of Valor Awardee, a war veteran, and a retired military personnel, and not disqualified due to dishonorable separation/revertion/discharge from service or conviction by final judgment of an offense involving moral turpitude. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.[17]

Locus standi

Petitioners claim to have a legal standing to file the petitions because they have already sustained direct injury as a result of

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[15] See Dissenting Opinion of Justice Abraham F. Sarmiento in *Marcos v. Manglapus,* 258-A Phil. 547, 560 (1989).

[16] *Marcos v. Manglapus,* 258 Phil. 479, 506 (1989).

[17] *Id.* at 506-507.

the act being questioned in this case. With respect to petitioners who are human rights violation victims *(HRVVs)* during the martial law period, they contend that their right to dispute Marcos' burial at the LNMB rests on their right to full and effective remedy and entitlement to reparation as guaranteed by the State under the Constitution as well as the domestic and international laws. In particular, they cite Republic Act *(R.A.)* No. 10368, arguing that Marcos' burial at the LNMB distorts the historical bases upon which their rights to other non-monetary compensation were granted, and is an affront to their honor and dignity that was restored to them by law. Essentially, petitioners decry that Marcos' burial at the LNMB results in illegal use of public funds, re-traumatization, historical revisionism, disregard of their state recognition as heroes and their rights to effective reparation and to satisfaction.

Petitioners' contentions still fail to persuade.

Locus standi or legal standing has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[18] Generally, a party will be allowed to litigate only when he or she can demonstrate that (1) he or she 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.[19] Petitioners have not clearly shown the direct injury they suffered or would suffer on account of the assailed memorandum and directive allowing Marcos' burial at the LNMB.

Petitioners' view that they sustained or will sustain direct injury is founded on the wrong premise that Marcos' burial at the LNMB contravenes the provisions of the Constitution: P.D.

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[18] *Francisco, Jr. v. The House of Representatives, supra* note 11, at 893.

[19] *Atty. Lozano, et al. v. Speaker Nograles,* 607 Phil. 334, 342 (2009) and *Tolentino v. COMELEC,* 465 Phil. 385, 402 (2004).

No. 105; R.A. Nos. 289, 10066, 10086, 10368; and international laws. However, as the Court fully explained in the assailed Decision, the historical and legal bases governing the LNMB unequivocally reveal its nature and purpose as an active military cemetery/grave site over which President Duterte has certain discretionary authority, pursuant to his control and commander-in-chief powers, which is beyond the Court's judicial power to review.

Petitioners cannot also maintain that Marcos' burial at the LNMB serves no legitimate public purpose and that no valid emulative recognition should be given him in view of his sins as recognized by law and jurisprudence. They have not proven that Marcos was actually not qualified and in fact disqualified under the provisions of AFP Regulations G 161-375. Moreover, the beneficial pro visions of R.A. No. 10368 cannot be extended to construe Marcos' burial at the LNMB as a form of reparation for the HRVVs. As We pointed out, such unwarranted interpretation is tantamount to judicial legislation, hence, unconstitutional. It is not Marcos' burial at the LNMB that would result in the "re-traumatization" of HRVVs but the act of requiring them to recount their harrowing experiences in the course of legal proceedings instituted by them or their families to seek justice and reparation for the gross human rights violations.

While the Court has adopted a liberal attitude and recognized the legal standing of concerned citizens who have invoked a public right allegedly breached by a governmental act, there must be showing that the issues raised are of *transcendental importance* which must be settled early.[20] Since the term has no exact definition, the Court has provided the following instructive guides to determine whether a matter is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of constitutional or statutory prohibition by the public respondent agency or instrumentality of the

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[20] *Prof. David v. Pres. Macapagal-Arroyo,* 522 Phil. 705, 758-759 (2006).

government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[21] As held in the assailed Decision and further elucidated below, petitioners are unable to satisfy all three determinants.

At this point, suffice it to state that given the public character of the LNMB and the general appropriations for its maintenance and upkeep, petitioners failed to prove illegal disbursement of public funds by showing that Marcos is disqualified to be interred at the LNMB under the provisions of existing Constitution, laws, and regulations. Also, they did not establish that a special disbursement was ordered for the Marcos burial apart from the funds appropriated for the interment of those who are similarly situated, which are sourced from the Maintenance and Other Operating Expenses of the AFP and are regularly included in the General Appropriations Act. As aptly noted by the OSG, the Marcos family would shoulder all the expenses for the burial and that the AFP is even authorized to claim reimbursement for the costs incurred therefor.

In stressing the alleged transcendental importance of the case, petitioners made much out of the Court's issuance of Status Quo Ante Order *(SQAO),* the conduct of oral arguments, and the mass protest across various sectors of the Philippine society. They erred. The SQAO was issued so as not to render moot and academic the petitions filed while the oral arguments were held in order to enlighten Us on difficult and complicated issues involved in this case. The concerted actions that transpired were but manifestations of the people's exercise of freedom of speech and expression or the right to peaceably assemble and petition the government for redress of grievances. The legal requisites for judicial inquiry before a question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court were not at all dispense with.

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[21] *Chamber of Real Estate and Builders' Ass'ns. Inc. v. Energy Regulatory Commission (ERC), et al.,* 638 Phil. 542, 556-557 (2010).

Exhaustion of Administrative Remedies and Hierarchy of Courts

Petitioners claim that the filing of an MR before public respondents and the Office of the President *(OP)* would have been an exercise in futility, and that direct resort to this Court is justified by the following special and compelling reasons; (1) the very *alter egos* of President Duterte, if not the President himself, would rule on the MR; (2) a mere verbal instruction of the President already put in motion the task of organizing Marcos' burial at the LNMB; (3) the denial of an appeal to the OP is a forgone conclusion in view of the President's repeated pronouncements during his election campaign, after the filing of the petitions, and subsequent to the promulgation of the Court's Decision, that he would allow Marcos' burial at the LNMB; (4) the case involves a matter of extreme urgency which is evident from the Court's issuance of SQAO; (5) whether the President committed grave abuse of discretion and violated the Constitution and the laws is purely a question of law; (6) as proven by the clandestine burial of Marcos in coordination with public respondents, there is up other plain, speedy and adequate remedy to assail the acts which are patently illegal and made with grave abuse of discretion; (7) the strong public interest involved as shown by the nationwide protests; and (8) the case is impressed with public interest and transcendental issues.

We do not subscribe.

The purpose behind the settled rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari* is to grant the court or administrative body which issued the assailed decision, resolution or order the opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[22] Even if the challenged issuance of public

[22] See *Commissioner on Internal Revenue v. Court of Tax Appeals, et al.,* 695 Phil. 55, 61 (2012).

respondents were rendered upon the verbal order of President Duterte, it cannot be denied that the concerned AFP officials still have the power to enforce compliance with the requirements of AFP Regulations G 161-375, as amended.[23] The logical and reasonable remedy to question the burial procedures and the allocation of plots should be with public respondents who issued the directives.

If the court or administrative body is given an opportunity to correct itself on an MR, there is no reason then not to extend such basic courtesy to public respondents since they are subordinates who merely follow the orders of their Commander-in-Chief. Like the President who is tasked to faithfully execute the laws of the land, they are also enjoined to obey the laws and are entitled to the disputable presumption of regularity in the performance of their official duties. Having been charged to exercise over-all supervision in the implementation of AFP Regulations G 161-375, public respondents could correct the interment directive issued should there be any meritorious ground therefor. The fact that the administrative regulation does not provide a remedy to question an interment directive does not automatically entitle petitioners to directly implore this Court considering that it does not prevent them to appeal or ask for

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[23] AFP Regulations G 161-375 C-1 dated 18 February 2003 provides.

6. Procedures:

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b. For deceased retired military personnel – The next of kin shall secure the Death Certificate and shall submit this document to the Adjutant General, AFP (Attn: C, NRD) who shall examine and process the same and determine if the deceased is qualified to be interred or reinterred at the LNMB.

c. For deceased veterans and reservists – The next of kin shall secure the Death Certificate and shall submit this document to the Adjutant General, AFP (Attn: C, NRD) who shall issue Certificate of Services and/or authenticated retirement orders of the deceased personnel. Subsequently, same documents shall be submitted to the DCS personnel for RRA, J10 who shall process the documents and determine if the deceased is qualified under par. 3 of the AFPRG and cause the issuance of interment directive. *(Rollo,* [G.R. No. 225973], Vol. II, p. 1275)

reconsideration based on their claim of right to due process or an opportunity to be heard on an issue over which they insist to have a standing to intervene.

Likewise, the Court cannot anchor its judgment on news accounts of President Duterte's statements with regard to the issue of Marcos' burial at the LNMB. Newspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted.[24] As it is, the news article is admissible only as evidence that such publication exists with the tenor of the news therein stated.[25] The same rules apply to news article published via the broadcast media or the internet communication. While it may be asserted that President Duterte's position on the issue is consistent, We must base Our decision on a formal concrete act, preferably a written order denying the MR or appeal, so as to avoid being entangled in possibly moot and academic discourses should he make a *volte-face* on the issue. Needless to state, he should be given an opportunity to correct himself, as it is disputably presumed that he would maintain his solemn oath to faithfully and conscientiously fulfill his duties as President of the Philippines, preserve and defend its Constitution, execute its laws, do justice to eveiy man, and consecrate himself to the service of the Nation.[26]

The fact that the Court was prompted to issue the SQAO does not make this case extremely urgent to resolve. Instead of issuing a temporary restraining order *(TRO)* and a writ of preliminary injunction *(WPI),* We issued (and extended) the effectivity of the SQAO in order not to render moot and academic the issues raised in the petitions. With respect to the alleged strong public interest on the case as shown by the nationwide protests, the Court views that such mass actions indicate the

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[24] *Feria v. Court of Appeals,* 382 Phil. 412, 423 (2000).

[25] *Id.*

[26] 1987 CONSTITUTION, Article VII, Section 5.

controversial nature of the issue involved. Again, the requisites of judicial review must be satisfied.

There is also no merit in petitioners' contention that the issue of whether President Duterte and public respondents violated the Constitution and the laws and/or committed grave abuse of discretion is purely a question of law that the Court ultimately has to resolve. To reiterate, the issue of allowing Marcos' burial at the LNMB involves a truly political question which is within the full discretionary authority and wisdom of President Duterte to decide. There is no constitutionally imposed limits on the powers or functions conferred upon him, much less grave abuse of discretion in the exercise thereof. Similarly, public respondents cannot be faulted for issuing the interment directive in their official capacities pursuant to the President's verbal order and to a valid and binding administrative regulation.

Petitioners' direct resort to the Court cannot also be justified by the ruling in *Drilon v. Lim*[27] that –

> x x x *[I]n the exercise of this jurisdiction [to consider the constitutionality of a law], lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with concurrence of the majority of those who participated in its discussion.*[28]

Such opinion bears no relation to the doctrines on exhaustion of administrative remedies and hierarchy of courts. Instead, it refers to the duty of a purposeful hesitation which every court, including Us, is charged before declaring a law unconstitutional, on the theory that the measure was first carefully studied by

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[27] *Drilon v. Lim,* G.R. No. 112497, August 4, 1994, 235 SCRA 135.

[28] *Id.* at 140.

the executive and the legislative departments and determined by them to be in accordance with the fundamental law before it was finally approved.[29]

It bears emphasis that the Constitution is clear that judicial power, which 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, is vested not just in the Supreme Court but also upon such lower courts established by law.[30] The organic act vests in Us appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation is in question.[31] This means that the resolution of such cases may be made in the first instance by said lower courts.[32] Under the law, the proper Regional Trial Court exercises concurrent jurisdiction over extraordinary remedies such as petitions for *certiorari,* prohibition and/or mandamus and equally wields the power to grant provisional relief/s.

In a case where the constitutionality of an executive order was challenged, the Court stressed that, while lower courts should observe a becoming modesty in examining constitutional questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal.[33] Besides, even if the case is one of first impression, the New Civil Code provides that no judge or court shall decline to render judgment by reason of the silence,

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[29] *Id.*

[30] 1987 CONSTITUTION, Article VIII, Section 1.

[31] 1987 CONSTITUTION, Article VIII, Section 5 (2) (a).

[32] *Ynot v. Intermediate Appellate Court,* 232 Phil. 615, 621 (1987).

[33] *Id.*

obscurity or insufficiency of the laws.[34] What is missing in the rules may be found in the general principles of logic, justice and equity.[35] A judge may apply a rule he sees fit to resolve the issue, as long as the rule chosen is in harmony with general interest, order, morals and public policy.[36]

Despite the patent procedural defects of the petitions, the Court nevertheless fully discussed the substantive merits of the case and finally ruled in favor of President Duterte's decision to allow Marcos' burial at the LNMB.

The substantive issues raised in the MR shall now be discussed *in seriatim.*

Mootness of the Case

The OSG argues that Marcos' burial at the LNMB on November 18, 2016 is a supervening event that rendered moot and academic the MRs of petitioners-movants. Consequently, this Court must refrain from resolving the issues raised in the MRs for to do so would result in an absurd situation wherein Marcos' remains would have to be exhumed if the assailed Decision is overturned. The OSG asserts that petitioners-movants cannot plead for the exhumation without first complying with Articles 306 to 309 of the New Civil Code.[37]

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[34] Article 9.

[35] *Ponce v. NLRC,* 503 Phil. 955, 965 (2005).

[36] *The National Liga ng mga Barangay v. Judge Paredes,* 482 Phil. 331, 347 (2004).

[37] Art. 306. Every funeral shall be in keeping with the social position of the deceased.

Art. 307. The funeral shall be in accordance with the expressed wishes of the deceased. In the absence of such expression, his religious beliefs or affiliation shall determine the funeral rites. In case of doubt, the form of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.

Art. 308. No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in Articles 294 and 305.

We disagree.

An issue becomes moot and academic when any declaration thereon would be of no practical use or value such that there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the claim.[38] On this basis, the Court holds that the MRs filed by petitioners-movants have not been mooted by Marcos' burial at the LNMB. There is still a live controversy between the parties. The MRs were not rendered illusory considering that the execution pending their resolution may still be voided in the event that We find merit in the contentions of petitioners-movants. In that sense, a declaration sustaining their motions and granting their prayer for relief would still be of practical value.

SQAO, Petitions for Contempt and Motion for Exhumation

Lagmao *et al.* contend that the right of a party to file a MR is impaired and that due process is derailed if a decision that is not yet final and executory is implemented. In this case, the Decision must become final and executory before the dissolution of the SQAO can take effect. Pending its finality, the absence of a court order enjoining Marcos' burial at the LNMB is of no moment because the lifting of the SQAO is contingent upon the finality of the Decision. Consistent with *Tung Ho Steel Enterprises Corporation v. Ting Guan Trading Corporation,*[39] which applied Sections 1 and 4 of Rule 52 of the Rules of Court *(Rules),* while the reglementary period for filing a MR has not expired, the Decision and the SQAO as an accessory order must not be enforced. Accordingly, a premature and void

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Art. 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

[38] See *Spouses Nicolas* v. *Agrarian Reform Beneficiaries Association (ARBA),* G.R. No. 179566, October 19, 2016.

[39] G.R. No. 182153, April 7, 2014, 720 SCRA 707.

execution of the Decision can be recalled even *motu proprio* by this Court.

The assertions lack merit.

While the Court concedes that execution takes place only when decisions become final and executory,[40] there are cases that may be executed pending appeal[41] or are immediately

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[40] In *PAL Employees Savings & Loan Ass'n., Inc. v. PAL, Inc.* (520 Phil. 502, 518-519 [2006]), We held:

"x x x Distinguishing a 'final' judgment or order from a 'final and executory' order, the Court in *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority* issued the following clarification:

'A 'final' judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto – such as an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription, for instance, x x x Now, a 'final' judgment or order in the sense just described becomes 'final and executory' upon expiration of the period to appeal therefrom where no appeal has been duly perfected or, an appeal therefrom having been taken, the judgment of the [appellate] court in turn has become final. It is called a 'final and executory' judgment because execution at such point issues as a matter of right." (citations omitted)

[41] Sec. 2 Rule 39 provides:

Sec. 2. *Discretionary execution.*

(a) *Execution of a judgment or final order pending appeal.* – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

(b) *Execution of several, separate or partial judgments.* – A several separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

executory[42] pursuant to the provisions of the *Rules* and the statutes

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[42] The following are immediately executory:

1. Decisions in actions for injunction, receivership, accounting and support (Sec. 4, Rule 39; See *Gan v. Hon. Reyes,* 432 Phil. 105 [2002]; *Lim-Lua v. Lua,* 710 Phil. 211 [2013]; and *Mabugay-Otamias v. Republic,* G.R. No. 189516, June 8, 2016)
2. Decisions in expropriation (Sec. 11, Rule 67; See *Diamond Builders Conglomeration v. Country Bankers Insurance Corp.,* 564 Phil.756 [2007])
3. Decisions in favor of the plaintiff in ejectment cases (Sections 19 and 21, Rule 70; See *Northcastle Properties and Estate Corp. v. Judge Paas,* 375 Phil. 564 [1999]; *Aznar Brothers Realty Co. v. Court of Appeals,* 384 Phil. 95 [2000]; *Teresa T. Gonzales La'o & Co., Inc. v. Sheriff Hatab,* 386 Phil. 88 [2000]; *Limpo v. CA,* 389 Phil. 102 [2000]; *Lu v. Judge Siapno,* 390 Phil. 489 [2000]; *Uy v. Hon. Santiago,* 391 Phil. 575 [2000]; *Jason v. Judge Ygaña,* 392 Phil. 24 [2000]; *Candido v. Camacho,* 424 Phil. 291 [2002]; *Torres v. Sicat, Jr.,* 438 Phil. 109 [2002]; *Nayve v. Court of Appeals,* 446 Phil. 473 [2003]; *Office of the Court Administrator v. Corpuz,* 458 Phil. 571 [2003]; *David v. Rod and Cynthia Navarro,* 467 Phil. 108 [2004]; *Mina v. Judge Vianzon,* 469 Phil. 886 [2004]; *Ricafort v. Judge Gonzales,* 481 Phil. 148 [2004]; *Benedicto v. Court of Appeals,* 510 Phil. 150 [2005]; *Bugarin v. Palisoc,* 513 Phil. 59 [2005]; *Republic of the Phils. (represented by the Phil. Orthopedic Center) v. Spouses Luriz,* 542 Phil. 137 [2007]; *City of Naga v. Hon. Asuncion, et al.,* 579 Phil. 781 [2008]; *Republic of the Phils. v. Hon. Mangotara, et al.,* 638 Phil. 353 [2010]; *La Campana Dev't. Corp. v. Ledesma, et al.,* 643 Phil. 257 [2010]; *Calara, et al. v. Francisco, et al.,* 646 Phil. 122 [2010]; *ALPA-PCM, Inc. v. Bulasao, et al.,* 684 Phil. 451 [2012]; *Vda. de Feliciano v. Rivera,* 695 Phil. 441 [2012]; *Acbang v. Judge Luczon, Jr., et al.,* 724 Phil. 256 [2014]; *Atty. Alconera v. Pallanan,* 725 Phil. 1 [2014]; *Air Transportation Office (ATO) v. Court of Appeals (Nineteenth Division),* G.R. No. 173616, June 25, 2014, 727 SCRA 196; and *Quilo v. Bajao,* G.R. No. 186199, September 7, 2016)
4. Judgment of direct contempt (Sec. 2, Rule 71; See *Diamond Builders Conglomeration v. Country Bankers Insurance Corp.,* 564 Phil. 756 [2007])
5. Decisions in civil cases before the Regional Trial Court that are governed by the Revised Rule on Summary Procedure (Sec. 21 of the 1991 Revised Rule on Summary Procedure; See *Sps. Jimenez v. Patricia, Inc.,* 394 Phil. 877 [2000])
6. Decisions in *Amparo* petitions *(Lt. Col. Boac, et al. v. Cadapan, et al.,* 665 Phil. 84 [2011])
7. Decisions in intra-corporate disputes, except the awards for moral damages, exemplary damages and attorney's fees, if any. (Sec. 4,

as well as by court order. Yet, the fact that a decision is

Rule 1 of A.M. 01-2-04-SC or the Interim Rules of Procedure Governing Intra-Corporate Controversies, as amended; See *Atty. Abrenica v. Law Firm of Abrenica, Tungol & Tibayan,* 534 Phil. 34 [2006] and *Heirs of Santiago C. Divinagracia v. Hon. Judge Ruiz, et al.,* 654 Phil. 340 [2011])

8. Orders issued by the rehabilitation court (A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation; See *Golden Cane Furniture Manufacturing Corp. v. Steelpro Philippines, Inc.,* G.R. No. 198222, April 4, 2016, 788 SCRA 82.

9. Dismissal Order grounded on the denial of respondents' right to speedy trial (See *Bonsubre, Jr. v. Yerro,* G.R. No. 205952, February 11, 2015, 750 SCRA 490)

10. Judgment based on compromise or judicial compromise (See *Republic of the Phils, v. Court of Appeals,* 357 Phil. 174 [1998]; *AFP Mutual Benefit Association, Inc. v. Court of Appeals,* 370 Phil. 150 [1999]; *Rosauro v. Judge Villanueva, Jr.,* 389 Phil. 699 [2000]; *Salvador v. Ortoll,* 397 Phil. 731 [2000]; *Sps. Magat v. Sps. Delizo,* 413 Phil. 24 [2001]; *Thermphil, Inc. v. Court of Appeals,* 421 Phil. 589 [2001]; *Manipor v. Sps. Ricafort,* 454 Phil. 825 [2003]; *Manila International Airport Authority v. ALA Industries Corp.,* 467 Phil. 229 [2004]; *Sps. Romero v. Tan,* 468 Phil. 224 [2004]; *Spouses Dela Cruz v. Court of Appeals,* 485 Phil. 168 [2004]; *Argana v. Republic of the Philippines,* 485 Phil, 565 [2004]; *Magbanua v. Uy,* 497 Phil. 511 [2005]; *Aromin v. Floresca,* 528 Phil. 1165 [2006]; *Phil. Journalists, Inc. v. National Labor Relations Commission,* 532 Phil. 531 [2006]; *Chong v. Court of Appeals,* 554 Phil. 43 [2007]; *Diamond Builders Conglomeration v. Country Bankers Insurance Corp.,* 564 Phil. 756 [2007]; *Republic of the Phils. v. Florendo, et al.,* 573 Phil. 112 [2008]; *Reyes-Mesugas v. Reyes,* 630 Phil. 334 [2010]; *Gaisano v. Akol* [Resolution], 667 Phil. 512 [2011]; *Rizal, et al. v. Naredo, et al.,* 684 Phil. 154 [2012]; *National Power Corporation v. Sps. Ilelo, et al.,* 690 Phil. 453 [2012]; *Gadrinab v. Salamanca, et al.,* 736 Phil. 279 [2014]; *Metro Manila Shopping Mecca Corp. v. Toledo* [Resolution], G.R. No. 190818, November 10, 2014, 739 SCRA 399; *The Plaza, Inc. v. Ayala Land, Inc.,* G.R. No. 209537, April 20, 2015, 756 SCRA 350; and *Ilaw Buklod ng Manggagawa (IBM) Nestle Phils., Inc. Chapter v. Nestle Phils., Inc.,* G.R. No. 198675, September 23, 2015, 771 SCRA 397)

11. Decisions of the Labor Arbiter reinstating a dismissed or separated employee (Article 223 [3rd paragraph] of the Labor Code, as amended by Section 12 of Republic Act No. 6715, and Section 2 of the NLRC Interim Rules on Appeals under R.A. No. 6715; See *International Container Terminal Services, Inc. v. NLRC,* 360 Phil. 527 [1998]; *Philippine Rabbit Bus Lines, Inc. v. NLRC,* 365 Phil. 598 [1999];

Roquero v. Philippine Airlines Inc., 449 Phil. 437 [2003]; *Triad Security & Allied Services, Inc. v. Ortega, Jr.,* 517 Phil. 133 [2006]; *Composite Enterprises, Inc. v. Caparoso,* 556 Phil. 301 [2007]; *Torres, Jr., et al. v. NLRC (4th Div.), et al.,* 593 Phil. 357 [2008]; *Garcia, et al. v. Phil. Airlines, Inc., et al.,* 596 Phil. 510 [2009]; *Bank of the Philippine Islands v. Labor Arbiter Calanza, et al.,* 647 Phil. 507 [2010]; *Magana v. Medicard Phils., Inc., et al.,* 653 Phil. 286 [2010]; *Pfizer, Inc., et al. v. Velaso,* 660 Phil. 434 [2011]; *3rd Alert Security and Detective Services, Inc. v. Navia,* 687 Phil. 610 [2012]; *Ever Electrical Manufacturing, Inc. v. Macam,* G.R. No. 192169 (Notice), June 13, 2013; *Wenphil Corp. v. Abing,* G.R. No. 207983, April 7, 2014, 721 SCRA 126; *Bergonio, Jr., et al. v. South East Asian Airlines, et al.,* 733 Phil. 347 [2014]; *Castro, Jr. v. Ateneo de Naga University,* G.R. No. 175293, July 23, 2014, 730 SCRA 422; *Philippine Airlines, Inc. v. Paz,* G.R. No. 192924, November 26, 2014, 743 SCRA 1; *Baronda v. Court of Appeals,* G.R. No. 161006, October 14, 2015, 772 SCRA 276; and *Manila Doctors College v. Olores,* G.R. No. 225044, October 3, 2016)

12. Reinstatement order of the Voluntary Arbitrator (See *Baronda v. Court of Appeals, supra.*)

13. Return-to-work order in case of assumption of jurisdiction by the Secretary of Labor (See *Manila Hotel Employees Ass'n. v. Manila Hotel Corp.,* 546 Phil. 177 [2007])

14. Decisions of certain government agencies (See *Pilipino Telephone Corp. v. NTC,* 457 Phil. 101 [2003]; *Zacarias v. National Police Commission,* 460 Phil. 555 [2003]; *Davao City Water District v. Aranjuez* [Resolution], G.R. No. 194192, June 16, 2015; *Republic v. Principalia Management and Personnel Consultants, Inc.,* G.R. No. 198426, September 2, 2015, 758 SCRA 235; and *Remo v. Bueno,* G.R. Nos. 175736 & 175898, April 12, 2016)

15. Penalties imposed in administrative cases *(Dr. Alday v. Judge Cruz, Jr.,* 426 Phil. 385 [2002])

16. Decisions of the Civil Service Commission under the Administrative Code of 1987. (See *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, in the latter's capacity as Sec. of DPWH,* 529 Phil. 619, 626 [2006])

17. Decisions of the Ombudsman in administrative cases may either be unappealable or appealable. Unappealable decisions are final and executory, and they are as follows: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. Appealable decisions, on the other hand, are those which fall outside said enumeration, and may be appealed to the CA under Rule 43 of the Rules of Court. An appeal shall not stop the

decision from being executory, and that such shall be executed as a matter of course. (Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, as cited in *Villaseñor v. Ombudsman,* G.R. No. 202303, June 4, 2014, 725 SCRA 230, 237; See also *Buencamino v. Court of Appeals,* 549 Phil. 511 [2007]; *Office of the Ombudsman v. Court of Appeals, et al.,576 Phil. 784* [2008];*Office of the Ombudsman v. Samaniego,* 646 Phil. 445 [2010]; *Office of the Ombudsman v. Court of Appeals, et al.,* 655 Phil. 541 [2011]; *Facura v. Court of Appeals,* 658 Phil. 554 [2011]; *Ganaden, et al. v. The Hon. Court of Appeals, et al.,* 665 Phil. 261 [2011]; *Office of the Ombudsman v. De Leon,* 705 Phil. 26 [2013]; *Dr. Pia v. Hon. Gervacio, Jr., et al.,* 710 Phil. 196 [2013]; *Office of the Ombudsman v. De Chavez, et al.,* 713 Phil. 211 [2013]; *Gupilan-Aguilar v. Office of the Ombudsman,* G.R. No. 197307, February 26, 2014, 717 SCRA 503; *Office of the Ombudsman v. Valencerina,* G.R. No. 178343, July 14, 2014, 730 SCRA 12; and *Belmonte v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices,* G.R. No. 197665, January 13, 2016, 780 SCRA 483.

18. Decisions of *Sangguniang Panlungsod* or *Sangguniang Bayan* (Sections 61, 67 and 68 of the Local Government Code; See *Mendoza v. Laxina, Sr.,* 453 Phil. 1013 [2003] and *Don v. Lacsa,* 556 Phil. 170 [2007])

19. Decisions of the Office of the President under the Local Government Code (Sec. 12, Rule 43 of the Revised Rules of Court in relation to Sec. 68 of the Local Government Code; See *Gov. Calingin v. Court of Appeals,* 478 Phil. 231 [2004])

20. Decisions of the Supreme Court in disciplinary actions against members of the Bar (See *Bergonia v. Atty. Merrera,* 446 Phil. 1 [2003]; *Brion, Jr. v. Brillantes, Jr.,* 447 Phil. 347 [2003]; *Ramos v. Atty. Pallugna,* 484 Phil. 184 [2004]; *Mortera v. Atty. Pagatpatan,* 499 Phil. 93 [2005]; *Lim v. Atty. Montano,* 518 Phil. 361 [2006]; *Spouses Tejada v. Atty. Palaña,* 557 Phil. 517 [2007]; *Pangasinan Electric Cooperative I v. Atty. Montemayor,* 559 Phil. 438 [2007].; *Fudot v. Cattleya Land, Inc.,* 591 Phil. 82 [2008]; *Mecaral v. Atty. Velasquez,* 636 Phil. 1 [2010]; *A-1 Financial Services, Inc. v. Atty. Valerio,* 636 Phil. 627 [2010]; *Atty. Alonso, et al. v. Atty. Relamida, Jr,.* 640 Phil. 325 [2010]; *Yuhico v. Atty. Gutierrez,* 650 Phil. 225 [2010]; *Nebreja v. Atty. Reonal* [Resolution], 730 Phil. 55 [2014]; *Phil. Association of Court Employees (PACE) v. Alibutdan-Diaz,* A.C. No. 10134, November 26, 2014, 742 SCRA 351; *Feliciano v. Bautista-Lozada,* A.C. No. 7593, March 11, 2015, 752 SCRA 245; *Ibana-Andrade v. Paita-Moya,* A.C. No. 8313, July 14, 2015, 762 SCRA 571; *Japitana v. Parado,* A.C. No. 10859 [Formerly CBD Case No. 09-2514], January 26, 2016, 782 SCRA 34; *Floran v. Ediza,* A.C. No. 5325, February 9, 2016, 783 SCRA 301; *In Re: Ferrer* [Resolution], A.C. No. 8037, February 17, 2016, 784 SCRA 118; *Vda. de Dominguez v. Agleron, Sr.* [Notice], A.C. No. 5359, April 18,

immediately executory does not prevent a party from questioning the decision before a court of law.[43]

As regards the SQAO, *Tung Ho* is inapplicable for having factual and procedural antecedents that are different from the instant case. Instead, We should find guidance in *Buyco v. Baraquia,*[44] which ruled that the lifting of a WPI due to the dismissal of the complaint is immediately executory even if the dismissal of the complaint is pending appeal. It was held:

> A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. Being an ancillary or auxiliary remedy, it is available during the

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2016; and *Quincela, Jr. v. Mijares III* [Notice], A.C. No. 11145, July 26, 2016)

21. Decisions of the Supreme Court in urgent election cases (See *Estrella v. COMELEC,* 472 Phil. 328 [2004]; *Jainal v. COMELEC,* 546 Phil. 614 [2007]; *Rivera III v. Commission on Elections,* 551 Phil. 37 [2007]; *Manzala v. Commission on Elections,* 551 Phil. 28 [2007]; *Kabataan Party-List Rep. Palatino, et al. v. Commission on Elections,* 623 Phil. 159 [2009]; *Martinez III v. House of Representatives Electoral Tribunal, et al.,* 624 Phil. 50 [2010]; *Mayor Tolentino v. COMELEC, et al.,* 631 Phil. 568 [2010]; *Dela Cruz v. Commission on Elections, et al.*, 698 Phil. 548 [2012]; *Mayor Abundo, Sr. v. COMELEC, et al.*, 701 Phil. 135 [2013]; *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454 [2013]; and *House of Representatives Electoral Tribunal*, G.R. Nos. 222236 & 223032, May 3, 2016).

22. Decisions of the Supreme Court where there are further proceedings to be taken and there is a need to finally resolve the case with reasonable dispatch (See *Manotok IV, et al. v. Heirs of Homer L. Barque,* 595 Phil. 87 [2008] and *Concorde Condominium, Inc. v. Baculio,* G.R. No. 203678, February 17, 2016, 784 SCRA 263)

23. Execution of cases which have dragged on for a number of years (See *Dula v. Dr. Maravilla* , 497 Phil. 569 [2005] and *De Leon v. Public Estates Authority, et al.,* 640 Phil. 594 [2010])

[43] *Remo v. Bueno,* G.R. Nos. 175736 & 175898, April 12, 2016.

[44] 623 Phil. 596 (2009). See also *Sps. Arevalo v. Planters Development Bank, et al.,* 686 Phil. 236 (2012) and *Local Water Utilities Administration Employees Association for Progress v. Local Water Utilities Administration,* G.R. Nos. 206808-09, September 7, 2016.

pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.

The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.

It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is **to preserve the *status quo* until the merits of the case can be heard.** It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy **before a full hearing can be had on the merits of the case.**

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The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a *provisional* remedy having been served, the appeal therefrom notwithstanding.

Unionbank v. Court of Appeals enlightens:

> ". . . **a dismissal,** discontinuance or non-suit of an action **in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired.** The rationale therefor is that **even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the *dismissal* of the action.**"[45]

By nature, a SQAO is similar to the provisional remedies of

[45] *Buyco v. Baraquia,* 623 Phil. 596, 600-602 (2009). (Italics, emphasis and underscoring supplied)

TRO and WPI.[46] Thus, when the Court dismissed the petitions in Our Decision, the SQAO, in effect, became *functus officio;* it could not stand independent of the main proceeding.[47] Such dismissal necessarily carried with it the lifting of the SQAO issued during the pendency of the action. Being interlocutory and ancillary in character, the order automatically dissolved upon dismissal of the main case.[48] The SQAO is effective immediately upon its issuance and upon its lifting despite the existence of the right to file and the actual filing of a MR or appeal.[49]

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[46] "Apart from the provisional remedies expressly recognized and made available under Rule 56 to Rule 61 of the *Rules of Court,* the Court has sanctioned only the issuance of the *status quo ante* order but only to maintain the last, actual, peaceable and uncontested state of things that preceded the controversy. The eminent Justice Florenz D. Regalado, an authority on remedial law, has delineated the nature of the *status quo ante* order, and distinguished it from the provisional remedy of temporary restraining order, as follows:

There have been instances when the Supreme Court has issued a *status quo* order which, as the very term connotes, is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. This was resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but the affected party neither sought such relief or the allegations in his pleading did not sufficiently make out a case for a temporary restraining order. The *status quo* order was thus issued *motu proprio* on equitable considerations. Also, unlike a temporary restraining order or a preliminary injunction, a *status quo* order is more in the nature of a cease and desist order, since it neither directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief. The further distinction is provided by the present amendment in the sense that, unlike the amended rule on restraining orders, a *status quo* order does not require the posting of a bond." (See *Megaworld Properties and Holdings, Inc. v. Majestic Finance and Investment Co., Inc.,* G.R. No. 169694, December 9, 2015 [citations omitted]).

[47] See *Unionbank of the Phils. v. Court of Appeals,* 370 Phil. 837, 845 (1999).

[48] See *Golez v. Leonidas,* 194 Phil. 179, 181 (1981).

[49] See *Gutierrez v. The House of Representatives Committee on Justice, et al.,* 660 Phil. 271, 285 (2011).

Petitioners-movants know for a fact that a SQAO has a definite life span; that it automatically ceases to have effect upon the expiration of the period.[50] In this case, the SQAO was initially effective until September 12, 2016.[51] It was extended twice, up to October 18, 2016,[52] and then until November 8, 2016[53] when the Decision was eventually promulgated. If a SQAO has no specific time frame, petitioners need not have pleaded for an extension and this Court need not have reissued separate resolutions therefor. With the dismissal of the petitions, a court order for the reinstatement of the SQAO is again necessary. There must be a new exercise of judicial power.[54] Petitioners-movants were cognizant of this rule. On November 11, 2016, Lagman *et al.* filed a "Manifestation"[55] praying *"that the Honorable Supreme Court may consider reissuing the Status [Quo] Ante Order and/or advising the Respondents not to proceed with the said burial pending resolution of the motion/s for reconsideration to be interposed seasonably.* " On the same day, Ocampo *et al.* also filed an "Extremely Urgent Motion"[56] praying, among others, to *"[direct] respondents to hold in abeyance or refrain from executing any plans on the interment of the remains of Marcos Sr. at the Libingan pending the formal service of the Decision to petitioners, the resolution of the Motion for Reconsideration to be filed by petitioners, and the finality of the Honorable Court's Decision[.]"* However, We did not act on these pleadings.

Finally, based on the title, allegations, and relief being sought, this consolidated case is one for prohibition; hence, essentially

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[50] See *Dojillo v. COMELEC,* 528 Phil. 890, 907 (2006).

[51] Resolution dated August 23, 2016, *rollo* (G.R. No. 225973), pp. 317-319.

[52] Resolution dated September 7, 2016, *id.* at 1591-1595.

[53] Resolution dated October 18, 2016, *id.* at 2502-2507.

[54] See *Santiago v. Vasquez,* G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 646.

[55] *Rollo* (G.R. No. 225973), pp. 2931-2935.

[56] *Id.* at 2936-2942, 2996-3002.

in the nature of petitions for injunction. Under Section 4, Rule 39 of the *Rules,*[57] judgments in actions for injunction **are immediately executory; it shall be enforceable after their rendition stud shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the court.**

With the dismissal of the petitions and the lifting of the SQAO, nothing stood to hinder respondents from acting on and proceeding with Marcos' burial at the LNMB prior to the expiration of the period to file a MR and before its resolution. Considering that there is no fault or punishable acts to speak of, respondents cannot be held guilty of indirect contempt under Section 3 (c) and (d), Rule 71 of the *Rules.*[58] On the same ground, neither is there any legal justification to order the exhumation of the mortal remains of Marcos and subject the same to forensic examination to ascertain its authenticity.

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[57] Sec. 4. *Judgments not stayed by appeal.* – Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

[58] Sec. 3. *Indirect contempt to be punished after charge and hearing.* – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

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(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;

x x x x x x x x x

Non-publication of AFP Regulations

Lagman *et al.* raise a new issue. They propound that AFP Regulations 161-375 cannot be used as basis to justify Marcos' burial at the LNMB because, per certification issued by Director Flordeliza C. Vargas-Trinidad,[59] AFP Regulations G 161-371 to 161-375 were not filed with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Complex. This failure is in violation of the mandatory requirement of Sections 3 (1) and 4, Chapter 2, Book VII of the Administrative Code of 1987. Being legally invalid, defective and unenforceable, no rights, privileges and obligations have accrued therefrom or been vested thereby.

They are mistaken.

Chapter 2, Book VII of the Administrative Code of 1987 provides:

SECTION 3. *Filing.* – (1) Every agency[60] shall file with the University of the Philippines Law Center three (3) certified copies of every rule[61] adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons. (2) The records officer of the agency, or his equivalent functionary,

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[59] *Rollo* (G.R. No. 225973). pp. 3068-3072.

[60] *"Agency"* includes any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases; research institutions with respect to licensing functions; government corporations with respect to functions regulating private right, privileges, occupation or business; and officials in the exercise of disciplinary power as provided by law. (Section 2[1], Chapter 1, Book VII, [ADMINISTRATIVE CODE OF 1987]).

[61] *"Rule"* means any agency statement of general applicability that implements or interprets a law, fixes and describes the procedures in, or practice requirements of, an agency, including its regulations. The term includes memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to, the public. (Section 2[2], Chapter 1, Book VII, [ADMINISTRATIVE CODE OF 1987])

shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

SECTION 4. *Effectivity.* – In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

The publication requirement in the ONAR is confined to issuances of administrative agencies under the Executive Branch of the government.[62] **Exempted from this prerequisite are** the military establishments in all matters relating exclusively to Armed Forces personnel.[63] A plain reading of AFP Regulations G 161-371 to 161-375 reveals that they are internal in nature as that they were issued merely for the guidance of the concerned AFP units which are tasked to administer the LNMB. Moreover, in view of the nature of the LNMB as an active military cemetery, it cannot be said that AFP Regulations G 161-375 is a regulation which "adversely affect, or impose a heavy and substantial burden on, the citizenry in a matter that implicates the very nature of government we have adopted" such that registration with the ONAR is not only "a matter of administrative convenience but x x x a dictate of due process."[64]

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[62] *Villanueva v. Judicial and Bar Council,* G.R. No. 211833, April 7, 2015, 755 SCRA 182, 206.

[63] Also not covered by the filing requirement are the Congress, the Judiciary, the Constitutional Commissions, the Board of Pardons and Parole, and state universities and colleges. (See Section 1, Chapter 1, Book VII, [ADMINISTRATIVE CODE OF 1987])

[64] See *GMA Network, Inc. v. Commission on Elections,* G.R. Nos. 205357, 205374, 205592, 205852 & 206360, September 2, 2014, 734 SCRA 88, 153.

In the exercise of executive power, the President has inherent power to adopt rules and regulations – a power which is different from a delegated legislative power that can be exercised only within the prescribed standards set by law – and to delegate this power to subordinate executive officials.[65] On July 12, 1957, then President Carlos P. Garcia, in the exercise of his powers of control and to reserve public land, issued Proclamation No. 423. Pursuant thereto, the AFP Chief of Staff issued AFP Regulations G 161-371 on February 2, 1960, which was eventually succeeded by AFP Regulations G 161-375. By granting the AFP Chief of Staff the power to administer a military reservation site then known as Fort Wm Mckinley (now Fort Andres Bonifacio), part of which is now the LNMB, former President Garcia and the presidents subsequent to him effectively delegated their rule-making power. As expressed in said regulations, they were issued *"By Order of the Secretary of National Defense/Defense Minister,"* who, in turn, is under the Office of the President.

Assuming that AFP Regulations G 161-375 is invalid for non-compliance with the publication requirement in the ONAR, its invalidity would still not result in the denial of Marcos' burial at the LNMB. Since the Administrative Code of 1987 is prospective in its application, President Duterte may apply AFP Regulations G 161-373 issued on April 9, 1986[66] as legal basis to justify the exercise of his presidential prerogative. Under this earlier regulation, Marcos may be buried at the LNMB because he is a Medal of Valor Awardee, President and AFP Commander-in-Chief, Minister of National Defense, Veteran, and Statesman, Moreover, unlike the succeeding regulations, AFP Regulations G 161-373 contains no provisions on disqualification for interment.

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[65] See Separate Concurring Opinion of Justice Antonio T. Carpio in *ABAKADA GURO Party List (formerly AASJS), at al. v. Hon. Purisima, et al.,* 584 Phil. 246 (2008).

[66] AFP Regulations G 161-373, issued on April 9, 1986, superseded AFP Regulations G 161-372 issued on July 31, 1973, which, in turn, repeated AFP Regulations G 161-371 issued on February 2, 1960.

Compliance with the 1987 Constitution, statutes, and jurisprudence

Petitioners-movants reiterate that AFP Regulations G 161-375 does not have the force and effect of Law and cannot be a valid source of any right, obligation or power for violating the Constitution, international and municipal laws, and foreign and local jurisprudence, which, cannot be disregarded as they are deemed incorporated in administrative regulations.

Again, the Court is not persuaded.

On the 1987 Constitution

Ocampo *et al.* maintain that Marcos' burial at the LNMB brazenly violates the Constitution, the basic principles of which are respect for human rights and dignity and public accountability. Rosales *et al.* hold that the spectacle of burying Marcos at the LNMB undermines the recognition of his crimes and takes away the very historical premises on which so much of our present constitutional design and order is anchored. And, *Latiph* expresses that Marcos was an epitome of anti-democracy, representing oppression and tyranny which the Constitution rejects.

It is asserted that We ignored the intent expressed by the Filipinos when they ratified the Constitution, which, among others, orders the AFP to be the protector of the people (Sec. 3, Art. II); adopts an independent foreign policy (Sec. 7, Art. II); directs the State to take positive and effective measures against graft and corruption (Sec. 27, Art. II); restricts the powers of the President to suspend the privilege of the writ of *habeas corpus* and proclamation of martial law (Sec. 18, Art. VII); expands the power and duty of the Supreme Court (Sec. 1, Art. VIII); directs that education shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country (Sec. 3 [2], Art. XIV); requires the State to strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights

in the performance of their duty (Sec. 5 [2], Art. XVI); creates the Commission on Human Rights (Sec. 17, Art. XIII); and causes the establishment of the Presidential Commission on Good Government *(PCGG)* and the Comprehensive Agrarian Reform Program *(CARP)* as well as the enactment of R.A. Nos. 9745, 9851, 10353, and 10368.

Moreover, for Rosales *et al.,* the cases of *Manila Prince Hotel v. GSIS,*[67] *Agabon v. NLRC,*[68] *Serrano v. Gallant Maritime Services, Inc., et al.,*[69] *Gutierrez v. House of Representatives Committee on Justice,*[70] and *Gamboa v. Finance Secretary Teves, et al.*[71] prove that the Constitution has self-executing provisions. Ocampo *et al.* add that this Court struck down in *Manila Prince Hotel* the argument that some provisions of the Constitution are not self-executing and requires implementing legislation, and that provisions claimed to be non self-executing can still be violated if the questioned act is directly opposite the provisions that require the government to undertake.

Finally, it is contended that our constitutional tradition has consistently followed the doctrine that the silence of the Constitution does not mean the absence of constitutional principles and commands. Rosales *et al.* cite *Angara v. Electoral Commission,*[72] wherein the Court, following the doctrine of necessary implication, appeared to have recognized the principle of separation of powers and Our power of judicial review. Also, Ocampo *et al.* refer to *Egerton v. Earl of Brownlow,*[73] wherein an act based on public policy considerations was allegedly struck down despite the fact that there was no law or jurisprudence prohibiting it.

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[67] 335 Phil. 82 (1997).

[68] 485 Phil. 248 (2004).

[69] 601 Phil. 245 (2009).

[70] 658 Phil. 322 (2011).

[71] 668 Phil. 1 (2011).

[72] 63 Phil. 139 (1936).

[73] HLC 484, [1853] 4 HLC 1, [1853] EngR 885, (1853) 10 ER 359.

The Court need not belabor once more in discussing the points raised above as most, if not all, of the above submissions were considered and passed upon in the Decision.

As the OSG correctly counters, reliance on *Manila Prince Hotel* is misplaced because the issue there was whether Sec. 10, Art. XII of the Constitution, a provision which was not invoked in this case, is self-executing. Petitioners-movants repeatedly failed to demonstrate precisely how Sections 3, 7, 11, 13, 23, 26, 27 and 28 of Art. II; Sec. 18, Art. VII; Sec. 1, Art. VIII; Sec. 1, Art. XI; Sec. 3[2], Art. XIV; Sec. 5 [2], Art. XVI; and Sec. 17, Art. XIII of the Constitution prohibit Marcos' burial at the LNMB. In fact, even the Statement[74] dated November 24, 2016, which was issued by some members of the Constitutional Commission, offers no consolation as nowhere therefrom could We find any specific constitutional provision/s violated by the interment of Marcos.

The provisions of the Constitution being invoked in this case are simple and clear. They are not equivocal as to necessitate resort to extraneous aids of construction and interpretation, such as the proceedings of the Constitutional Commission or Convention, in order to shed light on and ascertain the true intent or purpose thereof.[75] *Verba legis* should prevail since the presumption is that the words in which the constitutional provisions are couched express the objective sought to be attained.[76] The authors of our Constitution were not only the members of the Constitutional Commission but also all those who participated in its ratification. Since the ideas and opinions exchanged by a few of its commissioners should not be presumed to be the opinions of ail of them, it is the specific text – and

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[74] Signed by Felicitas Aquino-Arroyo, Adolfo S. Azcuna, Florangel Rosario Braid, Hilario G. Davide, Jr., Edmundo G. Garcia, Jose Luis Martin C. Gascon, Christian S. Monsod, Ricardo J. Romulo, Jaime S.L. Tadeo, and Bernardo M. Villegas *(Rollo* [G.R. No. 225973], p. 3268).

[75] See *Ang Bagong Bayani-OFW Labor Party v. COMELEC,* 412 Phil. 308, 338-339 (2001).

[76] *Id.* 338.

only that text – which was the result of the deliberations of the Commission that must be read and construed.[77] As this Court, through Justice Leonen, held in *David v. Senate Electoral Tribunal:*[78]

In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach.

These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.

Moreover, the original intent of the framers of the Constitution is not always uniform with the original understanding of the People who ratified it. In *Civil Liberties Union:*

> 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

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[77] See Dissenting Opinion of *J.* Leonen in *Imbong v. Ochoa, Jr.,* 732 Phil. 1 (2014).

[78] *David v. Senate Electoral Tribunal,* G.R. No. 221538, September 20, 2016.

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.

Considering that the Court may not ascribe to the Constitution meanings and restrictions that would unduly burden the powers of the President,[79] its plain and unambiguous language with respect to his power of control as Chief Executive and Commander-in-Chief should be construed in a sense that will allow its foil exercise. It cannot be conveniently claimed that various provisions of the Constitution, taken together, necessarily imply the prohibition of Marcos' burial at the LNMB. The silence of the Constitution cannot be unreasonably stretched to justify such alleged proscription.

On R.A. No. 289

Petitioners Ocampo *et al.* and Lagman *et al.* insist that R.A. No. 289 is applicable in determining the standards on who are entitled to be buried at the LNMB. As a special law, its provisions prevail over the power to allocate lands of the public domain granted to the President by the Administrative Code of 1987. Its salutary objective encompasses all subsequent shrines or memorials as interment grounds for former Presidents, heroes, and patriots, regardless of the time it was constituted and its location.

While We agree that R.A. No. 289 is an existing and valid law for not having been amended or repealed by subsequent ones, it is maintained that said law and the LNMB are unrelated to each other, Up to now, the Congress has deemed it wise not to appropriate any funds for the construction of the National Pantheon or the creation of the Board on National Pantheon. Significantly, the parcel of land subject matter of Proclamation No. 431, which was later on revoked by Proclamation No. 42,

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[79] *Spouses Constantino, Jr. v. Hon. Cuisia,* 509 Phil. 486, 510 (2005).

is different from that covered by Proclamation No. 208. Even Justice Caguioa's dissent, as to which Justice Jardeleza concurred, concluded that it is *non sequitur* to argue the applicability of R.A. No. 289, or the standards indicated therein, to the LNMB because the land on which the National Pantheon was to be built refers to a discrete parcel of land that is totally distinct from the site of the LNMB. Except for Justice Leonen, the other justices who dissented to the majority opinion were silent on the matter.

On R.A. No. 10368

The applicability of R.A. No. 10368 was reiterated by petitioners-movants. Ocampo *et al.* posit that Marcos' burial at the LNMB is diametrically opposed and evidently repugnant to the legislative intent and spirit of R.A. No. 10368, which statutorily declared the policy of the State to recognize the heroism and sacrifices of all human rights violations victims (HRVVs) during the Marcos regime. The HRVVs cannot be recognized and their dignity cannot be restored if the perpetrator is extolled and given honors befitting that of a hero, tantamount to exonerating him from the abuses of Martial Law. To recall Justice Leonen raised the same arguments in his dissent, stating that Marcos' burial at the LNMB is violative of R.A. No. 10368 because it may be considered as an effort "to conceal abuses during the Marcos regime" or to "conceal x x x the effects of Martial Law"; that it undermines the recognition of his complicity.

On their part, Lagman *et al.* and Rosales *et al.* assert that aside from the repealing clause expressly provided for under Sec. 31 of R.A. No. 10368, the incompatibility between AFP Regulations G 161-375 and said law satisfies the standard of effecting a repeal by implication. Under the doctrine of necessary implication, every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.

We differ.

The provisions of R.A. No. 10368 are straightforward. The rights of HRVVs to recognition and reparation have been set

and defined under the law, which grants specific remedies. Glaringly, not one of its provisions could be construed to justify denying former Pres. Marcos or his family of any rights which have been vested by law or regulation. R.A. No. 10368 repudiated no commendation or revoked any distinction attained by Marcos during his lifetime, particularly those which he accomplished outside the period of September 21, 1972 to February 25, 1986. Neither did it nullify any right or benefit accruing to him because of such achievements. The Court cannot do more than what the law clearly provides. To stretch its scope is not only unreasonable but also tantamount to judicial legislation.

Based on the history of the passage of R.A. No. 10368 and the events that led to or precipitated its enactment,[80] what the legislature actually had in mind is accurately reflected in the language of the law. As a matter of fact, in the sponsorship speech of Senator Francis G. Escudero, he expressed that the "bill seeks to provide reparation and recognition of the survivors and relatives of the victims of human rights during the regime of former Pres. Ferdinand Marcos" and that "[i]n order to qualify for compensation under this Act, the human rights violation must have occurred during the period from September 21, 1972 to February 25, 1986."[81] In the Senate, Senators Franklin M. Drilon and Panfilo M. Lacson withdrew their reservation to interpellate on the measure.[82] Likewise, in the House of Representatives *(House),* no member signified an intention to ask any question during the period of sponsorship and debate, and no committee or individual amendments were made during the period of amendments.[83] Thus, this Court is of the view

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[80] Refer to the Explanatory Notes of House Bill Nos. 54, 97, 302, 954 and 1693 and Senate Bill Nos. 2615 and 3330 (See *People v. Purisima,* 176 Phil. 186 [1978]; *League of Cities of the Phils., et al. v. COMELEC, et al.,* 623 Phil. 531 [2009]; and *Navarro, et al. v. Exec. Secretary Ermita, et al.,* 663 Phil. 546 [2011]).

[81] Senate Journal No. 38, December 3, 2012. p. 1020.

[82] Senate Journal No. 41, December 10, 2012, p. 1171.

[83] Congressional Record, Vol. 2, No. 44, March 14, 2012, p. 3.

that the statutory omission – the non-inclusion of the prohibition of Marcos' burial at the LNMB – was both deliberate and significant. Congress itself did not consider it as part and parcel of reparation to HRVVs.

Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.[84]

Indeed, the Court cannot supply legislative omission. We cannot engraft upon a law something that has been omitted but is believed as ought to have been embraced.[85] This Court cannot, under its power of interpretation, supply the omission even though the omission may have resulted from *inadvertence* or because the case in question was not foreseen or contemplated."[86] If the law is too narrow in scope or has shortcoming, it is for the Legislature alone to correct it by appropriate enactment, amendment or even repeal.[87]

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[84] *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso For Entitlement to Longevity Pay for His Services As Commission Member III Of The National Labor Relations Commission,* A.M. No. 12-8-07-CA, June 16, 2015, 758 SCRA 1, 56.

[85] *Tañada v. Yulo,* 61 Phil. 515, 519 (1935), as cited in *Malaloan v. Court of Appeals,* G.R. No. 104879, May 6, 1994, 232 SCRA 249, 259; and *Fetalino, et al. v. Commission on Elections,* 700 Phil. 129, 153 (2012).

[86] *Chavez v. Judicial and Bar Council, et al.* 709 Phil. 478, 496 (2013).

[87] See *Lacson v. Roque, etc., et al,*. 92 Phil. 456, 464 (1953) and *Hebron v. Reyes,* 104 Phil. 175, 215 (1958).

With regard to the non-monetary reparation to HRVVs under Sec. 5 of R.A. No. 10368, Rosales *et al.* argue that the Court's narrow interpretation is inconsistent with the prevailing jurisprudence and international law for failure to recognize the all-encompassing concept of the right to an effective remedy. To them, non-monetary reparation is not limited to a hollow commitment to provide services from government agencies including public respondents.

We are not amendable.

It is well established that courts may avail themselves of extrinsic aids such as the records of the deliberations or the actual proceedings of the legislative body in order to assist in determining the construction of a statute of doubtful meaning. Where there is doubt as to what a provision of a statute means, the meaning put to the provision during the legislative deliberation or discussion on the bill may be adopted.[88]

Notably, R.A. No. 10368 is the consolidation of Senate Bill *(S.B.)* No. 3334[89] and House Bill *(H.B.)* No. 5990[90] of the 15th Congress. S.B. No. 3334 substituted S.B. Nos. 2615[91]

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[88] *De Villa v. Court of Appeals* (273 Phil. 89, 96 [1991]), citing *Palanca v. City of Manila* (41 Phil. 125 [1920]) and *Arenas v. City of San Carlos* (82 SCRA 318 [1978]).

[89] Entitled *"An Act Providing For Reparation And Recognition Of The Survivors And Relatives Of The Victims Of Violations Of Human Rights And Other Related Violations During The Regime Of Former President Ferdinand Marcos, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes"* and co-authored by Sergio R. Osmena III, Teofisto D. Guingona III, Francis G. Escudero, and Franklin M. Drilon.

[90] Entitled *"An Act Providing Compensation To Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes"* and co-sponsored by Lorenzo R. Tañada III, Edcel C. Lagman, Rene L. Relampagos, Joseph Emilio A. Abaya, Walden F. Bello, Arlene J. Bag-ao, Teodoro A. Casiño, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Antonio L. Tinio, Emerenciana A. De Jesus, and Raymond V. Palatino.

[91] Entitled *"An Act Providing For Compensation To The Victims Of Human Rights Violations During The Regime Of Former President Ferdinand Marcos,*

and 3330,[92] which were both referred to and considered by the Senate Committees on Justice and Human Rights and Finance. While S.B. No. 3334 did not provide for non-monetary compensation,[93] H.B. No. 5990[94] afforded such benefit. The Conference Committee on the Disagreeing Provisions of H.B.

Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes" and introduced by Senator Sergio Osmeña, III.

[92] Entitled *"An Act Providing For Compensation To The Victims Of Human Rights Violations During The Regime Of Former President Ferdinand Marcos, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes"* and introduced by Senator Teofisto Guingona, III.

[93] However, one of the substituted bills, S.B. No. 3330, proposed the inclusion of non-monetary compensation to HRVVs such as, but not limited to, psychotherapy, counseling, social amelioration, and honorific recognition.

[94] This bill substituted H.B. Nos. 54, 97, 302, 954 and 1693, which were referred to and considered by the Committees on Human Rights and Appropriations of the House of Representatives. H.B. No 54 *("An Act Providing Compensation To Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes")* was introduced by Representative Lorenzo R. Tañada III; H.B. No. 97 *("An Act Providing Compensation To Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes")* was introduced by Representative Edcel C. Lagman; H.B. No. 302 *("An Act Providing Compensation To Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes")* was introduced by Representatives Walden F. Bello and Arlene J. Bag-ao; H.B. No. 954 *("An Act Mandating Compensation To The 9,539 Class Suit Plaintiffs And The 24 Direct Action Plaintiffs Who Filed and Won The Landmark Human Rights Case Against The Estate Of Ferdinand Marcos In The US Federal Court System In Honolulu, Hawaii and Appropriating Funds Therefor")* was introduced by Representatives Teodoro A. Casiño, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Antonio L. Tinio, Emerenciana A. De Jesus, and Raymond V. Palatino; and H.B. No. 1693 *("An Act Mandating Compensation To Victims of Human Rights Violations During The Marcos Dictatorship From 1972 To 1986 And Appropriating Funds Therefor")* was introduced by Representatives Teodoro A. Casiño, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Raymond V. Palatino, Emerenciana A. De Jesus, and Antonio L. Tinio.

No. 5990 and S.B. No. 3334 resolved to adopt the provision of the House of Representatives on non-monetary compensation (appearing as Section 5 of now R.A. No. 10368) but did not include its definition under H.B. No. 5990.[95] As defined by the House, it "refers to a non-pecuniary compensation given to a victim of human rights violation or members of the family to restore the family's honor and dignity and shall include, but not limited to, psychotherapy, counseling, medical care, social amelioration and honorific recognition."[96] Hence, interpretation of the term should be viewed in light of this definition such that any non-monetary compensation to be granted must be similar in nature with the enumerated services.

If a statute is plain and free from ambiguity, it must be given its literal meaning or applied according to its express terms, without any attempted interpretation, and leaving the court no room for any extended ratiocination or rationalization.[97] When the letter of the law is clear, to seek its spirit elsewhere is simply to venture vainly, to no practical purpose, upon the boundless domains of speculations.[98] A strictly literal interpretation of a statute may be disregarded and the court may consider the spirit and reason of the statute where a literal meaning would be impossible, render the provision/s meaningless, or lead to inconvenience, absurdity, contradiction, injustice or mischievous results, or would defeat the clear purpose of the lawmakers.[99]

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[95] Senate Journal No. 50, January 28, 2013, pp. 1611-1612.

[96] The definition was substantially lifted from H.B. Nos. 54, 97, and 302 and similar to what was provided in S.B. No. 3330.

[97] See *People v. Quijada,* 328 Phil. 505, 555 (1996) and *Barcellano v. Bañas,* 673 Phil. 177, 187 (2011).

[98] See *People v. Quijada, supra; Barcellano v. Bañas, supra,* and the dissenting opinion of Justice Claro M. Recto in *Pascual v. Santos,* 62 Phil. 148, 160 (1935).

[99] *Hidalgo, et al. v. Hidalgo, et al.,* 144 Phil. 312, 323 (1970); *People v. Judge Purisima, supra* note 80, at 206; *Pobre v. Mendieta,* G.R. No. 106677, 106696, July 23, 1993; *Matuguina Integrated Wood Products, Inc. v. CA,* 331 Phil. 795, 818 (1996); *Pangandaman v. COMELEC,* 377 Phil. 297, 312 (1999); *Thornton v. Thornton,* 480 Phil. 224, 233 (2004); *Republic*

Liberality has a place only when, between two positions that the law can both accommodate, the more expansive or more generous option is chosen.[100] It has no place where no choice is available at all because the terms of the law do riot at all leave room for discretion.[101]

The function of the courts is *jus dicere and not jus dare;* to interpret law, and not to make law or give law.[102] Our duty is not to amend the law by enlarging or abridging the same.[103] This Court should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.[104] We cannot interpose our own views as to alter them.[105] Simply put, the Court, must not read into the law what is not there.[106] The letter of the law cannot be disregarded on the pretext of pursuing its spirit.[107] To do so

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of the Phils. v. Orbecido III, 509 Phil. 108, 115 (2005); *Rural Bank of San Miguel, Inc. v. Monetary Board,* 545 Phil. 62, 72 (2007); *League of Cities of the Phils., et al. v. COMELEC, et al.,* 623 Phil. 531, 564-565 (2009); and *Barcellano v. Bañas, supra* note 97, at 187.

[100] *Re: Letter Of Court Of Appeals Justice Vicente S.E. Veloso For Entitlement To Longevity Pay For His Services As Commission Member III Of The National Labor Relations Commission, supra* note 84, at 52-53.

[101] *Id.* at 53.

[102] See *Uson v. Diosomito,* 61 Phil. 535 (1935) and *Office of the Court Administrator v. Judge Pascual,* 328 Phil. 978, 979 (1996).

[103] See *Silverio v. Rep. of the Phils.,* 562 Phil. 953, 973 (2007) and *Kida, et al. v. Senate of the Philippines, et al.,* 675 Phil. 316, 372, 383 (2011).

[104] *Corpuz v. People,* 734 Phil. 353, 416 (2014).

[105] *Bernas v. Court of Appeals,* G.R. No. 85041, August 5, 1993, 225 SCRA 119, 138.

[106] *Phil. Deposit Insurance Corp. v. Bureau of Internal Revenue,* 540 Phil. 142, 165 (2006); *Commissioner of Internal Revenue v. BPI,* 549 Phil. 886, 897 (2007); and *Fort Bonifacio Dev't . Corp. v. Commissioner of Internal Revenue, et al.,* 617 Phil. 358, 371 (2009).

[107] *Commissioner of Internal Revenue v. Fortune Tobacco Corp.,* 581 Phil. 146, 166 (2008).

would be engaging in judicial legislation, which is abjured by the *trias politica,* principle and in violation of one of the most basic principles of a republican and, democratic government – the separation of powers.[108]

Judicial power covers only the recognition, review or reversal of the policy crafted by the political departments if and when a case is brought before it on the ground of illegality, unconstitutionality or grave abuse of discretion *(i.e,,* blatant abuse of power or capricious exercise thereof).[109] The determination of the wisdom, fairness, soundness, justice, equitableness or expediency of a statute or what "ought to be" as a matter of policy is within the realm of and should be addressed to the legislature.[110] If existing laws are inadequate, the policy-determining branches of the government, specifically the duly elected representatives who carry the mandate of the popular will, may be exhorted peacefully by the citizenry to effect positive changes.[111] True to its constitutional mandate, the Court cannot craft and tailor statutory provisions in order to accommodate all of situations no matter how ideal or

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[108] See *Mendoza v. People,* 675 Phil. 759, 766 (2011) and *Kida, et al. v. Senate of the Philippines, et al., supra* note 103.

[109] See *People v. Reyes,* G.R. Nos. 101127-31. August 7, 1992, 212 SCRA 402, 410; *Kida, et al. v. Senate of the Philippines, et al., supra* note 103, at 368 and *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.,* 676 Phil. 518, 603 (2011) citing Justice Renato C. Corona's dissenting opinion in *Ang Ladlad LGBT Party v. COMELEC,* 632 Phil. 32 (2010).

[110] See *Silverio v. Rep. of the Phils.,* 562 Phil. 953, 973 (2007); *Re: Entitlement to Hazard Pay of SC Medical and Dental Clinic Personnel,* 592 Phil. 389, 403 (2003); *Kida, et al. v. Senate of the Philippines, et al., supra* note 103; *Giron v. COMELEC,* 702 Phil. 30, 39 (2013); *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission, supra note* 84, 55; and *Banco De Oro v. Republic,* G.R. No. 198756, August 16, 2016 (Resolution).

[111] See the concurring and dissenting opinion of Chief Justice Marcelo B. Fernan in *In the Matter of the Petition for Habeas Corpus of Umil v. Ramos,* 279 Phil. 266, 317 (1991).

reasonable the proposal may sound.[112] No matter how well-meaning, We can only air Our views in the hope that Congress would take notice.[113]

> x x x [The] Court should give Congress a chance to perform its primordial duty of lawmaking. The Court should not pre-empt Congress and usurp its inherent powers of making and enacting laws. While it may be the most expeditious approach, a short cut by judicial fiat is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.[114]

Judicial activism should never be allowed to become judicial exuberance.[115] In this case, no amount, of logic or convenience can convince Us to perform an insertion of a matter that was clearly not included in R.A. No. 10368 as enacted. Just like his return to the country, Marcos' burial at the LNMB is a delicate and complex subject with far reaching implications. No one can deny this as even the Post-EDSA presidents, including the two Aquino governments, as well as the past Congresses did not dare, wittingly or unwittingly, to finally put the issue to rest. In view of its political (and even economic) repercussions, We must leave the task of enlarging the scope of benefits to the HRVVs to the legislative authority where it properly belongs and which must be assumed to be just as capable of compassionate consideration as courts are thought to be.[116]

Observance of the IHR Laws

Rosales *et al.* propound that mere existence of human rights laws, administrative rules, and judicial issuance in the Philippines is not equivalent to full compliance with international law standards. It is contended that if the State is to ensure its

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[112] *Chavez v. Judicial and Bar Council, et al., supra* note 86, at 497.

[113] *Philacor Credit Corp. v. Commissioner of Internal Revenue,* 703 Phil. 26, 42 (2013).

[114] *Corpuz v. People,* 734 Phil. 353, 425 (2014).

[115] *Chavez v. Judicial and Bar Council, et al., supra* note 86, at 497.

[116] *Gonzaga v. The Secretary of Labor,* 254 Phil. 528, 545 (1989).

commitment to the principles of international human rights law, HRVVs must be given full satisfaction and guarantees of non-repetition as defined by Principles 22 and 23 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("Basic Principles and Guidelines").* Similarly, Ocampo *et al.* hold that the HRVVs are entitled to restitution, compensation, rehabilitation, and satisfaction as contemplated in Sections 19 to 22 of the *Basic Principles and Guidelines.* Essentially, as the Chief Justice expressed in her dissent, there must holistic reparation – financial and symbolic.

The *Basic Principles and Guidelines* and the *Updated Set of Principles for the Protection and. Promotion of Human Rights Through Action to Combat Impunity ("UN Principles on Impunity")* are neither a treaty nor have attained the status of generally accepted principles of international law and/or international customs. Justice Arturo D. Brion fittingly observed in his Separate Concurring Opinion that they do not create legally binding obligations because they are not international agreements but are considered as "'soft law" that cannot be interpreted as constraints on the exercise of presidential prerogative. Consistent with *Pharmaceutical and Health Care Assoc. of the Phils. v. Health Sec. Duque III,*[117] the *Basic Principles and Guidelines* and the UN *Principles on Impunity* are merely expressions of non-binding norms, principles, and practices that influence state behavior; therefore, they cannot be validly considered as sources of international law that is binding upon the Philippines under Art. 38 (1), Chapter II[118] of the Statute of the International Court of Justice.

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[117] 561 Phil. 386 (2007). See also *Ang Ladlad LGBT Party v. COMELEC,* 632 Phil. 32 (2010).

[118] 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

It is evident from the plain text of the *Basic Principles and Guidelines* and the UN *Principles on Impunity* that they are recommendatory in character. The Resolution of the General Assembly adopting the *Basic Principles and Guidelines* states:

> 2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general; (Underscoring ours)

As to the UN *Principles on Impunity,* the concluding portion of its Preamble reads:

> Pursuant to the Vienna Declaration and Programme of Action, the following principles are intended as guidelines to assist States in developing effective measures for combating impunity. (Underscoring ours)

Had the Congress intended to incorporate the provisions of the *Basic Principles and Guidelines* and the UN *Principles on Impunity,* which was already adopted by tine United Nations as early as 2005, it could have done so by expressly mentioning them in the Declaration of Policy under Sec. 2 of R.A. No. 10368. During the consideration of S.B. No. 3334 and H.B. No. 5990, petitioners-movants should have petitioned the Commission on Human Rights to make the necessary recommendations to the Congress or otherwise directly lobbied to the lawmakers to include the *Basic Principles and Guidelines* and the UN *Principles on Impunity* in the proposed law. They did not. Nonetheless, they can do so for the enactment of amendatory laws.

While the States have a duty to repair violations of human rights and international humanitarian law, the modalities of

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c. the general principles of law recognized, by civilized nations;
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

the reparation vary according to the right violated, the gravity of the violation, the harm done, or the persons affected. The *Basic Principles and Guidelines* recognizes that the different forms of reparation may be awarded depending on the facts of each case and whenever applicable.

Even if the *Basic Principles and Guidelines* and the UN *Principles on Impunity* are treated as binding, international laws, they do not prohibit Marcos' burial at the LNMB. We already noted in the Decision that they do not derogate against the right to due process of the alleged human rights violator. Aside from Art. 14, Part III of the ICCPR,[119] XIII (27) of the *Basic Principles and Guidelines*[120] and Principle 9 of the UN *Principles on Impunity*[121] are clear and unequivocal. Certainly, observance

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[119] Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[120] XIII. Rights of others

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

[121] PRINCIPLE 9. GUARANTEES FOR PERSONS IMPLICATED

Before a commission identifies perpetrators in its report, the individuals concerned shall be entitled to the following guarantees:

(a) The commission must try to corroborate information implicating individuals before they are named publicly;

(b)The individuals implicated shall be afforded an opportunity to provide a statement setting forth their version of the facts either at a hearing convened

of due process must not be sacrificed in pursuing the HRVVs' right to full and effective remedy under the international human rights law. The recognition and protection of a person's human rights and dignity must not trample upon that of another who we do not like or those who are perceived to be against us. Justice and equity demands that there be a balancing of interests in the enforcement of both. For the Constitution is a law for all classes of men at all times and there is only one Bill of Rights with the same interpretation for both unloved and despised persons on one hand and the rest who are not so stigmatized on the other.[122]

Disqualification under the AFP Regulations

Dishonorable Discharge

Rosales *et al.* assert that "active service," as defined in Sec. 3 of P.D. No. 1638, contemplates both civilian and military service. Thus, the term "dishonorable discharge" applies equally to civilians who are guilty of conduct so reprehensible and tainted with manifest disrespect to the rule of law. In Marcos' case, he was ousted from the Presidency by the Filipinos and was forced into dishonorable exile abroad. Lagman *et al.* posit that Marcos' burial at the LNMB would completely nullify all that the EDSA People Power Revolution stands for. It would desecrate the spirit of EDSA as it would sweep under the rug of impunity the cardinal sins of Marcos against the Filipinos.

The Court subscribes to the OSG's contention that the two instances of disqualification under AFP Regulations G 161-375 apply only to military personnel in "active service." For the purpose of P.D. No. 1638, the definition of "active service" under Sec. 3 covers the military and civilian service rendered <u>prior to</u> the date of separation or retirement from the AFP. Once

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by the commission while conducting its investigation or through submission of a document equivalent to a right of reply for inclusion in the commission's file.

[122] See Dissenting Opinion of Justice Hugo E. Gutierrez, Jr. in *Marcos v. Sec. Manglapus,* 258 Phil. 479, 513-514 (1989).

separated or retired, the military person is no longer considered as in "active service." In addition, the term dishonorable discharge in AFP Regulations G 161-375 refers to an administrative military process. Petitioners-movants have not shown that Marcos was dishonorably discharged from military service under the law or rules prevailing at the time his active service was terminated or as set forth by any of the grounds and pursuant to the procedures described in AFP Circular 17, Series of 1987[123] issued on October 2, 1987.

Moral Turpitude

Ocampo *et al.,* Lagman *et al.,* Rosales *et al.,* and Latiph argue that the November 8, 2016 Decision distinctly stands out as an aberration that contradicts and undoes the previous court rulings against Marcos. They contend that the majority opinion chose to ignore *Republic v. Sandiganbayan (First Division),*[124] *Republic v. Sandiganbayan,*[125] *Marcos, Jr. v. Rep. of the Phils.,*[126] *Marcos v. Sec. Manglapus,*[127] *Dizon v. Brig. Gen. Eduardo,*[128] *Mijares v. Hon. Rañada,*[129] *PCGG v. Judge Peña,*[130] *Bisig ng Manggagawa sa Concrete Aggregates, Inc. v. NLRC,*[131] *Galman v. Sandiganbayan,*[132] *In Re Estate of Marcos Human Rights Litigation*[133] and *Hilao v. Estate of Marcos,*[134] which characterized

[123] *Administrative Discharge Prior to Expiration of Term of Enlistment.*

[124] G.R. No. 96073, January 23, 1995, 240 SCRA 376.

[125] 453 Phil. 1059 (2003).

[126] 686 Phil. 980 (2012).

[127] 258 Phil. 479 (1989).

[128] 242 Phil. 200 (1988).

[129] 495 Phil. 372 (2005).

[130] 243 Phil. 93 (1988).

[131] G.R. No. 105090, September 16, 1993, 226 SCRA 499.

[132] 228 Phil. 42 (1986).

[133] 910 F. Supp. 1460 (1995),

[134] 103 F.3d 762 (1996).

the Martial Law as a regime filled with human rights violations and memorialized Marcos as a dictator who plundered the country. Rosales *et al.* opine that it is immaterial that the decisions of this Court and the foreign, tribunals were mere civil in character because all those litigation involved exhaustive presentation of evidence wherein Marcos and his heirs were fully heard and have enjoyed due process before courts of competent jurisdiction.

We disagree.

The cited cases cannot be relied upon to bar Marcos' burial at the LNMB. *Galman v. Sandiganbayan, Marcos v. Sec. Manglapus, Republic v. Sandiganbayan, Marcos, Jr. v. Rep. of the Phils., PCGG v. Judge Peña,* and *Mijares v. Hon. Rañada* did not involve the power and authority of the President to order an interment at the LNMB, while *Republic v. Sandiganbayan (First Division), Republic v. Sandiganbayan,* and *Marcos, Jr. v. Rep. of the Phils.* pertained to forfeiture cases under R.A. No. 1379,[135] which this Court declared as civil in nature. More importantly, these cases did not convict Marcos of a crime. The complaints, denunciations, and charges against him no matter how numerous and compelling do not amount to conviction by final judgment of an offense involving moral turpitude. Neither mere presence of an offense involving moral turpitude nor conviction by final judgment of a crime not involving moral turpitude would suffice. The twin elements of "conviction by final judgment" and "offense involving moral turpitude" must concur in order to defeat one's entitlement for burial at the LNMB. The conviction by final judgment referred to is a criminal conviction rendered by a civil court, not one that is handed down by a general court martial. The highest quantum of evidence – proof beyond reasonable doubt, not preponderance of evidence or substantial evidence – must be satisfied. Rosales *et al.,* therefore, erred in supposing that Marcos

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[135] *AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR.*

could never be disqualified under AFP Regulations G 161-375 because it would be absurd that he would appoint a Judge Advocate General to prosecute him and convene a General Court Martial to convict him.

Rosales *et al.,* Latiph, and De Lima further hold that Sec. 14 (2) Art. III of the Constitution anent the right of the accused to be presumed innocent arises only in criminal prosecution. Correspondingly, Marcos cannot avail such right because he was not charged criminally; he was not under trial; and would not be sentenced to a penalty where he stood to lose his life or liberty. Moreover, a claim for violation of due process by a criminal offender presupposes that the People of the Philippines was afforded a fair opportunity to arrest and prosecute the accused in a court of competent jurisdiction. In Marcos' case, the People were unable to criminally prosecute him because he was ousted from the presidency and died in a foreign land. Under the principle of territoriality in criminal law, the long arm of the law could not reach him for lack of jurisdiction over his person.

The arguments are untenable;

Aside from criminal prosecution, the presumption of innocence applies in the cases of attorney[136] under suspension or disbarment

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[136] *Bautista, et al. v. Atty. Ydia,* 161 Phil. 511 (1976); *Acosta v. Atty. Serrano,* 166 Phil. 257 (1977); *Uytengsu III v. Atty. Baduel,* 514 Phil. 1 (2005); *St. Louis University Laboratory High School (SLU-LHS) Faculty and Staff v. Atty. Dela Cruz,* 531 Phil. 213 (2006): *Salmingo v. Atty. Rubica,* 553 Phil. 676 (2007); *Aba, et al. v. Attys. De Guzman, Jr., et al.,* 678 Phil. 588 (2011); *Rodica v. Atty. Lazaro, et al.,* 693 Phil. 174 (2012); *Rodica v. Atty. Lazaro, et al.,* 706 Phil. 279 (2013); *Samonte v. Atty. Abellana,* 736 Phil. 718 (2014); *Sultan v. Macabanding,* A.C. No. 7919, October 8, 2014, 737 SCRA 530; *Jimenez v. Francisco,* A.C. No. 10548, December 10, 2014, 744 SCRA 215; *Villamor, Jr. v. Santos,* A.C. No. 9868, April 22, 2015, 757 SCRA 1; *Ecraela v. Pangalangan,* A.C. No. 10676, September 8, 2015; *Vda. de Robosa v. Mendoza,* A.C. No. 6056, September 9, 2015; *Rafanan v. Gambe,* A.C. No. 10948 (Notice), January 18, 2016; *Kim Yung Gu v. Rueda,* A.C. No. 10964 (Notice), January 20, 2016; *Rustia v. Jarder,* A.C. No. 10869 (Notice), January 27, 2016; and *Militante v. Batingana.* A.C. No. 9199 (Notice), June 1, 2016. See, however, *Cruz v. Jacinto,* 385 Phil. 359 (2000).

proceedings, judge[137] and court personnel[138] with pending administrative complaint, detained person[139] before a military tribunal, and employee[140] in labor cases.

The right to be presumed innocent until proven guilty is subsumed in the constitutional right of every *person* not to be held to answer for a criminal offense without due process of law.[141] This constitutional mandate refers to any *person,* not only to one who has been arrested, detained or otherwise deprived of liberty, or against whom a complaint or information was formally filed, or who is undergoing trial, or who is awaiting judgment by the trial court, or whose judgment of conviction is pending appeal. In *Herras Teehankee v. Rovira,*[142] the Court observed that bail is constitutionally available to ail persons, even those against whom no formal charges are filed. By parity of reasoning, there is no legal or just ground for Us to deny the constitutional right to be presumed innocent to one who is not even criminally prosecuted. Similarly, to place such person in a less favored position than an accused in a criminal case would be, to say the least, anomalous and absurd. It is illogical, if not

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[137] *Atty. Geocadin v. Hon. Peña,* 195 Phil. 344 (1981); *Tan v. Usman,* A.M. No. RTJ-14-2390, August 13, 2014; and *Re: Conviction of Judge Angeles, RTC, Br. 121, Caloocan City, in Criminal Case No. Q-97-69655 to 56 for Child Abuse,* 567 Phil. 189 (2008).

[138] *Son v. Salvador, et al.,* 584 Phil. 10 (2008).

[139] *Go v. Gen. Olivas,* 165 Phil. 830 (1976); *Romero v. Hon. Ponce Enrile,* 166 Phil. 416 (1977); and Concurring and Dissenting Opinion of Chief Justice Enrique M. Fernando in *Buscayno, et al. v. Military Commissions Nos. 1, 2, 6 & 25, et al.,* 196 Phil. 41 (1981).

[140] *Castillo v. Filtex International Corp.* 209 Phil. 728 (1983); *Gubac v. National Labor Relations Commission,* 265 Phil. 451 (1990); and *Gargoles v. Del Rosario,* G.R. No. 158583, September 10, 2014, 734 SCRA 558.

[141] 1987 CONSTITUTION, Sec. 14 (1), Art III.

[142] 75 Phil. 634 (1945). See also *Herras Teehankee v. Director of Prisons,* 76 Phil. 756, 766-767 (1946); Concurring and Dissenting of Justice Vicente Abad Santos in *Morales, Jr. v. Minister Enrile, et al.,* 206 Phil. 466, 529-530 (1983); and Separate Opinion of Justice Jose C. Vitug in *Gov't. of the United States of America v. Hon. Purganan,* 438 Phil. 417, 503 (2002).

inane. If there is a presumption of innocence in favor of one already formally charged with criminal offense, a *fortiori,* this presumption should be indulged in favor of one who is yet to be charged.

Likewise, it is entirely inaccurate to proclaim that there was no opportunity to arrest, try, and convict Marcos for his alleged criminal acts. Petitioners-movants must recall that *Marcos v. Sec. Manglapus* arose precisely because the former president intended to return to the Philippines, but then President Corazon C. Aquino refused on the grounds of national security and public safety. We sustained the exercise of her executive power. On hindsight, Marcos could have been prosecuted for his alleged offenses had he been allowed to come back. As what happened, the Court is unaware of any criminal case that was commenced against Marcos until his death.

Rosales *et al.* are also grossly mistaken to contend that a deceased person cannot claim any demandable right to due process for it is exclusively reserved to a person with civil personality. As the assailed Decision indicated, no less than the Constitution intends that "full respect for human rights [covers] every stage of a person's development 'from the time he becomes a person to the time he leaves this earth.'"[143] In fact, in our system of laws, all criminal liability is totally extinguished by death.[144] This applies to every Filipino, not. just Marcos.

Lagman *et al.* advance that Marcos must be assessed in his totality as a person, since he did not err as an ordinary human being. He was a disgraced President who was deposed by the sovereign people because he was a dictator, plunderer, and human rights violator; he sinned against the multitude of Filipinos as the magnitude of his transgressions permeated and ruined the

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[143] Vol. IV Record, September 19, 1986, pp. 829-831. See also Bernas, Joaquin G., S.J., *The Intent of the 1986 Constitution Writers.* 1995. pp. 116-117.

[144] REVISED PENAL CODE, Art. 89 (1).

very core of the Philippines' democratic society and developing economy; and he was not a noble soldier for faking his wartime exploits and credentials. Of the same view, Ocampo *et al.* assert that the record of Marcos as a soldier cannot be dichotomized and separated from his record as a President because he is no ordinary soldier and president. As *Marcos v. Sec. Manglapus* held, he is "in a class by itself."

The contentions lack merit.

We already pointed out in Our Decision that the NHCP study is limited to the conclusion that Marcos did not receive the Distinguished Service Cross, the Silver Medal, and the Order of the Purple Heart, and that the U.S. Government never recognized the *Ang Mga Maharlika* and his alleged leadership of said guerilla unit. It is incomplete as to his entire career. It did not cover and had no adverse findings with respect to his other accomplishments as a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. When the Decision declared that Marcos is *"just a human who erred like us, "* it was never the intention of the *ponente* to trivialize or, as petitioners-movants perceive it to be, forgive and forget what Martial Law has done to the HRVVs and our nation in general. There was no attempt to erase his accountability for the alleged human rights violations and the plunder he committed during the period. What the comparison only meant was to convey the truth that no human is perfect; that it is in our nature to commit sins and make mistakes. The Decision did not pass upon the issue of whether Marcos' "errors" were deliberately or innocently done, extensive or insignificant in scale, or heinous or meritorious in character.

Moreover, the case of ***Cudia v. The Superintendent of the Philippine Military Academy (PMA),***[145] **which was invoked by Rosales *et al.,* is** inapplicable. The factual antecedents are different and the applicable laws are unrelated: *Cudia* involves the right to due process of a military cadet who was dismissed from the Philippine Military Academy (PMA) while this case

[145] 754 Phil. 590 (2015).

involves the right to be buried of a military personnel at the LNMB; *Cudia* involves the PMA cadet's Honor Code and Honor System Handbook while this case involves the AFP Regulations G 161-375; and *Cudia* involves the exercise of academic freedom by the military academy while this case involves the exercise of executive power by the President.

Even if *Cudia* applies, there is actually no conflict. In that case, the Court affirmed the decision of the PMA, noting that it complied with the due process requirement of the law. We did not substitute the judgment of the military; did not impose standards other than what is traditionally and legally been practiced; and did not enforce a penalty different from what was imposed by the PMA, On the other hand, this case also involves a military regulation that We upheld for not being contrary to the prevailing Constitution, laws, and jurisprudence. This Court affirms the standards as to who may be buried at the LNMB, which are based on our unique military traditions and legal milieu, as codified in various AFP Regulations that took into account existing laws such as C.A. No. 408, P.D. No. 1638, and their amendments.

Finally, the Court resolves the challenge of Rosales *et al.* with respect to Our citation of U.S. rules and regulations on Arlington National Cemetery *(Arlington). First,* it must be stressed that We did not heavily rely on the list provided by the Code of Federal Regulations *(C.F.R.)* as to who are entitled to be buried at the LNMB. The rules and regulations on Arlington, as found in the C.F.R., were mentioned because of their apparent similarity with AFP Regulations G 161-375. They were not the main basis of Our Decision, which can stand on its own even without such reference. *Second,* We also did not forget to cite the very statute that explicitly enumerates those who are prohibited from interment in *Arlington.* This is reflected in footnotes 161 and 162 of the Decision, *Third,* We cannot consider the cases of Timothy Mcveigh and Russel Wayne Wagner, allegedly U.S. military men who were denied the right to be buried at the military cemetery. Newspaper or electronic reports cannot be appreciated by the Court, "not because of any issue

as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence."[146] And *Fourth,* the majority members of the Court did not "insist" the need of a prior proceeding in accordance with § 553.21 of the C.F.R. before any disqualification under 38 U.S.C. § 2411 can be applied. We merely echoed the U.S. rules with respect to a person found to have committed a Federal or State capital crime but who has not been convicted by reason of not being available for trial due to death or flight to avoid prosecution. We do not imply that exactly the same U.S. rules should be applied in Marcos' case but only emphasized the need to guarantee the rights of the accused who enjoys the presumption of innocence. In this jurisdiction, there has been no identical or similar rules to apply; hence, this Court cannot direct any compliance. Instead, Our lone guide is to determine whether, under AFP Regulations G 161-375, Marcos was dishonorably separated/reverted/discharged from service or whether he was convicted by final judgment of an offense involving moral turpitude, Nothing more, nothing less.

MOA between Ramos and the Marcoses

According to Lagman *et al.,* the 1992 Memorandum of Agreement *(MOA),* which was executed between the Government of the Republic of the Philippines, represented by then Department of Interior and Local Government *(DILG)* Secretary Rafael M. Alunan III, and the Marcos family, represented by Mrs. Imelda R. Marcos, is a valid and enforceable government contract, it being not contrary to law or public policy, that has never been impugned. As such, it cannot be amended, revoked or rescinded by the subsequent President in order to honor a personal campaign promise. If the sanctity of a private, contract is protected by the non-impairment clause, with more reason is a State contract inviolable. Also, under the MOA, the Marcos

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[146] See *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.,* 686 Phil. 357, 374 (2012).

family has irrevocably waived any entitlement of the late president to be buried at the LNMB. They are in estoppel and are guilty of laches because they have not instituted any formal demand or action for 24 years since it was signed.

The Court cannot agree.

The decision of former President Fidel V. Ramos in disallowing Marcos' burial at the LNMB is not etched in stone; it may be modified by succeeding administrations. If one Congress cannot limit or reduce the plenary legislative power of succeeding Congresses,[147] so, too, the exercise of executive power by the past president cannot emasculate that of the incumbent president. The discretionary act of the former is not binding upon and cannot tie the hands of the latter, who may alter the same.

In this case, the MOA expressly provides that *"any transfer of burial grounds shall be with prior clearance with the Philippine Government taking into account socio-political climate. "* When President Duterte issued his verbal directive, he effectively gave the required prior government clearance bearing in mind the current socio-political climate that is different from the one prevailing at the time of former President Ramos. His factual foundation, which is based on his presumed wisdom and possession of vital information as Chief Executive and Commander-in-Chief, cannot be easily defeated by petitioners-movants' naked assertions. Certainly, the determination of whether Marcos' burial at the LNMB will best serve the public interest lies within the prerogative of the President.

The powers of the Philippine President is not limited only to the specific powers enumerated in the Constitution, *i.e.,* executive power is more than the sum of specific powers so enumerated.[148] Thus, he or she should not be prevented from accomplishing his or her constitutionally and statutorily assigned

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[147] *City of Davao v. RTC, Branch XII, Davao City,* 504 Phil. 543, 558-559 (2005).

[148] *Marcos v. Sec. Manglapus,* 258 Phil. 479, 502 (1989).

functions and discretionary responsibilities in a broad variety of areas. Presidential prerogative ought not be fettered or embarrassed as the powers, express or implied, may be impermissibly undermined. If the act is within the exercise of the President's discretion, it is conclusive; if it is without authority and against law, it is void.[149] In the absence of arbitrariness and grave abuse, courts have no power or control over acts involving the exercise of judgment of the Executive Department. The ultimate power over alienable and disposable public lands is reposed in the President of the Philippines.[150] More so, a judicial review should not interfere with or intrude into a great extent on his needed prerogatives in conducting military affairs, We have held that the commander-in-chief power of the President is a wholly different and independent specie of presidential authority such that, by tradition and jurisprudence, it is not encumbered by the same degree of restriction as that which may attach to the exercise of executive control.[151]

With the foregoing, it is unnecessary for Us to discuss whether the Marcos family are in *estoppel* or guilty of *laches.*

National reconciliation and forgiveness

As long as it is proven that Marcos' burial at the LNMB is not contrary to the prevailing Constitution, laws, and jurisprudence, public respondents need not show exactly how such act would promote the declared policy of national healing and reconciliation. Regardless of petitioners-movants' disagreement with it, the rationale for the assailed directives pertains to the wisdom of an executive action which is not within the ambit of Our judicial review. As well, the disputed act, just like a law that is being challenged, is tested not by its supposed or actual result but by its conformity to existing Constitution,

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[149] See *U.S. ex rel. Goodrich v. Guthrie,* 58 U.S. 284, 314, 15 L. Ed. 102 (1854).

[150] *Chavez v. National Housing Authority,* 557 Phil. 29, 90 (2007).

[151] See *B/Gen. (Ret.) Gudani v. Lt./Gen. Senga,* 530 Phil. 398, 417-418 (2006).

laws, and jurisprudence. Hence, whether or not Marcos' burial at the LNMB would in fact cause the healing of the nation and reconciliation of the parties is another matter that is immaterial for purposes of resolving this case and irrelevant to the application of AFP Regulations G 161-375. It is presumptuous for petitioners-movants to claim that Marcos' burial at the LNMB will not bring about genuine national healing and closure. While the HRVVs may find it hard to accept, it is not improbable that the rest of the Filipinos may think and feel differently. In either case, the Court cannot engage in conjectures and surmises. Instead, Our policy is to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain.[152]

Equally, We cannot pass upon the propositions that Marcos' burial at the LNMB would cleanse the late President Marcos of his sins or consecrate his misdeeds (Lagman *et al.*); or would clear the image of the Marcos family as they once again attempt to rise into power (Rosales, *et al*); or would politically rehabilitate their already tarnished reputation and give a shot in the arm to their moribund fanatical followers (Ocampo *et al.*); or would vindicate him or exonerate each and every plunderer, thief, murderer, human rights violator, and torturer in government or justify every immoral and unlawful act of crooks, *trapos,* cheaters, and other villains in public office, giving honor to impunity in public office and to a public life without moral principles (De Lima). All these allegations are pure and simple speculations that are devoid of any factual moorings.

Historical revisionism

We concur with Ocampo *et al.* that this Court was also a victim of Marcos' authoritarian rule and that it cannot isolate itself from history because it was and is a part of it. However, as Justice Brion put it, while the Court is not blind to history, it is not a judge thereof. Accordingly, We should leave Marcos' legacy to the judgment of history. The assailed Decision aptly ruled:

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[152] See *Garcia v. Executive Secretary,* 281 Phil. 572, 579 (1991).

Contrary to petitioners' postulation, our nation's history will not be instantly revised by a single resolve of President Duterte, acting through the public respondents, to bury Marcos at the LNMB. Whether petitioners admit it or not, the lessons of Martial Law are already engraved, albeit in varying degrees, in the hearts and minds of the present generation of Filipinos. As to the unborn, [We] must [say] that the preservation and popularization of our history is not the sole responsibility of the Chief Executive; it is a joint and collective endeavor of every freedom-loving citizen of this country.

Notably, complementing the statutory powers and functions of the Human Rights Victims' Claims Board and the HRVV Memorial Commission in the memorialization of HRVVs, the National Historical Commission of the Philippines *(NHCP),* formerly known as the National Historical Institute *(NHI),* is mandated to act as the primary government agency responsible for history and is authorized to determine all factual matters relating to official Philippine history. Among others, it is tasked to: (a) conduct and support all kinds of research relating to Philippine national and local history; (b) develop educational materials in various media, implement historical educational activities for the popularization of Philippine history, and disseminate, information regarding Philippine historical events, dates, places and personages; and (c) actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events. Under R.A. Nos. 10066 *(National Cultural Heritage Act of 2009)* and 10086 *(Strengthening Peoples' Nationalism Through Philippine History Act),* the declared State policy is to conserve, develop, promote, and popularize the nation's historical and cultural heritage and resources. Towards this end, means shall be provided to strengthen people's nationalism, love of country, respect for its heroes and pride for the people's accomplishments by reinforcing the importance of Philippine national and local history in daily life with the end in view of raising social consciousness. Utmost priority shall be given not only with the research on history but also its popularization.[153]

The President of the Philippines has no authority to unilaterally declare anyone a hero. Also, while it is mandatory for the courts

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[153] November 8, 2016 Decision, pp. 28-29 (Citations omitted) *(Rollo* [G.R. No. 225973], pp. 2617-2618).

to take judicial notice of Philippine history, the NHCP has the primary jurisdiction with respect thereto.[154] It is the principal government agency responsible for history and has the authority to determine all factual matters relating to official Philippine

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[154] The Court held in *Guy, et al. v. Ignacio* (636 Phil. 689, 703-704 [2010]):

x x x In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.

Above all else, this Court still upholds the doctrine of primary jurisdiction. As enunciated in *Republic v. Lacap:*

The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question, demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, ars not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as lo make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings x x x (citations omitted)

history. In its task to actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events, the NHCP Board is empowered to discuss and resolve, with finality, issues or conflicts on Philippine history.[155] The Court only steps in if an action is brought before it to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NHCP.

Equitable consideration

Rosales *et al.* contend that the Court should apply equity and extend equitable protection to the HRVVs because Marcos' burial at the LNMB causes them irreparable injury as it re-inflicts their trauma and grief while the Marcos' heirs have not shown any injury that they would sustain by its denial.

The argument is untenable.

Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.

The choice between what is legally just and what is morally just, when these two options do not coincide, is explained by Justice Moreland in Vales *vs.* Villa, 35 Phil. 769. 788 where he said:

Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome *illegally*. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a *violation* of law, the commission of what the law knows as an *actionable wrong* before the courts are authorized to lay hold of the situation and remedy it.[156]

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[155] Sections 5 (e) and 7 (h), R.A. No. 10086.

[156] *Rural Bank of Parañaque, Inc. v. Remolado, et al.,* 220 Phil. 95, 98 (1985). See also *Esconde v. Hon. Barlongay,* 236 Phil. 644, 654 (1987); *Sps. Manzanilla v. Court of Appeals,* 262 Phil. 228, 236 (1990); *Sps. Serrano*

Equity is "justice outside legality,"[157] It is applied only in the absence of and never against statutory law or, as in this case, appropriate AFP regulations. Courts exercising equity jurisdiction are bound and circumscribed by law or rules and have no arbitrary discretion to disregard them.[158] Here, while there is no provision of the Constitution, law, or jurisprudence expressly allowing or disallowing Marcos' burial at the LNMB, there is a rule, particularly AFP Regulations G 161-375, that is valid and existing. It has the force and effect of law because it was duly issued pursuant to the rule-making power of the President that was delegated to his subordinate official. Hence, it is the sole authority in determining who may or may not be buried at the LNMB.

To conclude, let it be emphasized that Supreme Court decisions do not have to be popular as long as the Constitution and the law are followed. In pursuit of the ideal "cold neutrality of an impartial judge," every member of this august body must be guided by what Justice Isagani A. Cruz fittingly stated in his Dissenting Opinion in *Marcos v. Sec. Manglapus,* thus:

> I have no illusion that the stand I am taking will be met with paeans of praise, considering that Marcos is perhaps the most detested man in the entire history of our country. But we are not concerned here with popularity and personalities. As a judge, I am not swayed by what Justice Cardozo called the "hooting throng" that may make us see things through the prisms of prejudice. I bear in mind that when I sit in judgment as a member of this Court, I must cast all personal feelings aside.
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> The issue before us must be resolved with total objectivity, on the basis only of the established, facts and the applicable law and not of wounds that still fester and scars that have not healed. And

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v. Court of Appeals, 463 Phil. 77, 93 (2003); and *Pepsi Cola Products (Phils.) v. Patan, Jr.,* 464 Phil. 517, 524 (2004).

[157] *Sps. Alvendia v. Intermediate Appellate Court,* 260 Phil. 265, 278 (1990).

[158] See *Sps. Alvendia v. Intermediate Appellate Court,* 260 Phil. 265, 278 (1990).

not even of fear, for fear is a phantom. That phantom did not rise when the people stood fast at EDSA – against the threat of total massacre in defense at last of their freedom.[159]

Never has a burial stirred so much emotion, rancor and animosity as this case, drawing the Court in its vortex. We could only do so much, however, deciding the issues in a manner within our competence and otherwise holding back on getting embroiled in politically and emotionally charged controversies, matters better left for other government officials and agencies, the people, and history, eventually, to judge.

Ever mindful that the Court cannot and should not be the ultimate judge of all questions that confront the country, We must ever remain cognizant of the boundaries of our role as final arbiters on questions of law in a carefully wrought structure of government. If we are to do our job well, we must know the limits of our powers and the appropriate yardsticks for our decision-making authority. Overextending ourselves is more likely to be counterproductive, eventually compromising our ability to discharge our responsibilities effectively.

Just like the subject matter of this case, the issues must come to an end and be interred. A man's place in history is for others to decide, not the Court's.

WHEREFORE, the motions for reconsideration, as well as the motion/petition to exhume Marcos' remains at the *Libingan ng mga Bayani,* are **DENIED WITH FINALITY**. The petitions for indirect contempt in G.R. No. 228186 and G.R. No. 228245 are **DISMISSED** for lack of merit.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Mendoza, Perlas-Bernabe, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Sereno, C.J., reiterates dissent, see dissenting opinion.

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[159] *Marcos v. Sec. Manglapus,* 258 Phil. 479, 528 (1989).

Carpio, J., reiterates dissent.

Leonen, J., maintains dissent in the main case.

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

Caguioa, J., dissents, see dissenting opinion.

DISSENTING OPINION

SERENO, *C.J.*:

On 18 November 2016, former President Ferdinand E. Marcos was interred at the *Libingan ng mga Bayani (Libingan)* with burial rites and ceremonies conducted by the Armed Forces of the Philippines.[1] Respondents held the ceremony just 10 days after the Decision of this Court was released, notwithstanding the fact that the ruling had not yet attained finality. In his draft Resolution, however, the *ponente* proposes to take no action against respondents in connection with their premature implementation of the Decision. He also recommends the denial of the Motions for Reconsideration filed by petitioners.

I maintain my dissent.

I disagreed with the majority ruling issued on 8 November 2016 for many reasons, as explained in my Dissenting Opinion. My views on most of the arguments raised by petitioners have already been elucidated in my discussion therein, and my position has not changed.

It must continuously be emphasized that the absence of an express prohibition against the burial of former President Marcos should not be considered the primary determinant of the merits of this case. Our laws and jurisprudence provide more than sufficient guidance on what must be done with respect to his burial, and it is the duty of this Court to utilize these texts to arrive at a conclusion that allows right and justice to prevail.

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[1] Manifestation dated 23 November 2016 filed by the Office of the Solicitor General.

As extensively explained in my Dissent, our Constitution,[2] statutes, and jurisprudence clearly denounced the massive plunder and the countless abuses committed by Marcos and his cronies during his tenure as President. The legislature and the courts not only condemned him as a thief; they equally recognized his legal liability for the human rights violations suffered by innumerable victims while he was in power.[3] Taking all these things into account, Marcos is clearly not worthy of commendation from the state, and no public purpose would be served by his interment in the *Libingan.* Furthermore, his burial in that cemetery ran counter to the obligations of the Philippines under international human rights law; in particular, the duty to combat impunity and hold perpetrators of human rights violations accountable.

It is thus evident that the President acted with grave abuse of discretion and in violation of his duty to faithfully execute the laws when he ordered the burial of Marcos in the *Libingan.* His act was in direct contravention of both the policy and the spirit of domestic and international law, and for the Court to sanction this decision would be to endorse an egregious act of impunity. It would effectively be allowing the government to bestow undue honor upon a corrupt public official and perpetrator of human rights violations. This question is far from being purely political in nature. In fact, it goes into the very heart of the duty of this Court as the protector of the Constitution.

I believe that my position on the various issues raised by the parties has been adequately explained in my dissent from the Decision dated 8 November 2016. Nevertheless, I am compelled to write the present opinion to record my observations

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[2] Proclamation No. 3, Provisional Constitution of the Republic of the Philippines, First Whereas Clause (1986).

[3] For a discussion on the statutes and jurisprudence denouncing the economic plunder and human rights abuses committed by Marcos, his family and cronies during the Martial Law regime, *see* my Dissenting Opinion, pp. 20-29, in *Ocampo v. Enriquez,* G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294, 8 November 2016.

on two crucial questions brought up in the Motions for Reconsideration: (1) the precipitate burial of Marcos in the *Libingan* **before** the Decision of this Court attained finality; and (2) the invalidity of AFP Regulations G 161-375 for noncompliance with the requirement of filing copies thereof with the Office of the National Administrative Register (ONAR).

Given that the Decision dated 8 November 2016 had not yet attained finality, respondents had no right to proceed with the burial of Marcos at the Libingan.

As previously stated, Marcos was interred at the *Libingan* and accorded military honors on 18 November 2016, or 10 days after the Decision of this Court was released. Petitioners objected to the allegedly premature execution of the Decision citing their unexpired period to seek reconsideration of the ruling. They argue that the Decision had not attained finality and therefore could not be executed without impairing their right to due process.

I find merit in the foregoing arguments.

Respondents had no authority to execute the Decision pending its finality.

Rule 52, Sections 1 and 4 of the 1997 Rules of Court, provides the guidelines for the finality and execution of judgments of the Supreme Court:

RULE 52

MOTION FOR RECONSIDERATION

Section 1. Period for filing.
A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

x x x x x x x x x

Sec. 4. Stay of execution.
The **pendency of a motion for reconsideration** filed on time and by the proper party shall **stay the execution of the judgment or final resolution** sought to be reconsidered unless the court, **for good reasons,** shall otherwise direct. (Emphasis supplied)

These provisions apply to ***all*** original actions before this Court.[4] In *Perez v. Falcatan,*[5] the Court explained:

[U]nder Section 3, Rule 52 ("Section 3") of the Rules of Court "[a] motion for . . . reconsideration filed [on] time shall stay the final order . . . sought to be examined." Thus, respondents' **timely filing of their motion for reconsideration** of the 3 March 1997 Resolution **prevented that Resolution (and consequently the RTC Decision) from attaining finality. Indeed, to uphold petitioner's contention would be to ignore Section 3 and correspondingly deny respondents their right to seek reconsideration under Section 1, Rule 52.**[6] (Citations omitted and emphasis supplied)

Indeed, while there are certain judgments that may be executed immediately or even pending appeal, these remain specific exceptions to the general rule that a pending motion for reconsideration results in a stay of execution of the judgment. In *Engineering Construction Inc. v. National Power Corp.,* this Court stated:

The point that the Court wishes to emphasize is this: **Courts look with disfavor upon any attempt to execute a judgment which has not acquired a final character.** Section 2, Rule 39, authorizing

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[4] Rule 56-A, Section 2 of the 1997 Rules of Court, provides:

Sec. 2. Rules applicable.

The procedure in original cases for *certiorari*, prohibition, *mandamus, quo warranto* and *habeas corpus* shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;

b) The portions of said Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and

c) Eighteen (18) clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties.

The proceedings for disciplinary action against members of the judiciary shall be governed by the laws and Rules prescribed therefor, and those against attorneys by Rule 139-B, as amended.

[5] 508 Phil. 21 (2005).

[6] *Id*. at 31.

the premature execution of judgments, being an exception to the general rule, must be restrictively construed. It would not be a sound rule to allow indiscriminately the execution of a money judgment, even if there is a sufficient bond. "The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment."[7] (Emphasis supplied)

I must emphasize that execution pending appeal is discretionary and may issue only upon good reasons in cases covered by Rule 39, Section 2 of the Rules of Court. On the other hand, immediate execution is permitted only in very specific cases as provided by law,[8] the rules,[9] or jurisprudence.[10]

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[7] 246 Phil. 8, 15 (1988).

[8] *See,* for instance, Section 44 of Republic Act No. (R.A.) 7875, as amended by R.A. 10606 (2013) on violations of the law requiring payment of fines, reimbursement of paid claim or denial of payment; Section 7(c) of R.A. 9335 (2005) on termination of personnel of the Bureau of Internal Revenue and the Bureau of Customs; Section 66 of R.A. 8293 (1997) on cancellation of patents; Article 223, R.A. 6715 (1989) on decisions of the Labor Arbiter reinstating an employee; Article 225(d), P.D. 442, as amended, on decisions of the National Labor Relations Commission on indirect contempt; Administrative Code of 1987 on decisions of the Civil Service Commission; Sections 61, 67 and 68, R.A. 7160 (1991) on disciplinary actions against elective local officials.

[9] See, for instance, Rule 1, Section 3, Financial Liquidation and Suspension of Payments Rules of Procedure for Insolvent Debtors (A.M. No. 15-04-06-SC, s. 2015) on orders issued under those rules; Section 4, Financial Rehabilitation Rules of Procedure (A.M. No. 12-12-11-SC, s. 2013) on orders issued under those rules (Rule 1, Section 4), judgments in an action to implement or enforce a standstill agreement (Rule 1, Section 16), and any action involving an out-of-court or informal restructuring/workout agreement or rehabilitation plan (Rule 4, Section 16); Rule 1, Section 4, Rules of Procedure for Intellectual Property Rights Cases (A.M. No. 10-3-10-SC, s. 2011), on orders issued under those rules in connection with actions for violation of intellectual property rights; Rule 3, Section 5, Rules of Procedure on Corporate Rehabilitation (A.M. No. 00-8-10-SC, s. 2008) on orders issued under those rules in relation to petitions for rehabilitation of corporations, partnerships and associations; Section 5, Rule on DNA Evidence (A.M. No. 06-11-5-SC, s. 2007) on orders granting the DNA testing; Section 30, Rule on Violence Against Women and Their Children (A.N. No. 04-10-11-

A petition for prohibition clearly does not fall within any of the above-mentioned exceptions. Contrary to the position taken by the *ponente,* the fact that the remedy of prohibition is in the nature of an injunction does not mean that immediate execution is automatically warranted. Following Rule 52, Section 4, the Court must first order the immediate execution of a decision for good reasons, in order to warrant an exception to the general rule on the stay of execution. In *Florendo v. Paramount Insurance Corp.,*[11] we declared:

Normally, execution will issue as a matter of right only (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of origin. Execution pending appeal is the exception to the general rule.

As such exception, the court's discretion in allowing it must be strictly construed and firmly grounded on the existence of good reasons. **"Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory.** The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. **Lesser reasons would make of execution**

SC, s. 2004) on orders issued under those rules in connection with petitions for protection orders in cases of violence against women and their children under R.A. No. 9262; Section 21, Revised Rule on Summary Procedure (Resolution of the Court *En Banc*, 15 October 1991), on judgments issued under the rules, including ejectment and unlawful detainer; Rule 39, Section 4 on actions for injunction, receivership, accounting and support; Rule 67, Section 11 on expropriation cases; Rule 70, Sections 19 and 21 on ejectment cases; Rule 71, Section 2 on judgments for direct contempt.

[10] See, for instance, *Boac, et al. v. Cadapan, et al.,* 665 Phil. 84 (2011) on writs of amparo; *Abayon v. House of Representatives Electoral Tribunal* G.R. Nos. 222236 & 223032, 3 May 2016, on urgent election cases; *Malabed v. Asis,* 612 Phil. 336 (2009) and *Barcenas v. Alvero,* 633 Phil. 25 (2010) on disciplinary cases against judges and lawyers;

[11] 624 Phil. 373 (2010).

pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity.[12] (Emphases supplied)

Here, no order for the immediate execution of the Decision dated 8 November 2016 was made.[13] Accordingly, the general principle applies – the execution of the ruling must be considered deferred until its finality. This was how it should have been in this case, since there were no "good reasons" to justify the immediate execution of the ruling. Based on the records, there was neither allegation nor proof of any urgent need to proceed with the burial.

The lack of urgency notwithstanding, respondents facilitated the burial of Marcos at the *Libingan* prior to the expiration of the 15-day reglementary period for filing a motion for reconsideration. Their act was clearly in violation of the Rules of Court, because it amounted to the premature execution of a judgment that had not yet attained finality.

The expiration of the Status Quo Ante Order (SQAO) cannot justify the premature execution of the Decision.

I note that great significance has been given to the fact that the SQAO had expired on 8 November 2016, the same day the petitions were dismissed. The expiration of the order was taken to mean that there was nothing to prevent respondents from proceeding with the burial, even if the Decision had not yet become final.

I disagree.

The mere expiration of the period specified in the SQAO cannot justify the premature execution of the Decision. While it may be true that the SQAO had been lifted, the non-finality of the ruling prohibited the parties from implementing the

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[12] *Id*. at 381.

[13] The *fallo* of the Decision dated 8 November 2016 states:

"WHEREFORE, PREMISES CONSIDERED, the petitions are DISMISSED. Necessarily, the Status Quo Ante Order is hereby LIFTED."

judgment by proceeding with the burial. As explained above, execution may issue only after the decision in any particular case has become final, unless immediate execution or execution pending appeal is allowed. To reiterate, no such permission was granted by the Court in this case.

Furthermore, the Court clearly stated the particular reason for the issuance of the SQAO – to prevent the parties from doing anything that would render the petitions moot and academic. The Order states in relevant part:

> NOW, THEREFORE, You, Petitioners and Respondents, your agents, representatives, or persons acting in your place or stead, are hereby **directed to maintain the status quo prior to the issuance of the assailed Memorandum** dated August 7, 2016 of Secretary of National Defense Delfin N. Lorenza, for a period of twenty (20) days from notice hereof **so as not to render moot and academic the resolution of these consolidated petitions.**[14] (Emphases supplied)

In my view, this stated reason was just as important as the period specified therein, as that reason reflected the purpose behind the directive of the Court. We wanted to ensure that the dispute was resolved properly – and thus with finality – without the parties interfering with our exercise of jurisdiction. By prematurely executing the Decision, respondents failed to respect the rationale for the ruling.

For the Court to approve the conduct of respondents would be to support a blatant disregard for the rules. It would allow parties to consider every decision immediately executory and permit them to render a dispute moot by means of execution.

Based on the submissions of respondents themselves, that appears to be their precise intent in this case. After prematurely implementing the Decision by proceeding with the burial, they came to this Court and argued that the interment constituted a supervening event that rendered the Motions for Reconsideration moot and academic.[15] They even insisted that the exhumation

[14] Resolution dated 23 August 2016, p. 8.

[15] Consolidated Comment of the Office of the Solicitor General, pp. 92-95.

of the body was not a viable remedy should the original ruling be overturned later on, because that course of action would amount to disrespect for the dead.[16] These circumstances clearly betrayed the deplorable attempt of respondents to render these cases moot to their own advantage. For obvious reasons, the Court should not allow them to distort the principles of finality and execution in this manner and then to benefit from their own disregard of the rules.

Noncompliance with the ONAR filing requirement rendered AFP Regulations G 171-375 invalid and ineffective.

I likewise take a different view as regards the applicability of the ONAR filing requirement to the AFP Regulations in this case. While the *ponente* contends that the requirement does not apply to AFP Regulations G 171-375, I believe that these regulations are covered by Section 3, Chapter 2, Book VII of the Administrative Code of 1987. Having failed to comply with that requirement, that particular issuance must be deemed invalid.

It is argued by the *ponente* that Section 1, Chapter 1, Book VII of the Administrative Code of 1987, exempts military establishments from this requirement in all matters relating exclusively to armed forces personnel. Since the regulations were supposedly internal in nature, as they were issued only for the guidance of the AFP units tasked to administer the *Libingan,* it is contended that the exemption applies.[17] Furthermore, since the *Libingan* is a military cemetery, the regulations allegedly do not affect the citizenry, and registration in the ONAR cannot be considered a dictate of due process.[18]

I beg to differ.

Section 3, Chapter 2, Book VII of the Administrative Code of 1987, requires every agency to submit to the ONAR three

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[16] *Id*. at 93-95.

[17] Draft Resolution, pp. 21-22.

[18] *Id.* at 22.

certified copies of every rule it adopts. As defined by the Administrative Code, the term "agency" includes "any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases."[19] The AFP is clearly within the scope of this comprehensive definition; accordingly, it is bound to comply with the ONAR requirement.

It is true that a narrow exception to the foregoing general rule is provided in Section 1, Chapter 1, Book VII of the same Code, for issuances of military establishments on **"matters relating exclusively to Armed Forces personnel."**[20] AFP Regulations G 161-375, however, does not fall within the exception.

AFP Regulations G 161-375 does not pertain exclusively to armed forces personnel.

It is a basic principle of statutory construction that the words used in a statute are to be understood in their natural, plain, and ordinary acceptation, and according to the signification that they have in common use. They are to be given their ordinary meaning, unless otherwise specifically provided.[21] This interpretation is consistent with the basic precept of *verba legis.*[22]

The word *exclusively* means "apart from all others," "only," "solely," or "to the exclusion of all others."[23] Therefore, in

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[19] Book VII, Chapter 1, Section 2(1).

[20] Sec. 1, Chapter 2, Book VII, provides: "This Book shall be applicable to all agencies as defined in the next succeeding section, except the Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges."

[21] *Aquino v. Commission on Elections,* 756 Phil. 80 (2015).

[22] *David v. Senate Electoral Tribunal,* G.R. No. 221538, 20 September 2016.

[23] *Black's Law Dictionary* (Sixth Edition), p. 565.

order for the exemption under the Administrative Code to apply, the subject regulations issued by military establishments must deal with matters that affect only AFP personnel, **to the exclusion** of any other group or member of the populace.

Contrary to the position of the *ponente* that only matters relating exclusively to personnel of the AFP are implicated in the subject rules, a plain reading of the regulations reveals that the exception is not applicable to this case.

Section 3 of AFP Regulations G 161-375 provides:

> 3. Who are qualified to be interred in the Libingan ng mga Bayani: The remains of the following deceased persons are qualified and, therefore, authorized to be interred in the Libingan ng mga Bayani:
>
>   a. Medal of Valor Awardees
>   b. Presidents or Commanders-in-chief, AFP
>   c. Secretaries of National Defense
>   d. Chiefs of Staff, AFP
>   e. General/Flag Officers of the AFP
>   f. Active and retired military personnel of the AFP, to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities
>   g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP).
>   h. Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas.
>   i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense.
>   j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of former Presidents, Secretaries of National Defense and Chief of Staff xxx.

It cannot be denied that the preceding enumeration includes persons who are **not** members of the armed forces – government dignitaries, statesmen, national artists, former dignitaries, widows of former Presidents, secretaries of national defense, chiefs of staff, and even other deceased persons whose interment or re-interment has been approved by the Commander-in-Chief, Congress, or the defense secretary. It is therefore clear that while the regulations are addressed to officials tasked to administer the *Libingan,* the subject matter of the issuance is **not** confined to matters relating exclusively to AFP personnel. As such, the regulations cannot be considered exempt from the ONAR requirement.

It must be emphasized that the requirements of publication and filing of administrative issuances with the ONAR were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional righv to due process and to information on matters of public concern; therefore, these requirements call for strict compliance.[24] Here, petitioners have sufficiently proven that the regulations were never submitted to the ONAR.[25] Accordingly, these issuances must be deemed ineffective.[26]

The doctrine of prospectivity cannot be used to circumvent the ONAR filing requirement under the Administrative Code.

The *ponente* also advances a novel position regarding the possible outcome of this case, if we were to assume the invalidity of AFP Regulations G 161-375 for noncompliance with the ONAR filing requirement. He contends that even in that scenario, there would still be sufficient justification for the interment of

[24] *Republic v. Pilipinas Shell Petroleum Corp.*, 574 Phil. 134 (2008).

[25] *See* Certification dated 21 November 2016 issued by the Office of the National Administrative Register; Annex C of the Motion for Reconsideration filed by petitioners Lagman, *et al.*

[26] *Republic v. Pilipinas Shell Petroleum Corp., supra* note 24.

Marcos at the *Libingan,* because the President could still apply AFP Regulations G 161-373 issued on 9 April 1986.[27] The Administrative Code of 1987 is supposedly not applicable to that earlier issuance, because the code can only be prospectively applied.

I cannot subscribe to this position.

To begin with, AFP Regulations G 161-373 has already been superseded by AFP Regulations G 161-374, as clearly specified in the latter's last paragraph on supersession.[28] In turn, the latter regulations have been superseded by AFP Regulations G 161-375. Consequently, AFP Regulations G 161-373 cannot be the source of any legal right. It cannot be used as the basis of the current directives of the President.

Just as important is the flaw in the manner of reasoning employed. The doctrine of prospectivity cannot be exploited to allow the utilization of past issuances for the purpose of evading the application of the Administrative Code. That distorted application of the principle would do nothing but circumvent the provisions of the law and subvert its very purpose.

As I expressed in my Dissenting Opinion on the Decision dated 8 November 2016, it is the enduring duty of the Court to ensure that right and justice prevail. In this case, that duty would have meant preventing a whitewash of the sins of Marcos against the Filipino people. In denying the Motions for Reconsideration, I believe that the majority has countenanced a step in the opposite direction.

Nonetheless, the ruling in this case may be taken as an opportunity to remember the significance of the nation's historical truth. It is a moment to be reminded that opposing the distortion of our collective memory should go beyond resisting the burial of a dictator in a cemetery for heroes. The defense of history,

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[27] Draft Resolution, p. 22.

[28] Paragraph 7 of AFP Regulations G 161-374 states: "Supersession – AFPR G 161-373 dtd 9 Apr 86 is hereby superseded."

truth, and justice must motivate every Filipino to ensure that the government fulfills its responsibility to provide an effective remedy for victims of human rights violations during the Marcos regime. It must also provide an impetus for citizens to demand justice for the economic plunder endured by the country during that period.

Based on the information obtained by the Court throughout these proceedings, the task of obtaining justice for the nation and for the individual victims of the Martial Law regime is far from complete.

Reports from the Human Rights Victims' Claims Board reveals that more than 44,000 of the 75,000 applications it has received from victims of martial law abuses have still not been adjudicated.[29] Needless to state, these claims should be settled as soon as possible, if the state were to truly fulfill its acknowledged moral and legal obligation to recognize and/or provide reparation to victims of human rights abuses during the Marcos regime.[30]

The pending cases against the Marcos family and their cronies must also be closely scrutinized and monitored. While assets in the form of corporate shares,[31] paintings,[32] jewelry,[33] and

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[29] *See* Human Rights Claims Board, HRVCB Released the Names of First 4,000 Eligible Claimants, < http://www.hrvclaimsboard.gov.ph/index.php/hrvcb-released-the-names-of-the-initial-list-of-4-000-eligible-claimants > (visited 16 June 2017).

[30] Republic Act 10368 (2013), Section 2.

[31] See *Yuchengco v. Sandiganbayan,* 515 Phil. 1 (2006), on the reconveyance of 111,415 shares of the Philippine Telecommunications Investment Corporation to the Republic of the Philippines; *Republic v. Estate of Hans Menzi,* 512 Phil. 425 (2005), on the forfeiture of the Bulletin Publishing Co. shares.

[32] *Imelda Romualdez, et al. v. Republic of the Philippines,* G.R. No. 217901, 15 March 2017.

[33] See *Estate of Marcos v. Republic,* G.R. Nos. 213027 & 213253 (Resolution), 18 January 2017, on the forfeiture of jewelry known as the Malacañang Collection, valued at US$110,055 (low estimate) to USD 153,089 (high estimate).

deposits in overseas bank accounts[34] valued in billions of pesos have been recovered through litigation or compromise agreements, the PCGG has yet to accomplish its full mandate. Records submitted to this Court reveal that 118 cases – 51 civil and 67 criminal suits – filed by the PCGG against the Marcos family and their cronies remain pending.[35] Evidently, the "herculean task of recovering the ill-gotten wealth accumulated by the deposed President Ferdinand E. Marcos, his family, relatives, subordinates and close associates"[36] continues to be a crucial undertaking.

On a final note, I must emphasize the importance of these remaining tasks. It is imperative for the nation to remember the unfinished duty of the government to obtain justice for those who suffered under the Marcos regime. Now more than ever,

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[34] See *Marcos, Jr. v. Republic,* 686 Phil. 980 (2012), on the forfeiture of the ARELMA assets worth US$3,369,975.00; *Republic v. Sandiganbayan,* 453 Phil. 1059 (2003), on the forfeiture of deposits in Swiss Banks valued at USD 658 million.

[35] Based on the Overview of PCGG Pending Cases (As of June 2016), Annex A of the submission of the PCGG to the Court on 2 September 2016, the following cases remain pending:

Civil (filed before the Sandiganbayan only)	
Forfeiture	9
Reconveyance, Restitution, Accounting and Damages	38
Other Cases	4
Total Civil Cases	**51**
Criminal (pending with the OMB, Sandiganbayan and SC)	
Behest Loans	38
Other Cases	29
Total Criminal Cases	**67**
Total Number of Cases Filed	**118**

This tabulation does **not** include civil cases filed in the lower courts and incidents elevated to the Court of Appeals and the Supreme Court. It also does not include cases filed against the PCGG.

[36] *Miguel v. Gordon,* 535 Phil. 687, 694 (2006).

it is the only way to truly protect our collective history from the implications of allowing the dictator to be buried at the *Libingan.*

WHEREFORE, I maintain my **DISSENT** from the Decision dated 8 November 2016 and vote to **GRANT** the Motions for Reconsideration.

DISSENTING OPINION

CAGUIOA, *J.*:

When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments — it only asserts the solemn and sacred obligation assigned to it by the Constitution to determine the conflicting claims under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[1]

Anchoring the dismissal of the petitions on the alleged absence of constitutional limitations on the powers conferred upon the Executive in determining who are worthy of being interred at the *Libingan ng Mga Bayani* (LNMB), the Court ruled, in the November 8, 2016 Decision, that, substantively, President Rodrigo Duterte did not act with grave abuse of discretion in issuing a verbal order to inter the remains of the late President Ferdinand E. Marcos at the LNMB, considering that the burial is in accordance with the Constitution, laws, and jurisprudence.

I maintain my dissent.

The very provision that codifies this Court's expanded power of judicial review in Article VIII, Section 1, paragraph 2 of the 1987 Constitution, is a direct product of the collective experience of the Filipino people during martial law under then President Marcos.[2] Inevitably, when the Court is called upon to discharge

[1] *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936).

[2] I RECORD OF THE CONSTITUTIONAL COMMISSION 434, 436.

its ***duty***[3] to determine whether a branch of government or any of its officials acted with grave abuse of discretion, the Court ***cannot,*** by any means, divorce the specific text of the Constitution from its spirit as a post-dictatorship charter. Even in a situation where the legal basis for the assailed action is itself constitutional, the power of judicial review vested upon the Court includes

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In his sponsorship speech of Art. VIII, § 1, ¶2, Former Chief Justice Roberto Concepcion, Chairman of the Committee on the Judiciary of the Constitutional Commission, stated:

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x

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[T]he powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy power to determine whether a given law is valid or not is vested in courts of justice.

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question 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 or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question. (Italics supplied).

See also SKARLIT LABASTILLA, *DEALING WITH MUTANT JUDICIAL POWER: THE SUPREME COURT AND ITS POLITICAL JURISDICTION*, 84 PLJ 1 (2009).

[3] *Id*.

the power to declare unconstitutional the "application, or operation of presidential decrees, proclamations, x x x instructions, x x x and other regulations."[4]

Mindful of this duty, I submit the following observations in addition to those elucidated in my Dissenting Opinion dated November 8, 2016.

The *ponencia* holds, among others, that Petitioners' view that they sustained or will sustain direct injury "is founded on the wrong premise that Marcos' burial at the LNMB contravenes the provisions of the Constitution; P.D. 105, R.A. Nos. 289, 10066, 10086 and 10368 and international laws,"[5] considering that the LNMB is an active military cemetery/grave site over which the President has certain discretionary authority, pursuant to his control and commander-in-chief powers, which is beyond the Court's power of judicial review.

I disagree.

I maintain my position that the directive of President Duterte to bury or inter the remains of former President Marcos in the LNMB presents a justiciable, not political, issue. The wisdom of his oral directive is not being questioned. Rather, the question is whether the issuance of the directive is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction because, among others, it runs counter to the Constitution, national and international law, public policy on national shrines and national historic shrines, and jurisprudence.

The Court is not called upon to determine former President Marcos' rightful place in Philippine history. Rather, it is called upon to determine whether LNMB, given LNMB's history, nature, purpose and the public policy behind its establishment, administration and development, should be the rightful resting place of former President Marcos.

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[4] 1987 CONSTITUTION, Article VIII, Section 4(2); see also Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY,* 968 (2009).

[5] Resolution, p. 8.

It is beyond question that while it has an active military cemetery/grave site component, LNMB is foremost a military shrine or memorial declared as a **national shrine.** Being a national shrine, it is the government's duty "to hold and keep x x x [LNMB] as **sacred and hallowed place"**[6] pursuant to the policy mandated by Presidential Decree No. (PD) 105 dated January 24, 1973.[7] Also, the administration, maintenance and development of LNMB must be always in keeping with Proclamation No. 86[8] dated October 27, 1954, which renamed the Republic Memorial Cemetery to *"Libingan ng mga Bayani"* **(Cemetery of the Heroes**[9]**),** so that LNMB is **"symbolic** of the cause for which our soldiers have died, and x x x **truly express[ive of] the nation's ESTEEM and REVERENCE for her war dead."**[10] Further, the preservation, protection and conservation of LNMB's physical, cultural and historical significance and integrity are mandated by Republic Act No. (R.A.) 10066[11] and R.A. 10086.[12]

The very presence in LNMB of the remains of former President Marcos – a dictator and authoritarian; perpetrator of numerous and gross human rights abuses involving summary execution, torture, enforced or involuntary disappearance, arbitrary detention and other atrocities; plunderer of the Philippine economy with enormous ill-gotten wealth and kleptocrat; dishonorably separated and evicted President by People Power, dishonorably

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[6] P.D. No. 105, Third Whereas Clause.

[7] DECLARING NATIONAL SHRINES AS SACRED (HALLOWED) PLACES AND PROHIBITING DESECRATION THEREOF, January 24, 1973.

[8] CHANGING THE "REPUBLIC MEMORIAL CEMETERY" AT FORT WM MCKINLEY, RIZAL PROVINCES, TO "LIBINGAN NG MGA BAYANI", October 27, 1954.

[9] http://corregidorisland.com/bayani/libingan.html.

[10] Proc. No. 86, Whereas Clause.

[11] NATIONAL CULTURAL HERITAGE ACT OF 2009, approved on March 24, 2010.

[12] STRENGTHENING PEOPLE'S NATIONALISM THROUGH PHILIPPINE HISTORY ACT, approved on May 12, 2010.

discharged Commander-in-Chief; fabricator of allegedly received U.S. medals and allegedly committed "heroic" actions while being a soldier – is an affront to LNMB's sacredness and hallowedness as the legally designated and recognized Philippine heroes' burial site or cemetery. It does not further the esteem and reverence that LNMB rightly deserves as the memorial in honor of the heroism, patriotism, gallantry and nationalism of our war dead and fallen soldiers and military personnel. Its positive cultural and historical significance and integrity are grossly violated.

While we revere our dearly departed, the reverence we accord them is distinctly different from what we are expected to bestow upon our heroes. We do not need a definition of who a hero is or ought to be because we know in our heart and conscience who they really are when the occasion requires our collective decision. As we revere our dearly departed, we must not disparage the living and becloud our collective past.

The *ponencia* further holds that "the beneficial provisions of R.A. 10368[13] "cannot be extended to construe Marcos' burial at the LNMB as a form of reparation for the [Human Rights Violations Victims] [(]HRVVs[)]," so much so that the *ponencia* holds that "[i]t is not the Marcos' burial at the LNMB that would result in 're-traumatization' of HRVVs but the act of requiring them to recount their harrowing experiences in the course of legal proceedings instituted by them or their families to seek justice and reparation for the gross human rights violations."[14]

Once more, this holding is egregious error.

When the Court is called upon to discharge its duty to interpret the nature and extent of reparations owed to HRVVs as in this case, it must do so by interpreting domestic law *(i.e.,* R.A. 10368)

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[13] AN ACT PROVIDING FOR REPARATION AND RECOGNITION OF VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE MARCOS REGIME, DOCUMENTATION OF SAID VIOLATIONS, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, approved on February 25, 2013.

[14] Resolution, pp. 8-9.

in accordance with, and in light of, the very international law obligations underlying, and even compelling,[15] its passage. **It is the solemn duty of this Court to ensure that laws are interpreted in a manner consistent with the letter, spirit and intent of the Constitution and the law.**

The argument that the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (U.N. Principles on Reparation) do not in any way bind the Philippines is extremely *erroneous,* as it is based on the wrong premise that the HRVVs' rights flow solely and directly from the U.N. Principles on Reparation. They do not. Such an isolated reading of HRVVs' rights under international law fails to consider: *first,* that the obligation to provide reparation is anchored upon customary international law itself — and not the U.N. Principles on Reparation by and of themselves — which, pursuant to Article II, Section 2[16] of the 1987 Constitution, **automatically**[17] forms part of the law of the land, and *second,* that the obligation to provide reparation ***includes*** the obligation to provide full and effective remedy, among which is satisfaction. Thus, the HRVVs' right to an effective remedy emanates from customary international law which forms part of the law of the land.

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[15] For instance, States have the duty under International Law to translate the ICCPR human rights guarantees into domestic rights. *See* S. Joseph, A Rights Analysis of the Covenant on Civil and Political Rights (1999) 5 Journal of International Legal Studies 57; see also S. Joseph, M. Castan, The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary 11 (2013).

[16] Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations (Underscoring supplied).

[17] See *Pharmaceutical and Health Care Association of the Philippines v. Duque III,* 561 Phil. 386 (2007) (*En Banc*), citing *Minucher v. Court of Appeals,* 445 Phil. 250, 269 (2003); see also *Mijares v. Ranada,* 495 Phil. 372 (2005).

While the U.N. Principles on Reparation in fact do **not** entail ***new*** international or domestic legal obligations, they however identify mechanisms, modalities, procedures and methods for the implementation of ***existing*** legal obligations under international human rights law.[18] This is precisely because the U.N. Principles on Reparation merely compile international legal obligations ***already in force,*** including those embodied in international treaties.[19]

This is supported by the very language of R.A. 10368, categorically recognizing the Constitutional guarantee of full respect for human rights,[20] the Constitutional prohibition on torture, force, violence, threat, intimidation, or any other means which vitiate the free will,[21] as well as the mandate to compensate and rehabilitate victims of torture.[22]

I wish to emphasize that R.A. 10368 itself flows from the recognition of the State's obligation to enact domestic legislation to *give effect* to the rights recognized "therein".[23] The word "therein" in Section 2, paragraph 2 of R.A. 10368 refers to various international human rights laws and conventions to which the Philippines is a State Party *(i.e.,* International Covenant on Civil and Political Rights [ICCPR] and the Convention Against Torture [CAT] and the Universal Declaration of Human Rights

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[18] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, preamble ¶7. Emphasis supplied.

[19] Theo van Boven, The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 5 (2010); Carlos Fernández Romani, *International Law of Victims*, 14 Max Planck Yearbook of United Nations Law, 226 (2010).

[20] 1987 CONSTITUTION, Art. II, Sec. 11.

[21] *Id.*, Art. III, Sec. 12.

[22] R.A. 10368, Sec. 2(1).

[23] *Id.*, Sec. 2(2).

[UDHR]), which lay down States' *erga omnes* obligations concerning the basic rights of human persons.[24]

Among the obligations clearly required by international human rights covenants is the non-derogable right to an effective remedy under Article 2(3) of the ICCPR.[25] To be clear, without reparation provided to individuals whose rights have been violated *(e.g.,* those deprived of the right to life,[26] those subjected to torture, cruel, inhuman and degrading treatment,[27] those arbitrarily detained,[28] and the *desaparecidos*[29]), the obligation to provide an effective remedy is not discharged.

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[24] *Id.*, Sec. 2(2); Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004). The Human Rights Committee (HRC) is a treaty-based body of U.N. independent human rights experts, part of whose mandate is to monitor the implementation of the ICCPR.

[25] ICCPR, Art. 2 (3). "Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b)To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c)To ensure that the competent authorities shall enforce such remedies when granted."

[26] *Id*., Art. 6(1). "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

[27] *Id*., Art. 7. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment x x x."

[28] *Id*., Art. 9(1). "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."; *see also* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at Art. 8 (December 10, 1948), which provides: "[n]o one shall be subjected to arbitrary arrest, detention or exile."

[29] According to the HRC, enforced disappearances inherently constitute torture and/or cruel, inhuman, and degrading treatment, and the right to be

In any event, adopting the *ponencia's* resort to *verba legis,* R.A. 10368 lays to rest any doubt as to the status of the HRVVs' right to an effective remedy, *viz.:*

> In fact, the right to a remedy is itself guaranteed under existing human rights treaties and/or customary international law, being peremptory in character *(jus cogens)* and as such has been recognized as non-derogable.[30]

To my mind, the obligation to uphold the HRVVs' right to an effective remedy, and consequently, the right to all forms of reparation, is beyond question. The only question left to be asked is whether the HRVVs' right to reparation includes the right not to have the perpetrator of the violations of the human rights of these victims interred at the LNMB.

Insofar as the extent of reparation is concerned, even under the pretext of applying the literal meaning of R.A. 10368, it cannot be denied that the obligation to provide reparation to HRVVs is **not** limited to monetary compensation and non-monetary compensation similar to "psychotherapy, counseling, medical care, social amelioration and honorific recognition,"[31] as the *ponencia* suggests based on House Bill Nos. 54, 97, and 302 and Senate Bill No. 3330.

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protected under Article 7 of the ICCPR extends not only to the victim itself, but to the family of the victim. See: *Sarma v. Sri Lanka,* ¶ 9.3, U.N. Doc. CCPR/C/78/D/950/2000 (July 16, 2003) (providing that "[a]ny act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including . . . the right not to be subjected to torture or cruel, inhuman or degrading treatment x x x."); *Bashasha v. Libya,* U.N. Doc. CCPR/C/100/D/1776/2008 (November 2, 2010) at ¶ 7.5 (concluding that "the anguish and distress caused by the disappearance x x x to his close family" is a violation of Article 7), Human Rights Committee, Views: *Mojica v. Dominican Republic,* ¶ 5.7, U.N. Doc. CCPR/C/51/D/449/1991 (Aug. 10, 1994) (stating that "the disappearance x x x is inseparably linked to treatment that amounts to a violation" of the right to humane treatment); see also The Right to a Remedy for Enforced Disappearances in India: A Legal Analysis of International and Domestic Law Relating to Victims of Enforced Disappearances, 33 (April 2014).

[30] R.A. 10368, Sec. 2 (2).

[31] *Id*., Sec. 5; Resolution, p. 30.

Reparation consists of material and symbolic aspects.[32] Inasmuch as R.A. 10368 provides for mechanisms for monetary compensation,[33] it likewise transposes into the domestic sphere the international law obligation to provide non-monetary reparation by recognizing the State's obligation to "acknowledge the sufferings and damages inflicted upon [HRVVs]."[34] To be clear, the obligation to provide reparation refers to a range of measures. In fact, R.A. 10368 is replete with the use of the all-encompassing term "reparation," evincing the legislative intent to refer to all aspects of the entire universe of "reparation" accorded to HRVVs under International Human Rights Laws.

Compensation, as envisioned in Section 4 of R.A. 10368,[35] contemplates economically assessable damage. Section 5,[36] in

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[32] Theo van Boven, The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 4 (2010).

[33] R.A. 10368, Sec. 2; Principle 20, U.N. Principles on Reparation.

[34] *Id*., Sec. 2, par. 2.

[35] SEC 4. *Entitlement to Monetary Reparation.* — Any HRVV qualified under this Act shall receive reparation from the State, free of tax, as herein prescribed: *Provided,* That for a deceased or involuntary disappeared HRVV, the legal heirs as provided for in the Civil Code of the Philippines, or such other person named by the executor or administrator of the deceased or involuntary disappeared HRVVs estate in that order, shall be entitled to receive such reparation: *Provided, further,* That no special power of attorney shall be recognized in the actual disbursement of the award, and only the victim or the aforestated successor(s)-in-interest shall be entitled to personally receive said reparation form the Board, unless the victim involved is shown to be incapacitated to the satisfaction of the Board: *Provided, furthermore,* That the reparation received under this Act shall be without prejudice to the receipt of any other sum by the HRVV from any other person or entity in any case involving violations of human rights as defined in this Act.

[36] SEC. 5. *Nonmonetary Reparation.* — The Department of Health (DOH), the Department of Social Welfare and Development (DSWD), the Department of Education (DepED), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and such other government agencies shall render the necessary services as nonmonetary reparation for HRVVs and/or their families, as may be determined by the Board pursuant to the provisions of this Act. The amount necessary for this purpose shall be sourced from the budget of the agency concerned in the annual General Appropriations Act (GAA).

turn, read vis--à-vis Section 2,[37] refers to the other aspects of reparation, including restitution,[38] rehabilitation,[39]satisfaction,[40] and guarantees of non-repetition.[41] As correctly pointed out by Petitioners, satisfaction, as an aspect of reparation, requires upholding the imprescriptible right to truth, public apologies, and judicial sanctions.[42] By allowing the interment of former President Marcos' remains in no less than the *Libingan ng mga Bayani* and adopting a selective interpretation of the term "reparation," **the Court effectively rendered inutile the very laws passed to give due recognition to the HRVVs' victimhood.**

On a final note, as Petitioners correctly pointed out, mere existence of laws does not, by and of itself, constitute sufficient compliance with the obligation to provide reparation. For instance, in *Bautista de Arellana, v. Colombia,*[43] concerning an individual abducted, tortured and killed by military men dressed as civilians, the United Nations Human Rights Committee (UNHRC) held that despite the institution of a national administrative tribunal and the award of damages to the family's victim, "purely disciplinary and administrative remedies *cannot* be deemed to constitute adequate and effective remedies within the meaning of Article 2, paragraph (3) of the [ICCPR]."

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[37] "x x x The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime."

[38] U.N. Principles on Reparation, Principle 19.

[39] *Id.,* Principle 20.

[40] *Id*., Principle 22.

[41] *Id*., Principle 23.

[42] *Id*., Principle 22.

[43] Communication No. 503/1993, U.N. GAOR, Hum. Rts. Comm., 55th Sess. ¶2.1-2.7, U.N. Doc. CCPR/C/55/D/1993 (1995); see also Thomas M. Antkowiak, *Truth as Right and Remedy in International Human Rights Experience*, 23 Mich. J. Int'l L. 989 (2002).

All told, the judiciary, as a branch of government, is required[44] to adopt measures to fulfill its legal obligation to uphold the right to an effective remedy.[45] Although Article 2, paragraph 2 of the ICCPR allows States Parties to give effect to the ICCPR rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States Parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty.[46]

To be clear, the actual **source** of the HRVVs' right to an effective remedy and to reparation must not be confused with the **mechanism** by which those rights are, in practice, enforced and upheld. The *right* to an effective remedy and the corollary right to reparation arises from customary international law as codified in international human rights treaties, while the *means* by which those rights are protected are codified in the U.N. Principles on Reparation.

Petitioners, who are HRVVs, have come to the Court for the enforcement of their internationally recognized right to effective remedy and full reparation for the harrowing human rights abuses they and many more suffered under the Marcos' martial law regime. I cannot, without reneging on our obligations under international law, and in conscience, allow the interment of former President Marcos in the LNMB, the perpetrator of the violations of their human rights, and desecrate its legal status as a sacred and hallowed national shrine.

WHEREFORE, I maintain my **DISSENT** from the Decision dated November 8, 2016 and vote to **GRANT** the motions for reconsideration.

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[44] United Nations, 'General Comment No. 31', Human Rights Committee, CCPR/C/21/Rev.1/Add. 13 (2004) para. 8.

[45] ICCPR, Art. 2(3); CAT, Art. 14.

[46] United Nations, 'General Comment No. 31', Human Rights Committee, CCPR/C/21/Rev.1/Add. 13 (2004) para. 4.

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ABUSE OF RIGHTS

Elements — Art. 19 of the Civil Code contains what is commonly referred to as the principle of abuse of rights which requires that everyone must act with justice, give everyone his due, and observe honesty and good faith; the elements are the following: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) with the sole intent of prejudicing or injuring another; the existence of malice or bad faith is the fundamental element in abuse of right. (Tan *vs.* Valeriano, G.R. No. 185559, Aug. 2, 2017) p. 155

ACTIONS

Moot and academic cases — A case becomes moot and academic when, by virtue of supervening events, it ceases to present a justiciable controversy, such that a declaration thereon would no longer be of practical value; as a rule, courts decline jurisdiction over such a case or dismiss it on the ground of mootness. (Dr. Malabanan *vs.* Sandiganbayan, G.R. No. 186329, Aug. 2, 2017) p. 183

— An issue becomes moot and academic when any declaration thereon would be of no practical use or value such that there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the claim; the Court holds that the MRs filed by petitioners-movants have not been mooted by Marcos' burial at the LNMB; discussed. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336

Commission of — Sec. 5 Art. III of R.A. No. 7610 provides that when the victim is under 12 years of age, the perpetrators shall be prosecuted under the RPC, but the penalty shall be that provided in R.A. No. 7610; lascivious conduct is defined 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." (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

Elements –– Acts of lasciviousness under the RPC has the following elements: that the offender commits any act of lasciviousness or lewdness; that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and that the offended party is another person of either sex; accused-appellant is guilty of qualified rape and acts of lasciviousness under the RPC in relation to Sec. 5 (b) of R.A. No. 7610. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

Requisites — In instances where the child subjected to sexual abuse through lascivious conduct is below twelve (12) years of age, the offender should be prosecuted under Art. 336 of the RPC; penalty; before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for Acts of Lasciviousness under Art. 336 of the RPC must be met in addition to the requisites for sexual abuse thereunder. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

ACTS OF LASCIVIOUSNESS UNDER THE RPC AND SEXUAL ABUSE UNDER R.A. NO. 7610

Force or intimidation — Force or intimidation in cases involving prosecutions for Rape and Acts of Lasciviousness is defined as "power, violence or constraint exerted upon or against a person"; in *People v. Maceda*, the Court explained the standards for evaluating the force or intimidation employed in rape, which equally applies to Acts of Lasciviousness

as well as violation of Sec. 5 (b), Art. III of R.A. No. 7610. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

Penalty –– In line with recent jurisprudence, the Court modifies the awards of civil indemnity and moral damages. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

ADMINISTRATIVE CODE OF 1987

Publication requirement in the Office of the National Administrative Register (ONAR) –– The publication requirement in the ONAR is confined to issuances of administrative agencies under the Executive Branch of the government; exempted from this prerequisite are the military establishments in all matters relating exclusively to Armed Forces personnel; a plain reading of AFP Regulations G 161-371 to 161-375 reveals that they are internal in nature; discussed. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

ADMINISTRATIVE LAW

Public bidding –– The subject transactions in these cases were undertaken through negotiated purchase but the grounds explicitly mentioned in the COA circular to justify a resort to this mode of procurement were conspicuously absent, *viz:* (a) failure of the required public bidding; (b) purchase is made from reputable manufacturers or exclusive distributors provided they offer the lowest or most advantageous price; (c) any purchase made from the Procurement Service; and (d) on emergency purchase as defined in the circular. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

–– The transactions entered into took place in 1990 when the governing law was COA Circular No. 85-55A requiring public bidding on purchases of supplies, materials, and equipment in excess of ₱50,000.00 unless the law or the agency charter provides otherwise; the exceptions were

clearly identified as follows: emergency purchase, negotiated purchase, and repeat order. (*Id.*)

ADMINISTRATIVE PROCEEDINGS

Conduct prejudicial to the best interest of the service –– Jurisprudence outlined the following acts that constitute this offense, such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders; only the quantum of proof of substantial evidence is required. (OCA *vs.* Umblas, A.M. No. P-09-2649 [Formerly A.M. No. 09-5-219-RTC], Aug. 1, 2017) p. 27

Dishonesty — Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (OCA *vs.* Umblas, A.M. No. P-09-2649 [Formerly A.M. No. 09-5-219-RTC], Aug. 1, 2017) p. 27

Gross misconduct — In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former. (OCA *vs.* Umblas, A.M. No. P-09-2649 [Formerly A.M. No. 09-5-219-RTC], Aug. 1, 2017) p. 27

Gross neglect of duty — As compared to Simple Neglect of Duty which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference, Gross Neglect of Duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. (OCA *vs.* Umblas, A.M. No. P-09-2649 [Formerly A.M. No. 09-5-219-RTC], Aug. 1, 2017) p. 27

Misconduct — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; to

warrant dismissal from the service, it must be grave, serious, important, weighty, momentous, and not trifling; expounded. (OCA *vs.* Umblas, A.M. No. P-09-2649 [Formerly A.M. No. 09-5-219-RTC], Aug. 1, 2017) p. 27

AFP MILITARY PERSONNEL RETIREMENT AND SEPARATION DECREE OF 1979 (P.D. NO. 1638)

Disqualifications — The complaints, denunciations, and charges against Marcos, no matter how numerous and compelling do not amount to conviction by final judgment of an offense involving moral turpitude; the twin elements of "conviction by final judgment" and "offense involving moral turpitude" must concur in order to defeat one's entitlement for burial at the LNMB; conviction by final judgment, explained; the highest quantum of evidence – proof beyond reasonable doubt – must be satisfied. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

— The two instances of disqualification under AFP Regulations G 161-375 apply only to military personnel in "active service"; "active service" under Sec. 3 covers the military and civilian service rendered prior to the date of separation or retirement from the AFP; the term dishonorable discharge in AFP Regulations G 161-375 refers to an administrative military process; the cited cases cannot be relied upon to bar Marcos' burial at the LNMB. (*Id.*)

AGRARIAN LAWS

Compliance with the procedure — In this issue of compliance with the procedure, it must be remembered that the burden of proof lies with the party who asserts a right and the quantum of evidence required by law in civil cases is preponderance of evidence. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

DAR Administrative Order No. 02-94 — DAR A.O. No. 02-94 provides that a registered EP or Certificate of Land Ownership Award (CLOA) may be cancelled on the following grounds, to wit: 9. The land is found to be

exempt/excluded from P.D. No. 27/E.O. No. 228 or CARP coverage or to be part of the landowners' retained area as determined by the Secretary or his authorized representative. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Violation of Section 3(g) –– On the several grounds raised by the petitioners to fortify their plea for acquittal, what caught the attention of this Court was the manner of canvass undertaken by the team to prove its claim of overpricing; elements of Violation of Sec. 3(g) of R.A. No. 3019: a) the accused is a public officer; b) that he entered into a contract or transaction on behalf of the government; and c) that such contract or transaction is grossly and manifestly disadvantageous to the government. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

–– Pursuant to COA Circular No. 85-55A, the term "excessive expenditure" pertains to the variables of price and quality; as to the price, the circular provides that it is excessive if "it is more than the 10% allowable price variance between the price for the item bought and the price of the same item per canvass of the auditor"; what was required to be canvassed was the very same item subject of the assailed transaction; the element that the transaction must be grossly and manifestly disadvantageous to the government was not sustained by the testimonial and documentary evidence of the People; "manifest," "gross," "disadvantageous," defined. (*Id.*)

APPEALS

Appeal from the Decision of the Sandiganbayan –– R.A. No. 8249, which governs the jurisdiction of the Sandiganbayan, pertinently states: Sec. 7. Form, Finality and Enforcement of Decisions. – Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the

Rules of Court; the afore-quoted is complimented by Part II, Rule X of the Revised Internal Rules of the Sandiganbayan; the sole and proper remedy available to obtain a reversal of the decision and resolution of the Sandiganbayan was to appeal pursuant to Rule 45 of the Rules of Court. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

Appeal in criminal cases –– An appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. (People *vs.* Ceralde *y* Ramos, G.R. No. 228894, Aug. 7, 2017) p. 711

Factual findings of administrative bodies — Factual findings of administrative bodies charged with their specific field of expertise, such as the PARAD and the DARAB, are afforded great weight, *nay*, finality by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

Factual findings of the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals –– Considering that the Labor Arbiter, the NLRC, and the Court of Appeals all found petitioner to be disabled due to a work-related injury, this fact is now binding on the respondents and this Court. (Gomez *vs.* Crossworld Marine Services, Inc., G.R. No. 220002, Aug. 2, 2017) p. 401

Factual findings of the trial court — As a rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial; this Rule, however, allows exceptions, such as instances when the findings of fact of the trial court are conflicting or contradictory with those of the CA, as in this case where the conflicting findings of facts of the MCTC on one hand, and the RTC and the CA on the other, warrant a

second look for the proper dispensation of justice. (Sps. Fahrenbach *vs.* Pangilinan, G.R. No. 224549, Aug. 7, 2017) p. 696

Findings of the COA — Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness amounting to grave abuse of discretion; it is only when the COA acted with such abuse of discretion that the Court entertains a petition for *certiorari* under Rule 65 of the Rules of Court. (Hi-Lon Mfg., Inc. *vs.* COA, G.R. No. 210669, Aug. 1, 2017) p. 60

Petition for review on certiorari to the Supreme Court under Rule 45 — As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45; it is not the function of this Court to review and weigh anew the evidence already passed upon by the Regional Trial Court and the Court of Appeals absent any showing of arbitrariness, capriciousness, or palpable error; no substantive or compelling reason for the Court to apply the exception in this case. (Lucido *alias* Tony Ay *vs.* People, G.R. No. 217764, Aug. 7, 2017) p. 646

— The 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. (Equitable Ins. Corp. *vs.* Transmodal Int'l., Inc., G.R. No. 223592, Aug. 7, 2017) p. 681

Points of law, issues, theories, and arguments –– Petitioner should have raised the issue on the medical reports being hearsay evidence before the Labor Arbiter; as a general rule, points of law, theories, and arguments not brought below cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result. (Gomez *vs.* Crossworld Marine Services, Inc., G.R. No. 220002, Aug. 2, 2017) p. 401

–– The scope of review in a Rule 45 petition is limited to questions of law; the appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court subject to certain exceptions: (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 Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a

different conclusion. (Tan *vs.* Valeriano, G.R. No. 185559, Aug. 2, 2017) p. 155

ATTORNEYS

Attorney-client relationship –– It is undeniable that, in causing the filing of a complaint against his former client, respondent used confidential knowledge that he acquired while he was still employed by his former client to further the cause of his new client. (Palacios, for and in behalf of the AFP Retirement and Separation Benefits System (AFP-RSBS) *vs.* Atty. Amora, Jr., A.C. No. 11504, Aug. 1, 2017) p. 9

Code of Professional Responsibility –– Under Rule 15.03 of the Code of Professional Responsibility, a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts; a lawyer's failure to acquire a written consent from both clients after a full disclosure of the facts would subject him to disciplinary action; absent such written consent, respondent is guilty of representing conflicting interests. (Palacios, for and in behalf of the AFP Retirement and Separation Benefits System (AFP-RSBS) *vs.* Atty. Amora, Jr., A.C. No. 11504, Aug. 1, 2017) p. 9

Conflict of interest –– 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 brief, if he argues for one client, this argument will be opposed by him when he argues for the other client"; other tests, discussed. (Palacios, for and in behalf of the AFP Retirement and Separation Benefits System (AFP-RSBS) *vs.* Atty. Amora, Jr., A.C. No. 11504, Aug. 1, 2017) p. 9

–– While the Court cannot allow a lawyer to represent conflicting interests, it deems disbarment a much too harsh penalty under the circumstances; penalty. (*Id.*)

ATTORNEYS FEES

Award of –– Attorney's fees, correctly awarded in favor of petitioner; under Art. 2208, par. 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws; pursuant to the case of *Nacar v. Gallery Frames*, the Court imposes on the monetary award for permanent partial disability benefit an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction. (Gomez *vs.* Crossworld Marine Services, Inc., G.R. No. 220002, Aug. 2, 2017) p. 401

–– Case law states that "where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the award." (Atienza *vs.* Orophil Shipping Int'l. Co., Inc., G.R. No. 191049, Aug. 7, 2017) p. 480

–– The Court finds the award of attorney's fees in order, considering that petitioners' intrusion on respondent's property has compelled the latter to incur expenses to protect her interests. (Sps. Fahrenbach *vs.* Pangilinan, G.R. No. 224549, Aug. 7, 2017) p. 696

BANKS

Liquidation of a closed bank –– The closure of the bank by the Monetary Board, the appointment of a receiver and its takeover of the bank, and the filing of a petition for assistance in the liquidation of the Bank, had the similar effect of suspending or staying the demand ability of the loan obligation of the bank to respondent corporation with the concomitant cessation of the former's obligation to pay interest to the latter upon the bank's closure. (Cu *vs.* Small Business Guarantee and Finance Corp., G.R. No. 211222, Aug. 7, 2017) p. 617

–– The petition for assistance in the liquidation of a closed bank is a special proceeding for the liquidation of a closed bank, and includes the declaration of the

concomitant rights of its creditors and the order of payment of their valid claims in the disposition of assets; the provisions of the Securities Regulation Code (R.A. No. 8799) and Supreme Court A.M. No. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation, not applicable. (*Id.*)

–– When a bank is ordered closed by the Monetary Board, PDIC is designated as the receiver which shall then proceed with the takeover and liquidation of the closed bank; the placement of a bank under liquidation has the following effect on interest payments; explained. (*Id.*)

BILL OF RIGHTS

Right to be presumed innocent –– The right to be presumed innocent until proven guilty is subsumed in the constitutional right of every person not to be held to answer for a criminal offense without due process of law; there is no legal or just ground for the Court to deny the constitutional right to be presumed innocent to one who is not even criminally prosecuted. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

CARRIAGE OF GOODS BY SEA ACT (COGSA)

Prescriptive period –– It has long been settled that in case of loss or damage of cargoes, the one-year prescriptive period under the COGSA applies; as an exception, the nine-month period is inapplicable when there is a different period provided by a law for a particular claim or action— unlike in *Philippine American* where the Bill of Lading stipulated a prescriptive period for actions without exceptions; application. (Pioneer Ins. and Surety Corp. *vs.* APL Co. Pte. Ltd., G.R. No. 226345, Aug. 2, 2017) p. 439

CERTIORARI

Petition for –– An order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for *certiorari;* the denial of the

motion to quash means that the criminal information remains pending with the court, which must proceed with the trial to determine whether the accused is guilty of the crime charged therein. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

–– As a rule, judgments, final orders or resolutions of the Office of the President may be taken to the Court of Appeals by filing a verified petition for review within 15 days from notice; however, where the petition alleges grave abuse of discretion as when the assailed resolution substantially modifies a decision that already became final and executory, what is involved is an error of jurisdiction that is reviewable by *certiorari*, and no longer an error of judgment which is reviewable by an appeal under Rule 43; illustrated. (Multinational Village Homeowners' Assoc., Inc. *vs.* Gacutan, G.R. No. 188307, Aug. 2, 2017) p. 205

–– *Certiorari* as a special civil action can be availed of only if there is a concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

–– *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment; true function of the writ of *certiorari* — "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction." (*Id.*)

–– The alleged misapplication of facts and evidence, and whatever flawed conclusions of the Sandiganbayan, is an error in judgment, not of jurisdiction, and therefore not within the province of a special civil action for *certiorari;* erroneous conclusions based on evidence do

not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. (*Id.*)

–– The special civil action of *certiorari* will not lie unless the aggrieved party has no other plain, speedy, and adequate remedy in the ordinary course of law; the filing of a motion for reconsideration is an indispensable condition before resorting to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any. (*Id.*)

***CERTIORARI* AND PROHIBITION**

Petitions for –– It has been held that there is grave abuse of discretion when an act is: 1) done contrary to the Constitution, the law or jurisprudence; or 2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias; petitioners correctly availed of the remedies of *certiorari* and prohibition, although these governmental actions were not made pursuant to any judicial or quasi-judicial function. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

–– Petitioner failed to bring her petition within the jurisprudentially established exceptions where appeal would be inadequate and the special civil action of *certiorari* or prohibition may be allowed, *viz:* (1) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (2) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (3) in the interest of a more enlightened and substantial justice; (4) to promote public welfare and public policy; and (5) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

–– The remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition 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. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

CHILD AND YOUTH WELFARE CODE (P.D. NO. 603)

Article 139 — As explicitly worded, city councils are authorized to enact curfew ordinances (as what respondents have done in this case) and enforce the same through their local officials; P.D. No. 603 provides sufficient statutory basis – as required by the Constitution – to restrict the minors' exercise of the right to travel; the restrictions set by the Curfew Ordinances that apply solely to minors are likewise constitutionally permissible. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

CIVIL REGISTRY LAW (ACT NO. 3753)

Birth certificates of illegitimate children –– Acts executed against the provisions of mandatory or prohibitory laws shall be void; in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. (In the Matter of Petition for Cancellation of Certificates of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, G.R. No. 222095, Aug. 7, 2017) p. 664

Local civil registrar — Since it appears on the face of the subject birth certificates that the mother did not sign the documents, the local civil registrar had no authority to register the subject birth certificates; under the IRR of Act No. 3753, the civil registrar shall see to it that the Certificate of Live Birth presented for registration is properly and completely filled up, and the entries are correct. (In the Matter of Petition for Cancellation of Certificates of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, G.R. No. 222095, Aug. 7, 2017) p. 664

Section 5 — The first paragraph of Sec. 5 of Act No. 3753 assumes that the newborn child is legitimate since our law accords a strong presumption in favor of legitimacy of children; on the other hand, the fourth paragraph of Sec. 5 specifically provides that in case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses; thus, it is mandatory that the mother of an illegitimate child signs the birth certificate of her child in all cases, irrespective of whether the father recognizes the child as his or not; purpose. (In the Matter of Petition for Cancellation of Certificates of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, G.R. No. 222095, Aug. 7, 2017) p. 664

COCONUT LEVY FUNDS

Nature — Sec. 1(a) of P.D. No. 1234 clearly characterizes the CCSF and the CIDF as public funds, which shall be remitted to the Treasury as Special Accounts in the General Fund; in the landmark cases of *COCOFED* and *Republic*, the Court, in no uncertain terms, declared Sec. 5, Art. III of P.D. No. 1468 unconstitutional and categorized coconut levy funds to be public in nature; the most compelling reasons to treat coconut levy funds as public funds are the fact that it was raised through the State's taxing power and it was for the development of the coconut industry as a whole and not merely to benefit individual

farmers. (Confederation of Coconut Farmers Orgs. of the Phils., Inc. (CCFOP) *vs.* Pres. Aquino III, G.R. No. 217965, Aug. 8, 2017) p. 1036

–– The coconut levy funds are special funds allocated for a specific purpose and can never be used for purposes other than for the benefit of the coconut farmers or the development of the coconut industry; the assailed issuances (E.O. No. 179 calling for the inventory and privatization of all coco levy assets and E.O. No. 180 mandating the reconveyance and utilization of these assets for the benefit of coconut farmers and the development of the coconut industry), explained; P.D. No. 1234 does not actually provide a mechanism for how the SAGF is to be disbursed; the absence of the requisite legislative authority in the disbursement of public funds cannot be remedied by executive fiat. (*Id.*)

COMMISSION ON AUDIT (COA)

Disbursement of public funds –– COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds; in consonance with its general audit power, COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement. (Hi-Lon Mfg., Inc. *vs.* COA, G.R. No. 210669, Aug. 1, 2017) p. 60

COMMON CARRIERS

Breach of contract of carriage –– The principle that, in an action for breach of contract of carriage, moral damages may be awarded only in case: 1) an accident results in the death of a passenger; or 2) the carrier is guilty of fraud or bad faith, is pursuant to Art. 1764, in relation to Art. 2206(3) of the Civil Code, and Art. 2220 thereof; exemplary damages, when awarded. (Darines *vs.* Quiñones, G.R. No. 206468, Aug. 2, 2017) p. 345

COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (R.A. NO. 6758)

Consolidation of allowances and compensation –– As the Court explained in its Feb. 7, 2017 Decision, the transition allowance was given only to comply with the non-diminution clause of the law; it was never meant as an additional compensation to the standardized pay. (Rep. of the Phils. *vs.* Hon. Cortez, G.R. No. 187257, Aug. 8, 2017) p. 724

–– This issue has already been discussed and passed upon in the Court's Feb. 7, 2017 Decision: Thus, *Philippine Ports Authority Employees Hired After July 1, 1989* clarified that those who were already receiving Cost of Living Allowance (COLA) and Amelioration Allowance (AA) as of July 1, 1989, but whose receipt was discontinued due to the issuance of DBM-CCC No. 10, were entitled to receive such allowances during the period of the Circular's ineffectivity, or from July 1,1989 to March 16,1999; the COLA and AA of NAPOCOR officers and employees were integrated into the standardized salaries effective July 1, 1989 pursuant to Sec. 12 of R.A. No. 6758. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule –– Sec. 21, Art. II of R.A. No. 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value; explained. (People *vs.* Ceralde *y* Ramos, G.R. No. 228894, Aug. 7, 2017) p. 711

–– The failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the

integrity and evidentiary value of the seized items are properly preserved. (*Id.*)

— The initial procedural safeguard is provided for under Sec. 21, par. 1 of R.A. No. 9165, which reads: (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; this is mandatory in nature. (People *vs.* Sagana *y* De Guzman, G.R. No. 208471, Aug. 2, 2017) p. 356

— The prosecution must identify the persons involved in handling the seized articles from confiscation up to their presentation as evidence; concomitantly, the prosecution should also offer statements pertaining to each link of the chain "in such a way that every person who touched the illegal drugs would describe how and from whom they were received, where they were and what happened to them while in his or her possession, the condition in which he or she received them, and their condition upon delivery." (*Id.*)

Illegal possession of dangerous drugs — When an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (People *vs.* Ceralde *y* Ramos, G.R. No. 228894, Aug. 7, 2017) p. 711

Illegal possession of prohibited drugs — The following elements must be proven in illegal possession of prohibited drugs: 1) the accused was in possession of dangerous drugs; 2) such possession was not authorized by law; and 3) the

accused was freely and consciously aware of being in possession of dangerous drugs. (People *vs.* Sagana *y* De Guzman, G.R. No. 208471, Aug. 2, 2017) p. 356

Illegal sale of dangerous drugs — In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. (People *vs.* Sagana *y* De Guzman, G.R. No. 208471, Aug. 2, 2017) p. 356

Illegal sale of prohibited drugs — For a plausible conviction under Art. II, Sec. 5 of R.A. No. 9165 or illegal sale of prohibited drugs, the prosecution must ascertain the following: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor; it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused." (People *vs.* Sagana *y* De Guzman, G.R. No. 208471, Aug. 2, 2017) p. 356

CONSTITUTION

Interpretation of — Petitioners-movants repeatedly failed to demonstrate precisely how Secs. 3, 7, 11, 13, 23, 26, 27 and 28 of Art. II; Sec. 18, Art. VII; Sec. 1, Art. VIII; Sec. 1, Art. XI; Sec. 3[2], Art. XIV; Sec. 5 [2], Art. XVI; and Sec. 17, Art. XIII of the Constitution prohibit Marcos' burial at the LNMB; the Court may not ascribe to the Constitution meanings and restrictions that would unduly burden the powers of the President; the silence of the Constitution cannot be unreasonably stretched to justify such alleged proscription. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

CONSTITUTIONAL RIGHTS

Judicial scrutiny tests — The second requirement of the strict scrutiny test stems from the fundamental premise that

citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional rights; the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest; application. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

–– Three (3) tests of judicial scrutiny to determine the reasonableness of classifications: the strict scrutiny test applies when a classification either: (*i*) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution; or (*ii*) burdens suspect classes; the intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy; lastly, the rational basis test applies to all other subjects not covered by the first two tests; the strict scrutiny test is the applicable test. (*Id.*)

CONTRACTS

Interpretation of — Art. 1370 of the New Civil Code provides that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control; clear and convincing evidence is required to impugn it. (Hi-Lon Mfg., Inc. *vs.* COA, G.R. No. 210669, Aug. 1, 2017) p. 60

–– In *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.*, the Court reiterated that when the terms of the contract are clear, its literal meaning shall control; the cardinal rule in the interpretation of contracts is embodied in the first paragraph of Art. 1370 of the Civil Code; this provision is akin to the "plain meaning rule" applied by Pennsylvania courts; it also resembles the "four corners" rule. (Pioneer Ins. and Surety Corp. *vs.* APL Co. Pte. Ltd., G.R. No. 226345, Aug. 2, 2017) p. 439

COURTS

Doctrine of hierarchy of courts –– The doctrine of hierarchy of courts requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court; the Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus;* this jurisdiction is shared with the Court of Appeals and the Regional Trial Courts; a direct invocation of this Court's jurisdiction, when allowed. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

Functions –– The function of the courts is *jus dicere* and not *jus dare;* to interpret law, and not to make law or give law; judicial legislation is abjured by the *trias politica* principle and in violation of one of the most basic principles of a republican and, democratic government – the separation of powers. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

Hierarchy of courts –– The policy on the hierarchy of courts is not to be regarded as an iron-clad rule; in *The Diocese of Bacolod v. Commission on Elections* and *Querubin v. Commission on Elections*, the Court has enumerated the various specific instances when direct resort to the Court may be allowed: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression; (d) when the constitutional issues raised are best decided by this Court; (e) when the time element presented in this case cannot be ignored; (f) when the petition reviews the act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (h) when public welfare and the advancement of public policy so dictates, or when demanded by the broader interest of justice; (i) when the orders complained of are patent nullities; and j) when

appeal is considered as clearly an inappropriate remedy. (Hon. Rama *vs.* Hon. Moises, G.R. No. 197146, Aug. 8, 2017) p. 954

Jurisdiction — The Constitution is clear that judicial power, which 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, is vested not just in the Supreme Court but also upon such lower courts established by law. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

— The organic act vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation is in question. (*Id.*)

— The proper Regional Trial Court exercises concurrent jurisdiction over extraordinary remedies such as petitions for *certiorari,* prohibition and/or mandamus and equally wields the power to grant provisional relief/s; in a case where the constitutionality of an executive order was challenged, the Court stressed that, while lower courts should observe a becoming modesty in examining constitutional questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal; even if the case is one of first impression, the New Civil Code provides that no judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws; rationale. (*Id.*)

CRIMINAL PROCEDURE

Appeals — In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising

therefrom; hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG; effect if denied. (Cu *vs.* Small Business Guarantee and Finance Corp., G.R. No. 211222, Aug. 7, 2017) p. 617

DENIAL

Defense of — It is an established rule that denial is an inherently weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness; mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

DEPARTMENT OF AGRARIAN REFORM (DAR)

Jurisdiction — In agrarian reform cases, primary jurisdiction is vested in the DAR, more specifically, in the DARAB as provided for in Sec. 50 of R.A. No. 6657; E.O. No. 229 also vested the DAR with: 1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and 2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DA and the DENR. (LBP *vs.* Dalauta, G.R. No. 190004, Aug. 8, 2017) p. 740

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)

Classification of lands — To establish that a land is indeed alienable and disposable, applicants must submit the application for original registration with the CENRO certification and a copy of the original classification approved by the DENR Secretary and certified as a true

copy by the legal custodian of the official records. (Rep. of the Phils. *vs.* Sps. Go, G.R. No. 197297, Aug. 2, 2017) p. 306

Functions of DENR Secretary –– Sec. X(1) of the DENR Administrative Order No. 1998-24 and Sec. IX(1) of DENR Administrative Order No. 2000-11 affirm that the DENR Secretary is the approving authority for "[l]and classification and release of lands of the public domain as alienable and disposable"; the DENR Secretary's official acts "may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy." (Rep. of the Phils. *vs.* Sps. Go, G.R. No. 197297, Aug. 2, 2017) p. 306

ELECTRIC POWER CRISIS ACT OF 1993 (R.A. NO. 7648)

New compensation plan –– This Court clarified that upon the implementation of R.A. No. 7648, NAPOCOR workers were covered by a new compensation plan; the new compensation plan already incorporated all benefits previously integrated, including the COLA and AA. (Rep. of the Phils. *vs.* Hon. Cortez, G.R. No. 187257, Aug. 8, 2017) p. 724

EMINENT DOMAIN

Just compensation –– Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator; the word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. (Nat'l. Transmission Corp. *vs.* Oroville Dev't. Corp., G.R. No. 223366, Aug. 1, 2017) p. 91

–– The Court agrees that just compensation for respondent's land should be computed based on the formula provided under DAR-LBP Joint Memorandum Circular No. 11, series of 2003; JMC No. 11 (2003) provides for several valuation procedures and formulas, explained; the award shall earn legal interest. (LBP *vs.* Dalauta, G.R. No. 190004, Aug. 8, 2017) p. 740

–– The Court is not unaware of the rulings in *National Power Corporation v. Heirs of Macabangkit Sangkay* and *National Power Corporation v. Spouses Saludares* wherein it was held that just compensation should be reckoned from the time the property owners initiated inverse condemnation proceedings notwithstanding that the taking of the properties occurred earlier; these rulings, however, are exceptions to the general rule that just compensation must be reckoned from the time of taking or filing of the complaint, whichever came first. (Nat'l. Transmission Corp. *vs.* Oroville Dev't. Corp., G.R. No. 223366, Aug. 1, 2017) p. 91

–– The owner's loss is not only his property but also its income-generating potential; thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost; rationale; respondent corporation is entitled to twelve percent (12%) interest *per annum* which is the prevailing rate during such period pursuant to Central Bank Circular No. 905, effective from Dec. 22, 1982 to June 30, 2013 and is also awarded additional compensation by way of exemplary damages and attorney's fees. (*Id.*)

Petition for determination of just compensation –– Since the determination of just compensation is a judicial function, the Court must abandon its ruling in *Veterans Bank, Martinez* and *Soriano* that a petition for determination of just compensation before the SAC shall be proscribed and adjudged dismissible if not filed within the 15-day period prescribed under the DARAB Rules; in Sec. 57 of R.A. No. 6657, Congress expressly granted the RTC, acting as SAC, the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. (LBP *vs.* Dalauta, G.R. No. 190004, Aug. 8, 2017) p. 740

–– There may be situations where a landowner, who has a pending administrative case before the DAR for determination of just compensation, still files a petition before the SAC for the same objective; such recourse is

not strictly a case of forum shopping, the administrative determination being not *res judicata* binding on the SAC; this was allowed by the Court in *LBP v. Celada* and other several cases; nevertheless, the practice should be discouraged; discussed. (*Id.*)

–– While R.A. No. 6657 itself does not provide for a period within which a landowner can file a petition for the determination of just compensation before the SAC, it cannot be imprescriptible because the parties cannot be placed in limbo indefinitely; considering that the payment of just compensation is an obligation created by law, it should only be ten (10) years from the time the landowner received the notice of coverage; under Art. 1144, such actions must be brought within ten (10) years from the time the right of action accrues. (*Id.*)

Requirements –– Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare; two mandatory requirements should underlie the Government's exercise of this power: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. (Nat'l. Transmission Corp. *vs.* Oroville Dev't. Corp., G.R. No. 223366, Aug. 1, 2017) p. 91

–– The landmark case of *Republic v. Vda. De Castellvi* provides an enlightening discourse on the requisites of taking: first, the expropriator must enter a private property; second, the entrance into private property must be for more than a momentary period; third, the entry into the property should be under warrant or color of legal authority; fourth, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and fifth, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. (*Id.*)

Valuation of property –– Sec. 9, Art. III of the 1987 Constitution provides that "[p]rivate property shall not be taken for public use without just compensation"; in *Export*

Processing Zone Authority v. Dulay, the Court ruled that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies. (LBP *vs.* Dalauta, G.R. No. 190004, Aug. 8, 2017) p. 740

EMPLOYMENT, TERMINATION OF

Gross misconduct –– The Court has consistently ruled that the utterance of obscene, insulting or offensive words against a superior is not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also constitutes gross misconduct; accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination. (Sterling Paper Products Enterprises, Inc. *vs.* KMM-Katipunan, G.R. No. 221493, Aug. 2, 2017) p. 425

Illegal dismissal –– In an illegal dismissal case, the employer whose defense is the voluntary resignation of the employee must prove by clear, positive and convincing evidence that the resignation was voluntary; the petitioners fully discharged their burden of proof. (FCA Security and General Services, Inc. *vs.* Academia, Jr. II, G.R. No. 189493, Aug. 2, 2017) p. 233

–– In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause. (Sterling Paper Products Enterprises, Inc. *vs.* KMM-Katipunan, G.R. No. 221493, Aug. 2, 2017) p. 425

Management prerogative –– Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its affairs including the right to dismiss its erring employees; as long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.

(Sterling Paper Products Enterprises, Inc. *vs.* KMM-Katipunan, G.R. No. 221493, Aug. 2, 2017) p. 425

Misconduct –– Misconduct is defined as an improper or wrong conduct; it is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment; the following elements must concur: a) the misconduct must be serious; b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and c) it must have been performed with wrongful intent. (Sterling Paper Products Enterprises, Inc. *vs.* KMM-Katipunan, G.R. No. 221493, Aug. 2, 2017) p. 425

EVIDENCE

Preponderance of evidence –– Preponderance of evidence is the weight, credit, and 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 credible evidence." (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

Quantum of evidence in criminal cases –– The quantum of evidence required in criminal cases is proof beyond reasonable doubt; this only requires moral certainty or "that degree of proof which produces conviction in an unprejudiced mind." (People *vs.* PO3 Borja, G.R. No. 199710, Aug. 2, 2017) p. 327

Torrens system –– The mere issuance of EPs and TCTs does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny; EPs issued to agrarian reform beneficiaries may be corrected and cancelled for violations of agrarian laws, rules, and regulations; 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; the jurisdiction of the PARAD/DARAB cannot be deemed to disappear the moment a certificate of title

is issued; rationale. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

Weight and sufficiency of — The Court sustained the findings, as well as the Certifications issued by the zoning administrator, attesting to the classification of the property as being within the residential zone; evidentiary weight is accorded to the said documents as the same were issued by such officer having jurisdiction over the area where the land in question is situated and is, therefore, more familiar with the property in issue; these certifications carried the presumption of regularity in its issuance. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

EXECUTIVE DEPARTMENT

Power of the President — In the absence of arbitrariness and grave abuse, courts have no power or control over acts involving the exercise of judgment of the Executive Department; the commander-in-chief power of the President is a wholly different and independent specie of presidential authority that is not encumbered by the same degree of restriction as that which may attach to the exercise of executive control. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

— The Court should leave Marcos' legacy to the judgment of history; the President of the Philippines has no authority to unilaterally declare anyone a hero. (*Id.*)

— The exercise of executive power by the past president cannot emasculate that of the incumbent president; the determination of whether Marcos' burial at the LNMB will best serve the public interest lies within the prerogative of the President; the powers of the Philippine President is not limited only to the specific powers enumerated in the Constitution; if the act is within the exercise of the President's discretion, it is conclusive; if it is without authority and against law, it is void. (*Id.*)

—— The President's constitutional power of control over all the executive departments, bureaus and offices cannot be curtailed or diminished by law; this **power of control** of the President cannot be diminished by the CTA; thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President should resolve the dispute instead of the courts. (Power Sector Assets and Liabilities Mgm't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

—— While there is no provision of the Constitution, law, or jurisprudence expressly allowing or disallowing Marcos' burial at the LNMB, there is a rule, particularly AFP Regulations G 161-375, that is valid and existing; it has the force and effect of law because it was duly issued pursuant to the rule-making power of the President that was delegated to his subordinate official. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — It is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction; otherwise, his action is premature and his case is not ripe for judicial determination; P.D. No. 242 (now Chap. 14, Book IV of E.O. No. 292), provides for such administrative remedy; thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires; effect of non-observance of the doctrine. (Power Sector Assets and Liabilities Mgm't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

—— The Court cannot anchor its judgment on news accounts of the President's statements with regard to the issue of Marcos' burial at the LNMB; newspaper articles amount to "hearsay evidence, twice removed" and are therefore

not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted; the Court must base its decision on a formal concrete act, preferably a written order denying the MR or appeal, so as to avoid being entangled in possibly moot and academic discourses should he make a *volte-face* on the issue; discussed. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

–– The exceptions to the doctrine of exhaustion of administrative remedies, according to *Province of Zamboanga del Norte v. Court of Appeals,* are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot. (GSIS *vs.* Velasco, G.R. No. 196564, Aug. 7, 2017) p. 523

–– The purpose behind the settled rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari* is to grant the court or administrative body which issued the assailed decision, resolution or order the opportunity to correct any actual

or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

— The rationale of the doctrine was aptly explained by the Court in *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*: The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system; The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence; explained. (Power Sector Assets and Liabilities Mgm't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

— This Court cannot accept the proposition that a mere allegation of good faith by the issuers of the assailed official acts automatically takes the disputed action out of its being patently illegal and thereby necessitates the application of the doctrine of exhaustion of administrative remedies. (GSIS *vs.* Velasco, G.R. No. 196564, Aug. 7, 2017) p. 523

EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Acts of lasciviouness — "Influence" is the improper use of power or trust in any way that deprives a person of free will and substitutes another's objective; on the other hand, "coercion" is the improper use of power to compel another to submit to the wishes of one who wields it; Sec. 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct; intimidation need not necessarily be irresistible. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Civil liability of accused-appellant — Sec. 31(f) of R.A. No. 7610 imposes a fine upon the perpetrator; considering the gravity and seriousness of the offense, taken together

with the evidence presented against the accused, the Court finds it proper to award damages; in light of recent jurisprudential rules, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua,* the victim is entitled to civil indemnity, moral damages and exemplary damages, regardless of the number of qualifying aggravating circumstances present. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Consent –– Consent is immaterial in cases involving violation of Sec. 5 of R.A. No. 7610; the mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense because it is a *malum prohibitum*; all the essential elements of lascivious conduct under Sec. 5(b) of R.A. No. 7610 have been proved in this case. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Lascivious conduct under Section 5 (b) –– Considering that the victim was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua; i*n crimes against chastity, such as acts of lasciviousness, relationship is always aggravating; explained. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Sexual abuse and lascivious conduct –– The accused's acts are clearly covered by the definitions of "sexual abuse" and "lascivious conduct" under Sec. 2 of the rules and regulations of R.A. No. 7610: (g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children; (h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus

or mouth, of any person, whether of the same or opposite sex, with an intent to **abuse**, humiliate, harass, degrade, or arouse or gratify the **sexual desire of any person,** bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Sexual abuse under Section 5(b) –– Based on the language of Sec. 5(b) of R.A. No. 7610, the offense designated as Acts of Lasciviousness under Art. 336 of the RPC in relation to Sec. 5 of R.A. No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed; explained; application. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

–– Even absent coercion or intimidation, the accused can still be convicted of lascivious conduct under Sec. 5(b) of R.A. No. 7610 as he evidently used his moral influence and ascendancy as a father in perpetrating his lascivious acts against the victim; it is doctrinal that moral influence or ascendancy takes the place of violence and intimidation. (*Id.*)

–– Guidelines in designating or charging the proper offense in case lascivious conduct is committed under Sec. 5(b) of R.A. No. 7610, and in determining the imposable penalty: 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty; 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Art. 336 of the Revised Penal Code in relation to Sec. 5(b) of R.A. No. 7610"; pursuant to the second *proviso* in Sec. 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period; 3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty,

exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Sec. 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*. (*Id.*)

–– R.A. No. 7610 finds application when the victims of abuse, exploitation or discrimination are children or those "persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition." (*Id.*)

–– Sec. 5(b) of R.A. No. 7610 does not require a prior or contemporaneous abuse that is different from what is complained of, or that a third person should act in concert with the accused. (*Id.*)

–– The elements of sexual abuse under Sec. 5(b) of R.A. No. 7610 are as follows: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age. (*Id.*)

EXPROPRIATION

Notice to landowner –– Land acquisition by virtue of P.D. No. 27 and R.A. No. 6657 partakes of the nature of expropriation; the law on the matter must be strictly construed; in expropriation proceedings, as in judicial proceedings, notice is part of the constitutional right to due process of law; purpose. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

FALSIFICATION OF A PRIVATE DOCUMENT

Commission of –– Falsification of a private document under paragraph 2 of Art. 172 of the Revised Penal Code; elements. (Dr. Malabanan *vs.* Sandiganbayan, G.R. No. 186329, Aug. 2, 2017) p. 183

FALSIFICATION OF DOCUMENTS COMMITTED BY A PUBLIC OFFICER

Commission of –– Falsification of documents committed by a public officer under Art. 171 of the Revised Penal Code; elements. (Dr. Malabanan *vs.* Sandiganbayan, G.R. No. 186329, Aug. 2, 2017) p. 183

FAMILY CODE, AS AMENDED BY R.A. NO. 9255

Paternity and filiation — Upon the effectivity of R.A. No. 9255, the provision that illegitimate children shall use the surname and shall be under the parental authority of their mother was retained, with an added provision that they may use the surname of their father if their filiation has been expressly recognized by their father. (In the Matter of Petition for Cancellation of Certificates of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, G.R. No. 222095, Aug. 7, 2017) p. 664

FELONIES

Variance between the felony charged in the Information and found in the judgment of conviction –– The conviction for falsification of a private document under par. 2, Art. 172 is valid only if the elements of that felony constituted the elements of his indictment for falsification by a public officer under Art. 171; the Court cannot justly convict petitioner of falsification of a commercial document under par. 1 of Art. 172. (Dr. Malabanan *vs.* Sandiganbayan, G.R. No. 186329, Aug. 2, 2017) p. 183

FORCIBLE ENTRY OR UNLAWFUL DETAINER

Commission of — It is well-settled that the only question that the courts must resolve in forcible entry or unlawful detainer cases is who between the parties is entitled to the physical or material possession of the property in dispute; the main issue is possession *de facto*, independently of any claim of ownership or possession

de jure that either party may set forth in his pleading. (Sps. Fahrenbach *vs.* Pangilinan, G.R. No. 224549, Aug. 7, 2017) p. 696

Judgment –– Under Sec. 17, Rule 70 of the Rules of Court, the judgment in cases for forcible entry shall include the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises; however, in *Badillo v. Tayag*, the Court clarified that reasonable amount of rent in suits for forcible entry must be determined not by mere judicial notice, but by supporting evidence; application. (Sps. Fahrenbach *vs.* Pangilinan, G.R. No. 224549, Aug. 7, 2017) p. 696

FORUM SHOPPING

Concept –– According to jurisprudence, forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or special civil action of *certiorari,* or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court might look with favor upon the party. (GSIS *vs.* Velasco, G.R. No. 196564, Aug. 7, 2017) p. 523

Litis pendencia –– Where the elements of *litis pendentia* are not present or where a final judgment in one case will not amount to *res judicata* in the other, there is no forum shopping; respondent, not guilty of forum shopping. (GSIS *vs.* Velasco, G.R. No. 196564, Aug. 7, 2017) p. 523

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Alternative methods of procurement –– At present, the law governing the procurement activities in the government requires that all procurement be done through competitive bidding except when the alternative methods of procurement would apply, *viz:* (a) limited source bidding otherwise known as selective bidding; (b) direct contracting otherwise known as single source procurement; (c) repeat order; (d) shopping; and (e) negotiated

procurement; competitive public bidding may not be dispensed with nor circumvented; and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law; purpose of competitive public bidding. (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Hold-over directors — HLURB Resolution No. 770-04, entitled "Framework for Governance of Homeowners Associations," defines hold-over directors or officers in Sec. 67 thereof; Sec. 4 of HLURB Resolution No. R-771-04 expressly authorizes the HLURB-NCRFO to call the election when the circumstances so warrant, as in this case; while HLURB Resolution Nos. 770-04 and R-771-04 do not expressly set the maximum period that a director or officer may serve in a hold-over capacity, the BOD of a homeowners' association cannot unjustifiably refuse to call and hold an election when mandated by the association by-laws. (Multinational Village Homeowners' Assoc., Inc. *vs.* Gacutan, G.R. No. 188307, Aug. 2, 2017) p. 205

INSURANCE

Subrogation — Presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right; the subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim. (Equitable Ins. Corp. *vs.* Transmodal Int'l., Inc., G.R. No. 223592, Aug. 7, 2017) p. 681

— Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities; basis. (*Id.*)

–– The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss; the right of subrogation is not dependent upon, nor does it grow out of any private of contract or upon payment by the insurance company of the insurance claim; it accrues simply upon payment by the insurance company of the insurance claim. (*Id.*)

INTERNATIONAL LAW

International Human Rights Law — The Basic Principles and Guidelines and the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity ("UN Principles on Impunity") are merely expressions of non-binding norms, principles, and practices that influence state behavior; not validly considered as sources of international law that is binding upon the Philippines under Art. 38 (1), Chap. II of the Statute of the International Court of Justice; even if treated as binding, international laws, they do not prohibit Marcos' burial at the LNMB; they do not derogate against the right to due process of the alleged human rights violator; discussed. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

JUDGES

Gross negligence — The leniency of a judge in the administrative supervision of his employees is an undesirable trait; the judge's failure to meet the exacting standards of his position, as evidenced by the number and different irregularities discovered to have been occurring in his court, as well as his failure to eliminate these irregularities, establish that he was grossly negligent in the performance of his duties. (OCA *vs.* Retired Judge Chavez, A.M. No. RTJ-10-2219, Aug. 1, 2017) p. 41

JUDGMENTS

Doctrine of immutability of final and executory judgments –– The OP Clarificatory Resolution did not modify but

merely clarified the ambiguity in the dispositive portion of the Decision of the HLURB-NCRFO; when a final judgment is executory, it becomes immutable and unalterable; however, where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final. (Multinational Village Homeowners' Assoc., Inc. *vs.* Gacutan, G.R. No. 188307, Aug. 2, 2017) p. 205

Equity — Equity is "justice outside legality"; it is applied only in the absence of and never against statutory law or, as in this case, appropriate AFP regulations. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

Execution of — Execution has been defined as a remedy afforded by law for the enforcement of a judgment, its object being to obtain satisfaction of the judgment on which the writ is issued; a writ of execution was never meant to be a prerequisite before a judgment may be enforced; with the finality of the decision in *COCOFED*, there is no question that the coconut levy assets are public funds; it does not deprive the courts with its power to issue writs of execution because the government may resort to it in case it encounters obstacles in the enforcement of the decision. (Confederation of Coconut Farmers Orgs. of the Phils., Inc. (CCFOP) *vs.* Pres. Aquino III, G.R. No. 217965, Aug. 8, 2017) p. 1036

— There are cases that may be executed pending appeal or are immediately executory pursuant to the provisions of the Rules and the statutes as well as by court order; the fact that a decision is immediately executory does not prevent a party from questioning the decision before a court of law; as regards the *Status Quo Ante* Order (SQAO), *Buyco v. Baraquia,* ruled that the lifting of a Writ of Preliminary Injunction due to the dismissal of the complaint is immediately executory even if the dismissal of the complaint is pending appeal; application. (Ocampo

vs. Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

Judgment of the Court of Appeals — The CA's decision did not amount to a judgment of acquittal; the statement must be read alongside the immediately succeeding directive of the appellate court, remanding the case to the RTC for further proceedings pursuant to Sec. 14, Rule 110 and Sec. 19, Rule 119 of the Rules of Court; not consistent with the concept of acquittal which denotes a discharge, a formal certification of innocence, a release or an absolution. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Variance doctrine — Applying the variance doctrine under Sec. 4, in relation to Sec. 5 of Rule 120 of the Revised Rules of Criminal Procedure, the accused can be held guilty of the lesser crime of acts of lasciviousness performed on a child, *i.e.*, lascivious conduct under Sec. 5(b) of R.A. No. 7610, which was the offense proved, because it is included in rape, the offense charged; this echoes the Court's pronouncement in Leonardo. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

— The language of paragraphs 1 and 2 of Art. 266-A of the RPC, as amended by R.A. No. 8353, provides the elements that substantially differentiate the two forms of rape, *i.e.,* rape by sexual intercourse and rape by sexual assault; given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter. (*Id.*)

— The variance doctrine, which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged, is embodied in Sec. 4, in relation to Sec. 5 of Rule 120 of the Rules of Court; by jurisprudence, however, an accused charged in the Information with rape by sexual intercourse cannot

be found guilty of rape by sexual assault, even though the latter crime was proven during trial. (*Id.*)

JUDICIAL AND BAR COUNCIL (JBC)

Clustering of nominees by the JBC –– The MR-Resolution and Supplement-MR-Resolution lack merit given the admission of the JBC itself in its previous pleadings of lack of consensus among its own members on the validity of the clustering of nominees for the six simultaneous vacancies in the Sandiganbayan, further bolstering the unanimous decision of the Court against the validity of such clustering. (Hon. Aguinaldo *vs.* Pres. Aquino III, G.R. No. 224302, Aug. 8, 2017) p. 1062

JUDICIAL DEPARTMENT

Judicial power — The present Constitution has expanded the concept of judicial power, which up to then was confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

JUDICIAL REVIEW

Legal standing –– The standing requirement may be relaxed in cases of paramount importance where serious constitutional questions are involved, and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review; a party's standing before the Court is a procedural technicality that it may, in the exercise of its discretion, set aside in view of the importance of the issues raised. (Hon. Rama *vs.* Hon. Moises, G.R. No. 197146, Aug. 8, 2017) p. 954

Requisites –– An actual case or controversy is one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute'; in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement

is simplified "by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act"; requirement of ripeness, discussed. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

–– Even if subject to review by the Court, no grave abuse of discretion when the President allowed Marcos' burial at the LNMB; rationale; if grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp.1175, 1178

–– *Locus standi* or legal standing has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged; generally, a party will be allowed to litigate only when he or she can demonstrate that: 1) he or she 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; direct injury not clearly shown by petitioners. (*Id.*)

–– The Court finds it proper to relax the standing requirement insofar as all the petitioners are concerned, in view of the transcendental importance of the issues involved in this case; this is a case of first impression in which the constitutionality of juvenile curfew ordinances is placed under judicial review. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

–– The Court sees no cogent reason to depart from the standard set in *Francisco, Jr. v. The House of Representatives*; petitioners failed to demonstrate that the constitutional provisions they invoked delimit the

executive power conferred upon the President; while the Bill of Rights stands primarily as a limitation not only against legislative encroachments on individual liberties but also against presidential intrusions, petitioners failed to show as well that he violated the due process and equal protection clauses in issuing a verbal order to public respondents that authorized Marcos' burial at the LNMB. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

–– The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: *a*) there must be an actual case or controversy calling for the exercise of judicial power; *b*) the person challenging the act must have the standing to question the validity of the subject act or issuance; *c*) the question of constitutionality must be raised at the earliest opportunity; and *d*) the issue of constitutionality must be the very *lis mota* of the case. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

–– The question of *locus standi* or legal standing focuses on the determination of whether those assailing the governmental act have the right of appearance to bring the matter to the court for adjudication; petitioners must show that they have a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, some direct injury as a consequence of the enforcement of the challenged governmental act. (*Id.*)

–– The rationale for the assailed directives pertains to the wisdom of an executive action which is not within the ambit of judicial review; the disputed act, just like a law that is being challenged, is tested not by its supposed or actual result but by its conformity to existing Constitution,

laws, and jurisprudence. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

— Whether or not Marcos' burial at the LNMB would in fact cause the healing of the nation and reconciliation of the parties is another matter that is immaterial for purposes of resolving this case and irrelevant to the application of AFP Regulations G 161-375; in either case, the Court cannot engage in conjectures and surmises; its policy is to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. (*Id.*)

— While the Court has adopted a liberal attitude and recognized the legal standing of concerned citizens who have invoked a public right allegedly breached by a governmental act, there must be showing that the issues raised are of transcendental importance which must be settled early; instructive guides to determine whether a matter is of transcendental importance: 1) the character of the funds or other assets involved in the case; 2) the presence of a clear case of disregard of constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and 3) the lack of any other party with a more direct and specific interest in the questions being raised; petitioners are unable to satisfy all three determinants; explained. (*Id.*)

JURISDICTION

Doctrine of primary jurisdiction — The doctrine of primary jurisdiction tells us that courts cannot, and will not, resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. (LBP *vs.* Dalauta, G.R. No. 190004, Aug. 8, 2017) p. 740

KIDNAPPING

Commission of — Although the crime of kidnapping can only be committed by a private individual, the fact that the accused is a public official does not automatically preclude the filing of an information for kidnapping against him; a public officer who detains a person for the purpose of extorting ransom cannot be said to be acting in an official capacity; he may be prosecuted under Art. 267 of the Revised Penal Code if it is shown that he committed acts unrelated to the functions of his office. (People *vs*. PO3 Borja, G.R. No. 199710, Aug. 2, 2017) p. 327

— The essence of the crime of kidnapping is "the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it"; deprivation of a person's liberty can be committed in different ways. (*Id.*)

Elements — A conviction for the crime of kidnapping or serious illegal detention requires the concurrence of the following elements: 1. The offender is a private individual; 2. That individual kidnaps or detains another or in any other manner deprives the latter of liberty; 3. The act of detention or kidnapping is illegal; 4. In the commission of the offense, any of the following circumstances is present: a. The kidnapping or detention lasts for more than three days; b. It is committed by one who simulates public authority; c. Any serious physical injury is inflicted upon the person kidnapped or detained, or any threat to kill that person is made; and d. The person kidnapped or detained is a minor, a female or a public officer. (People *vs*. PO3 Borja, G.R. No. 199710, Aug. 2, 2017) p. 327

KIDNAPPING FOR RANSOM

Penalty — Discussed. (People *vs*. PO3 Borja, G.R. No. 199710, Aug. 2, 2017) p. 327

LABOR CODE AND AMENDED RULES ON EMPLOYEES' COMPENSATION

Total and permanent disability — Under Art. 198(c)(1) of the Labor Code, as amended, in relation to Rule VII, Sec. 2(b) and Rule X, Sec. 2(a) of the Amended Rules on Employees' Compensation (AREC), the following disabilities shall be deemed as total and permanent; explained; based on the foregoing provisions, the seafarer is declared to be on temporary total disability during the 120-day period within which he is unable to work; however, a temporary total disability lasting continuously for more than 120 days, except as otherwise provided in the Rules, is considered as a total and permanent disability. (Atienza *vs.* Orophil Shipping Int'l. Co., Inc., G.R. No. 191049, Aug. 7, 2017) p. 480

LAND TITLES

Torrens system — In *Lacbayan v. Samoy, Jr.*, the Court noted that what cannot be collaterally attacked is the certificate of title, and not the title itself; in the case of *Balangcad v. Court of Appeals,* it was held that "the system merely confirms ownership and does not create it"; in *Ledesma v. Municipality of Iloilo,* it was ruled that "if a person obtains title, under the Torrens system, which includes, by mistake or oversight, lands which cannot be registered under the Torrens system, he does not, by virtue of said certificate alone, become the owner of the land illegally included." (Hi-Lon Mfg., Inc. *vs.* COA, G.R. No. 210669, Aug. 1, 2017) p. 60

LOCAL GOVERNMENT CODE

Barangay conciliation — Sec. 412(a) of the LGC requires the parties to undergo a conciliation process before the *Lupon* Chairman or the *Pangkat* as a pre-condition to the filing of a complaint in court; authority of the *lupon* of each *barangay*; one exception is in cases where the dispute involves parties who actually reside in barangays of different cities or municipalities, unless said *barangay* units adjoin each other and the parties thereto agree to

submit their differences to amicable settlement by an appropriate *lupon*. (Abagatnan *vs.* Sps. Clarito, G.R. No. 211966, Aug. 7, 2017) p. 636

Real property taxation –– Sec. 267 operates only within the purview of real property taxation (Title II); thus, the reason for the "sale at public auction of the real property or rights therein" in Sec. 267 is obviously because of non-payment of realty tax and no other. (Beaumont Holdings Corp. *vs.* Atty. Reyes, G.R. No. 207306, Aug. 7, 2017) p. 584

LOCAL GOVERNMENTS

Curfew ordinances –– Any person, such as petitioners, who was perceived to be a minor violating the curfew, may prove that he is beyond the application of the Curfew Ordinances by simply presenting any competent proof of identification establishing their majority age; in the absence of such proof, the law authorizes enforcement authorities to conduct a visual assessment of the suspect, which should be done ethically and judiciously under the circumstances; remedy if law enforcers disregard these rules. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

–– It is a long-standing principle that conformity with law is one of the essential requisites for the validity of a municipal ordinance; by necessary implication, ordinances should be read and implemented in conjunction with related statutory law. (*Id.*)

–– Law enforcement agents are still bound to follow the prescribed measures found in R.A. No. 9344 when implementing ordinances; R.A. No. 9344, as amended, provides in Sec. 7 how the age of a child may be determined; this provision should be read in conjunction with the Curfew Ordinances; pursuant to Sec. 57-A of R.A. No. 9344, as amended by R.A. No. 10630, minors caught in violation of curfew ordinances are children at risk and, therefore, covered by its provisions. (*Id.*)

— Penalty is defined as "punishment imposed on a wrongdoer usually in the form of imprisonment or fine"; "punishment imposed by lawful authority upon a person who commits a deliberate or negligent act"; punishment, in turn, is defined as "a sanction – such as fine, penalty, confinement, or loss of property, right, or privilege – assessed against a person who has violated the law"; Sec. 57-A of R.A. No. 9344, as amended, empowers local governments to adopt appropriate intervention programs, such as community-based programs recognized under Sec. 54 of the same law; advantages in implementing the community service programs. (*Id.*)

— Reprimand is generally defined as "a severe or formal reproof"; the RRACCS and our jurisprudence explicitly indicate that reprimand is a penalty, hence, prohibited by Sec. 57-A of R.A. No. 9344, as amended; fines and/ or imprisonment, on the other hand, undeniably constitute penalties – as provided in our various criminal and administrative laws and jurisprudence – that Sec. 57-A of R.A. No. 9344, as amended, evidently prohibits. (*Id.*)

— The prohibition in Sec. 57-A is clear, categorical, and unambiguous; for imposing the sanctions of reprimand, fine, and/or imprisonment on minors for curfew violations, portions of Sec. 4 of the Manila Ordinance directly and irreconcilably conflict with the clear language of Sec. 57-A of R.A. No. 9344, as amended, and hence, invalid; on the other hand, the impositions of community service programs and admonition on the minors are allowed. (*Id.*)

— The provisions do not prohibit the enactment of regulations that curtail the conduct of minors, when the similar conduct of adults are not considered as an offense or penalized (*i.e.*, status offenses); instead, what they prohibit is the imposition of penalties on minors for violations of these regulations; consequently, the enactment of curfew ordinances on minors, without penalizing them for violations thereof, is not violative of Sec. 57-A. (*Id.*)

—— The sanction of admonition imposed by the City of Manila is consistent with Secs. 57 and 57-A of R.A. No. 9344 as it is merely a formal way of giving warnings and expressing disapproval to the minor's misdemeanour; admonition is generally defined as a "gentle or friendly reproof" or "counsel or warning against fault or oversight"; the Revised Rules on Administrative Cases in the Civil Service and our jurisprudence in administrative cases explicitly declare that "a warning or admonition shall not be considered a penalty." (*Id.*)

MALICIOUS PROSECUTION

Damages — In an action to recover damages based on malicious prosecution, it must be established that the prosecution was impelled by legal malice; there is necessity of proof that the suit was patently malicious as to warrant the award of damages under Arts. 19 to 21 of the Civil Code or that the suit was grounded on malice or bad faith; the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution. (Tan *vs.* Valeriano, G.R. No. 185559, Aug. 2, 2017) p. 155

MARRIAGES

Psychological incapacity — Habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity; all these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness. (Garlet *vs.* Garlet, G.R. No. 193544, Aug. 2, 2017) p. 268

—— Jurisprudence had laid down guiding principles in resolving cases for the declaration of nullity of marriage on the ground of psychological incapacity; enumerated and explained. (*Id.*)

–– The Court already declared that sexual infidelity, by itself, is not sufficient proof that a spouse is suffering from psychological incapacity; it must be shown that the acts of unfaithfulness are manifestations of a disordered personality which makes the spouse completely unable to discharge the essential obligations of marriage. (*Id.*)

–– While the Court previously held that "there is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician," yet, this is qualified by the phrase, "if the totality of evidence presented is enough to sustain a finding of psychological incapacity"; the psychologist's findings must still be subjected to a careful and serious scrutiny as to the bases of the same, particularly, the source/s of information, as well as the methodology employed. (*Id.*)

MOTION FOR RECONSIDERATION

Motion for extension of time to file –– In its Resolution issued in *Habaluyas Enterprises,* the Court already elucidated, for the guidance of Bench and Bar, that: 1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Court of Appeals; such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested; heavy pressure of work in the preparation of pleadings in other equally important cases requiring immediate attention, not a valid excuse to grant the extension. (Garlet *vs.* Garlet, G.R. No. 193544, Aug. 2, 2017) p. 268

1997 NATIONAL INTERNAL REVENUE CODE (NIRC)

Section 4 –– The first paragraph of Sec. 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is subject to review by the Secretary of Finance, who is the alter ego of the President;

the second par. of Sec. 4, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with P.D. No. 242; to harmonize Sec. 4 of the 1997 NIRC with P.D. No. 242, the following interpretation should be adopted: (1) As regards private entities and the BIR, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Sec. 4 of the NIRC; and (2) Where the disputing parties are all public entities (covers disputes between the BIR and other government entities), the case shall be governed by P.D. No. 242. (Power Sector Assets and Liabilities Mgm't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES (NHCP)

Functions –– The National Historical Commission of the Philippines (NHCP) is the principal government agency responsible for history and has the authority to determine all factual matters relating to official Philippine history; in its task to actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events, the NHCP Board is empowered to discuss and resolve, with finality, issues or conflicts on Philippine history; instances when the Court steps in. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

NOTARIES PUBLIC

Duties — The notary public violated the mandatory recording requirements under the Rules; Sec. 1 of Rule VI of the Rules requires a notary public to keep a notarial register;

Sec. 2 mandates that a notary public must record in the notarial register every notarial act at the time of notarization. (Boers *vs.* Atty. Calubaquib, A.C. No. 10562, Aug. 1, 2017) p. 1

–– The Rules on Notarial Practice governs the various notarial acts that a duly commissioned notary public is authorized to perform; these include acknowledgment, affirmation and oath, and *jurat*; in *Cabanilla v. Cristal-Tenorio*, the Court held that "a party acknowledging must appear before the notary public"; purpose. (*Id.*)

OFFICE OF THE SOLICITOR GENERAL (OSG)

Functions –– The Court has taken exceptions and given due course to several actions even when the respective interests of the Government were not properly represented by the OSG, namely, when the challenged order affected the interest of the State or the People; the case involved a novel issue, like the nature and scope of jurisdiction of the Cooperative Development Authority; and the ends of justice would be defeated if all those who came or were brought to court were not afforded a fair opportunity to present their sides; application. (Cu *vs.* Small Business Guarantee and Finance Corp., G.R. No. 211222, Aug. 7, 2017) p. 617

–– The OSG is the law office of the Government whose specific powers and functions include that of representing the Republic and/or the People before any court in any action which affects the welfare of the People as the ends of justice may require; if there is a dismissal of a criminal case by the trial court, it is only the OSG that may bring an appeal of the criminal aspect representing the People. (*Id.*)

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (2000 POEA-SEC)

Burden of proof –– As differentiated from the matter of work-relatedness, no legal presumption of compensability is accorded in favor of the seafarer; as such, he bears the

burden of proving that these conditions are met; he is burdened to present substantial evidence that his *work conditions caused or at least increased the risk of contracting the disease* and only a reasonable proof of work-connection, not direct causal relation is required to establish its compensability; in *Jebsen Maritime, Inc. v. Ravena,* it was likewise elucidated that there is a need to satisfactorily show the four (4) conditions under Sec. 32-A of the 2000 POEA-SEC in order for the disputably presumed disease resulting in disability to be compensable. (Atienza *vs.* Orophil Shipping Int'l. Co., Inc., G.R. No. 191049, Aug. 7, 2017) p. 480

Total and permanent disability –– The NLRC did not account for the employer's failure to comply with the 120 day-rule, by virtue of which the law conclusively presumes the seafarer's disability to be total and permanent. (Atienza *vs.* Orophil Shipping Int'l. Co., Inc., G.R. No. 191049, Aug. 7, 2017) p. 480

Work-related illnesses –– The findings square with the conditions of compensability under Sec. 32-A of the 2000 POEA-SEC, and hence, all appear to attend to this case; the tasks performed by petitioner and his constant exposure to the varying elements of nature have contributed to the development or aggravation of his illness while on board and therefore, rendered his illness and resulting disability compensable. (Atienza *vs.* Orophil Shipping Int'l. Co., Inc., G.R. No. 191049, Aug. 7, 2017) p. 480

–– Under the 2000 POEA-SEC, "any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness;" Sec. 20 (B)(4) thereof declares that those illnesses not listed in Sec. 32 of this Contract are disputably presumed as work related; the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence. (*Id.*)

POEA STANDARD EMPLOYMENT CONTRACT

Permanent total disability –– A temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability; since the company-designated doctor has not declared that petitioner is not fit to work within the 240-day period, and the 240-day period has not lapsed when petitioner filed his complaint, the petitioner cannot be legally presumed as permanently and totally disabled to be entitled to permanent total disability. (Gomez *vs.* Crossworld Marine Services, Inc., G.R. No. 220002, Aug. 2, 2017) p. 401

POSSESSION

Tacking of possession — Tacking of possession only applies to possession *de jure*, or that possession which has for its purpose the claim of ownership, *viz.*: True, the law allows a present possessor to tack his possession to that of his predecessor-in-interest to be deemed in possession of the property for the period required by law; the tacking is made for the purpose of completing the time required for acquiring or losing ownership through prescription. (Sps. Fahrenbach *vs.* Pangilinan, G.R. No. 224549, Aug. 7, 2017) p. 696

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)

Purpose and objective –– PSALM was created primarily to liquidate all NPC financial obligations and stranded contract costs in an optimal manner; the purpose and objective of PSALM are explicitly stated in Sec. 50 of the EPIRA law; PSALM is limited to selling only NPC assets and IPP contracts of NPC; the sale of NPC assets by PSALM is not "in the course of trade or business" but purely for the specific purpose of privatizing NPC assets

in order to liquidate all NPC financial obligations. (Power Sector Assets and Liabilities Mgm't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p.

–– The EPIRA law even requires PSALM to submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the total privatization of the NPC assets and IPP contracts; thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law. (*Id.*)

PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES (P.D. NO. 242)

Coverage –– The law is clear and covers "*all disputes, claims and controversies solely"* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements"; "all disputes, claims and controversies solely" among government agencies means all, without exception; only those cases already pending in court at the time of the effectivity of P.D. No. 242 are not covered by the law; purpose; the procedure is not much different, and no less desirable, than the arbitration procedures provided in R.A. No. 876 (Arbitration Law) and in Sec. 26, R.A. No. 6715 (The Labor Code). (Power Sector Assets and Liabilities Mgm't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

Settlement of disputes –– P.D. No. 242 is only applicable to disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved; P.D. No. 242 clearly applies in this case, and the Secretary of Justice has jurisdiction over this case. (Power Sector Assets and Liabilities Mgm't. Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

–– Under P.D. No. 242, all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved; as regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. (*Id*.)

PRESUMPTIONS

Disputable presumptions –– Rule 131, Sec. 3, par. (f) provides: Sec. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x (f) That money paid by one to another was due the latter; by alleging that respondent was not entitled to the payment, it was incumbent upon complainant to present evidence to overturn the disputable presumption that the payment was due to respondent. (Palacios, for and in behalf of the AFP Retirement and Separation Benefits System (AFP-RSBS) *vs.* Atty. Amora, Jr., A.C. No. 11504, Aug. 1, 2017) p. 9

PRE-TRIAL

Pre-trial Order –– The lack of *barangay* conciliation proceedings cannot be brought on appeal because it was not included in the Pre-Trial Order; the issues to be tried between parties in a case is limited to those defined

in the pre-trial order as well as those which may be implied from those written in the order or inferred from those listed by necessary implication. (Abagatnan *vs.* Sps. Clarito, G.R. No. 211966, Aug. 7, 2017) p. 636

PROPERTY

Right-of-way — Under the Philippine Highway Act of 1953, "right-of-way" is defined as the land secured and reserved to the public for highway purposes, whereas "highway" includes rights-of-way, bridges, ferries, drainage structures, signs, guard rails, and protective structures in connection with highways. (Hi-Lon Mfg., Inc. *vs.* COA, G.R. No. 210669, Aug. 1, 2017) p. 60

Road right of way — Being of similar character as roads for public use, a road right-of-way (RROW) can be considered as a property of public dominion, which is outside the commerce of man, and cannot be leased, donated, sold, or be the object of a contract, except insofar as they may be the object of repairs or improvements and other incidental matters; however, this RROW must be differentiated from the concept of easement of right of way under Art. 649 of the Civil Code; a RROW cannot be registered in the name of private persons under the Land Registration Law and be the subject of a Torrens Title. (Hi-Lon Mfg., Inc. *vs.* COA, G.R. No. 210669, Aug. 1, 2017) p. 60

— Having actual notice of a public highway built on the RROW portion of the subject property, petitioner cannot afford to ignore the possible claim of encumbrance thereon by the government, much less fail to inquire into the status of such property. (*Id.*)

— Petitioner cannot invoke lack of notice of the government's claim over the RROW simply because it has actual notice of the public highway built thereon, which constitutes as a statutory lien on its title even if it is not inscribed on the titles of its predecessors-in-interest; actual notice is equivalent to registration, because to hold otherwise

would be to tolerate fraud and the Torrens System cannot be used to shield fraud. (*Id.*)

— The mistake of the government officials in offering to buy the RROW does not bind the State, let alone vest ownership of the property to petitioner; as a rule, the State, as represented by the government, is not estopped by the mistakes or errors of its officials or agents, especially true when the government's actions are sovereign in nature. (*Id.*)

PROSECUTION OF OFFENSES

Sufficiency of complaint or information — Sec. 6, Rule 110 of the Rules of Court (Rules), lays down the guidelines in determining the sufficiency of a complaint or information; Sec. 11, Rule 110 of the Rules adds that it is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense; petitioner had been fully apprised of the charges against him. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

PUBLIC LAND ACT (C.A. NO. 141)

Judicial confirmation of title — Any application for confirmation of title under C.A. No. 141 already concedes that the land is previously public; for a person to perfect one's title to the land, he or she may apply with the proper court for the confirmation of the claim of ownership and the issuance of a certificate of title over the property; this process is also known as judicial confirmation of title; Sec. 48(b) of C.A. No. 141, as amended by P.D. No. 1073, states who can apply for judicial confirmation of title. (Rep. of the Phils. *vs.* Sps. Go, G.R. No. 197297, Aug. 2, 2017) p. 306

PUBLIC LAND ACT (C.A. NO. 141) AND PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Judicial confirmation and registration of an imperfect title — Although not adequate to establish ownership, a tax

declaration may be a basis to infer possession; the Court has highlighted that where tax declaration was presented, it must be the 1945 tax declaration because June 12, 1945 is material to the case; the specific date must be ascertained; otherwise, applicants fail to comply with the requirements of the law. (Rep. of the Phils. *vs.* Sps. Go, G.R. No. 197297, Aug. 2, 2017) p. 306

–– Under Sec. 48(b) of C.A. No. 141, as amended, and Sec. 14(1) of P.D. No. 1529, Filipino citizens applying for the judicial confirmation and registration of an imperfect title must prove several requisites: first, they must prove that they, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession of the property; second, it must be settled that the applicants' occupation is under a *bona fide* claim of acquisition or ownership since June 12, 1945 or earlier, immediately before the application was filed; third, it should be established that the land is an agricultural land of public domain; finally, it has to be shown that the land has been declared alienable and disposable. (*Id.*)

PUBLIC LANDS

Classifications –– Public lands are classified into agricultural, mineral, timber or forest, and national parks; of these four (4) types of public lands, only agricultural lands may be alienated; thus, an applicant has the burden of proving that the public land has been classified as alienable and disposable; the applicant must show a positive act from the government declassifying the land from the public domain and converting it into an alienable and disposable land. (Rep. of the Phils. *vs.* Sps. Go, G.R. No. 197297, Aug. 2, 2017) p. 306

PUBLIC PROSECUTORS

Duties –– Public prosecutors have to be more judicious and circumspect in preparing the Information since a mistake or defect therein may not render full justice to the State, the offended party and even the offender; primary duty

of a lawyer in public prosecution, explained. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

QUALIFIED RAPE

Commission of — Time and again, the Court held that the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape; the crime committed by accused-appellant must be qualified under Art. 266-B of the RPC; there is qualified rape when the victim is below 18 years of age and the offender is an ascendant or relative by consanguinity or affinity within the third civil degree. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

Elements — Under Art. 266-B of the RPC, there is qualified rape when the victim is below 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. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

QUALIFIED RAPE AND ACTS OF LASCIVIOUSNESS

Civil liability of accused-appellant — Discussed. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

Penalty — Discussed. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

QUASI-DELICTS

Vicarious liability of an employer — As a general rule, one is only responsible for his own act or omission; general rule laid down in Art. 2176 of the Civil Code; one exception is an employer who is made vicariously liable for the tort committed by his employee under paragraph 5 of Art. 2180; rationale; applicability. (Reyes *vs.* Doctolero, G.R. No. 185597, Aug. 2, 2017) p. 166

RAPE BY SEXUAL ASSAULT

Commission of — Rape by sexual assault under par. 2, Art. 266-A of the RPC, committed. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Elements –– In the first mode (rape by sexual intercourse): (1) the offender is always a man; (2) the offended party is always a woman; (3) rape is committed through penile penetration of the vagina; and (4) the penalty is *reclusion perpertua;* in the second mode (rape by sexual assault): (1) the offender may be a man or a woman; (2) the offended party may be a man or a woman; (3) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) the penalty is *prision mayor;* since the charge in the Information in Criminal Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven; rationale. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

–– The elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others. (*Id.*)

RAPE UNDER ARTICLE 266-A

Rape by sexual assault –– It is settled that in cases where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation; the prosecution has sufficiently proved the crime of rape by sexual assault

as defined in par. 2 of Art. 266-A of the RPC. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

Rape through sexual intercourse –– The elements of rape through sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation; rape by sexual intercourse is a crime committed by a man against a woman, and the central element is carnal knowledge. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

RAPE UNDER RPC, AS AMENDED BY THE ANTI-RAPE LAW OF 1997 (R.A. NO. 8353)

Modes of rape — R.A. No. 8353 (Anti-Rape Law of 1997) amended Art. 335, reclassifying rape as a crime against persons and introducing rape by "sexual assault," as differentiated from rape through "carnal knowledge" or rape through "sexual intercourse"; rape under the RPC, as amended, can be committed in two ways: (1) Art. 266-A par. 1 refers to rape through sexual intercourse, also known as "organ rape" or "penile rape"; the central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt; (2) Art. 266-A paragraph 2 refers to rape by sexual assault, also called "instrument or object rape," or "gender-free rape." (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

REFORMED VALUE ADDED TAX (R.A. NO. 9337)

Repeal of the NPC's VAT Exemption — Functions of the NPC and PSALM, discussed; since PSALM is not a successor-in-interest of NPC, the repeal by R.A. No. 9337 of NPC's VAT exemption does not affect PSALM. (Power Sector Assets and Liabilities Mgm't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

RIGHTS OF THE ACCUSED

Right to be informed of the nature and the cause of accusation — Sec. 4, Rule 120 of the Rules of Criminal Procedure, explained; the accused can only be convicted of an offense when it is both charged and proved; if it is not charged, although proved, or if it is proved, although not charged, the accused cannot be convicted thereof; as to when an offense includes or is included in another, Sec. 5 of Rule 120, mentioned. (Dr. Malabanan *vs.* Sandiganbayan, G.R. No. 186329, Aug. 2, 2017) p. 183

RULE ON THE WRIT OF *AMPARO* (A.M. NO. 07-9-12-SC)

Archiving of case — Archiving of cases is a procedural measure designed to temporarily defer the hearing of cases in which no immediate action is expected, but where no grounds exist for their outright dismissal; the *Amparo* rule sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from effectively hearing and conducting the *amparo* proceedings. (Balao *vs.* Ermita, G.R. No. 186050, Aug. 1, 2017) p. 54

RULES OF PROCEDURE

Construction — While the Court recognizes the importance of procedural rules in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice, it likewise takes into consideration that at stake in these cases are the life and liberty of petitioner; thus, it would only be proper to relax the rules considering that, in numerous cases, it had allowed the liberal construction of the rules when to do so would serve the demands of substantial justice and equity as amply discussed in *Aguam v. Court of Appeals.* (Miranda *vs.* Sandiganbayan, G.R. Nos. 144760-61, Aug. 2, 2017) p. 123

RULES ON CHILD ABUSE CASES

Lascivious conduct –– Lascivious conduct is defined under Sec. 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases) as: The intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus, or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

Lewd design ––The term "*lewd*" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire; the presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

SEAFARERS

Disability benefits — The Court applied the prevailing rule enunciated in *Crystal Shipping, Inc. v. Natividad*, promulgated on Oct. 20, 2005, that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. (Gomez *vs.* Crossworld Marine Services, Inc., G.R. No. 220002, Aug. 2, 2017) p. 401

–– The Court of Appeals correctly found that the CBA that covers petitioner's employment is the ITF Uniform "TCC" Collective Agreement, which was admitted by respondents, agreed to by the Labor Arbiter and the NLRC, but the Labor Arbiter and the NLRC erroneously used the rate of compensation of the ITF Standard Collective Agreement, which is a different agreement. (*Id.*)

SHERIFFS

Duties –– Sheriffs are duty-bound to know and to comply with the very basic rules relative to the implementation of writs; repeated collection and receipt of sums of money from a party-litigant purportedly to defray expenses of the demolition without rendering an accounting and liquidation thereof, not only is a violation of the rules but also in effect constituted misconduct. (Serdoncillo *vs.* Sheriff Lanzaderas, A.M. No. P-16-3424 [Formerly OCA I.P.I. No. 11-3666-P], Aug. 7, 2017) p. 468

–– The rule requires that the sheriff executing the writs shall provide an estimate of the expenses to be incurred that shall be approved by the court; the rule does not allow direct payment of sheriff expenses from the interested party to the sheriff; failure to faithfully comply with the provisions of Rule 141 of the Rules of Court warrants the imposition of disciplinary measures. (*Id.*)

–– The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes; they are not allowed to receive any voluntary payments from parties in the course of the performance of their duties; corollary, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion. (*Id.*)

Misconduct –– The sheriff miserably failed to comply with the requirements of Secs. 9 and 10 of the Rules of Court, as amended; compulsory observance of the rules under the circumstances is also underscored by the use of the word *shall* in the above Sections; any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action. (Serdoncillo *vs.* Sheriff Lanzaderas, A.M. No. P-16-3424 [Formerly OCA I.P.I. No. 11-3666-P], Aug. 7, 2017) p. 468

Simple misconduct –– Respondent is liable for simple misconduct, defined as a transgression of some established

rule of action, an unlawful behavior, or negligence committed by a public officer; Sec. 52(B)(2) of the Revised Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense punishable by suspension of one month and one day to six months for the first offense; penalty. (Serdoncillo *vs.* Sheriff Lanzaderas, A.M. No. P-16-3424 [Formerly OCA I.P.I. No. 11-3666-P], Aug. 7, 2017) p. 468

SPECIAL AGRARIAN COURTS (SACs)

Jurisdiction –– The SACs are the Regional Trial Courts expressly granted by law with original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners; jurisdiction defined in Sec. 57 of R.A. No. 6657; the Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. (LBP *vs.* Dalauta, G.R. No. 190004, Aug. 8, 2017) p. 740

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Child abuse –– Art. I, Sec. 3(b) of R.A. No. 7610 defines child abuse as the maltreatment of a child, whether habitual or not, including any of the following: (1) Psychological and ***physical abuse***, neglect, cruelty, sexual abuse and emotional maltreatment; (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death; child abuse includes physical abuse of the child, whether it is habitual or not. (Lucido @ Tony Ay *vs.* People, G.R. No. 217764, Aug. 7, 2017) p. 646

–– Repeated acts of strangulation, pinching, and beating are clearly extreme measures of punishment not commensurate with the discipline of an eight (8)-year-

old child; the crime under R.A. No. 7610 is *malum prohibitum;* the intent to debase, degrade, or demean the minor is not the defining mark; any act of punishment that debases, degrades, and demeans the intrinsic worth and dignity of a child constitutes the offense. (*Id.*)

Offenses punished under Section 10(a) — Sec. 10(a) of R.A. No. 7610 punishes four (4) distinct offenses*, i.e.* (a) child abuse; (b) child cruelty; (c) child exploitation; and (d) being responsible for conditions prejudicial to the child's development; the element that the acts must be prejudicial to the child's development pertains only to the fourth offense; the element of resulting prejudice to the child's development cannot be interpreted as a qualifying condition to the other acts of child abuse, child cruelty and child exploitation. (Lucido @ Tony Ay *vs.* People, G.R. No. 217764, Aug. 7, 2017) p. 646

Section 5(b), Article III — A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult; lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

— As stated in Sec. 5(b) of R.A. No. 7610, when the victim of rape or acts of lasciviousness is below twelve (12) years old, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period; statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act; proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

Sexual abuse –– Sec. 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms; defined as "the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children"; "influence" and "coercion", defined. (Fianza *a.k.a.* "Topel" *vs.* People, G.R. No. 218592, Aug. 2, 2017) p. 379

–– Sexual abuse, as defined under Sec. 5(b), Art. III of R.A. No. 7610 has three (3) elements: a) the accused commits an act of sexual intercourse or lascivious conduct; b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and c) the child is below eighteen (18) years old. (*Id.*)

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, PROSECUTION OF OFFENSES

Amendment or substitution –– The CA erred in remanding the case to the trial court for the purpose of filing the proper Information on the basis of the last paragraph of Sec. 14, Rule 110 and Sec. 19, Rule 119 of the Rules of Court; the rules are applicable only before judgment has been rendered; not applicable in this case. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

STARE DECISIS

Doctrine of –– The doctrine of *stare decisis* constrains the Court to follow the ruling laid down in *Tecson* and similar cases; *Stare decisis et non quieta movere* and *stare decisis*, explained. (Nat'l. Transmission Corp. *vs.* Oroville Dev't. Corp., G.R. No. 223366, Aug. 1, 2017) p. 91

STATE POLICIES

Restriction of right to travel — The right to travel is recognized and guaranteed as a fundamental right under Sec. 6, Art. III of the 1987 Constitution; grave and overriding

considerations of public interest justify restrictions even if made against fundamental rights; freedom to move from one place to another, not absolute; the State may impose limitations on the exercise of this right, provided that they: (1) serve the interest of national security, public safety, or public health; and (2) are provided by law; explained. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

State authority relative to parental supervision –– Sec. 12, Art. II of the 1987 Constitution articulates the State's policy relative to the rights of parents in the rearing of their children; in cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, these legitimate state interests may override the parents' qualified right to control the upbringing of their children; the Curfew Ordinances are but examples of legal restrictions designed to aid parents in their role of promoting their children's well-being; rationale. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

STATE, POWERS OF THE

Parens patriae –– As *parens patriae*, the State regulates and, to a certain extent, restricts the minors' exercise of their rights, such as in their affairs concerning the right to vote, the right to execute contracts, and the right to engage in gainful employment; with respect to the right to travel, minors are required by law to obtain a clearance from the Department of Social Welfare and Development before they can travel to a foreign country by themselves or with a person other than their parents. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

Police power –– As explained in *Nunez*, the *Bellotti* framework shows that the State has a compelling interest in imposing greater restrictions on minors than on adults; ultimate

objective of the Curfew Ordinances, discussed; the city councils found it necessary to enact curfew ordinances pursuant to their police power under the general welfare clause. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

STATUTES

Application — Assuming that AFP Regulations G 161-375 is invalid for non-compliance with the publication requirement in the ONAR, its invalidity would still not result in the denial of Marcos' burial at the LNMB; since the Administrative Code of 1987 is prospective in its application, the President may apply AFP Regulations G 161-373 issued on April 9, 1986 as legal basis to justify the exercise of his presidential prerogative; rationale. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

STATUTORY CONSTRUCTION

Defect of vagueness — A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application; it is repugnant to the Constitution in two (2) respects: 1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and 2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. (Samahan ng mga Progresibong Kabataan (SPARK) *vs.* Quezon City, represented by Mayor Bautista, G.R. No. 224302, Aug. 8, 2017) p. 1067

Lex specialis derogat generali — Where there is in the same statute a particular enactment and also a general one which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language

which are not within the provision of the particular enactment. (In the Matter of Petition for Cancellation of Certificates of Live Birth of Yuhares Jan Barcelote Tinitigan and Avee Kynna Noelle Barcelote Tinitigan, G.R. No. 222095, Aug. 7, 2017) p. 664

Plain and unambiguous statute –– If a statute is plain and free from ambiguity, it must be given its literal meaning or applied according to its express terms, without any attempted interpretation, and leaving the court no room for any extended ratiocination or rationalization; exceptions. (Ocampo *vs.* Rear Admiral Enriquez, G.R. No. 225973, Aug. 8, 2017) pp. 1175, 1178

Special laws and general laws –– Difference between a special law and a general law, clarified in *Vinzons-Chato v. Fortune Tobacco Corporation*; a general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. (Power Sector Assets and Liabilities Mgm't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

–– Even if the 1997 NIRC, a general statute, is a later act, P.D. No. 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes; rationale; such disputes must be resolved under P.D. No. 242 and not under the NIRC, precisely because P.D. No. 242 specifically mandates the settlement of such disputes in accordance with P.D. No. 242; since the amount involved in this case is more than one million pesos, the DOJ Secretary's decision may be appealed to the Office of the President in accordance with Sec. 70, Chap. 14, Book IV of E.O. No. 292 and Sec. 5 of P.D. No. 242; resort if the appeal to the Office of the President is denied. (*Id.*)

–– The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus

conflict with the special act, the special law must prevail; rationale; where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication. (*Id.*)

TAXES

Tax delinquency –– The Court explained the reason for the deposit requirement in Sec. 267; a deposit is a condition – a "prerequisite," which must be satisfied before the court can entertain any action assailing the validity of the public auction sale; the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor; when not applicable. (Beaumont Holdings Corp. *vs.* Atty. Reyes, G.R. No. 207306, Aug. 7, 2017) p. 584

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Operation Land Transfer (OLT) Program –– P.D. No. 27, which implemented the Operation Land Transfer (OLT) program, covers only tenanted rice or corn lands; requisites for coverage under the OLT program: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease tenancy obtaining therein. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

Tenancy relationship –– Prior to the compliance with the prescribed requirements, tenant-farmers have, at most, an inchoate right over the land they were tilling; a Certificate of Land Transfer (CLT) is issued to a tenant-farmer to serve as a provisional title of ownership over the landholding while the lot owner is awaiting full payment of just compensation or for as long as the tenant-farmer is an amortizing owner; land transfer under P.D. No. 27 is effected in two stages: first, the issuance of a CLT; and second, the issuance of an EP; discussed. (Cabral *vs.* Heirs of Florencio Adolfo, G.R. No. 191615, Aug. 2, 2017) p. 243

— The Court has, time and again, held that occupancy and cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant; independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner; tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away by conjectures. (*Id.*)

— Under P.D. No. 27, tenant-farmers of rice and corn lands were deemed owners of the land they till as of Oct. 21, 1972 or the effectivity of the said law; however, the provision should not be construed as automatically vesting upon them absolute ownership over the land they are tilling; certain requirements must also be complied with before full ownership is vested upon the tenant-farmers. (*Id.*)

UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (URACCS)

Dishonesty, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of service — The URACCS classifies the offenses of Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service as Grave Offenses; penalty; rationale. (OCA *vs.* Umblas, A.M. No. P-09-2649 [Formerly A.M. No. 09-5-219-RTC], Aug. 1, 2017) p. 27

VALUE ADDED TAX (VAT)

Sale of power plants — Even if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Sec. 105 of the NIRC, and thus, not subject to VAT; their sale is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. (Power Sector Assets and Liabilities Mgm't. Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 198146, Aug. 8, 2017) p. 966

–– Under the EPIRA law, the ownership of these power plants was transferred to PSALM for sale, disposition, and privatization in order to liquidate all NPC financial obligations; the sale of the power plants cannot be considered as an incidental transaction made in the course of NPC's or PSALM's business; it should not be subject to VAT; the deficiency VAT remitted by PSALM under protest should therefore be refunded to PSALM. (*Id.*)

WITNESSES

Credibility of — A child witness who spoke in a clear, positive, and convincing manner and remained consistent on cross-examination, is a credible witness; motive becomes inconsequential when there is a categorical declaration from the victim, which establishes the liability of the accused. (Lucido @ Tony Ay *vs.* People, G.R. No. 217764, Aug. 7, 2017) p. 646

–– It is settled that ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused. (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

–– Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim; evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

–– The testimony of the victim showed that the she was able to establish with clear and candid detail her age at the time of the incident, the identity of accused-appellant, her relationship with him, and the specific bestial acts committed by him; inconsistencies in the testimony of the victim do not necessarily render such testimony incredible; in fact, minor inconsistencies strengthen the

credibility of the witness and the testimony, because of a showing that such charges are not fabricated. (*Id.*)

— The trial court's assessment on the trustworthiness of the witnesses will not be disturbed, absent any facts or circumstances of real weight which might have been overlooked, misappreciated, or misunderstood; through its firsthand observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. (Lucido @ Tony Ay *vs.* People, G.R. No. 217764, Aug. 7, 2017) p. 646

— The victim's account of the incident, as found by the RTC and the CA, was clear, convincing and straightforward, devoid of any material or significant inconsistencies; in *People v. Pareja*, the Court held that: The "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied the appellate courts, and when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court." (People *vs.* Caoili *alias* "Boy Tagalog", G.R. No. 196342, Aug. 8, 2017) p. 839

— When a rape victim's testimony on the manner she was molested is straightforward and candid, and is corroborated by the medical findings of the examining physician, as in this case, the same is sufficient to support a conviction for rape; in a long line of cases, the Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. (*Id.*)

Testimony of — A recantation does not necessarily cancel an earlier declaration; the rule is settled that in cases where the previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the

general rules of evidence. (Sterling Paper Products Enterprises, Inc. *vs.* KMM-Katipunan, G.R. No. 221493, Aug. 2, 2017) p. 425

— Testimonies of rape victims who are young and of tender age are credible; the revelation of an innocent child whose chastity was abused deserves full credence; it is a well-settled rule that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. (People *vs.* Udtohan *y* Jose, G.R. No. 228887, Aug. 2, 2017) p. 449

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