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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 217426. December 4, 2017]

ST. MARTIN POLYCLINIC, INC., *petitioner, vs.* **LWV CONSTRUCTION CORPORATION**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; IN PETITIONS FOR REVIEW ON *CERTIORARI*, ONLY QUESTIONS OF LAW MAY GENERALLY BE PUT INTO ISSUE; EXCEPTIONS.—** [A] re-examination of factual findings cannot be done acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law. Thus, in petitions for review on *certiorari,* only questions of law may generally be put into issue. This rule, however, admits of certain exceptions, such as "when the inference made is manifestly mistaken, absurd or impossible"; or "when the findings are conclusions without citation of specific evidence on which they are based." Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court would not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.

2. **CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; ELEMENTS; QUASI-DELICT IS ONE AMONG SEVERAL SOURCES OF OBLIGATION.—** An action for damages due to the negligence of another may be instituted on the basis of Article 2176 of the Civil Code,

x x x. The elements of a quasi-delict are: **(1) an act or omission; (2) the presence of fault or negligence in the performance or non-performance of the act; (3) injury; (4) a causal connection between the negligent act and the injury; and (5) no pre-existing contractual relation.** As a general rule, any act or omission coming under the purview of Article 2176 gives rise to a cause of action under quasi-delict. This, in turn, gives the basis for a claim of damages. Notably, quasi-delict is one among several sources of obligation. Article 1157 of the Civil Code states: Article 1157. Obligations arise from: (1)Law; (2) Contracts; (3 Quasi-contracts; (4) Acts or omissions punished by law; and (5) Quasi-delicts.

3. ID.; ID.; ID.; APPLICATIONS OF ARTICLE 2176 OF THE CIVIL CODE (ON QUASI-DELICTS) AS DISTINGUISHED FROM THAT OF ARTICLES 19, 20 AND 21 (WHICH ARE GENERAL PROVISIONS ON HUMAN RELATIONS); ARTICLE 2176 APPLIES WHEN THE NEGLIGENT ACT CAUSING DAMAGE TO ANOTHER DOES NOT CONSTITUTE A BREACH OF AN EXISTING LAW OR A PRE-EXISTING CONTRACTUAL OBLIGATION; CASE AT BAR.— [A]s explained by Associate Justice Marvic M.V.F. Leonen (Justice Leonen) in his opinion in *Alano v. Magud-Logmao (Alano)*, "**Article 2176 is not an all-encompassing enumeration of all actionable wrongs which can give rise to the liability for damages. Under the Civil Code, acts done in violation of Articles 19, 20, and 21 will also give rise to damages**." x x x In the Alano case, Justice Leonen aptly elaborated on the distinctive applications of Articles 19, 20 and 21, which are general provisions on human relations, vis-à-vis Article 2176, which particularly governs quasi-delicts: x x x Thus, with respect to negligent acts or omissions, it should therefore be discerned that **Article 20 of the Civil Code concerns "violations of existing law as basis for an injury," whereas Article 2176 applies when the negligent act causing damage to another does not constitute "a breach of an existing law or a pre-existing contractual obligation."** In this case, the courts *a quo* erroneously anchored their respective rulings on the provisions of Articles 19, 20, and 21 of the Civil Code. This is because respondent did not proffer (nor have these courts mentioned) any law as basis for which damages may be recovered due to petitioner's alleged negligent act. In its amended

complaint, respondent mainly avers that had petitioner not issue a "fit for employment" Medical Report to Raguindin, respondent would not have processed his documents, deployed him to Saudi Arabia, and later on – in view of the subsequent findings that Raguindin was positive for HCV and hence, unfit to work – suffered actual damages in the amount of ₱84,373.41. Thus, as the claimed negligent act of petitioner was not premised on the breach of any law, and not to mention the incontestable fact that no pre-existing contractual relation was averred to exist between the parties, Article 2176 — instead of Articles 19, 20 and 21 — of the Civil Code should govern.

4. ID.; DAMAGES; NEGLIGENCE; MUST BE PROVEN BY HIM WHO ALLEGES IT.— Negligence is defined as the failure to observe for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. As early as the case of *Picart v. Smith*, the Court elucidated that "the test by which to determine the existence of negligence in a particular case is: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation?** If not, then he is guilty of negligence." Corollary thereto, the Court stated that "[t]he question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. **Abstract speculation cannot here be of much value** x x x: Reasonable men govern their conduct by the circumstances which are before them or known to them. **They are not, and are not supposed to be, omniscient of the future. Hence[,] they can be expected to take care only when there is something before them to suggest or warn of danger.**" Under our Rules of Evidence, it is disputably presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular. **In effect, negligence cannot be presumed, and thus, must be proven by him who alleges it.**

5. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; DOCUMENTS WRITTEN IN AN UNOFFICIAL LANGUAGE SHALL NOT BE ADMITTED AS EVIDENCE UNLESS ACCOMPANIED WITH A TRANSLATION IN ENGLISH OR FILIPINO.— [T]he fact

that Raguindin tested positive for HCV could not have been properly established since the courts *a quo*, in the first place, erred in admitting and giving probative weight to the Certification of the General Care Dispensary, which was written in an unofficial language. Section 33, Rule 132 of the Rules of Court states that: Section 33. *Documentary evidence in an unofficial language*. — Documents written in an unofficial language ***shall not be admitted*** as evidence, ***unless accompanied with a translation into English or Filipino.*** To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial. A cursory examination of the subject document would reveal that while it contains English words, the majority of it is in an unofficial language. Sans any translation in English or Filipino provided by respondent, the same should not have been admitted in evidence; thus their contents could not be given probative value, and deemed to constitute proof of the facts stated therein.

6. ID.; ID.; ID.; BEFORE ANY PRIVATE DOCUMENT OFFERED AS AUTHENTIC IS RECEIVED IN EVIDENCE, ITS DUE EXECUTION AND AUTHENTICITY MUST BE PROVED.— [T]he due execution and authenticity of the [subject] certification were not proven in accordance with Section 20, Rule 132 of the Rules of Court: Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) By anyone who saw the document executed or written; (b) By evidence of the genuineness of the signature or handwriting of the maker (c) Any other private document need only be identified as that which it is claimed to be. Notably, the foregoing provision applies since the Certification does not fall within the classes of public documents under Section 19, Rule 132 of the Rules of Court — and hence, must be considered as private. It has been settled that an **unverified and unidentified private document cannot be accorded probative value**. In addition, case law states that "**since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications**. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author

should be presented as a witness to provide the other party to the litigation the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the medical certificate renders its contents suspect and of no probative value," as in this case.

7. ID.; ID.; DIFFERENCE BETWEEN A CHANGE IN THE THEORY OF THE CASE AND A SHIFTING OF THE INCIDENCE OF THE EMPHASIS PLACED DURING THE TRIAL OR IN THE BRIEFS.— In *Limpangco Sons v. Yangco*, the Court explained that "[t]here is a difference x x x between a change in the theory of the case and a shifting of the incidence of the emphasis placed during the trial or in the briefs." "Where x x x the theory of the case as set out in the pleadings remains the theory throughout the progress of the cause, the change of emphasis from one phase of the case as presented by one set of facts to another phase made prominent by another set of facts x x x does not result in a change of theory x x x." In any case, petitioner had already questioned the validity of these documents in its Position Paper before the MeTC. Hence, there is no change of theory that would preclude petitioner's arguments on this score.

APPEARANCES OF COUNSEL

Ricardo M. Ribo for petitioner.
Corpuz & Associates for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 11, 2014 and the Resolution[3] dated

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[1] *Rollo*, pp. 7-27.

[2] *Id*. at 28-37. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela concurring.

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

February 27, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 125451, which affirmed with modification the Decision[4] dated December 15, 2011 and the Order dated May 25, 2012 of the Regional Trial Court of Mandaluyong City, Branch 211 (RTC) in SCA Case No. MC11-879 (Civil Case No. 21881), and thereby ordered herein petitioner St. Martin Polyclinic, Inc. (petitioner) to pay respondent LWV Construction Corporation (respondent) temperate damages in the amount of ₱50,000.00.

The Facts

Respondent is engaged in the business of recruiting Filipino workers for deployment to Saudi Arabia.[5] On the other hand, petitioner is an accredited member of the Gulf Cooperative Council Approved Medical Centers Association (GAMCA) and as such, authorized to conduct medical examinations of prospective applicants for overseas employment.[6]

On January 10, 2008, respondent referred prospective applicant Jonathan V. Raguindin (Raguindin) to petitioner for a pre-deployment medical examination in accordance with the instructions from GAMCA.[7] After undergoing the required examinations, petitioner cleared Raguindin and found him "fit for employment," as evidenced by a Medical Report[8] dated January 11, 2008 (Medical Report).[9]

Based on the foregoing, respondent deployed Raguindin to Saudi Arabia, allegedly incurring expenses in the amount of ₱84,373.41.[10] Unfortunately, when Raguindin underwent another

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[4] CA *rollo*, pp. 34-40. Penned by Presiding Judge Ofelia L. Calo.

[5] *Rollo*, p. 29.

[6] *Id*.

[7] See CA *rollo*, p. 68. See also Referral Slip for Medical Examination; *id*. at 73.

[8] *Id*. at 74.

[9] *Id*. at 69.

[10] *Id*.

medical examination with the General Care Dispensary of Saudi Arabia (General Care Dispensary) on March 24, 2008, he purportedly tested positive for HCV or the hepatitis C virus. The Ministry of Health of the Kingdom of Saudi Arabia (Ministry of Health) required a re-examination of Raguindin, which the General Care Dispensary conducted on April 28, 2008.[11] However, the results of the re-examination remained the same, *i.e.*, Raguindin was positive for HCV, which results were reflected in a Certification[12] dated April 28, 2008 (Certification). An undated HCV Confirmatory Test Report[13] likewise conducted by the Ministry of Health affirmed such finding, thereby leading to Raguindin's repatriation to the Philippines.[14]

Claiming that petitioner was reckless in issuing its Medical Report stating that Raguindin is "fit for employment" when a subsequent finding in Saudi Arabia revealed that he was positive for HCV, respondent filed a complaint[15] for sum of money and damages against petitioner before the Metropolitan Trial Court of Mandaluyong City, Branch 60 (MeTC). Respondent essentially averred that it relied on petitioner's declaration and incurred expenses as a consequence. Thus, respondent prayed for the award of damages in the amount of ₱84,373.41 representing the expenses it incurred in deploying Raguindin abroad.[16]

In its Answer with compulsory counterclaim,[17] petitioner denied liability and claimed that: *first*, respondent was not a proper party in interest for lack of privity of contract between them; *second*, the MeTC had no jurisdiction over the case as it involves the interpretation and implementation of a contract

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

[12] *Id*. at 75.

[13] *Id*. at 76.

[14] See *id*. at 70.

[15] See Amended Complaint dated December 2, 2008; *id*. at 68-72.

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

[17] Dated February 1, 2010; *id*. at 84-89.

of employment; *third*, the action is premature as Raguindin has yet to undergo a post-employment medical examination following his repatriation; and *fourth*, the complaint failed to state a cause of action as the Medical Report issued by petitioner had already expired on April 11, 2008, or three (3) months after its issuance on January 11, 2008.[18]

The MeTC Ruling

In a Decision[19] dated December 17, 2010, the MeTC rendered judgment in favor of respondent and ordered petitioner to pay the amount of ₱84,373.41 as actual damages, ₱20,000.00 as attorney's fees, and the costs of suit.[20]

At the onset, the MeTC held that it had jurisdiction over the case, since respondent was claiming actual damages incurred in the deployment of Raguindin in the amount of ₱84,373.41.[21] It further ruled that respondent was a real party in interest, as it would not have incurred expenses had petitioner not issued the Medical Report certifying that Raguindin was fit to work.

On the merits, the MeTC found that respondent was entitled to be informed accurately of the precise condition of Raguindin before deploying the latter abroad and consequently, had sustained damage as a result of the erroneous certification.[22] In this relation, it rejected petitioner's contention that Raguindin may have contracted the disease after his medical examination in the Philippines up to the time of his deployment, there being no evidence offered to corroborate the same.[23]

Aggrieved, petitioner appealed to the RTC, contending,[24] among others, that respondent failed to comply with the

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

[19] *Id*. at 113-117. Penned by Assisting Judge Bonifacio S. Pascua.

[20] *Id*. at 117.

[21] *Id*. at 116.

[22] *Id*. at 117.

[23] *Id*.

[24] See Memorandum dated July 12, 2011; *id*. at 118-132.

requirements on the authentication and proof of documents under Section 24,[25] Rule 132 of the Rules of Court, considering that respondent's evidence, particularly the April 28, 2008 Certification issued by the General Care Dispensary and the HCV Confirmatory Test Report issued by the Ministry of Health, are foreign documents issued in Saudi Arabia.

The RTC Ruling

In a Decision[26] dated December 15, 2011, the RTC dismissed petitioner's appeal and affirmed the MeTC Decision in its entirety.[27] Additionally, the RTC pointed out that petitioner can no longer change the theory of the case or raise new issues on appeal, referring to the latter's argument on the authentication of respondent's documentary evidence.[28]

Petitioner's motion for reconsideration[29] was denied in an Order[30] dated May 25, 2012. Dissatisfied, petitioner elevated the case to the CA.[31]

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[25] Section 24. *Proof of official record*. – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[26] CA *rollo*, pp. 34-40.

[27] *Id*. at 40.

[28] See *id*. at 38.

[29] Dated February 15, 2012. *Id*. at 141-148.

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

[31] See Petition for review dated July 19, 2012; *id*. at 6-33.

The CA Ruling

In a Decision[32] dated July 11, 2014, the CA affirmed the RTC Decision, with the modification deleting the award of actual damages and instead, awarding temperate damages in the amount of ₱50,000.00.[33]

The CA held that petitioner failed to perform its duty to accurately diagnose Raguindin when it issued its Medical Report declaring the latter "fit for employment", considering that he was subsequently found positive for HCV in Saudi Arabia.[34] Further, the CA opined that the Certification issued by the General Care Dispensary is not a public document and in such regard, rejected petitioner's argument that the same is inadmissible in evidence for not having been authenticated. Moreover, it remarked that petitioner's own Medical Report does not enjoy the presumption of regularity as petitioner is merely an accredited clinic.[35] Finally, the CA ruled that petitioner could not disclaim liability on the ground that Raguindin tested positive for HCV in Saudi Arabia *after* the expiration of the Medical Report on April 11, 2008, noting that the General Care Dispensary issued its Certification on April 28, 2008, or a mere seventeen (17) days from the expiration of petitioner's Medical Report.[36] Hence, the CA concluded that "it is contrary to human experience that a newly-deployed overseas worker, such as Raguindin, would immediately contract a serious virus at the very beginning of a deployment."[37]

However, as the records are bereft of evidence to show that respondent actually incurred the amount of ₱84,373.41 as expenses for Raguindin's deployment, the CA deleted the award

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[32] *Rollo*, pp. 28-37.

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

[34] *Id.* at 34.

[35] *Id.* at 34-35.

[36] *Id.* at 35.

[37] *Id.*

of actual damages and instead, awarded temperate damages in the amount of ₱50,000.00.[38]

Aggrieved, petitioner filed a motion for partial reconsideration,[39] which the CA denied in a Resolution[40] dated February 27, 2015; hence, this petition.

The Issue Before the Court

The essential issue advanced for the Court's resolution is whether or not petitioner was negligent in issuing the Medical Report declaring Raguindin "fit for employment" and hence, should be held liable for damages.

The Court's Ruling

The petition is granted.

I.

At the outset, it should be pointed out that a re-examination of factual findings cannot be done acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law.[41] Thus, in petitions for review on *certiorari*, only questions of law may generally be put into issue. This rule, however, admits of certain exceptions, such as "when the inference made is manifestly mistaken, absurd or impossible"; or "when the findings are conclusions without citation of specific evidence on which they are based."[42] Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court would not apply, and the Court

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[38] See *id*. at 36.

[39] Dated August 18, 2014. *Id*. at 38-46.

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

[41] *Maersk-Filipinas Crewing, Inc. v. Vestruz*, 754 Phil. 307, 317 (2015), citing *Jao v. BCC Products Sales, Inc.*, 686 Phil. 36, 41 (2012).

[42] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 213 (2005).

retains the authority to pass upon the evidence presented and draw conclusions therefrom.[43]

II.

An action for damages due to the negligence of another may be instituted on the basis of Article 2176 of the Civil Code, which defines a quasi-delict:

> Article 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 elements of a quasi-delict are: **(1) an act or omission; (2) the presence of fault or negligence in the performance or non-performance of the act; (3) injury; (4) a causal connection between the negligent act and the injury; and (5) no pre-existing contractual relation**.[44]

As a general rule, any act or omission coming under the purview of Article 2176 gives rise to a cause of action under quasi-delict. This, in turn, gives the basis for a claim of damages.[45] Notably, quasi-delict is one among several sources of obligation. Article 1157 of the Civil Code states:

> Article 1157. Obligations arise from:
>
> (1) Law;
> (2) Contracts;
> (3) Quasi-contracts;
> (4) Acts or omissions punished by law; and
> (5) Quasi-delicts.

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[43] *Maersk-Filipinas Crewing, Inc. v. Vestruz*, *supra* note 41 at 317-318.

[44] See *Garcia, Jr. v. Salvador*, 547 Phil. 463, 470 (2007).

[45] See Concurring Opinion of Justice Leonen in *Alano v. Magud-Logmao*, 731 Phil. 407, 430 (2014).

However, as explained by Associate Justice Marvic M.V.F. Leonen (Justice Leonen) in his opinion in *Alano v. Magud-Logmao*[46] (*Alano*), "**Article 2176 is not an all-encompassing enumeration of all actionable wrongs which can give rise to the liability for damages. Under the Civil Code, acts done in violation of Articles 19, 20, and 21 will also give rise to damages**."[47] These provisions – which were cited as bases by the MTC, RTC and CA in their respective rulings in this case – read as follows:

> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> Article 20. Every person who, contrary to law, willfully or **negligently** causes damage to another, shall indemnify the latter for the same.
>
> Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage.

"[Article 19], known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties."[48] Case law states that "[w]hen 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. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would [then] be proper."[49] Between

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[46] *Id*.

[47] *Id*.

[48] *Globe Mackay Cable and Radio Corporation v. CA*, 257 Phil. 783, 788 (1989).

[49] *Id*. at 784.

these two provisions as worded, it is Article 20 which applies to both **willful and negligent** acts that are done contrary to law. On the other hand, Article 21 applies only to **willful acts done *contra bonos mores***.[50]

In the *Alano* case, Justice Leonen aptly elaborated on the distinctive applications of Articles 19, 20 and 21, which are general provisions on human relations, vis-à-vis Article 2176, which particularly governs quasi-delicts:

> Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21.
>
> **Article 20 concerns violations of existing law as basis for an injury**. It allows recovery should the act have been willful or negligent. Willful may refer to the intention to do the act and the desire to achieve the outcome which is considered by the plaintiff in tort action as injurious. Negligence may refer to a situation where the act was consciously done but without intending the result which the plaintiff considers as injurious.
>
> Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.
>
> **Article 2176** covers situations where an injury happens through an act or omission of the defendant. When it involves a positive act, the intention to commit the outcome is irrelevant. **The act itself must not be a breach of an existing law or a pre-existing contractual obligation**. What will be considered is whether there is "fault or negligence" attending the commission of the act which necessarily

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[50] "Article 21 refers to acts *contra bonos mores* and has the following elements: (1) an act which is legal; (2) but which is contrary to morals, good custom, public order or public policy; and (3) is done with intent to injure." (*Mata v. Agravante*, 583 Phil. 64, 70 [2008]).

leads to the outcome considered as injurious by the plaintiff. The required degree of diligence will then be assessed in relation to the circumstances of each and every case.[51] (Emphases and underscoring supplied)

Thus, with respect to negligent acts or omissions, it should therefore be discerned that **Article 20 of the Civil Code concerns** "**violations of existing law as basis for an injury", whereas Article 2176 applies when the negligent act causing damage to another does not constitute "a breach of an existing law or a pre-existing contractual obligation**."

In this case, the courts *a quo* erroneously anchored their respective rulings on the provisions of Articles 19, 20, and 21 of the Civil Code. This is because respondent did not proffer (nor have these courts mentioned) any law as basis for which damages may be recovered due to petitioner's alleged negligent act. In its amended complaint, respondent mainly avers that had petitioner not issue a "fit for employment" Medical Report to Raguindin, respondent would not have processed his documents, deployed him to Saudi Arabia, and later on – in view of the subsequent findings that Raguindin was positive for HCV and hence, unfit to work – suffered actual damages in the amount of ₱84,373.41.[52] Thus, as the claimed negligent act of petitioner was not premised on the breach of any law, and not to mention the incontestable fact that no pre-existing contractual relation was averred to exist between the parties, Article 2176 – instead of Articles 19, 20 and 21 – of the Civil Code should govern.

III.

Negligence is defined as the failure to observe for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury.[53]

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[51] *Alano v. Magud-Logmao*, *supra* note 45 at 433-434.

[52] CA *rollo*, p. 70.

[53] *Mendoza v. Spouses Gomez*, 736 Phil. 460, 474 (2014); citation omitted.

As early as the case of *Picart v. Smith*,[54] the Court elucidated that "the test by which to determine the existence of negligence in a particular case is: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation**? If not, then he is guilty of negligence."[55] Corollary thereto, the Court stated that "[t]he question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. **Abstract speculation cannot here be of much value** x x x: Reasonable men govern their conduct by the circumstances which are before them or known to them. **They are not, and are not supposed to be, omniscient of the future. Hence[,] they can be expected to take care only when there is something before them to suggest or warn of danger**."[56]

Under our Rules of Evidence, it is disputably presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular.[57] **In effect, negligence cannot be presumed, and thus, must be proven by him who alleges it**.[58] *In Huang v. Philippine Hoteliers, Inc.*:[59]

> [T]he negligence or fault should be clearly established as it is the basis of her action. The burden of proof is upon [the plaintiff]. Section 1, Rule 131 of the Rules of Court provides that "burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." It is then up for the plaintiff to establish his cause of action or the defendant to establish his defense. **Therefore, if the**

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[54] 37 Phil. 809 (1918).

[55] *Id.* at 83.

[56] *Id.*

[57] See Revised Rules of Evidence, Rule 131, Section 3 (p).

[58] See *Samsung Construction Company of the Philippines, Inc. v. Far East Bank and Trust Company*, 480 Phil. 39, 58 (2004); citations omitted.

[59] 700 Phil. 327 (2012).

plaintiff alleged in his complaint that he was damaged because of the negligent acts of the defendant, he has the burden of proving such negligence. It is even presumed that a person takes ordinary care of his concerns. The quantum of proof required is preponderance of evidence.[60] (Emphasis and underscoring supplied)

The records of this case show that the pieces of evidence mainly relied upon by respondent to establish petitioner's negligence are: (*a*) the Certification[61] dated April 28, 2008; and (*b*) the HCV Confirmatory Test Report.[62] However, these issuances only indicate the results of the General Care Dispensary and Ministry of Health's own medical examination of Raguindin finding him to be positive for HCV. Notably, the examination conducted by the General Care Dispensary, which was later affirmed by the Ministry of Health, was conducted **only on March 24, 2008, or at least two (2) months after petitioner issued its Medical Report on January 11, 2008**. Hence, even assuming that Raguindin's diagnosis for HCV was correct, the fact that he later tested positive for the same does not convincingly prove that he was already under the same medical state at the time petitioner issued the Medical Report on January 11, 2008. In this regard, it was therefore incumbent upon respondent to show that **there was already negligence at the time the Medical Report was issued**, may it be through evidence that show that standard medical procedures were not carefully observed or that there were already palpable signs that exhibited Raguindin's unfitness for deployment at that time. This is hardly the case when respondent only proffered evidence which demonstrate that months after petitioner's Medical Report was issued, Raguindin, who had already been deployed to Saudi Arabia, tested positive for HCV and as such, was no longer "fit for employment."

In fact, there is a reasonable possibility that Raguindin became exposed to the HCV only ***after*** his medical examination with

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[60] *Id*. at 358-359; citations omitted.

[61] CA *rollo*, p. 75.

[62] *Id*. at 76.

petitioner on January 11, 2008. Based on published reports from the World Health Organization, HCV or the hepatitis C virus causes both acute and chronic infection. Acute HCV infection is usually **asymptomatic**,[63] and is only very rarely associated with life-threatening diseases. The **incubation period**[64] for HCV is **two (2) weeks to six (6) months**, and following initial infection, approximately 80% of people do not exhibit any symptoms.[65] Indisputably, Raguindin was not deployed to Saudi Arabia immediately after petitioner's medical examination and hence, could have possibly contracted the same only when he arrived thereat. In light of the foregoing, the CA therefore erred in holding that "[h]ad petitioner more thoroughly and diligently examined Raguindin, it would likely have discovered the existence of the HCV because it was contrary to human experience that a newly-deployed overseas worker, such as Raguindin, would immediately have contracted the disease at the beginning of his deployment."[66]

While petitioner's Medical Report indicates an expiration of April 11, 2008, the Court finds it fitting to clarify that the same could not be construed as a certified guarantee coming from petitioner that Raguindin's medical status at the time the report was issued on January 11, 2008 (*i.e.*, that he was fit for

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[63] Asymptomatic has been defined as "without symptoms; providing no subjective evidence of existence" (see <https://www.collinsdictionary.com/dictionary/english/asymptomatic> [visited October 26, 2017]) or "having or showing no symptoms of disease" (see <https://www.merriam-webster.com/dictionary/ asymptomatic> [visited October 26, 2017]).

[64] Incubation period has been defined as "the time between exposure to an infectious disease and the appearance of the first signs or symptoms "(see <https://www.collinsdictionary.com/dictionary/ english/incubation-period> [visited October 26, 2017]) or "the period between the infection of an individual by a pathogen and the manifestation of the illness or disease it causes" (see <https://www.merriam-webster.com/ dictionary/ incubation%20period> [visited October 26, 2017]).

[65] World Health Organization Fact Sheet on Hepatitis C, updated July 2017; see <http://www.who.int/ mediacentre/factsheets/fs164/en/> (visited October 26, 2017). Emphasis supplied.

[66] *Id*.

employment) would remain the same up until that date (*i.e.*, April 11, 2008). As earlier intimated, the intervening period could very well account for a number of variables that could have led to a change in Raguindin's condition, such as his deployment to a different environment in Saudi Arabia. If at all, the expiration date only means that the Medical Report is valid – and as such, could be submitted – as a formal requirement for overseas employment up until April 11, 2008; it does not, by any means, create legal basis to hold the issuer accountable for any intervening change of condition from the time of issuance up until expiration. Truly, petitioner could not be reasonably expected to predict, much less assure, that Raguindin's medical status of being fit for employment would remain unchanged. Thus, the fact that the Medical Report's expiration date of April 11, 2008 was only seventeen (17) days away from the issuance of the General Care Dispensary's April 28, 2008 Certification finding Raguindin positive for HCV should not – as it does not – establish petitioner's negligence.

IV.

At any rate, the fact that Raguindin tested positive for HCV could not have been properly established since the courts *a quo*, in the first place, erred in admitting and giving probative weight to the Certification of the General Care Dispensary, which was written in an unofficial language. Section 33, Rule 132 of the Rules of Court states that:

> Section 33. *Documentary evidence in an unofficial language*. – Documents written in an unofficial language ***shall not be admitted*** as evidence, ***unless accompanied with a translation into English or Filipino***. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.[67]

A cursory examination of the subject document would reveal that while it contains English words, the majority of it is in an unofficial language. Sans any translation in English or Filipino provided by respondent, the same should not have been admitted

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[67] Emphasis and underscoring supplied.

in evidence; thus their contents could not be given probative value, and deemed to constitute proof of the facts stated therein.

Moreover, the due execution and authenticity of the said certification were not proven in accordance with Section 20, Rule 132 of the Rules of Court:

> Section 20. *Proof of private document*. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
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> (a) By anyone who saw the document executed or written; or
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
> (c) Any other private document need only be identified as that which it is claimed to be.

Notably, the foregoing provision applies since the Certification does not fall within the classes of public documents under Section 19, Rule 132 of the Rules of Court[68] – and hence, must be considered as private. It has been settled that an **unverified and unidentified private document cannot be accorded probative value**.[69] In addition, case law states that "**since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications**. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party to the litigation

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[68] Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledged before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to be entered therein. All other writings are private.

[69] *Huang v. Philippine Hoteliers, Inc.*, *supra* note 59 at 367.

the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the medical certificate renders its contents suspect and of no probative value,"[70] as in this case.

Similarly, the HCV Confirmatory Test Report issued by the Ministry of Health of Saudi Arabia should have also been excluded as evidence. Although the same may be considered a public document, being an alleged written official act of an official body of a foreign country,[71] the same was not duly authenticated in accordance with Section 24,[72] Rule 132 of the Rules of Court. While respondent provided a translation[73] thereof from the National Commission on Muslim Filipinos, Bureau of External Relations, Office of the President, the same was not accompanied by a certificate of the secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or any officer in the foreign service of the Philippines stationed in Saudi Arabia, where the record is kept, and authenticated by the seal of his office.[74]

To be sure, petitioner – contrary to respondent's contention[75] – has not changed its theory of the case by questioning the

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[70] *Id*. See also *Maritime Factors, Inc. v. Hindang*, 675 Phil. 587 (2011).

[71] *Rollo*, p. 12.

[72] Section 24. *Proof of official record*. – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[73] CA *rollo*, p. 254.

[74] See *rollo*, pp. 13-14.

[75] See Explanation to Show Cause and Comment dated January 27, 2017; *id*. at 65-70.

foregoing documents. As petitioner correctly argued, it merely amplified its defense[76] that it is not liable for negligence when it further questioned the validity of the issuances of the General Care Dispensary and Ministry of Health. In *Limpangco Sons v. Yangco*,[77] the Court explained that "[t]here is a difference x x x between a change in the theory of the case and a shifting of the incidence of the emphasis placed during the trial or in the briefs." "Where x x x the theory of the case as set out in the pleadings remains the theory throughout the progress of the cause, the change of emphasis from one phase of the case as presented by one set of facts to another phase made prominent by another set of facts x x x does not result in a change of theory x x x".[78] In any case, petitioner had already questioned the validity of these documents in its Position Paper[79] before the MeTC. [80] Hence, there is no change of theory that would preclude petitioner's arguments on this score.

All told, there being no negligence proven by respondent through credible and admissible evidence, petitioner cannot be held liable for damages under Article 2176 of the Civil Code as above-discussed.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated July 11, 2014 and the Resolution dated February 27, 2015 of the Court of Appeals in CA-G.R. SP No. 125451 are **REVERSED** and **SET ASIDE**, and a **NEW ONE** is entered, **DISMISSING** the complaint of respondent LWV Construction Corporation for lack of merit.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[76] See *id*. at 87-88.

[77] 34 Phil. 597 (1916).

[78] *Id*. at 607-608.

[79] Dated October 25, 2010; CA *rollo*, pp. 92-96.

[80] *Id*. at 95.

SECOND DIVISION

[G.R. No. 222366. December 4, 2017]

W LAND HOLDINGS, INC., *petitioner, vs.* **STARWOOD HOTELS AND RESORTS WORLDWIDE, INC.**, *respondent.*

SYLLABUS

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE (IP CODE); MARK DEFINED AS ANY VISIBLE SIGN CAPABLE OF DISTINGUISHING THE GOODS (TRADEMARK) OR SERVICES (SERVICE MARK) OF AN ENTERPRISE; FUNCTIONS OF TRADEMARKS.— The IP Code defines a "mark" as "any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise." Case law explains that "[t]rademarks deal with the psychological function of symbols and the effect of these symbols on the public at large." It is a merchandising short-cut, and, "[w]hatever the means employed, the aim is the same – to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears." Thus, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods or services bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods or services. As viewed by modern authorities on trademark law, trademarks perform three (3) distinct functions: (1) they indicate origin or ownership of the articles to which they are attached; (2) they guarantee that those articles come up to a certain standard of quality; and (3) they advertise the articles they symbolize.

2. ID.; ID.; TRADEMARK; A CERTIFICATE OF REGISTRATION OF A MARK CONSTITUTES *PRIMA FACIE* EVIDENCE OF ITS VALIDITY, OWNERSHIP AND EXCLUSIVE RIGHT TO USE; MAY BE CHALLENGED AND OVERCOME BY PROOF OF NON-USE OF THE MARK, EXCEPT WHEN EXCUSED.— In *Berris Agricultural Co., Inc. v. Abyadang*, this Court explained that "[t]he ownership

of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. x x x. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate." However, "the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, **by proof of [, among others,] non--use of the mark**, except when excused." The actual use of the mark representing the goods or services introduced and transacted in commerce over a period of time creates that goodwill which the law seeks to protect. For this reason, the IP Code, under Section 124.2, requires the registrant or owner of a registered mark to declare "actual use of the mark" (DAU) and present evidence of such use within the prescribed period. Failing in which, the IPO DG may cause the *motu propio* removal from the register of the mark's registration. Also, any person, believing that "he or she will be damaged by the registration of a mark," which has not been used within the Philippines, may file a petition for cancellation. Following the basic rule that he who alleges must prove his case, the burden lies on the petitioner to show damage and non-use.

3. ID.; ID.; ID.; ID.; "USE" MUST BE GENUINE, RESULTING TO COMMERCIAL INTERACTION IN THE ORDINARY COURSE OF TRADE.— The IP Code and the Trademark Regulations have not specifically defined "use." However, it is understood that **the "use" which the law requires to maintain the registration of a mark must be genuine**, and not merely token. Based on foreign authorities, genuine use may be characterized **as a *bona fide* use which results or tends to result, in one way or another, into a commercial interaction or transaction "in the ordinary course of trade.**" What specific act or acts would constitute use of the mark sufficient to keep its registration in force may be gleaned from the Trademark Regulations, Rule 205 x x x The Trademark Regulations was amended by Office Order No. 056-13. Particularly, Rule 205 now mentions certain items which "shall be accepted as proof of actual use of the mark:" x x x Office Order No. 056-13 was

issued by the IPO DG on April 5, 2013, pursuant to his delegated rule-making authority under Section 7 of the IP Code. The rationale for this issuance, per its whereas clauses, is to further "the policy of the [IPO] to streamline administrative procedures in registering trademarks" and in so doing, address the need "to clarify what will be accepted as proof of use." In this regard, the parameters and list of evidence introduced under the amended Trademark Regulations are thus mere administrative guidelines which are only meant to flesh out the types of acceptable evidence necessary to prove what the law already provides, *i.e.*, the requirement of actual use.

4. ID.; ID.; ID.; ID.; ID.; USE OF REGISTERED MARK BY MEANS OF AN INTERACTIVE WEBSITE MAY CONSTITUTE PROOF OF ACTUAL USE THAT IS SUFFICIENT TO MAINTAIN THE REGISTRATION OF THE SAME; THE USE OF THE MARK MUST BE "WITHIN THE PHILIPPINES."— Based on the amended Trademark Regulations, it is apparent that the IPO has now given due regard to the advent of commerce on the internet. Specifically, it now recognizes, among others, "downloaded pages from the website of the applicant or registrant clearly showing that the goods are being sold or the services are being rendered in the Philippines," as well as "for online sale, receipts of sale of the goods or services rendered or other similar evidence of use, showing that the goods are placed on the market or the services are available in the Philippines or that the transaction took place in the Philippines," as acceptable proof of actual use. x x x Cognizant of [the] current state of affairs, the Court therefore agrees with the IPO DG, as affirmed by the CA, that the use of a registered mark representing the owner's goods or services by means of an interactive website may constitute proof of actual use that is sufficient to maintain the registration of the same. Since the internet has turned the world into one vast marketplace, the owner of a registered mark is clearly entitled to generate and further strengthen his commercial goodwill by actively marketing and commercially transacting his wares or services throughout multiple platforms on the internet. x x x It must be emphasized, however, that the mere exhibition of goods or services over the internet, without more, is not enough to constitute actual use. x x x Since the internet creates a borderless marketplace, **it must be shown that the owner has actually**

> **transacted, or at the very least, intentionally targeted customers of a particular jurisdiction in order to be considered as having used the trade mark in the ordinary course of his trade in that country**. **A showing of an actual commercial link to the country is therefore imperative**. x x x **As the IP Code expressly requires, the use of the mark must be "within the Philippines**." This is embedded in Section 151 of the IP Code on cancellation. x x x Thus, the use of mark on the internet must be shown to result into a within-State sale, or at the very least, discernibly intended to target customers that reside in that country.

APPEARANCES OF COUNSEL

Cruz Marcelo & Tenefrancia for petitioner.
Romulo Mabanta Buenaventura Sayoc & De los Angeles 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 June 22, 2015 and the Resolution[3] dated January 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 133825 affirming the Decision[4] dated January 10, 2014 of the Intellectual Property Office (IPO) – Director General (IPO DG), which, in turn, reversed the Decision[5] dated May 11, 2012 of the IPO Bureau of Legal Affairs (BLA) in Inter Partes Case No. 14-2009-000143, and accordingly, dismissed petitioner

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[1] *Rollo*, pp. 10-63.

[2] *Id*. at 70 and 76-87. Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.

[3] *Id*. at 75, 71-73.

[4] *Id*. at 168-175. Penned by Director General Ricardo R. Blancaflor.

[5] *Id*. at 758-767. Penned by Director IV Atty. Nathaniel S. Arevalo.

W Land Holdings, Inc.'s (W Land) petition for cancellation of the trademark "W" registered in the name of respondent Starwood Hotels and Resorts, Worldwide, Inc. (Starwood).

The Facts

On December 2, 2005, Starwood filed before the IPO an application for registration of the trademark "W" for Classes 43[6] and 44[7] of the International Classification of Goods and Services for the Purposes of the Registration of Marks[8] (Nice Classification).[9] On February 26, 2007, Starwood's application was granted and thus, the "W" mark was registered in its name.[10] However, on April 20, 2006, W Land applied[11] for the registration of its own "W" mark for Class 36,[12] which thereby prompted

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[6] CLASS 43 – Services for providing food and drink; temporary accommodation.

Explanatory Note: Class 43 includes mainly services provided by persons or establishments whose aim is to prepare food and drink for consumption and services provided to obtain bed and board in hotels, boarding houses or other establishments providing temporary accommodation. (See also *id*. at 76.)

[7] CLASS 44 – Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

Explanatory Note: Class 44 includes mainly medical care, hygienic and beauty care given by persons or establishments to human beings and animals; it also includes services relating to the fields of agriculture, horticulture and forestry. (See also *id*. at 76.)

[8] World Intellectual Property Organization, Geneva, 8th Edition, published in 2001 (January 2002).

[9] *Rollo*, p. 76.

[10] See *id*. at 21.

[11] See Trademark Application Form; *id*. at 189.

[12] CLASS 36 – Insurance; financial affairs; monetary affairs; real estate affairs.

Explanatory Note: Class 36 includes mainly services rendered in financial and monetary affairs and services rendered in relation to insurance contracts of all kinds. (See also *id*. at 77.)

Starwood to oppose the same.[13] In a Decision[14] dated April 23, 2008, the BLA found merit in Starwood's opposition, and ruled that W Land's "W" mark is confusingly similar with Starwood's mark,[15] which had an earlier filing date. W Land filed a motion for reconsideration[16] on June 11, 2008, which was denied by the BLA in a Resolution[17] dated July 23, 2010.

On May 29, 2009, W Land filed a Petition for Cancellation[18] of Starwood's mark for non-use under Section 151.1[19] of Republic Act No. 8293 or the "Intellectual Property Code of the Philippines" (IP Code),[20] claiming that Starwood has failed to use its mark in the Philippines because it has no hotel or establishment in the Philippines rendering the services covered by its registration; and that Starwood's "W" mark application and registration barred its own "W" mark application and registration for use on real estate.[21]

In its defense,[22] Starwood denied having abandoned the subject mark on the ground of non-use, asserting that it filed with the Director of Trademarks a notarized Declaration of Actual Use[23]

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[13] See *id*. at 77.

[14] *Id.* at 148-164. Docketed as IPC No. 14-2007-00084 and penned by BLA Director Estellita Beltran-Abelardo.

[15] See *id*. at 163-164.

[16] Not attached to the *rollo*.

[17] *Rollo*, p. 315. Penned by BLA Director Nathaniel S. Arevalo.

[18] Dated May 12, 2009. *Id*. at 177-184.

[19] The provision is cited on pages 12-13 of this *ponencia*.

[20] Entitled "AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES" (January 1, 1998).

[21] See *rollo*, pp. 180-183. See also *id*. at 76-78.

[22] See Verified Answer dated October 23, 2009; *id*. at 317-334.

[23] Dated April 3, 2008. *Id*. at 250.

(DAU)[24] with evidence of use on December 2, 2008,[25] which was not rejected. In this relation, Starwood argued that it conducts hotel and leisure business both directly and indirectly through subsidiaries and franchisees, and operates interactive websites for its W Hotels in order to accommodate its potential clients worldwide.[26] According to Starwood, apart from viewing agents, discounts, promotions, and other marketing fields being offered by it, these interactive websites allow Philippine residents to make reservations and bookings, which presuppose clear and convincing use of the "W" mark in the Philippines.[27]

The BLA Ruling

In a Decision[28] dated May 11, 2012, the BLA ruled in W Land's favor, and accordingly ordered the cancellation of Starwood's registration for the "W" mark. The BLA found that the DAU and the attachments thereto submitted by Starwood did not prove actual use of the "W" mark in the Philippines, considering that the "evidences of use" attached to the DAU refer to hotel or establishments that are located abroad.[29] In this regard, the BLA opined that "the use of a trademark as a business tool and as contemplated under [Section 151.1 (c) of RA 8293] refers to the actual attachment thereof to goods and services that are sold or availed of and located in the Philippines."[30]

Dissatisfied, Starwood appealed[31] to the IPO DG.

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[24] Required by Section 124.2 of the IP Code and Rule 204 of the "Rules and Regulations on Trademarks, Service Marks, Trade Names, and Marked or Stamped Containers" or the "Trademark Regulations" as amended, approved on October 29, 1998.

[25] See *rollo*, p. 325.

[26] See *id*. at 325-326.

[27] See *id*. at 326. See also *id*. at 78.

[28] *Id*. at 758-767.

[29] *Id*. at 766.

[30] *Id*. at 767.

[31] See Memorandum (Respondent-Appellant) dated August 7, 2013; *id*. at 509-533.

The IPO DG Ruling

In a Decision[32] dated January 10, 2014, the IPO DG granted Starwood's appeal,[33] thereby dismissing W Land's Petition for Cancellation. Contrary to the BLA's findings, the IPO DG found that Starwood's submission of its DAU and attachments, coupled by the acceptance thereof by the IPO Bureau of Trademarks, shows that the "W" mark still bears a "registered" status. Therefore, there is a presumption that Starwood sufficiently complied with the registration requirements for its mark.[34] The IPO DG likewise held that the absence of any hotel or establishment owned by Starwood in the Philippines bearing the "W" mark should not be equated to the absence of its use in the country, opining that Starwood's pieces of evidence, particularly its interactive website, indicate actual use in the Philippines,[35] citing Rule 205[36] of the Trademark Regulations, as amended by IPO Office Order No. 056-13.[37] Finally, the

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[32] *Id*. at 168-175.

[33] *Id*. at 175.

[34] *Id*. at 172.

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

[36] RULE 205. *Contents of the Declaration and Evidence of Actual Use.*—
(a) The declaration shall be under oath and filed by the applicant or registrant (or the authorized officer in case of a juridical entity) or the attorney or authorized representative of the applicant or registrant. The declaration must refer to only one application or registration, shall contain the name and address of the applicant or registrant declaring that the mark is in actual use in the Philippines, the list of goods or services where the mark is used, the name/s of the establishment and address where the products are being sold or where the services are being rendered. **If the goods or services are available only by online purchase, the website must be indicated on the form in lieu of name or address of the establishment or outlet. The applicant or registrant may include other facts to show that the mark described in the application or registration is actually being used in the Philippines.** The date of first use shall not be required.
x x x x x x x x x (Emphasis supplied)

[37] Entitled "AMENDMENT OF THE PROVISIONS ON DECLARATION OF ACTUAL USE OF THE TRADEMARK REGULATIONS" (April 5, 2013).

IPO DG stressed that since Starwood is the undisputed owner of the "W" mark for use in hotel and hotel-related services, any perceived damage on the part of W Land in this case should be subordinated to the essence of protecting Starwood's intellectual property rights. To rule otherwise is to undermine the intellectual property system.[38]

Aggrieved, W Land filed a petition for review[39] under Rule 43 of the Rules of Court before the CA.

The CA Ruling

In a Decision[40] dated June 22, 2015, the CA affirmed the IPO DG ruling. At the onset, the CA observed that the hotel business is peculiar in nature in that the offer, as well as the acceptance of room reservations or bookings wherever in the world is an indispensable element. As such, the actual existence or presence of a hotel in one place is not necessary before it can be considered as doing business therein.[41] In this regard, the CA recognized that the internet has become a powerful tool in allowing businesses to reach out to consumers in a given market without being physically present thereat; thus, the IPO DG correctly held that Starwood's interactive websites already indicate its actual use in the Philippines of the "W" mark.[42] Finally, the CA echoed the IPO DG's finding that since Starwood is the true owner of the "W" mark – as shown by the fact that Starwood had already applied for the registration of this mark even before W Land was incorporated – its registration over the same should remain valid, absent any showing that it has abandoned the use thereof.[43]

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[38] *Rollo*, p. 174.

[39] Dated February 18, 2014. *Id*. at 89-140.

[40] *Id*. at 70, 76-87.

[41] See *id*. at 82.

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

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

Unperturbed, W Land moved for reconsideration,[44] but was denied in a Resolution[45] dated January 7, 2016; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly affirmed the IPO DG's dismissal of W Land's Petition for Cancellation of Starwood's "W" mark.

The Court's Ruling

The petition is without merit.

The IP Code defines a "mark" as "any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise."[46] Case law explains that "[t]rademarks deal with the psychological function of symbols and the effect of these symbols on the public at large."[47] It is a merchandising short-cut, and, "[w]hatever the means employed, the aim is the same – to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears."[48] Thus, the protection of trademarks as intellectual

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[44] See motion for reconsideration dated July 30, 2015; *id*. at 546-582.

[45] *Id*. at 75, 71-73.

[46] Section 121.1, Part III, RA 8293.
Section 38, paragraph 2 of RA 166, entitled "AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES," otherwise known as "THE TRADEMARK LAW" (June 20, 1947), defines "trademark" as including "any word, name, symbol, emblem, sign or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured, sold or dealt in by others."

[47] *Mirpuri v. CA*, 376 Phil. 628, 665 (1999).

[48] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, 526 Phil. 300, 310 (2006), citing *Mishawaka Mfg. Co. v. Kresge Co.*, 316 U.S. 203, 53 USPQ (1942).

property is intended not only to preserve the goodwill and reputation of the business established on the goods or services bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods or services.[49] As viewed by modern authorities on trademark law, trademarks perform three (3) distinct functions: (1) they indicate origin or ownership of the articles to which they are attached; (2) they guarantee that those articles come up to a certain standard of quality; and (3) they advertise the articles they symbolize.[50]

In *Berris Agricultural Co., Inc. v. Abyadang*,[51] this Court explained that "[t]he ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. x x x. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate."[52] However, "the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, **by proof of[, among others,] non-use of the mark**, except when excused."[53]

The actual use of the mark representing the goods or services introduced and transacted in commerce over a period of time creates that goodwill which the law seeks to protect. For this reason, the IP Code, under Section 124.2,[54] requires the registrant

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[49] *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corporation,* G.R. No. 198889, January 20, 2016, 781 SCRA 424, 456, citing *Berries Agricultural Co., Inc. v. Abyadang*, 647 Phil. 517, 533 (2010).

[50] *Mirpuri v. CA*, *supra* note 47, at 645-646.

[51] *Supra* note 49.

[52] *Id*. at 525.

[53] *Id*. at 526; emphasis and underscoring supplied.

[54] Section 124.2. The applicant or the registrant shall **file a declaration of actual use of the mark** with evidence to that effect, as prescribed by the

or owner of a registered mark to declare "actual use of the mark" (DAU) and present evidence of such use within the prescribed period. Failing in which, the IPO DG may cause the *motu proprio* removal from the register of the mark's registration.[55] Also, any person, believing that "he or she will be damaged by the registration of a mark," which has not been used within the Philippines, may file a petition for cancellation.[56]

Regulations within three (3) years from the filing date of the application. **Otherwise**, the application shall be refused or **the mark shall be removed from the Register by the Director**. (Emphases and underscoring supplied)

[55] Rule 204 of the Trademark Regulations reads:

RULE 204. *Declaration of Actual Use*. — The Office will not require any **proof of use in commerce** in the processing of trademark applications. However, **without need of any notice from the Office, all applicants or registrants shall file a declaration of actual use of the mark with evidence to that effect within three years**, without possibility of extension, from the filing date of the application. **Otherwise**, the application shall be refused or **the mark shall be removed from the register by the Director *motu proprio*.** (Emphases and underscoring supplied) See also Section 124.2 of the IP Code.

[56] Section 151 of the IP Code reads:

Section 151. *Cancellation*. — 151.1. **A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs** by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act.

(b) **At any time, if the registered mark** becomes the generic name for the goods or services, or a portion thereof, for which it is registered, **or has been abandoned**, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for

Following the basic rule that he who alleges must prove his case,[57] the burden lies on the petitioner to show damage and non-use.

The IP Code and the Trademark Regulations have not specifically defined "use." However, it is understood that **the "use" which the law requires to maintain the registration of a mark must be genuine**, and not merely token. Based on foreign authorities,[58] genuine use

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determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer. (Emphases supplied)

[57] *Lim v. Equitable PCI Bank*, 724 Phil. 453, 454 (2014).

[58] International Trademark Association, 2003 Europe Legislation Analysis Subcommittee Report, *What constitutes use of a registered trademark in the European Union (including New Member States)*, (May 2004). <http://www.inta.org/Advocacy/Documents/INTATrademarkUseEurope2004.pdf> (last visited October 25, 2017), provides, among others:

> CTM laws recognize that use of a CTM must be genuine: the reason for this is 'that it is only the position on the market actually held by the trademark proprietor that should be protected, and not a mere register right that is not supported by any actual or potential goodwill. Furthermore, requiring use of a mark as a condition for enforcing rights will reduce the number of conflicts between marks and eventually also reduce the number of marks maintained on the register without actually having been used' (see. OHIM Opposition Guidelines, part VI, Guidelines on Proof of Use). (The CTM is the unified trademark registration system in Europe established under the EU; see p. 44 of the Article)

The article likewise provides the definition, interpretation, or understanding of "use" in the various jurisdictions in the European Union. For example: in Spain, its Trademark Act 17/2001 requires that the "use" should be effective and real, with "real use" being interpreted as a real, unequivocal, not disguised use (Decision of the Provincial Court of Barcelona, 24 March 1998), and an existing and true use, contrary to merely formal use whose sole purpose is to avoid revocation (Decision of the Provincial Court of Barcelona, 7 March 1995); while "effective use" "consists in the continuous and relevant

may be characterized **as a *bona fide* use which results or tends to result, in one way or another, into a commercial**

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introduction into the market of the goods or services bearing the mark, or advertisement as a serious step in the production or selling process of the product. Merely internal use, insignificant, economical use and occasional use are excluded" (Decision of the Provincial Court of Barcelona, 7 March 1995). (See pp. 37-38 of the Article).

In Germany, "use' under Section 26 (1) of MarkenG, German courts is understood as referring only to "serious use," with the German courts having developed a three (3)-element test, *i.e.,* the duration, the extent, and the kind of use, all of which are taken into account as objective criteria to establish use within the meaning of Section 26 MarkenG (cf. BGH GRUR 1980, 52 – Contiflex and BGH GRUR 1980, 289 – Trend). (See pp. 15-16 of the Article).

In the United Kingdom, whether there has been "use" of trademark requires the application of the "genuine use" test, *i.e.,* a factual test of intent to be satisfied through examination of the facts and not requiring commercial success (*Gerber Products Co v. Gerber Foods International Ltd.* [2002] RPC 637*).* (See p. 43 of the Article).

In the Benelux Countries (Belguim, Netherlands, and Luxembourg), the "use" to effectively maintain the trademark rights, refers to "normal use," *i.e.*, the use must take place: with commercial intent; outside the company of the user; clearly related to the products sold or offered by the user, which products are distinguished from the products of others through such use; and normal (Decision by the Benelux Court of Justice in *Winston v. Whiston* (BenCJ January 27, 1981, NJ 1981, 333, BIE 1981, p. 151). Whether use can be considered "normal' depends on the facts and circumstances of the case, *i.e.*, nature, scope, frequency, regularity and duration of the use; the nature of the goods; and the nature and size of the company; while "use" can be considered "commercial" if: a trademark or sign is used other than for merely scientific purposes, as part of a company's or a professional's activities, or any other activity not conducted in the private sphere; and if economic profit is intended with such use (See pp. 5-6 of the Article).

In France, the "use" to protect a trademark registration from cancellation, must be serious and regular, *i.e.,* use occurred with the trademark owner's consent or, in case of collective trademarks, in accordance with applicable statutes; use of the mark in a modified form which does not alter its distinctive character; and affixing the mark on products or their packaging solely for export (Article L.714-5 of the Intellectual Property Code). Their case law also provides the following requirements governing uses deemed serious and regular: the use must relate to products and services covered by registration; must consist of a public use, *i.e.,* not restricted to a strictly private use (Paris, 25 May 1989); cannot consists of a single use, but can

interaction or transaction "in the ordinary course of trade."[59]

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take the form of a single advertisement (Versailles 27 May 1989); cannot be a sporadic or accidental use (TGI Paris, 28 Nov. 1990, Ritz PIBD 1991 III 207) nor consist of preparatory or purely experimental use, *i.e.,* small-scale product trials conducted in hospitals, where such products are not made available to patients as a whole (Regional Court of Paris, 16 December 1986, RPDI nº 10 p 131); use is determined according to quality and not quantity (Paris, 18 February 1980); must be unambiguous, that is, trademark has to be used as a trademark and not as a tradename or business name; a trademark can be used by a licensee, or by anyone authorized by the legal trademark owner (Paris, 24 March 1998); the existence of a licence agreement, in itself does not constitute evidence of serious and regular use of the trademark (CA Paris, 14 January 1998, Gaz.Pal. 1998, 2, som.544); the manufacture of trademarked labels in France to be affixed on items intended for export does not constitute a serious and regular use if the labels were not actually affixed on the products in France (*L'Orèal v. Loreen Paris*, CA Paris 4ème B, 20 September 2002). (See pp. 13-14 of the Article).

[59] Under the United States (U.S.) Trademark Law of 1946, as amended (or the Lanham Act), "use [of the mark] in commerce" is defined as the "*bona fide* use of a mark in the ordinary course of trade", and, with particular reference to services, "when it is used or displayed in the sale or advertising of services and the services are rendered in commerce and the person rendering the services is engaged in commerce in connection with the services." The pertinent provision reads:

> TITLE X - CONSTRUCTION AND DEFINITIONS
> § 45 (15 U.S.C. § 1127).
>
> In the construction of this chapter, unless the contrary is plainly apparent from the context—
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> x x x x x x x x x
>
> *Use in commerce*. The term **"use in commerce" means the *bona fide* use of a mark in the ordinary course of trade**, and not made merely to reserve a right in a mark. For purposes of this chapter, a mark shall be **deemed to be in use in commerce**—
>
> x x x x x x x x x
>
> (2) **on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce**, or the services are rendered in more than one State or in the United States and a foreign country and **the person rendering the services is engaged in commerce in connection with the services**. (Emphases supplied)

What specific act or acts would constitute use of the mark sufficient to keep its registration in force may be gleaned from the Trademark Regulations, Rule 205 of which reads:

RULE 205. *Contents of the Declaration and Evidence of Actual Use.* — **The declaration shall be under oath**, must refer to only one application or registration, must contain the name and address of the applicant or registrant **declaring that the mark is in actual use in the Philippines**, list of goods where the mark is attached; **list the name or names and the exact location or locations of the outlet or outlets** where the products are being sold or **where the services are being rendered, recite sufficient facts to show that the mark described in the application or registration is being actually used in the Philippines and, specifying the nature of such use.** The declarant shall attach five labels as actually used on the goods or the picture of the stamped or marked container visibly and legibly showing the mark as well as proof of payment of the prescribed fee. [As amended by Office Order No. 08 (2000)] (Emphases supplied)

The Trademark Regulations was amended by Office Order No. 056-13. Particularly, Rule 205 now mentions certain items which "shall be accepted as proof of actual use of the mark:"

RULE 205. *Contents of the Declaration and Evidence of Actual Use.* —

(a) The declaration shall be under oath and filed by the applicant or registrant (or the authorized officer in case of a juridical entity) or the attorney or authorized representative of the applicant or registrant. The declaration must refer to only one application or registration, shall contain the name and address of the applicant or registrant declaring that the mark is in actual use in the Philippines, the list of goods or services where the mark is used, the name/s of the establishment and address where the products are being sold or where the services are being rendered. If the goods or services are available only by online purchase, the website must be indicated on the form in lieu of name or address of the establishment or outlet. The applicant or registrant may include other facts to show that the mark described in the application or registration is actually being used in the Philippines. The date of first use shall not be required.

(b) Actual use for some of the goods and services in the same class shall constitute use for the entire class of goods and services. Actual use for one class shall be considered use for related classes.

In the event that some classes are not covered in the declaration, a subsequent declaration of actual use may be filed for the other classes of goods or services not included in the first declaration, provided that the subsequent declaration is filed within the three-year period or the extension period, in case an extension of time to file the declaration was timely made. In the event that no subsequent declaration of actual use for the other classes of goods and services is filed within the prescribed period, the classes shall be automatically dropped from the application or registration without need of notice to the applicant or registrant.

(**c) The following shall be accepted as proof of actual use of the mark:** (1) labels of the mark as these are used; (2) **downloaded pages from the website of the applicant or registrant clearly showing that the goods are being sold or the services are being rendered in the Philippines**; (3) photographs (including digital photographs printed on ordinary paper) of goods bearing the marks as these are actually used or of the stamped or marked container of goods and of the establishment/s where the services are being rendered; (4) brochures or advertising materials showing the actual use of the mark on the goods being sold or services being rendered in the Philippines; (5) **for online sale, receipts of sale of the goods or services rendered or other similar evidence of use, showing that the goods are placed on the market or the services are available in the Philippines or that the transaction took place in the Philippines**; (6) copies of contracts for services showing the use of the mark. Computer printouts of the drawing or reproduction of marks will not be accepted as evidence of use.

(d) **The Director may, from time to time, issue a list of acceptable evidence of use and those that will not be accepted by the Office.** (Emphases and underscoring supplied)

Office Order No. 056-13 was issued by the IPO DG on April 5, 2013, pursuant to his delegated rule-making authority under Section 7 of the IP Code.[60] The rationale for this issuance,

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[60] Section 7. *The Director General and Deputies Director General.* – 7.1. *Functions.* – The Director General shall exercise the following powers and functions:

a) Manage and direct all functions and activities of the Office, **including the promulgation of rules and regulations to implement the objectives,**

per its whereas clauses, is to further "the policy of the [IPO] to streamline administrative procedures in registering trademarks" and in so doing, address the need "to clarify what will be accepted as proof of use." In this regard, the parameters and list of evidence introduced under the amended Trademark Regulations are thus mere administrative guidelines which are only meant to flesh out the types of acceptable evidence necessary to prove what the law already provides, *i.e.*, the requirement of actual use. As such, contrary to W Land's postulation,[61] the same does not diminish or modify any substantive right and hence, may be properly applied to "all pending and registered marks,"[62] as in Starwood's "W" mark for hotel / hotel reservation services being rendered or, at the very least, made available in the Philippines.

Based on the amended Trademark Regulations, it is apparent that the IPO has now given due regard to the advent of commerce on the internet. Specifically, it now recognizes, among others, "downloaded pages from the website of the applicant or registrant clearly showing that the goods are being sold or the services are being rendered in the Philippines," as well as "for online sale, receipts of sale of the goods or services rendered or other similar evidence of use, showing that the goods are placed on

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policies, plans, programs and projects of the Office: *Provided*, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry[.]

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[61] See *rollo*, pp. 51-55.

[62] See Office Order No. 056-13, which states that "[t]his Office Order shall apply to all pending and registered marks."

the market or the services are available in the Philippines or that the transaction took place in the Philippines,"[63] as acceptable proof of actual use. Truly, the Court discerns that these amendments are but an inevitable reflection of the realities of the times. In *Mirpuri v. CA*,[64] this Court noted that "[a]dvertising on the Net and cybershopping are turning the Internet into a commercial marketplace:"[65]

> The Internet is a decentralized computer network linked together through routers and communications protocols that enable anyone connected to it to communicate with others likewise connected, regardless of physical location. Users of the Internet have a wide variety of communication methods available to them and a tremendous wealth of information that they may access. The growing popularity of the Net has been driven in large part by the World Wide Web, *i.e*., a system that facilitates use of the Net by sorting through the great mass of information available on it. **Advertising on the Net and cybershopping are turning the Internet into a commercial marketplace**.[66] (Emphasis and underscoring supplied)

Thus, as modes of advertising and acquisition have now permeated into virtual zones over cyberspace, the concept of commercial goodwill has indeed evolved:

> In the last half century, the unparalleled growth of industry and the rapid development of communications technology have enabled trademarks, tradenames and other distinctive signs of a product to penetrate regions where the owner does not actually manufacture or sell the product itself. **Goodwill is no longer confined to the territory of actual market penetration; it extends to zones where the marked article has been fixed in the public mind through advertising. Whether in the print, broadcast or electronic communications medium, particularly on the Internet**, **advertising has paved the**

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[63] See Rule 205 (c), items (2) and (3) of Office Order No. 056-13.

[64] *Supra* note 47.

[65] *Id*. at 649.

[66] *Id*.; citing Maureen O'Rourke, *Fencing Cyberspace*: *Drawing Borders in a Virtual World*, Minnesota Law Review, Vol. 82: 609-611, 615-618 [Feb. 1998].

way for growth and expansion of the product by creating and earning a reputation that crosses over borders, virtually turning the whole world into one vast marketplace.[67] (Emphasis and underscoring supplied)

Cognizant of this current state of affairs, the Court therefore agrees with the IPO DG, as affirmed by the CA, that the use of a registered mark representing the owner's goods or services by means of an interactive website may constitute proof of actual use that is sufficient to maintain the registration of the same. Since the internet has turned the world into one vast marketplace, the owner of a registered mark is clearly entitled to generate and further strengthen his commercial goodwill by actively marketing and commercially transacting his wares or services throughout multiple platforms on the internet. The facilities and avenues present in the internet are, in fact, more prominent nowadays as they conveniently cater to the modern-day consumer who desires to procure goods or services at any place and at any time, through the simple click of a mouse, or the tap of a screen. Multitudinous commercial transactions are accessed, brokered, and consummated everyday over websites. These websites carry the mark which represents the goods or services sought to be transacted. For the owner, he intentionally exhibits his mark to attract the customers' interest in his goods or services. The mark displayed over the website no less serves its functions of indicating the goods or services' origin and symbolizing the owner's goodwill than a mark displayed in the physical market. Therefore, there is no less premium to recognize actual use of marks through websites than their actual use through traditional means. Indeed, as our world evolves, so too should our appreciation of the law. Legal interpretation – as it largely affects the lives of people in the here and now – never happens in a vacuum. As such, it should not be stagnant but dynamic; it should not be ensnared in the obsolete but rather, sensitive to surrounding social realities.

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[67] *Id.* at 648-649.

It must be emphasized, however, that the mere exhibition of goods or services over the internet, without more, is not enough to constitute actual use. To reiterate, the "use" contemplated by law is genuine use – that is, a *bona fide* kind of use tending towards a commercial transaction in the ordinary course of trade. Since the internet creates a borderless marketplace, **it must be shown that the owner has actually transacted, or at the very least, intentionally targeted customers of a particular jurisdiction in order to be considered as having used the trade mark in the ordinary course of his trade in that country**. **A showing of an actual commercial link to the country is therefore imperative**. Otherwise, an unscrupulous registrant would be able to maintain his mark by the mere expedient of setting up a website, or by posting his goods or services on another's site, although no commercial activity is intended to be pursued in the Philippines. This type of token use renders inutile the commercial purpose of the mark, and hence, negates the reason to keep its registration active. **As the IP Code expressly requires, the use of the mark must be** "**within the Philippines**." This is embedded in Section 151 of the IP Code on cancellation, which reads:

SECTION 151. *Cancellation*. — 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act.

(b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services

solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer. (Emphasis and underscoring supplied)

The hotel industry is no stranger to the developments and advances in technology. Like most businesses nowadays, hotels are utilizing the internet to drive almost every aspect of their operations, most especially the offering and accepting of room reservations or bookings, regardless of the client or customer base. The CA explained this booking process in that the "business transactions commence with the placing of room reservations, usually by or through a travel agent who acts for or in behalf of his principal, the hotel establishment. [The] reservation is first communicated to the reservations and booking assistant tasked to handle the transaction. After the reservation is made, the specific room reserved for the guest will be blocked and will not be offered to another guest. As such, on the specified date of arrival, the room reserved will be available to the guest."[68]

In this accord, a hotel's website has now become an integral element of a hotel business. Especially with the uptrend of international travel and tourism, the hotel's website is now recognized as an efficient and necessary tool in advertising and promoting its brand in almost every part of the world. More so, interactive websites that allow customers or clients to instantaneously book and pay for, in advance, accommodations and other services of a hotel anywhere in the world, regardless of the hotel's actual location, dispense with the need for travel agents or hotel employees to transact the reservations for them.

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[68] *Rollo*, p. 82.

In effect, the hotel's website acts as a bridge or portal through which the hotel reaches out and provides its services to the client/customer anywhere in the world, with the booking transaction completed at the client/customer's own convenience. It is in this sense that the CA noted that the "actual existence or presence of a hotel in one place is not necessary before it can be considered as doing business therein."[69]

As earlier intimated, mere use of a mark on a website which can be accessed anywhere in the world will not automatically mean that the mark has been used in the ordinary course of trade of a particular country. Thus, the use of mark on the internet must be shown to result into a within-State sale, or at the very least, discernibly intended to target customers that reside in that country. This being so, **the use of the mark on an interactive website, for instance, may be said to target local customers when they contain specific details regarding or pertaining to the target State, sufficiently showing an intent towards realizing a within-State commercial activity or interaction**. These details may constitute a local contact phone number, specific reference being available to local customers, a specific local webpage, whether domestic language and currency is used on the website, and/or whether domestic payment methods are accepted.[70] Notably, this paradigm of ascertaining local details

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[69] *Id*.

[70] See also the Joint Recommendation Concerning Provisions on the Protection of Marks, And Other Industrial Property rights in Signs, on the Internet (adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) [September 24 to October 3, 2001]) which provides that use of the sign on the internet constitutes use within the Member State if such use produces commercial effect within that State (Article 2). To determine whether the use has produced commercial effect, the following factors can be considered: doing, or plans to do, business within the State; level and character of commercial activity within, *i.e.,* actually serving customers within or has entered into other commercially motivated relationships with persons within the Member State; connection of the offer of services with the Member State, *i.e.,* delivery of goods or services; prices are indicated in local currency; interactive contact accessible to internet users within the Member State; indication of an address, phone number,

to evince within-state commercial intent is subscribed to by a number of jurisdictions, namely, the European Union, Hong Kong, Singapore, Malaysia, Japan, Australia, Germany, France, Russia, and the United Kingdom.[71] As for the U.S. – where

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etc.; text used in conjunction with the use of the sign is in a language predominantly used within the Member State; and use of the sign in connection with a domain name (Article 3). <http://www.wipo.int/edocs/pubdocs/en/marks/845/pub845.pdf> (last visited October 25, 2017)

[71] See Online Trademark Use. Particularly: European Union - *800-FLOWERS EU* [2000] FSR 697, affirmed [2001] EWCA Civ 721 (by the URC Munich, Decision of June 16, 2005, file no. 29 U 5456/04) (pp. 7-8); Hong Kong – applying the rulings in the United Kingdom cases of *800 Flowers Trade mark* [2000] FSR 697 and *Euromarket Designs Inc v. Peters* [2000] FSR 20 (pp. 10-11); Singapore - *Weir Warman Lrd. V. Research & Development Pty Ltd* [2007] (2 SLR 1073) (pp. 19-20); Malaysia – "[i]f the website is intended to be used to seek worldwide trade with a view towards commercial gain x x x its activities fall squarely within the category of 'doing business over the internet' and may constitute for the purpose of trademark proceedings" (*Abercrombie & Fitch Co v. Fashion Factory Outlet KL Sdn Bhd [2008] 7 CLJ 413*) (pp. 16-17); India – "'use' of a trademark as understood under Indian law may not necessarily be use upon or in physical relation to goods x x x to constitute use there is no requirement for the goods bearing the mark to be physically present and made available in India." (*Hardie Trading Ltd. V. Addison Paint and Chemicals Ltd.* reported in 2003 [27] PTC 241, decided on September 12, 2003) (p. 13); Korea – "[a]dvertisement over the internet may be regarded as use of the trademark if the requirements of Article 2 of the Korean Trademark Act x x x are satisfied, *i.e.*, indicating the trademark on advertisement, price lists, business papers, signboards or labels and displaying or distributing them." (p. 16); United Kingdom – *Euromarket Designs Inc v. Peter & Another* [2000] ETMR 1025, and *KK Sony Computer Entertainment v. Pacific Game Technology (Holding) Limited* [2006] EWHC 2509 (Pat.) (p. 22); Germany– "[t]he use of a trademark in the Internet can be considered as use of the trademark in Germany if that use has a commercial effect in Germany (German Court of Justice [BGH], published in GRUR 2005, 431, 432 'HOTEL MARITIME')" (p. 9); and France – "provided the website can be proven to be directed at French consumers" (Decision of French Supreme Court "*Cour de Cassation*" of January 11, 2005) (p. 9). <http://www.inta.org/Advocacy/Documents/Online%20Trademark%20Use.pdf> (last visited October 25, 2017).

See however, Canada: A brick-and-mortar presence in Canada is required for hotel services. Website advertising and even offering reservation services online, may be insufficient to maintain a TM registration for "hotel services" without an actual hotel presence in Canada. (*Bellagio Limousines v. Mirage*

most of our intellectual property laws have been patterned[72] – there have been no decisions to date coming from its Trademark Trial and Appeal Board involving cases challenging the validity of mark registrations through a cancellation action based on the mark's internet use. However, in *International Bancorp LLC v. Societe des Bains de Mer et du Cercle des Etrangers a Monaco,*[73] it was ruled that mere advertising in the U.S. combined with rendering of services to American customers in a foreign country constituted "use" for the purpose of establishing trademark rights in the U.S.

In this case, Starwood has proven that it owns Philippine registered domain names,[74] *i.e.,* www.whotels.ph, www.

Resorts Inc., 2012 TMOB 220 and *Strikeman Elliott LLP v. Millenium & Copthorne International Limited,* 2017 TMOB 34). Performance of ancillary or other related services in Canada do not constitute the "performance" of hotel services" in Canada (*Miller Thompson LLP v. Hilton <Worldwide Holding LLP,* 2017 TMOB 19). http://www.bereskinparr.com/index.cfm?cm=Doc&ce=downloadPDF&primaryKey=913> (last visited October 25, 2017).

[72] See Sponsorship Speech of Senator Raul Roco; RECORD OF THE SENATE, Vol. II, No. 29, October 8, 1996, p. 128. See also Nicandro, Rogelio. *The Use of Prosecution History in Post-Grant Patent Proceedings*, pp. 5 and 9 (May 18, 2012) <http://aippi.org/wp-content/uploads/committees/229/GR229philippines.pdf> (visited October 28, 2017).

[73] 329 F. ed 359 (4th Cir. 2003).

[74] A domain name is defined as a "[u]nique address of a computer on the internet, made up of three parts: (1) name of the entity, followed by (2) type of the entity, followed by, if located outside the US, (3) entity's geographical location. Domain names provide an easy way to remember internet address which is translated into its numeric address (IP address) by the domain name system (DNS)." (See <http://www.businessdictionary.com/definition/domain-name.html> (visited October 25, 2017). Each website has a domain name that serves as an address, which is used to access the website. <https://techterms.com/definition/domain name> (visited October 25, 2017).

A domain name is a "unique identifier with a set of properties attached to it so that computers can perform conversions. A typical domain name is "icann.org". Most commonly the property attached is an IP address, like "208.77.188.103", so that computers can convert the domain name into an IP address. However the DNS is used for many other purposes. The domain

wreservations.ph, www.whotel.ph, www.wreservation.ph, for its website that showcase its mark. The website is readily accessible to Philippine citizens and residents, where they can avail and book amenities and other services in any of Starwood's W Hotels worldwide. Its website also readily provides a phone number[75] for Philippine consumers to call for information or other concerns. The website further uses the English language[76] – considered as an official language in this country[77] – which the relevant market in the Philippines understands and often uses in the daily conduct of affairs. In addition, the prices for its hotel accommodations and/or services can be converted into the local currency or the Philippine Peso.[78] Amidst all of these features, Starwood's "W" mark is prominently displayed in the website through which consumers in the Philippines can instantaneously book and pay for their accommodations, with immediate confirmation, in any of its W Hotels. Furthermore, it has presented data showing a considerably growing number of internet users in the Philippines visiting its website since

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name may also be a delegation, which transfers responsibility of all sub-domains within that domain to another entity." <https://www.icann.org/resources/pages/glossary-2014-02-04-en> (visited October 25, 2017). Domain name registration pertains to the "act of reserving a name on the internet for a certain period, usually one year." <https://www.siteground.com/kb/domain name registration/> (visited October 25, 2017).

[75] In particular, Starwood designates the contact number +80032525252 for the Philippines. See <https://www.starwoodhotels.com/whotels/support/contact/worldwide.html?country=PH> (visited October 25, 2017).

[76] In its website, when pointing to the language icon, a drop down box will appear which lists English, among others, as one of the language the Starwood website uses. See <http://www.starwoodhotels.com/whotels/index.html?EM=DWR_WH_WHOTELS.PH> (visited October 25, 2017).

[77] See Article XIV, Section 7 of the 1987 Constitution.

[78] In booking hotel reservations, the website offers clients the option to view accommodation rates and pay for the same according to the client's local currency through the "currency converter" icon. See <https://www.starwoodhotels.com/whotels/search/results/ detail.html?brand=WH&country=HK&city =Hong+ Kong&numberOfChildren=0 &numberOfRooms=1 &numberOfAdults=1&arrivalDate=2017-11-15 &departureDate=2017-11-16&currencyCode=PHP> (visited October 25, 2017).

2003, which is enough to conclude that Starwood has established commercially-motivated relationships with Philippine consumers.[79]

Taken together, these facts and circumstances show that Starwood's use of its "W" mark through its interactive website is intended to produce a discernable commercial effect or activity within the Philippines, or at the very least, seeks to establish commercial interaction with local consumers. Accordingly, Starwood's use of the "W" mark in its reservation services through its website constitutes use of the mark sufficient to keep its registration in force.

To be sure, Starwood's "W" mark is registered for Classes 43, *i.e.,* for hotel, motel, resort and motor inn services, **hotel reservation services**, restaurant, bar and catering services, food and beverage preparation services, café and cafeteria services, provision of conference, meeting and social function facilities, under the Nice Classification.[80] Under Section 152.3 of the IP Code, "[t]he use of a mark in connection with one or more of

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[79] See *rollo*, p. 662.

[80] The Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. The Treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957. <http://www.wipo.int/treaties/en/classification/nice/> (visited October 25, 2017).

Class 43 of the Nice Classification also includes the following services: accommodation bureau services (hotels, boarding houses); bar services; boarding house services and bookings; boarding for animals; providing campground facilities; rentals of chairs, tables, table linen, glassware; rental of cooking apparatus; day-nursery services; rental of drinking water dispensers; food and drink catering; food sculpting; holiday camp services; rental of lighting apparatus; rental of meeting rooms; retirement home services; self-service restaurant services; snack-bar services; rental of temporary accommodation; temporary accommodation services; rental of tents; tourist homes services; and rental of transportable buildings. See Nice Classification, 11th Edition <http://web2.wipo.int/ classifications/nice/nclpub/en/fr/home.xhtml> (visited October 25, 2017). See also *rollo*, p. 76.

the goods or services belonging to the class in respect of which the mark is registered shall prevent its cancellation or removal in respect of all other goods or services of the same class." Thus, Starwood's use of the "W" mark for reservation services through its website constitutes use of the mark which is already sufficient to protect its registration under the entire subject classification from non-use cancellation. This, notwithstanding the absence of a Starwood hotel or establishment in the Philippines.

Finally, it deserves pointing out that Starwood submitted in 2008 its DAU with evidence of use which the IPO, through its Director of Trademarks and later by the IPO DG in the January 10, 2014 Decision, had accepted and recognized as valid. The Court finds no reason to disturb this recognition. According to jurisprudence, administrative agencies, such as the IPO, by means of their special knowledge and expertise over matters falling within their jurisdiction are in a better position to pass judgment on this issue.[81] Thus, their findings are generally accorded respect and finality, as long as they are supported by substantial evidence. In this case, there is no compelling basis to reverse the IPO DG's findings – to keep Starwood's registration for the "W" mark in force – as they are well supported by the facts and the law and thus, deserve respect from this Court.

WHEREFORE, the petition is **DENIED**. The Decision dated June 22, 2015 and the Resolution dated January 7, 2016 of the Court of Appeals in CA-G.R. SP No. 133825 are hereby **AFFIRMED**.

SO ORDERED.

Peralta (*Acting Chairperson*), *Caguioa,* and *Reyes, Jr., JJ.,* concur.

Jardeleza,[*] *J.,* on leave.

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[81] See *Summit One Condominium Corp. v. Pollution Adjudication Board*, G.R. No. 215029, July 5, 2017.

[*] Designated Additional Member per Raffle dated November 27, 2017; on leave.

SECOND DIVISION

[G.R. No. 225544. December 4, 2017]

ROGEL N. ZARAGOZA, *petitioner, vs.* **KATHERINE L. TAN and EMPERADOR DISTILLERS, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; THE WRIT OF EXECUTION MUST CONFORM TO THE JUDGMENT WHICH IS TO BE EXECUTED.—** The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment which is sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.

2. **ID.; ID.; ID.; EXECUTION OF A JUDGMENT CAN ONLY BE ISSUED AGAINST ONE WHO IS A PARTY TO THE ACTION.—** It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. A decision of a court will not operate to divest the rights of a person who has not and has never been a party to a litigation, either as plaintiff or as defendant. Execution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party to the action, has not yet had his day in court. That execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case. Accordingly, the LA's Order against respondents who were not parties to the case is a deprivation of property without due process of law.

3. **COMMERCIAL LAW; CORPORATION LAW; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; TO DISREGARD THE SEPARATE JURIDICAL PERSONALITY OF A CORPORATION, THE**

WRONGDOING MUST BE ESTABLISHED CLEARLY AND CONVINCINGLY.— [I]t is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as the corporate agents are not their personal liability but the direct responsibility of the corporation they represent. While a corporation may exist for any lawful purpose, the law will regard it as an association of persons, or in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction which applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed. x x x [Thus], where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor. x x x Also, the existence of interlocking directors, corporate officers and shareholders, which the LA considered, without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.

4. **ID.; ID.; CORPORATE OFFICERS; REQUISITES TO HOLD A DIRECTOR OR OFFICER PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS.—** [T]o hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

APPEARANCES OF COUNSEL

Leandro M. Millano for petitioner.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] dated January 27, 2016 and the Resolution[2] dated May 26, 2016 of the Court of Appeals (*CA*) issued in CA-G.R. SP No. 135572.

The antecedent facts are as follows:

Petitioner Rogel N. Zaragoza was the Area Sales Manager of Consolidated Distillers of the Far East Incorporated (*Condis*) in the Bicol Region. He was dismissed on December 3, 2007. On February 18, 2008, he filed an illegal dismissal case with money claims against Condis, Winston Co and Dominador D. Hidalgo. On March 3, 2009, the Labor Arbiter (*LA*) issued his Decision[3] finding that petitioner was illegally dismissed, the dispositive portion of which reads:

> WHEREFORE, finding merit on the causes of action set forth by complainant ROGEL N. ZARAGOZA, judgment is hereby rendered declaring his termination or dismissal from employment by respondents CONSOLIDATED DISTILLERS OF THE FAR EAST, INC./ DOMINADOR D. HIDALGO, as illegal, thus:
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> a. ordering respondents to reinstate complainant, which reinstatement is immediately executory, to his former position without loss of seniority rights and other privileges, and under the same terms and conditions prevailing prior to his dismissal, and by reason thereof, directing respondents to submit a report of compliance within ten (10) days from receipt of this decision;

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[1] Penned by Associate Justice Jhosep Y. Lopez, concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, *rollo*, pp 55-71.

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

[3] *Id.* at 166-174.

b. ordering respondents to pay complainant, jointly and severally, full backwages, computed from the date of his unlawful dismissal up to the time of actual reinstatement, which as of the date of this decision amount to Php362,692.25;

c. ordering respondents, jointly and severally, to pay the total amount of Php36,043.69, representing complainant's monthly incentive; vacation/sick leave; 13th month pay; and operational expenses; and

d. ordering respondents, jointly and severally, to pay complainant moral and exemplary damages of Php 100,000.00; [and]

e. ordering respondents, jointly and severally, to pay complainant nominal damages of Php50,000.00 (please see attached computation of monetary award forming an integral part of this decision).

Other claims and charges are ordered DISMISSED finding no legal and tactual basis thereof.[4]

On May 11, 2009, Condis filed its Manifestation[5] by way of compliance with the LA alleging that petitioner can no longer be reinstated as his former sales position no longer existed and there was no equivalent position to which he could be reinstated pending appeal as the company was no longer engaged in the manufacturing, selling and marketing of Emperador Brandy and other liquor products; and that the Services Agreement which Condis entered with Emperador Distillers, Inc. (*EDI*), the company that bought the former, to market, sell and make logistic services was also terminated on June 1, 2008.

Condis and Hidalgo appealed the LA decision to the National Labor Relations Commission (*NLRC*). On April 13, 2010, the NLRC affirmed[6] with modification the LA decision by deleting the award of nominal damages and reducing to ₱50,000.00 the award of moral and exemplary damages. Their motion for

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

[5] *Id.* at 331-333.

[6] *Id.* at 176-186.

reconsideration was denied in a Resolution dated July 30, 2010. They filed a petition for *certiorari* with the CA which issued its Decision[7] dated November 22, 2010, partly granting the petition. The CA affirmed with modification the NLRC Decision and Resolution, and absolved Hidalgo of liability and deleted the award of moral and exemplary damages. The CA denied the motion for reconsideration in a Resolution[8] dated March 7, 2011.

Condis filed a petition for review with the Court, which denied it in a Resolution[9] dated June 22, 2011. The motion for reconsideration was denied in a Resolution[10] dated January 18, 2012. The Resolution became final and executory on March 30, 2012 and an entry of judgment was made.

Meanwhile, petitioner had already received a total amount of ₱454,986.98.[11] He then filed a motion[12] for issuance of alias writ of execution with notice of appearance, arguing that he is likewise entitled to accrued salaries by reason of the order of reinstatement, which as of December 3, 2012 amounted to ₱2,294,897.47. He prayed that respondent Tan, as President of Condis, should be held personally liable for the awards; and that respondent EDI should also be held jointly and solidarily liable with Condis for the judgment award as the transfer of manufacturing business of the latter to the former was done in bad faith in order to evade payment/satisfaction of their liabilities in the labor case, applying the doctrine of piercing the veil of corporate fiction.

On August 3, 2013, the LA issued a Resolution,[13] the decretal portion of which reads:

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[7] *Id.* at 188-A-210; Docketed as CA-G.R. SP No. 115824.

[8] *Id.* at 211-213.

[9] *Id.* at 217; Docketed as G.R. No. 196038.

[10] *Id.* at 218.

[11] *Id.* at 216-216-A.

[12] *Id.* at 223-236.

[13] *Id.* at 154-161.

WHEREFORE, premises considered and as prayed for, let an alias writ of execution issue against CONSOLIDATED DISTILLERS OF THE FAR EAST, INC.,/EMPERADOR DISTILLERS, INC., doing business under the name and style of EDI International, jointly and severally, and in the alternative, against Katherine L. Tan, in her capacity as President of Consolidated Distillers of the Far East, Inc., for P2,135,256.45, representing backwages/reinstatement salaries, inclusive of allowances, and to his other benefits or their monetary equivalent, covering the period December 3, 2007 until August 3, 2013.[14]

In adjudging respondents Katherine Tan and EDI to be jointly and severally liable with Condis, the LA found that the execution of the Asset Purchase Agreement and the termination of the Services Agreement were purposely done by Condis and respondent EDI to defraud petitioner as shown by the following: While the January 16, 2007 Asset Purchase Agreement was executed earlier than petitioner's dismissal on December 3, 2007, Condis was still operational for the period convenient to its purpose; the Asset Purchase Agreement and the letter terminating the Services Agreement were signed by Co as the Managing Director of EDI, and Co used to be Condis' Senior Vice-President prior to its alleged cessation of operation; both companies were represented by one and the same lawyer when they filed their respective Comment/Opposition; and Condis raised the issue of cessation of operation and separate corporate personality only in the course of the execution of the decision in the illegal dismissal case. Thus, the corporate fiction is pierceable by reason of fraud.

Respondents then filed with the NLRC a Petition for Annulment of the Resolution dated 3 August 2013 of the Executive Labor Arbiter Jess Orlando M. Quinones *Ex Abundante Ad Cautelam* (with an Extremely Urgent Motion for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction).

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[14] *Id.* at 160.

On January 17, 2014, the NLRC issued its Decision,[15] the decretal portion of which reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The 03 August 2013 Resolution holding petitioners Emperador Distillers Inc. and Katherine Tan liable for the claims of private respondent Rogel Zaragoza is declared null and void.[16]

In granting the petition, the NLRC found that respondents were never made parties in the illegal dismissal case filed by petitioner; that they were merely dragged into the proceedings when petitioner filed a motion for issuance of alias writ of execution with notice of appearance; that an order of execution can only be issued against a party and not against one who did not have his day in court. The LA did not acquire jurisdiction over the respondents, since they were neither summoned nor voluntarily appeared before the LA, and not being impleaded in the case, respondent EDI cannot be subject to the LA's process of piercing the veil of corporate fiction, and respondent Tan cannot also be subject to the LA's process of determining bad faith which would make an officer personally liable for the claims of a dismissed employee.

Petitioner's motion for reconsideration was denied in a Resolution[17] dated February 28, 2014.

Petitioner filed a petition for *certiorari* with the CA. The CA rendered its assailed Decision dated January 27, 2016 which dismissed the petition and affirmed the NLRC decision. Petitioner's motion for reconsideration was denied in a Resolution dated May 26, 2016.

Hence this petition for review where petitioner raises the issue of:

> WHETHER OR NOT THE MONETARY AWARD IN FAVOR OF PETITIONER IN NLRC CASE NO. SRAB V-07-00089-08 CAN

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[15] *Id.* at 95-115.

[16] *Id.* at 115.

[17] *Id.* at 117-119.

STILL BE ENFORCED AGAINST RESPONDENT TAN IN HER CAPACITY AS PRESIDENT OF CONDIS AND AGAINST RESPONDENT EDI, EVEN THOUGH THEY WERE NOT IMPLEADED IN SAID LABOR CASE.[18]

We find no merit in this petition.

Under the final and executory decision in petitioner's illegal dismissal case, only Condis was found liable for the judgment awarded to him. However, in petitioner's motion for the issuance of alias writ of execution with notice of appearance, petitioner alleged that should Condis fail to pay the judgment award, respondent Tan, as its President and as a stockholder of respondent EDI, should be held personally liable for the awards; and that respondent EDI should also be held jointly and severally liable with Condis. The LA granted the motion and issued the alias writ of execution where respondents were ordered to solidarity pay the judgment award with Condis. The NLRC, however, reversed the LA Order, which reversal was affirmed by the CA.

We agree with the CA.

The LA Resolution dated August 3, 2013, which directed the issuance of an alias writ of execution against respondents had the effect of amending the final and executory decision which made Condis the only one liable to petitioner. This cannot be done. The writ of execution must conform to the judgment which is to be executed,[19] as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment which is sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity. To maintain otherwise would be to ignore the constitutional provision

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[18] *Id.* at 39.

[19] *QBE Insurance Phils., Inc. v. Judge Lavina*, 562 Phil. 355, 369 (2007), citing *Buan v. Court of Appeals*, G.R. No. 101614, August 17, 1994, 235 SCRA 424, 432.

against depriving a person of his property without due process of law.[20]

Moreover, it bears stressing that respondents were never mentioned in the illegal dismissal proceedings, *i.e.*, from the LA, the NLRC, the CA or up to this Court, since the party-respondents therein were Condis, Co and Hidalgo. It is undisputed that respondents were involved in the case only when petitioner filed a motion for issuance of alias writ of execution which prayed for their inclusion, and which the LA granted; thus, they were unexpectedly ordered to be jointly and severally liable with Condis to pay the judgment award. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[21] A decision of a court will not operate to divest the rights of a person who has not and has never been a party to a litigation, either as plaintiff or as defendant.[22] Execution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party to the action, has not yet had his day in court.[23] That execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case.[24] Accordingly, the LA's Order against respondents who were not parties to the case is a deprivation of property without due process of law.

More importantly, since respondents were never impleaded in the illegal dismissal case, they were never served with summons nor did they voluntarily appear in the arbitration level;

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[20] *Id.*, citing *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, 331 Phil. 795, 811 (1996).

[21] *National Housing Authority v. Evangelista*, 497 Phil. 762, 770 (2005), citing *Heirs of Antonio Pael v. CA*, 382 Phil. 222, 249 (2000).

[22] *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, *supra* note 20, at 810.

[23] *Id.*, citing *St. Dominic Corp. v. Intermediate Appellate Court, etc.*, 235 Phil. 583, 590 (1887).

[24] *QBE Insurance Phils., Inc. v. Lavina*, *supra* note 19.

thus, the LA never acquired jurisdiction over them as to order the piercing of the veil of corporate fiction, and to make them jointly and severally liable with Condis for the judgment award to petitioner. We find apropros the case of *Pacific Rehouse Corporation v. Court of Appeals*[25] which was cited by the CA in its decision, thus:

The Court already ruled in *Kukan International Corporation v. Reyes* that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit:

> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:
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> > 23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x

This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. x x x" (Citations omitted)

From the preceding, it is therefore correct to say that the court must first and foremost acquire jurisdiction over the parties; and only then would the parties be allowed to present evidence for and/or against piercing the veil of corporate fiction. If the court has no jurisdiction over the corporation, it follows that the court has no

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[25] 730 Phil. 325 (2014).

business in piercing its veil of corporate fiction because such action offends the corporation's right to due process.

"Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, 'any judgment of the court which has no jurisdiction over the person of the defendant is null and void.'" "The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process."[26]

In any event, it is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected.[27] A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as the corporate agents are not their personal liability but the direct responsibility of the corporation they represent.[28] While a corporation may exist for any lawful purpose, the law will regard it as an association of persons, or in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality.[29] This is the doctrine of piercing the veil of corporate fiction which applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime,[30] or when it is made as

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[26] *Id.* at 343-344.

[27] *McLeod v. NLRC*, 541 Phil. 214, 238 (2007), citing *Martinez v. Court of Appeals,* 481 Phil. 450, 471 (2004).

[28] *Lozada v. Mendoza*, G.R. No. 196134, October 12, 2016, citing *Polymer Rubber Corporation v. Salamuding*, 715 Phil. 141, 150 (2013).

[29] *McLeod v. NLRC*, *supra* note 27, at 239.

[30] *Id.*, citing *Jardine Davies, Inc. v. JRB Realty, Inc.*, 502 Phil. 129, 138 (2005); *Development Bank of the Philippines v. Court of Appeals*, 415 Phil. 538, 549 (2001); *Kukan International Corporation v. Reyes*, 646 Phil. 210, 233 (2010).

a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[31] To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[32]

Petitioner argues that respondent Tan, as President of Condis, can be held solidarily liable for the judgment award despite not being impleaded as a party in the illegal dismissal case relying on *A.C. Ransom Labor Union-CCLU v. NLRC*.[33]

We are not impressed.

In *A.C. Ransom*, Ransom was found guilty of unfair labor practice; thus, it was ordered, together with its officers and agents, to reinstate the 22 union members to their respective positions with backwages, which decision became final and executory but the writ of execution could not be implemented against Ransom because of the disposition posthaste of its leviable assets. We found that Ransom put up another corporation, the Rosario Industrial Corporation (*Rosario*), while the ULP case was pending with the Court of Industrial Relations and that both corporations were closed corporations, owned and managed by the members of the Hernandez family; and that Rosario was established to phase out Ransom if an unfavorable decision would be rendered against the latter, hence, Ransom's operation was discontinued few months after the LA ruled in the employees' favor. As Ransom had the intention of evading its just and due obligations to the employees, We allowed the piercing of the veil of corporate fiction by making the officers of Ransom personally liable for the debts of the latter. We said that since

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[31] *Id.*, citing *Indophil Textile Mill Workers Union v. Calica*, 282 Phil. 725, 732 (1992).

[32] *Id.*, citing *Lim v. Court of Appeals*, 380 Phil. 60 (2000); *Del Rosario v. National Labor Relations Commission*, 265 Phil. 805, 809 (1990).

[33] 226 Phil. 199 (1986).

Ransom is a corporation, an artificial person, it must have an officer who can be presumed to be the employer, which as defined under Article 212(c) (now Article 212 [e]) of the Labor Code, includes any person acting in the interest of an employer, directly or indirectly, but does not include any labor organization or any of its officers or agents, except when acting as employer.

The factual milieu of *A.C. Ransom* case is different from the instant case. As the CA correctly found, in *A.C. Ransom*, the officers and agents were already held liable in the final and executory decision as they were named individual respondents in the case. Here, respondents were included in this case only in petitioner's motion for issuance of alias writ of execution.

Moreover, in *Carag v. NLRC*,[34] where the employees therein sought to hold Carag, the company's Chairman of the Board, personally liable for the separation pay owed by the company to them on the basis of Article 212 (e) of the Labor Code, We made this clarification and held:

> Indeed, complainants seek to hold Carag personally liable for the debts of MAC based solely on Article 212(e) of the Labor Code. This is the specific legal ground cited by complainants, and used by Arbiter Ortiguerra, in holding Carag personally liable for the debts of MAC.
>
> We have already ruled in *McLeod v. NLRC* and *Spouses Santos v. NLRC* that Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. Thus, we explained in *McLeod*:
>
> > Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such

[34] 548 Phil. 581 (2007).

> issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarity liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.[35]

x x x x x x x x x

Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Neither Article 212[e] nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation. As this Court ruled in *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*:

> We concur with the CA that these two respondents are not liable. Section 31 of the Corporation Code (Batas Pambansa Blg. 68) provides:
>
> > Section 31. *Liability of directors, trustees or officers*. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith ... shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders and other persons.
>
> The personal liability of corporate officers validly attaches only when (a) they assent to a patently unlawful act of the corporation; or (b) they are guilty of bad faith or gross negligence in directing its affairs; or (c) they incur conflict of interest, resulting in damages to the corporation, its stockholders or other persons.

Thus, it was error for Arbiter Ortiguerra, the NLRC, and the Court of Appeals to hold Carag personally liable for the separation pay owed by MAC to complainants based alone on Article 212(e) of the Labor Code. Article 212(e) does not state that corporate officers are

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[35] *Id.* at 604-605.

personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31 of the Corporation Code.[36]

Thus, to hold a director or officer personally liable for corporate obligations, two requisites must concur:[37] (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

To stress, respondent Tan was not at all impleaded in the illegal dismissal case; thus, her participation in petitioner's dismissal was never established in any of the proceedings therein. Consequently, it was not shown at all that she assented to patently unlawful acts of the corporation, or that she was guilty of gross negligence or bad faith. In fact, the LA Resolution granting the alias writ of execution against the respondents did not make any finding as to why respondent Tan was ordered to pay the judgment award in the alternative, with Condis and respondent EDI, other than his reliance on our ruling in *A.C. Ransom*, which as we found is misplaced.

Petitioner contends that he must be protected against the corporate maneuverings of Condis to evade the full satisfaction of the award in the labor case by selling its manufacturing and sales business to respondent EDI through the execution of the Asset Purchase Agreement; that there was a valid justification to pierce the corporate veil of these two corporations as found by the LA.

We are not convinced.

In justifying the piercing of the veil of corporate fiction of respondent EDI and Condis, the LA found that the execution of the Asset Purchase Agreement and the termination of the Service Agreement between the two companies were purposely

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[36] *Id.* at 608-609.

[37] *Francisco v. Mallen, Jr.*, 645 Phil. 369, 374-375 (2010).

done to defraud petitioner; that the Asset Purchase Agreement and the letter terminating the Services Agreement were signed by Co as the Managing Director of respondent EDI, and that he used to be Condis' Senior Vice-President prior to its alleged cessation of operation; and both companies were represented by the same counsel; and that Condis raised the issue of cessation of operation and separate corporate personality only in the course of the execution of the decision in the illegal dismissal case. We find these reasons to be insufficient to justify the doctrine's application.

Notably, respondent EDI was incorporated in 2006. It entered into an Asset Purchase Agreement with Condis on January 16, 2007 whereby all the latter's assets in the manufacturing and selling of Emperador Brandy were sold to the former. On even date, they also executed a Services Agreement where Condis' employees would provide assistance to respondent EDI until the latter was already capable. These agreements were executed prior to petitioner's dismissal on December 3, 2007 and the LA Decision dated March 3, 2009 finding him illegally dismissed. Hence, it could not be alleged that respondent EDI was organized with the intention of evading Condis' obligations to petitioner. Moreover, where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.[38] In fact, the Asset Purchase Agreement provides for non-assumption of liability, to wit:

> Non assumption of liabilities
>
> Except as otherwise agreed expressly in writing, Buyer does not and shall not assume or agree to pay any of Seller's or, where applicable any shareholder's, partners' or members' liabilities or obligations, of any nature or kind. Seller and, where applicable, any shareholder, partner, member, shall each remain responsible for their respective debts and obligations.[39]

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[38] *China Banking Corporation v. Dyne Sem Electronics Corporation*, 527 Phil. 74, 83 (2006).

[39] *Rollo*, p. 335.

Also, the existence of interlocking directors, corporate officers and shareholders, which the LA considered, without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.[40] Any piercing of the corporate veil has to be done with caution.[41] The wrongdoing must be clearly and convincingly established. It cannot just be presumed.[42]

It is significant to note that even if petitioner has sufficiently proven the factual bases for the application of the said doctrine, it cannot still be validly applied against respondents since, as we have discussed above, the LA never acquired jurisdiction over them.

WHEREFORE, the petition for review is **DENIED**. The Decision dated January 27, 2016 and the Resolution dated May 26, 2016 of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, concur.

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[40] See *Jardine Davies v. JRB Realty*, 502 Phil. 129, 140 (2005), citing *Velarde v. Lopez, Inc*., 464 Phil. 525, 538 (2004).

[41] *Id.*, citing *Reynoso IV v. Court of Appeals*, 399 Phil. 38, 50 (2000).

[42] *Id.*, *Development Bank of the Philippines v. Court of Appeals*, 415 Phil. 538, 549 (2000), citing *Complex Electronics Employees Association v. NLRC*, 369 Phil. 666, 682 (1999); *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1003 (1999); and *Matuguina Integrated Wood Product v. Court of Appeals*, *supra* note 20, at 814.

SECOND DIVISION

[G.R. No. 230975. December 4, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICO NIEBRES *y* REGINALDO**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW.—** At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; RAPE; STATUTORY RAPE; SEXUAL INTERCOURSE WITH A WOMAN WITH A MENTAL AGE BELOW 12 YEARS OLD CONSTITUTES STATUTORY RAPE.—** For the successful prosecution of the crime of Rape by sexual intercourse under Article 266-A (1) of the RPC, it is necessary that the elements thereof are proven beyond reasonable doubt, to wit: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act through force, threat or intimidation, when the victim was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when the victim is under 12 years of age or is demented. Moreover, case law states that sexual intercourse with a woman who is a mental retardate, with a mental age below 12 years old, constitutes statutory rape. In *People v. Deniega*, the Court clarified that if a mentally-retarded or intellectually-disabled person whose mental age is less than 12 years is raped, the rape is considered committed under paragraph 1(d) and not paragraph 1 (b), Article 266-A of the RPC.

3. ID.; ID.; ID.; ID.; KNOWLEDGE OF THE OFFENDER OF THE MENTAL DISABILITY OF THE VICTIM DURING THE COMMISSION OF THE CRIME OF RAPE IS A SPECIAL QUALIFYING CIRCUMSTANCE.— [K]nowledge of the offender of the mental disability of the victim during the commission of the crime of rape is a special qualifying circumstance, which makes it punishable by death. Such qualifying circumstance, however, must be sufficiently alleged in the indictment and proved during trial to be properly appreciated by the trial court. It must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form.

4. ID.; ID.; ID.; ID.; ID.; KNOWLEDGE OF THE VICTIM'S MENTAL DISABILITY MUST BE SUFFICIENTLY ESTABLISHED.— In this case, while the qualifying circumstance of knowledge of Niebres of AAA's mental retardation was specifically alleged in the Information, no supporting evidence was adduced by the prosecution. The fact that Niebres did not dispute AAA's mental retardation during trial is insufficient to qualify the crime of rape, since it does not necessarily create moral certainty that he knew of her disability at the time of its commission. It is settled that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. On that score, the prosecution cannot simply profit from Niebres's omission, as it must rely on its own evidence to prove his knowledge of AAA's mental disability beyond reasonable doubt. Additionally, mere relationship by affinity between Niebres and AAA does not sufficiently create moral certainty that the former knew of the latter's disability.

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

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Rico Niebres *y* Reginaldo (Niebres) assailing the Decision[2] dated August 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06374, which affirmed with modification the Judgment[3] dated June 28, 2013 of the Regional Trial Court of [redacted] Camarines Sur, Branch 31 (RTC) in Crim. Case No. P-4532, and found Niebres guilty beyond reasonable doubt of the crime of Qualified Rape, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC).

The Facts

On June 24, 2011, an Information[4] was filed before the RTC charging Niebres of Rape, the accusatory portion of which reads:

> That sometime in the month of August 2010 and the days thereafter at [redacted] Province of Camarines Sur, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, through force, intimidation and influence, did then and there, willfully, unlawfully and knowingly, undress and succeed in having carnal knowledge with [AAA[5]], a

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[1] See Notice of Appeal dated September 23, 2015; *rollo*, pp. 20-22.

[2] *Id*. at 2-19. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Victoria Isabela A. Paredes, concurring.

[3] CA *rollo*, pp. 59-69. Penned by Presiding Judge Jose C. Sarcilla.

[4] Dated June 24, 2011. Records, pp. 1-3.

[5] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR

sixteen (16) year-old lass, who is suffering from mild mental retardation which fact of retardation is known to the accused and with a mental age of nine (9) year-old, without her consent and against her will, an act by deed which debases, degrades or demeans the intrinsic worth and dignity of the said victim as a human being, to her damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[6]

The prosecution alleged that sometime in October 2010, Niebres, together with his wife (AAA's sister) and six (6) children, went to the house of his parents-in-law in [redacted] to participate in a traditional *palay* harvesting called "basok/hasok."[7] When they arrived at the house of his parents-in-law at around eight (8) o'clock in the morning, they momentarily took a rest. Thereafter, Niebres joined the other members of the family on the fields and began the "basok/hasok," which lasted until 4:30 in the afternoon. After dinner, Niebres went out to drink with his father-in-law and brother-in-law and came home at around midnight. He directly went to the room where AAA and his family were sleeping and lied beside her to sleep.[8] At about five (5) o'clock in the morning of the following day, AAA suddenly woke up and noticed Niebres kissing her on the cheeks, neck, and down her body. Niebres then pulled down her shorts, unzipped his pants, and proceeded to have carnal knowledge of her. After repeatedly making a push and pull motion on AAA, Niebres finally pulled out his penis and dismounted from her. AAA claimed that the incident produced so much pain, and it caused her vagina to bleed profusely. This notwithstanding, she could not tell anyone about it, as she was afraid of what Niebres and

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OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]).

[6] Records, p. 1.

[7] See *rollo*, p. 5. See also CA *rollo*, pp. 62-63.

[8] See *rollo*, p. 5. See also CA *rollo*, p. 62.

her parents would do to her. According to AAA, this was not the first time Niebres sexually abused her, claiming that Niebres also raped her several weeks before the said incident in his house at [redacted] Camarines Sur [redacted].[9]

Subsequently, when AAA complained of abdominal pains, her mother, BBB,[10] brought her to Naga Health Care Diagnostic Center on March 25, 2011. After conducting an ultrasound examination on AAA, the doctors discovered that she was approximately five (5) to six (6) months pregnant. When AAA finally admitted to BBB that Niebres raped her, they reported the matter to the police and filed the instant Complaint. On February 7, 2012, AAA went to a psychiatrist named Dr. Edessa Parde Laguidao (Dr. Laguidao), who revealed that she was suffering from a mild mental retardation with an intelligence quotient (I.Q.) equivalent to a nine (9)-year old child.[11]

For his part, while Niebres admitted that he and his family went to the house of his parents-in-law in La Victoria sometime in October 2010, he verbally denied raping AAA therein. Niebres maintained that at the time of the incident, he went out of the room of his parents-in-law's house, drank coffee, and proceeded to continue harvesting *palay* without waiting for his other companions. When Niebres was done harvesting, he and his family supposedly left La Victoria in the afternoon and never came back. Moreover, Niebres averred that the only time AAA slept in their house in [redacted] was when he was in Batangas from March to August 2010. Ultimately, Niebres insisted that the filing of case against him was actuated by ill motive, considering that his parents-in-law were angry at him when he demanded his share in the proceeds of the cow, which was purportedly sold to cover the wedding expenses of his brother-in-law.[12]

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[9] See *rollo*, p. 6. See also CA *rollo*, p. 62.

[10] See note 5.

[11] See *rollo*, pp. 4-7. See also CA *rollo*, pp. 60-61.

[12] See *rollo*, pp. 7-9. See also CA *rollo*, pp. 63-65.

The RTC Ruling

In a Judgment[13] dated June 28, 2013, the RTC found Niebres guilty of the crime of Simple Rape in relation to Section 5 (b) of RA 7610 and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua* and to pay AAA the amounts of ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.[14] It held that the prosecution was able to present testimonial and documentary evidence to support AAA's claim of rape against Niebres. Meanwhile, Niebres's unsubstantiated defenses of denial and alibi failed to create reasonable doubt in light of the positive and categorical testimony and identification of AAA.[15]

Furthermore, the RTC did not appreciate the qualifying circumstance of relationship by affinity between Niebres and AAA even if it was proven in court, given that the same was not alleged in the Information.[16]

Aggrieved, Niebres appealed[17] to the CA.

The CA Ruling

In a the Decision[18] dated August 17, 2015, the CA upgraded Niebres's conviction to that of Qualified Rape, finding Niebres not eligible for parole and ordering him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, with interest at the rate of six percent (6%) per annum on all damages awarded from date of finality of judgment until fully paid.[19]

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[13] CA *rollo*, pp. 59-69.

[14] *Id*. at 69.

[15] See *id*. at 65-69.

[16] See *id*. at 69.

[17] See Notice of Appeal dated September 10, 2013; records, p. 196.

[18] *Id*. at 2-19.

[19] See *id*. at 16-18.

The CA upheld the RTC's finding of rape, further noting that the inconsistencies in the testimonies of AAA were too minor and inconsequential to acquit Niebres of the crime charged. Further, it was highly improbable for AAA to fabricate the charges against Niebres, considering that a traumatizing experience like rape would definitely leave a lasting impression on her given her mental condition.[20] However, the CA ruled that Niebres should be convicted for Qualified Rape, considering that: (*a*) the state of mental retardation of AAA was competently established on account of the testimony and psychiatric evaluation of Dr. Laguidao on AAA; and (*b*) Niebres failed to dispute AAA's mental retardation during trial. Accordingly, the CA deemed it proper to hold Niebres guilty of Qualified Rape.[21]

Unyielding, Niebres filed the present appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Niebres's conviction for the crime of Rape should be upheld.

The Court's Ruling

The appeal is denied.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[22]

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[20] See *id*. at 13-14.

[21] See *id*. at 15-17.

[22] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

As will be explained hereunder, the Court deems it proper to modify Niebres's conviction for the crime of Qualified Rape to Simple Rape.

Here, a plain reading of the Information reveals that Niebres was charged of the crime of Qualified Rape, as defined and penalized under Article 266-A (1), in relation to Article 266-B, of the RPC, to wit:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

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. (Emphases and underscoring supplied)

x x x x x x x x x

ART. 266-B. Penalties. – x x x.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x x x x x x

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

x x x x x x x x x

(Emphases and underscoring supplied)

For the successful prosecution of the crime of Rape by sexual intercourse under Article 266-A (1) of the RPC, it is necessary that the elements thereof are proven beyond reasonable doubt,

to wit: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act through force, threat or intimidation, when the victim was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when the victim is under 12 years of age or is demented.[23] Moreover, case law states that sexual intercourse with a woman who is a mental retardate, with a mental age below 12 years old, constitutes statutory rape.[24] In *People v. Deniega*,[25] the Court clarified that if a mentally-retarded or intellectually-disabled person whose mental age is less than 12 years is raped, the rape is considered committed under paragraph l (d) and not paragraph 1 (b), Article 266-A of the RPC. Thus, it ruled that:

> Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. **Hence, person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established**.[26] (Emphasis in the original)

In this instance, the prosecution competently established the elements of the crime of Rape, as it was shown that: (*a*) AAA was suffering from mild mental retardation, which has an I.Q. equivalent to a nine (9)-year old child; (*b*) Niebres successfully had carnal knowledge of AAA sometime in October 2010; and

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[23] See *People v. Hilarion*, 722 Phil. 52, 55 (2013).

[24] See *People v. Deniega*, G.R. No. 212201, June 28, 2017.

[25] See *id*.

[26] See *id*., citing *People v. Quintos*, 746 Phil. 809, 830-831 (2014).

(*c*) Niebres was able to accomplish the said act because AAA, being a mental retardate, was deprived of reason at the time of the incident.

However, the CA erred in appreciating the qualifying circumstance of Niebres's knowledge of AAA's mental disability at the time of the commission of the crime, there being no sufficient and competent evidence to substantiate the same.

Notably, knowledge of the offender of the mental disability of the victim during the commission of the crime of rape is a special qualifying circumstance, which makes it punishable by death.[27] Such qualifying circumstance, however, must be sufficiently alleged in the indictment and proved during trial to be properly appreciated by the trial court.[28] It must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form.[29]

In this case, while the qualifying circumstance of knowledge of Niebres of AAA's mental retardation was specifically alleged in the Information, no supporting evidence was adduced by the prosecution. The fact that Niebres did not dispute AAA's mental retardation during trial is insufficient to qualify the crime of rape, since it does not necessarily create moral certainty that he knew of her disability at the time of its commission. It is settled that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[30] On that score, the prosecution cannot simply profit from Niebres's omission, as it must rely on its own evidence to prove his knowledge of AAA's mental disability beyond reasonable doubt.

Additionally, mere relationship by affinity between Niebres and AAA does not sufficiently create moral certainty that the

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[27] *People v. Suansing*, 717 Phil. 100, 114 (2013).

[28] See *People v. Diunsay-Jalandoni*, 544 Phil. 163, 176 (2007).

[29] *People v. Ramos*, 442 Phil. 710, 732 (2002).

[30] See *People v. Ortega*, 680 Phil. 285, 293-294 (2012); citation omitted.

former knew of the latter's disability. In *People v. Ramos*,[31] the Court ruled that "while private complainant was the niece of accused-appellant and they were neighbors before and at the time of the commission of the crime[, the same] do not constitute conclusive proof that accused-appellant had knowledge of the mental retardation of private complainant absent evidence of external manifestations of her mental condition."[32] Here, the prosecution did not present any evidence that AAA exhibited external manifestations of her mental condition. On the contrary, records reveal that the mental retardation of AAA only became noticeable the moment Dr. Laguidao conducted the requisite psychological test on her. When AAA engaged in other activities, she actually performed and functioned like a normal person. Thus, Dr. Laguidao testified that:

> [PROS. AGATON FAJARDO]: Also in your assessment, you stated "mental retardation, mild", tell us Doctor what method did you use or take that you were able to say the mental retardation of patient is mild?
>
> DR. LAGUIDAO: The patient has to undergo psychological test to determine the IQ or intelligence quotient of the patient.
>
> Q: From the basis of the IQ you conducted you can now determine the mental retardation of the patient?
>
> A: The level of the retardation.
>
> Q: And the level is mild?
>
> A: Yes, sir.
>
> x x x x x x x x x
>
> Q: Is the mental retardation of the patient manifests (sic)?
>
> A: It was seen during the psychological test however during the activities she was able to function appropriately regarding her communication and self-care.

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[31] *Supra* note 29.

[32] *Id*. at 734.

Q: So she performs normally?

A: Yes, your honor.[33] (Underscoring supplied)

x x x x x x x x x

[ATTY. ART TEOXON]: Based on your examination this patient [AAA] is duly cognizant of whatever is happening around her especially the time?

[DR. LAGUIDAO]: Yes, sir.

Q: She was certain based on your questioning her that is happened sometimes (sic) in September 2010?

A: Yes, sir.

x x x x x x x x x

Q: When you examined the patient you did not observe any abnormality on her?

A: The way she answered it seems that there is something wrong with the intelligence and the manner she presented.[34] (Underscoring supplied)

By and large, the prosecution failed to prove beyond reasonable doubt that Niebres was aware of AAA's mental disability at the time he committed the crime and, thus, he should be convicted of the crime of Simple Rape only.

The foregoing notwithstanding, the Court finds it necessary to modify the amount of exemplary damages awarded to AAA in order to conform with prevailing jurisprudence.[35] Accordingly, Niebres is ordered to pay AAA the amount of ₱75,000.00 as exemplary damages. Meanwhile, the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages are affirmed. In addition, the Court imposes, on all monetary awards, interest

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[33] TSN, April 2, 2012, pp. 19-20.

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

[35] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.

at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.[36]

WHEREFORE, the appeal is **DENIED**. The Decision dated August 17, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06374 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Rico Niebres *y* Reginaldo is found **GUILTY** beyond reasonable doubt of the crime of Simple Rape, as defined and penalized under Article 266-A (1) (d) of the Revised Penal Code and, accordingly, sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with legal interest at the rate of six percent (6%) per annum on all the monetary awards from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

EN BANC

[A.C. No. 10758. December 5, 2017]
(Formerly CBD Case No. 11-3215)

ATTY. ROSITA L. DELA FUENTE TORRES, *ET AL.*, *petitioners, vs.* **ATTY. BAYANI P. DALANGIN,** *respondent.*

[A.C. No. 10759. December 5, 2017]
(Formerly CBD Case No. 12-3292)

GLENDA ALVARO, *petitioner, vs.* **ATTY. BAYANI P. DALANGIN,** *respondent.*

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[36] *People v. Inciong*, 761 Phil. 561, 581 (2015).

[A.C. No. 10760. December 5, 2017]
(Formerly CBD Case No. 12-3369)

ATTY. BAYANI P. DALANGIN, *petitioner, vs.* **ATTY. ROSITA L. DELA FUENTE TORRES and ATTY. AVELINO ANDRES,** *respondents.*

[A.C. No. 10761. December 5, 2017]
(Formerly CBD Case No. 12-3458)

ATTY. BAYANI P. DALANGIN, *petitioner, vs.* **ATTY. ROSITA L. DELA FUENTE TORRES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; SUSPENSION FROM THE PRACTICE OF LAW; IT IS THE SUPREME COURT THAT HAS THE DUTY TO TAKE A FINAL ACTION ON ANY DETERMINATION OF THE IBP FOR A LAWYER'S SUSPENSION FROM THE PRACTICE OF LAW OR DISBARMENT.— [I]t must still be stressed that the filing of the petition for review on the issue of Atty. Dalangin's suspension from the practice of law was as yet not among his remedies, considering that the Court still had to release its final action on the matter. It is the Supreme Court, not the IBP, which has the constitutionally mandated duty to discipline lawyers. The factual findings of the IBP can only be recommendatory. Its recommended penalties are also, by their nature, recommendatory. In light of these precepts, the Court will then not refuse a review of the IBP's recommendation for Atty. Dalangin's suspension notwithstanding the premature filing of the petition. In fact, an examination of the IBP resolutions for his suspension is warranted as a matter of course, even in the absence of a petition, because it is the Court that has the duty to take a final action on any determination of the IBP for a lawyer's suspension from the practice of law or disbarment.

2. ID.; ID.; GROSS IMMORALITY; REQUIRES SUBSTANTIAL EVIDENCE; CASE AT BAR.— Time and again, the Court has indeed regarded extramarital affairs of lawyers to offend the sanctity of marriage, the family, and the

community. Illicit relationships likewise constitute a violation of Article XV, Section 2 of the 1987 Constitution which states that, "[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State." When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment. Upon the Court's review, however, it finds no sufficient basis to suspend Atty. Dalangin for a supposed illicit affair with Pascual. That an amorous relationship actually existed between them was not adequately proved. The quantum of proof in administrative cases is substantial evidence. x x x [T]he Court emphasized in *Cabas v. Sususco* the oft-repeated rule that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence." x x x The Court, nonetheless, does not find Atty. Dalangin totally absolved of fault. While he vehemently denied any romantic relationship with Pascual, he admitted demonstrating closeness with the latter's family, including her children. x x x "As officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community." "As keepers of public faith, lawyers are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with great caution." The fault, nonetheless, does not warrant Atty. Dalangin's suspension, much less disbarment. An admonition should suffice under the circumstances.

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF LAWYER TO MAINTAIN THE HONOR DUE TO HIS PROFESSION; VIOLATION IN CASE AT BAR WARRANTS A FINE OF ₱5,000.— In relation to A.C. No. 10759 on Atty. Dalangin's altercation (heated confrontation) on November 14, 2011 with Alvaro as the latter was waiting for the start of a court hearing in the RTC of Sto. Domingo, Nueva Ecija, the records include affidavits executed by witnesses who did not appear to have any reason to falsely testify against Atty. Dalangin on the incident. x x x For the Court, Atty. Dalangin erred in his conduct subject of the complaint, especially since his outburst was carried out within the court premises and in the presence of several persons who readily witnessed his fit

of anger. Part of Atty. Dalangin's duties as a lawyer is to maintain the honor that is due the profession. x x x The Court finds it appropriate to impose upon Atty. Dalangin a **fine of ₱5,000.00**, with a stern warning that a more severe sanction will be imposed on him for any repetition of the same or similar offense in the future.

PERALTA, *J.*, *separate opinion*:

1. LEGAL ETHICS; LAWYERS; GROSS IMMORALITY; SUBSTANTIAL EVIDENCE; THE IBP FOUND THE EXISTENCE OF SUBSTANTIAL EVIDENCE PROVING THE PRESENCE OF THE ALLEGED ILLICIT AFFAIR.— [W]hile I agree with the ponencia's finding that there is indeed fault and imprudence on the part of Dalangin, I believe that a mere reprimand is not sufficient to correct his actions, but the more serious penalty of suspension should be imposed, as aptly recommended by the IBP. Indeed, the quantum of proof required in administrative cases is substantial evidence. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Certainly, after a thorough investigation, the IBP found the existence of substantial evidence proving the presence of the alleged illicit affair.

2. ID.; ID.; ID.; A LAWYER'S INTIMATE RELATIONSHIP WITH A WOMAN OTHER THAN HIS WIFE SHOWED HIS MORAL INDIFFERENCE AND DISRESPECT FOR THE LAWS ON THE SANCTITY OF MARRIAGE.— It has been repeatedly held that to justify suspension or disbarment, the act complained of must not only be immoral, but *grossly* immoral. A grossly immoral act is one that is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. It is willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. In the instant case, Dalangin's intimate relationship with a woman other than his wife showed his moral indifference to the opinion of the good and respectable members of the community. It manifested his disrespect for the laws on the sanctity of marriage

and for his own marital vow of fidelity. It showed his utmost moral depravity and low regard for the fundamental ethics of his profession. Indeed, he has fallen below the moral bar. Such detestable behavior warrants a disciplinary sanction.

APPEARANCES OF COUNSEL

Andres & Associates Law Office for complainants in A.C. No. 10758 and respondent in A.C. No. 10760.
Romeo V. Viloria for complainant in A.C. No. 10759.

D E C I S I O N

REYES, JR., *J.*:

These are four administrative complaints that were separately filed with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) by and against substantially the same parties, particularly:

(1) CBD Case No. 11-3215 for gross immorality, malpractice and gross misconduct filed by Atty. Rosita L. Dela Fuente-Torres (Atty. Torres), *et al.*, against Atty. Bayani P. Dalangin (Atty. Dalangin) and docketed before the Court as A.C. No. 10758;

(2) CBD Case No. 12-3292 for gross misconduct filed by Glenda Alvaro (Alvaro) against Atty. Dalangin and docketed before the Court as A.C. No. 10759;

(3) CBD Case No. 12-3369 for gross misconduct, violation of the lawyer's oath and violation of Canon 1 of the Code of Professional Responsibility (CPR) filed by Atty. Dalangin against Atty. Torres and Atty. Avelino Andres (Atty. Andres), docketed in this Court as A.C. No. 10760; and

(4) CBD Case No. 12-3458 for grave misconduct, dishonesty and violation of Canon 1 of the CPR filed by Atty. Dalangin against Atty. Torres and docketed in this Court as A.C. No. 10761.

The Antecedents

A.C. No. 10758

CBD Case No. 11-3215 is a complaint[1] for gross immorality, malpractice and gross misconduct filed against Atty. Dalangin by the following complainants: (1) Atty. Torres; (2) Felicidad O. Samatra (Samatra); (3) Alvaro; (4) Mary DF. Noveras (Noveras); and (5) Generosa S. Camacho (Camacho).[2]

The complaint imputed upon Atty. Dalangin several breaches of his duties as a lawyer. *First*, it was alleged that Atty. Dalangin filed against employees of the Judiciary and a fellow lawyer groundless suits, which were merely prompted by his loss in a case and intended to cover up his negligence as counsel. By his acts, Atty. Dalangin committed gross misconduct, and breached Rule 18.03, Canon 18, Rules 1.02 and 1.03, Canon 1, and Canon 11 of the CPR.[3]

It appeared that prior to the institution of CBD Case No. 11-3215, a complaint for disbarment was filed against Atty. Torres by Apolonia Marzan (Marzan) and Melody Valdez (Valdez), who were clients of Atty. Dalangin and the losing parties in an unlawful detainer case decided by Presiding Judge Efren B. Mallare (Judge Mallare) of the Municipal Trial Court (MTC) of Sto. Domingo, Nueva Ecija. Marzan and Valdez later disclosed to Atty. Torres that the filing of the disbarment case was orchestrated by Atty. Dalangin, who prepared the affidavit and instructed them to sign it even without explaining the contents and tenor of the document.

When Marzan and Valdez eventually realized that their affidavit was used to file a disbarment complaint with the IBP against Atty. Torres, they decided to terminate the services of Atty. Dalangin. By their new counsel's advice, Marzan and Valdez stopped attending the disbarment hearings, and the case

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[1] *Rollo* (A.C. No. 10758), Vol. I, pp. 2-11.

[2] *Id*. at 2.

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

was eventually dismissed by the IBP. Atty. Dalangin also caused Marzan and Valdez's filing of administrative cases against Judge Mallare and Noveras, as the Clerk of Court of the MTC, which complaints were nonetheless likewise dismissed by the Supreme Court upon the IBP's recommendation.[4]

Second, Atty. Dalangin was accused of maintaining an illicit and immoral affair with one Julita Pascual (Pascual), a clerk at the Public Attorney's Office (PAO) in Talavera, Nueva Ecija, where Atty. Dalangin previously worked as district public attorney. After Atty. Dalangin had left PAO, he retained Pascual as his private secretary, who still remained to be employed with PAO. Atty. Dalangin and Pascual had a daughter whom they named Julienne, even when each of them had existing marriages with some other persons.[5] The affair between Atty. Dalangin and Pascual, and the paternity of Julienne, were known to the community, especially the courts.[6] Julienne was nonetheless entered in the civil registry as Pascual and her legal husband's own child so as to conceal the fact that Atty. Dalangin was the real father.[7] The foregoing acts allegedly breached Rule 1.01, Canon 1, and Rule 7.03, Canon 7 of the CPR.

Third, Atty. Dalangin was accused of malpractice for acts that dated back to his prior employment with PAO. He allegedly collected attorney's fees from indigent litigants who sought his assistance, like complainant Camacho from whom he demanded an acceptance fee of ₱8,000.00. When Camacho explained that he could only produce ₱3,000.00, Atty. Dalangin threw the case records on a table and retorted, "*Mabubuhay ba naman ang abogado [dito].*"[8] Without prior authority from his superiors, Atty. Dalangin also willfully appeared in areas outside his jurisdiction as a district public attorney.[9]

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

[5] *Id*. at 4-6.

[6] *Id*. at 5.

[7] *Id*.

[8] *Id*. at 29.

[9] *Id*. at 6.

Fourth, the complaint included charges that pertained to Atty. Dalangin's handling of his court cases. It was claimed that Atty. Dalangin misquoted jurisprudence in a pleading he filed in court, which act constituted a breach of Rule 10.02, Canon 10 of the CPR.[10] In a case for robbery filed by Samatra against Pascual, Atty. Dalangin also wielded his influence and prepared perjured statements from supposed witnesses, a clear violation of Rule 10.02, Canon 10 of the CPR.[11] Finally, Atty. Dalangin violated Rule 10.01, Canon 10 of the CPR when he submitted in a civil case fraudulent and misleading evidence, particularly a certificate of title without the page reflecting the annotations pertinent to the case.[12]

Atty. Dalangin filed his Answer and refuted all charges.[13] He denied having a hand in the preparation of the disbarment complaint against Atty. Torres, as he argued that neither his name nor his signature appeared in the records thereof. His relationship with Pascual, on the other hand, was only maliciously misinterpreted. He was only a close friend of the Pascuals, and some of Pascual's children, including Julienne, were his godchildren.[14]

Atty. Dalangin likewise denied the claim that he collected attorney's fees while he worked as a PAO lawyer. Although he admitted appearing as a public attorney in an area that was beyond his jurisdiction, the appearance was with the Regional Public Attorney's verbal authority, claimed by Atty. Dalangin to be sufficient under office practice.[15] Finally, the alleged mistakes that he committed as counsel in specific cases' presentation of evidence had been rectified in court.[16]

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

[11] *Id*. at 7-8.

[12] *Id*. at 9.

[13] *Id*. at 89-97.

[14] *Rollo* (A.C. No. 10758), Vol. III, p. 1189.

[15] *Id*. at 1189-1190.

[16] *Id*. at 1190.

A.C. No. 10759

CBD Case No. 12-3292, a complaint[17] for gross misconduct, was filed by Alvaro against Atty. Dalangin for an incident that happened on the morning of November 14, 2011, while Alvaro was waiting for the start of a hearing at the lobby of the Regional Trial Court (RTC), Branch 37, Sto. Domingo, Nueva Ecija. Upon seeing Alvaro, Atty. Dalangin allegedly hurled slanderous and defamatory remarks against her, as he spoke at the top of his voice and referred to her as a "certified swindler." He also confronted and threatened Alvaro for her participation in the filing of CBD Case No. 11-3215, and then precluded her from visiting the PAO in Talavera, Nueva Ecija. Atty. Dalangin's tirade was heard and witnessed by several persons, and some of them executed their respective affidavits[18] to narrate the incident. The foregoing impelled Alvaro to seek Atty. Dalangin's disbarment for a violation of Rules 1.01 and 1.02, Canon 1, Rule 7.03, Canon 7, and Rule 8.02, Canon 8 of the CPR.

While Atty. Dalangin admitted in his Answer[19] the alleged confrontation, he denied shouting invectives at Alvaro. When he talked to Alvaro, he merely confronted her for what he claimed were lies declared in her affidavit in CBD Case No. 11-3215. Atty. Dalangin also warned to seek legal remedies should Alvaro fail to substantiate the truth of her testimonies.

Atty. Dalangin also admitted that he precluded Alvaro from visiting PAO, but explained that this was prompted by his knowledge that Alvaro was a fixer, who used the name of the office and demanded money from indigent clients. For Atty. Dalangin, Alvaro filed this complaint to get back at Atty. Dalangin for banning her at the PAO and depriving her of earning from her illegal activities.[20]

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[17] *Rollo* (A.C. No. 10759), pp. 1840-1843.

[18] *Id.* at 1845-1847.

[19] *Id.* at 1861-1867.

[20] *Id.* at 1863-1864.

A.C. No. 10760

The two other complaints, CBD Case No. 12-3369 and CBD Case No. 12-3458, were instituted by Atty. Dalangin.

In CBD Case No. 12-3369,[21] Atty. Dalangin sought the disbarment of Atty. Torres and Atty. Andres for gross misconduct, violation of the lawyer's oath, and breach of Rules 1.01 and 1.02, Canon 1 of the CPR. He claimed that both lawyers conspired with their clients in filing CBD Case No. 11-3215, even as they violated Republic Act (R.A.) No. 4200, otherwise known as the Anti-Wiretapping Act.

Submitted to support CBD Case No. 11-3215 was Nonilo Alejo's (Alejo) affidavit, which contained a transcript of a recorded telephone conversation between Alejo and one Wilma Pineda (Pineda).[22] The recording was without the prior knowledge and consent of Pineda.[23]

As a backgrounder, Atty. Dalangin was accused in CBD Case No. 11-3215 of fabricating testimonies against Noveras, who was claimed to be a vital witness in a criminal case against Pascual. In an affidavit drafted by Atty. Dalangin for Pineda, the latter complained of Noveras and Alejo's failure to return in full the cash bond that she posted in a case for violation of the Bouncing Checks Law, even after the case had been dismissed by the trial court. This allegation was negated in the disputed transcript, as Pineda allegedly confirmed receiving the full ₱8,000.00, but decided to give half thereof to Alejo for a "blow-out" after her case's dismissal.[24]

Both Atty. Andres and Atty. Torres disputed the complaint. Atty. Andres asserted that CBD Case No. 12-3369 was filed only to harass and intimidate him, being the counsel of the

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[21] *Rollo* (A.C. No. 10760), pp. 1995-2000.

[22] *Id.* at 2048-2054.

[23] *Id.* at 1996-1997.

[24] *Id.* at 2011-2012.

complainants in CBD Case No. 11-3215.[25] By way of defense, he adopted a counter-affidavit[26] which he submitted in a separate complaint for violation of R.A. No. 4200 that was filed by Atty. Dalangin with the City Prosecutor of Pasig City. Atty. Andres therein argued that on the basis of Atty. Dalangin's allegations, the case should have been filed by Pineda against Alejo, being the purported victim and the one who recorded the conversation, respectively.

Atty. Torres, on the other hand, pointed out that Atty. Dalangin's reference to R.A. No. 4200 was tantamount to an admission that the conversation actually transpired. This only confirmed a fault committed by Atty. Dalangin for the fabrications in Pineda's earlier affidavit, which was executed purposely to destroy the credibility of Noveras. The submission of the transcript was necessary because Atty. Dalangin's malpractice was one of the main causes of action in CBD Case No. 11-3215.[27] Moreover, the record of the conversation between Alejo and Pineda could not be considered a violation of R.A. No. 4200 because no wire or cable was used to tap their cellular phones. Neither party in the conversation also complained of a supposed wiretapping.[28]

A.C. No. 10761

The complaint[29] docketed as CBD Case No. 12-3458 was filed solely against Atty. Torres for grave misconduct, dishonesty for violation of Article 183[30] of the Revised Penal Code, and breach of Canon 1 of the CPR.

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[25] *Id.* at 2060-2061.

[26] *Id.* at 2063-2064.

[27] *Id.* at 2067-2068.

[28] *Id.* at 2069-2070.

[29] *Rollo* (A.C. No. 10761), pp. 2295-2301.

[30] Art. 183. *False testimony in other cases and perjury in solemn affirmation.* – The penalty of *arresto mayor* in its maximum period *to prision correccional* in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the

Atty. Dalangin faulted Atty. Torres for submitting in CBD Case No. 11-3215 Marzan and Valdez's affidavit,[31] which allegedly contained untruthful statements. Marzan and Valdez knew from the beginning that they were complainants in a disbarment case against Atty. Torres. Atty. Torres, however, later made them issue the perjured statements by using as a leverage her own complaint[32] for perjury against Marzan and Valdez, who were then pressured to sign the affidavits in exchange for the perjury case's dismissal. [33]

In her Answer[34] to the complaint, Atty. Torres insisted on the truth of the statements made by Marzan and Valdez in their affidavit in CBD Case No. 11-3215.

Report and Recommendation of the Investigating Commissioner

The four administrative complaints were eventually consolidated and jointly resolved by the IBP.

After the parties' filing of their respective position papers and the conduct of a series of hearings, Investigating Commissioner Honesto A. Villamor (Investigating Commissioner) issued a Consolidated Report and Recommendation[35] dated February 11, 2013, which found sufficient bases for Atty. Dalangin's suspension from the practice of law for three years. Atty. Dalangin's charges against

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provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[31] *Rollo* (A.C. No. 10761), pp. 2313-2314.

[32] *Id.* at 2315-2316.

[33] *Id.* at 2298-2300.

[34] *Id.* at 2326-2332.

[35] *Rollo* (A.C. No. 10759), pp. 1896-1905.

Atty. Dela Torres and Atty. Andres, on the other hand, were recommended for dismissal.

Thus, the Investigating Commissioner's Consolidated Report and Recommendation ended as follows:

> WHEREFORE, under the foregoing, finding that Respondent Bayani P. Dalangin violated the provisions of the [CPR] and his Lawyer's Oath specifically on Gross Immorality, and Gross Misconduct in CBD Case No. 11-3215 and CBD Case No. 12-3292, it is recommended that said Respondent be suspended from the practice of law for the period of three (3) years from receipt of the order with a warning that similar offense in the future will be dealt with more severely.
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> It is further recommended that the charges against Respondent Rosita L. dela Fuente Torres and Respondent Avelino Andres in CBD Case No. 12-3369 and CBD Case No. 12-3458, for lack of merit be ordered dismissed.
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> RESPECTFULLY SUBMITTED.[36]

Recommendation of the IBP Board of Governors

On June 21, 2013, the IBP Board of Governors issued Resolution No. XX-2013-768,[37] which adopted and approved the Investigating Commissioner's Consolidated Report and Recommendation. The resolution reads:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent Dalangin is guilty of gross immorality and gross misconduct, Atty. Bayani P. Dalangin is hereby **SUSPENDED from the practice of law for three (3) years with Warning** that repetition of the same or similar act shall be dealt with more severely. The case against Atty. Rosita L.

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[36] *Id.* at 1905.

[37] *Id.* at 1892-1893.

dela [Fuente] Torres and Atty. Manuel Andres is hereby **DISMISSED**.[38]

Atty. Dalangin filed a motion for reconsideration, but this was denied by the IBP Board of Governors in a Resolution[39] dated August 8, 2014, which reads:

> RESOLVED to DENY Respondent/Complainant Dalangin's Motion for Reconsideration there being no cogent reason to reverse the findings of the Commission and the Resolution subject of the motion, it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-768 dated June 1, 2013 is hereby **AFFIRMED**.[40]

On February 26, 2015, Atty. Dominic C. M. Solis, Director for Bar Discipline, IBP Commission on Bar Discipline, transmitted the case records to the Court pursuant to Rule 139-B of the Rules of Court.[41]

On even date and before the Court could have rendered its final action on the disbarment complaints against Atty. Dalangin *vis-à-vis* the records forwarded by the IBP, Atty. Dalangin forthwith filed with the Court a Petition for Review,[42] which questioned the IBP resolutions that, *first*, declared him administratively liable in CBD Case Nos. 11-3215 and 12-3292, and *second*, dismissed his complaints against Atty. Torres and Atty. Andres in CBD Case Nos. 12-3369 and 12-3458.

In a Resolution[43] dated June 16, 2015, the Court consolidated these cases and, without giving due course to the petition for review, required the filing of Comments on the petition. Accordingly, a Consolidated Comment on the Petition[44] dated

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[38] *Id.* at 1892-A.

[39] *Rollo* (A.C. No. 10758), Vol. III, pp. 1332-1333.

[40] *Id.* at 1332-A.

[41] *Id.* at 1511.

[42] *Id.* at 1262-1318.

[43] *Id.* at 1511-1512.

[44] *Id.* at 1514-1571.

August 5, 2015 was filed by Andres & Associates Law Office, as counsel for Atty. Torres, et al., being the complainants in CBD Case Nos. 11-3215 and 12-3292, and respondents in CBD Case Nos. 12-3369 and 12-3458. Thereafter, Atty. Dalangin filed his Reply[45] to the consolidated comment.

The Court's Ruling

Procedure from Resolutions of the IBP Board of Governors

The Court finds it appropriate to first address the matter of Atty. Dalangin's immediate recourse to the Court *via* a petition for review that questioned the IBP Board of Governors' resolve to affirm the Investigating Commissioner's recommendation on his administrative liability, notwithstanding the fact that the Court had not yet taken a final action on the complaints.

When the administrative complaints were resolved by the IBP and the instant petition for review was filed in Court, the procedure from resolutions of the IBP Board of Governors in administrative cases was as provided in the former Section 12 of Rule 139-B of the Rules of Court, prior to the amendments introduced by Bar Matter No. 1645 dated October 13, 2015. The old rule read:

> **Section 12.** *Review and decision by the Board of Governors.*
>
> a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report.
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> 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**

[45] *Id.* at 1751-1755.

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.

c) If the **respondent is exonerated by the Board or the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand, or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court** within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

d) Notice of the resolution or decision of the Board shall be given to all parties through their counsel. A copy of the same shall be transmitted to the Supreme Court. (Emphases supplied)

In B.M. No. 1755 captioned *Re: Clarification of Rules of Procedure of the Commission on Bar Discipline*, the Court applied this provision to address the issue therein involved, and explained its proper application in a Resolution dated June 17, 2008. The Court set the following guidelines:

In case a decision is rendered by the [Board of Governors (BOG)] that **exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file a petition for a review under Rule 45** of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.

If the **imposable penalty is suspension from the practice of law or disbarment**, the BOG shall issue a resolution setting forth its findings and recommendations. The **aggrieved party can file a motion for reconsideration of said resolution with the BOG within fifteen (15) days from notice. The BOG shall first resolve the incident and shall thereafter elevate the assailed resolution with the entire case records to this Court for final action**. If the 15-day period lapses without any motion for reconsideration having been

filed, then the BOG shall likewise transmit to this Court the resolution with the entire case records for appropriate action. (Emphases supplied)

Nowhere in his petition did Atty. Dalangin attempt to justify his immediate filing of the petition for review questioning the IBP resolutions that recommended his suspension. It could nonetheless be inferred from the circumstances that Atty. Dalangin's chosen course of action was to preclude the forfeiture of his right to question the dismissal of the administrative cases where he served as complainant, given that Section 12(c) provides that where the respondent is exonerated, *(t)he case shall be deemed terminated unless upon a petition of the complainant or other interested party filed with Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.* For this reason, the Court refused to make an outright denial of Atty. Dalangin's petition for review notwithstanding the fact that it questioned the resolve to suspend him from the practice of law. Considering that the petition likewise covered the IBP's dismissal of the disbarment cases against Atty. Torres and Atty. Andres, the Court, in a Resolution dated June 16, 2015, directed the filing of comments on the petition.

In any case, it must still be stressed that the filing of the petition for review on the issue of Atty. Dalangin's suspension from the practice of law was as yet not among his remedies, considering that the Court still had to release its final action on the matter.[46] It is the Supreme Court, not the IBP, which has the constitutionally mandated duty to discipline lawyers.[47] The factual findings of the IBP can only be recommendatory. Its recommended penalties are also, by their nature, recommendatory.[48] In light of these precepts, the Court will then not refuse a review of the IBP's recommendation for

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[46] See *Office of the Court Administrator v. Atty. Deniel B. Liangco*, 678 Phil. 305, 326-327 (2011).

[47] *Bernardino v. Santos*, 754 Phil. 52, 70 (2015).

[48] *Id.* at 71.

Atty. Dalangin's suspension notwithstanding the premature filing of the petition. In fact, an examination of the IBP resolutions for his suspension is warranted as a matter of course, even in the absence of a petition, because it is the Court that has the duty to take a final action on any determination of the IBP for a lawyer's suspension from the practice of law or disbarment.

Rule 139-B of the Rules of Court had in fact been later amended by B.M. No. 1645 dated October 13, 2015. Section 12 thereof now reads:

> Sec. 12. Review and recommendation by the Board of Governors.
>
> a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.
>
> b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.
>
> c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.
>
> d) Notice of the resolution shall be given to all parties through their counsel, if any.

In *Vasco-Tamaray v. Daquis*,[49] the Court emphasized that the amendments reiterated the principle that only the Court has the power to impose disciplinary action on members of the bar. Factual findings and recommendations of the Commission on

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[49] A.C. No. 10868, January 26, 2016, 782 SCRA 44, 63-64.

Bar Discipline and the Board of Governors of the IBP are recommendatory, subject to review by the Court.[50]

As the Court now reviews the IBP's resolve to dismiss the complaints against Atty. Torres and Atty. Andres, it then also enters its final action on the IBP Board of Governors' recommendation to suspend Atty. Dalangin from the practice of law for three years, as the IBP cited gross misconduct, violations of the CPR and breach of the lawyer's oath as grounds.

A.C. No. 10758

Gross Immorality

Among several cited grounds, the IBP's recommendation to suspend Atty. Dalangin from the practice of law for three years was on the pretext that he publicly and openly maintained a romantic relationship with Pascual even when their marriages with their respective spouses subsisted. Allegedly, the affair further resulted in the birth of the child Julienne, who was believed to be Atty. Dalangin's daughter even when he turned down a challenge for a DNA test that could prove the child's true filiation.[51]

In his report, the Investigative Commissioner specifically referred to the following evidence to support his finding of an immoral relationship between Atty. Dalangin and Pascual:

2. That Complainant Alvaro who executed an affidavit regarding the illicit and immoral relation of [Atty. Dalangin] with [Pascual] for the reason that she was formerly [close] to [Pascual] and the latter confided to her that she (Pascual) [did] not love her husband anymore and the child called [Atty. Dalangin] "Papa attorney" (Affidavit of Alvaro as Exh. "F").

3. That Ligaya Agrave[,] a neighbor of [Pascual,] likewise executed an affidavit that the child ["Julienne"] is the daughter of [Atty. Dalangin and Pascual], that she used to see [Atty. Dalangin] taking care of

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[50] *Id.* at 65.

[51] *Rollo* (A.C. No. 10759), p. 1903.

[Julienne] when she was still a baby and when she grew up already, [Atty. Dalangin] used to accompany the child in their school tour and also her graduation. That the child as she grew older is a look[-]alike of [Atty. Dalangin]. (Affidavit of Ligaya Agrave marked as Exh. "G").

4. That the illicit affair of [Atty. Dalangin] with his former Clerk in the PAO, Talavera, Nueva Ecija was well known in Talavera, in the entire judiciary in Talavera, Nueva Ecija and even in the community of Sto. Domingo, Nueva [E]cija[.] [(L]etter to the Ombudsman dated Aug. 18, 2011 of Felicidad Sumatra is marked as Exh. "H").

5. That [Atty. Dalangin] refused when challenged for a DNA test.

6. Complainants submitted xxx pictures of [Atty. Dalangin and Pascual] together with their daughter [Julienne] taken in far away Puerto Prinsesa marked as Exh. I and I-1.

7. That [Atty. Dalangin] continued to publicly and openly cohabit with a woman who is not his legal wife shows his lack of good moral character.[52]

Time and again, the Court has indeed regarded extramarital affairs of lawyers to offend the sanctity of marriage, the family, and the community. Illicit relationships likewise constitute a violation of Article XV, Section 2 of the 1987 Constitution which states that, "[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State."[53] When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment.

Upon the Court's review, however, it finds no sufficient basis to suspend Atty. Dalangin for a supposed illicit affair with Pascual. That an amorous relationship actually existed between them was not adequately proved.

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[52] *Rollo* (A.C. No. 10758), Vol. III, p. 1191.

[53] See *Ecraela v. Pangalangan*, 769 Phil. 1, 17 (2015); *Guevara v. Eala*, 555 Phil. 713, 728 (2007).

The quantum of proof in administrative cases is substantial evidence. The Court explained in *Saladaga v. Astorga*:[54]

Section 5, in relation to Sections 1 and 2, Rule 133 of the Rules of Court states that in administrative cases, such as the ones at bar, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[55]

In *Reyes v. Nieva*,[56] the Court reiterated this rule on the quantum of proof in administrative proceedings, as it held:

Based on a survey of cases, the recent ruling on the matter is *Cabas v. Sususco,* which was promulgated just this June 15, 2016. In the said case, it was pronounced that:

> In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. x x x.

Accordingly, this more recent pronouncement ought to control and therefore, quell any further confusion on the proper evidentiary threshold to be applied in administrative cases against lawyers.

The rule is taken in light of other settled principles that apply for a proper disposition of administrative cases. In *Advincula v. Macabata*,[57] the Court emphasized:

The burden of proof rests on the complainant, and she must establish the case against the respondent by clear, convincing and satisfactory proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power. Thus, the adage that *he who asserts not he who denies, must prove.* x x x.[58]

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[54] 748 Phil. 1 (2014).

[55] *Id.* at 16.

[56] A.C. No. 8560, September 6, 2016, 802 SCRA 196, 219.

[57] 546 Phil. 431 (2007).

[58] *Id.* at 445-446.

Further, the Court emphasized in *Cabas v. Sususco*[59] the oft-repeated rule that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."[60]

With careful consideration of the foregoing tenets, the Court's perusal of the records reveals an insufficiency of evidence that could warrant the recommended suspension from the practice of law.

To begin with, the two affidavits considered by the IBP as bases for its finding of Atty. Dalangin's gross immorality harped only on general statements of a supposed personal and public knowledge on the wrongful relationship between Atty. Dalangin and Pascual. The circumstances that could have led them to their conclusion were scant and unsubstantiated. The most concrete proof that they could offer was the birth of Julienne, yet even the child's birth certificate, a public document, expressly indicated the girl's father to be Pascual's husband, and not Atty. Dalangin.[61] Julienne's baptismal certificate[62] also provided such fact, along with a confirmation of Atty. Dalangin's defense on his closeness to Julienne for being her godfather.

It would be unfair to Atty. Dalangin, more so for the child whose filiation is in a way needlessly dragged into this case, for the Court to affirm the assertions in the complaint and the IBP's findings and conclusions on the basis of the available evidence. The alleged similarities in the physical appearances of Atty. Dalangin and Julienne were but lame and dismal validations of the complainants' vehement claim of paternity. Even the photographs[63] of Atty. Dalangin, Pascual and Julienne in what appeared to be a trip to Puerto Princesa, Palawan were insufficient to support a conclusion on the unlawful relations.

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[59] A.C. No. 8677, June 15, 2016, 793 SCRA 309.

[60] *Id*. at 315.

[61] *Rollo* (A.C. No. 10758), Vol. I, p. 258.

[62] *Id*. at 253.

[63] *Id*. at 387-388.

The lone photo where Atty. Dalangin appeared with Pascual and Julienne, who were apparently merely waiting for boarding in an airport terminal, utterly failed to manifest any romantic or filial bond among them. It was also explained through an affidavit[64] executed by spouses Dante Capindian and Timotea Jamito that Atty. Dalangin was a principal sponsor, while Pascual's family were guests, in their wedding which was held on August 6, 2011 in Puerto Princesa, Palawan. Apparently, the photos were taken during the said trip. Pascual's husband, Edgardo, was also present for the occasion.

The Court, nonetheless, does not find Atty. Dalangin totally absolved of fault. While he vehemently denied any romantic relationship with Pascual, he admitted demonstrating closeness with the latter's family, including her children. It was such display of affection that could have sparked in the minds of observers the idea of a wrongful relationship and belief that Julienne was a product of the illicit affair. Atty. Dalangin should have been more prudent and mindful of his actions and the perception that his acts built upon the public, particularly because he and Pascual were both married. "As officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community."[65] "As keepers of public faith, lawyers are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with great caution."[66]

The fault, nonetheless, does not warrant Atty. Dalangin's suspension, much less disbarment. An admonition should suffice under the circumstances. The following pronouncement in *Advincula v. Macabata*[67] is pertinent:

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[64] *Rollo* (A.C. No. 10758), Vol. II, pp. 753-754.

[65] *Vitug v. Rongcal*, 532 Phil. 615, 626 (2006).

[66] *Valdez v. Dabon, Jr.*, 773 Phil. 109, 126 (2015).

[67] *Supra* note 57.

While it is discretionary upon the Court to impose a particular sanction that it may deem proper against an erring lawyer, it should neither be arbitrary and despotic nor motivated by personal animosity or prejudice, but should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar and to exact from the lawyer strict compliance with his duties to the court, to his client, to his brethren in the profession and to the public.

x x x Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. x x x[68]

Gross Misconduct and Malpractice

Atty. Dalangin was also charged, and recommended for suspension from the practice of law, for several other acts involving use of misleading evidence in court and preparation of affidavits with perjured statements to support cases and complaints for disbarment. When he still served as a public attorney, he likewise allegedly demanded acceptance fees from indigent clients, and appeared in courts beyond his area of jurisdiction. Even these charges, however, were not supported by evidence that could warrant Atty. Dalangin's suspension. And while there were several other charges included in the complaint against Atty. Dalangin, the accusations were actually for actions that should be attributed not to him, but to other individuals like Pascual.

Specifically on the claim that Atty. Dalangin failed to fully explain to Marzan and Valdez the contents of the affidavit that supported a disbarment case against Atty. Torres, the Court takes note of the fact that the alleged failure to explain did not necessarily equate to the falsity of the claims therein made. It refers to the joint affidavit executed by Marzan and Valdez, and which was attached to the complaint in CBD

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[68] *Id.* at 447-448.

Case No. 11-3215, whereby affiants merely alleged that they signed the affidavit even when they were not fully apprised of its contents.[69] It was not alleged that they were fraudulently lured or tricked by Atty. Dalangin into signing the complaint, and that the charges therein hurled against Atty. Torres were absolutely false. Thus, the claim that Atty. Dalangin knowingly brought a groundless suit against a fellow lawyer had no leg to stand on.

The charge of malpractice for Atty. Dalangin's supposed demand for attorney's fees while he still worked as a PAO lawyer also remained unsubstantiated by evidence. Such serious imputation could not have been adequately established by an affidavit that was executed in 2010 by a lone person, Camacho, from whom the demand for ₱8,000.00 was allegedly made in 2001.[70] Similarly, while Atty. Dalangin admitted to have appeared in courts beyond his area of jurisdiction as public attorney, he claimed to have obtained permission therefor from the Regional Public Attorney, a defense which the complainants failed to refute. In the absence of contrary evidence, the presumption that the respondent regularly performed his duty in accordance with his oath shall prevail,[71] especially as the Court considers it highly improbable for the courts where appearances were made to fail to notice such patent irregularity, if Atty. Dalangin was indeed not authorized to perform his acts before their courts as a public attorney.

Anent the failure of Atty. Dalangin to submit all pages of a certificate of title in Civil Case No. 336-SD(04)AF pending with the RTC, Branch 88, Sto. Domingo, Nueva Ecija and entitled *Tamayo v. Philippine National Bank*, it has been explained that the error had been corrected at once during the pre-trial conference.[72]

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[69] *Rollo* (A.C. No. 10758), Vol. I, pp. 12-13.

[70] *Id.* at 29.

[71] *Vitug v. Rongcal*, *supra* note 65, at 630.

[72] *Rollo* (A.C. No. 10758), Vol. I, p. 94.

Among the other charges imputed against Atty. Dalangin in A.C. No. 10758, the Court only finds fault for his misquote of jurisprudence cited in a pleading filed with the RTC, Branch 35, Gapan City for Cad. Case No. 1564-05 entitled *Bangko Luzon v. Diaz*. It was narrated in the complaint in CBD Case No. 11-3215 that:

> 14. x x x [T]he cited jurisprudence is hereto quoted:
>
> "If a court of competent jurisdiction annulled the foreclosure sale of the property in question, the issuance of a writ of possession ceases to be ministerial."
>
> 15. In the said case of BPI vs. Tampipi, there is nothing mentioned about the cessation of the ministerial function of the court but instead what is clearly stated in the decision are the following:
>
> "Until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court."[73]

Atty. Dalangin invoked adherence to the substance and spirit of the cited ruling.[74] As counsel and officer of the court, however, with the corresponding duty to aid the courts in the task of ascertaining the truth, Atty. Dalangin was remiss in the discharge of his duties under the CPR. Canon 10, Rule 10.02 thereof provides:

> "[a] lawyer shall not knowingly misquote or misrepresent the contents of paper, the language or the argument of the opposing counsel, or the text of a decision or authority, or knowingly cite as a law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved."

The Court, nonetheless, still does not find suspension to be an appropriate penalty for the act. While the Court detests Atty. Dalangin's failure to properly indicate that the statement was not a verbatim reproduction of the cited jurisprudence and, accordingly, calls his attention on the matter, it finds the admonition to be adequate.

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

[74] *Id.* at 92.

A suspension for the lone incident would be too harsh a penalty. It appeared that the supposed quotation was Atty. Dalangin's own conclusion from the cited jurisprudence. There was no clear indication that the statement was intended to mislead the court or commit a falsehood; there was no brazen deviation from the principle or doctrine that was embodied in the jurisprudence's original text.

A.C. No. 10759

In relation to A.C. No. 10759 on Atty. Dalangin's altercation on November 14, 2011 with Alvaro as the latter was waiting for the start of a court hearing in the RTC of Sto. Domingo, Nueva Ecija, the records include affidavits executed by witnesses who did not appear to have any reason to falsely testify against Atty. Dalangin on the incident.

Affiant Josephine Rivera, in particular, who claimed to be also then waiting for a scheduled hearing, allegedly saw Atty. Dalangin shout and point at Alvaro, as he threatened to file a case against the latter.[75] Two security guards stationed at the trial court, evidently disinterested persons who would not have wrongly testified against Atty. Dalangin, likewise confirmed that such heated confrontation actually transpired. Pertinent portions of the guards' affidavit[76] read:

1. Na noong ika-14 ng Nobyembre, 2011, ganap na ika-8:45 ng umaga humigit kumulang, habang nakaupo si [Alvaro] sa "bench", upuang mahaba malapit sa aming kinauupuan dito sa pintuan ng Hall of Justice, Regional Trial Court, Baloc, Sto. Domingo, Nueva Ecija at kausap niya ang isa niyang kasama, dumating si Atty. Bayani Dalangin at pagkakita kay [Alvaro] ay pinagsisigawan ito at maraming sinabi laban kay [Alvaro];

2. Na maraming nakarinig, nakakita at nagulat sa pangyayaring ito;

x x x x x x x x x[77]

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[75] *Rollo* (A.C. No. 10759), p. 1845.

[76] *Id.* at 1846.

[77] *Id.*

For the Court, Atty. Dalangin erred in his conduct subject of the complaint, especially since his outburst was carried out within the court premises and in the presence of several persons who readily witnessed his fit of anger. Part of Atty. Dalangin's duties as a lawyer is to maintain the honor that is due the profession. Members of the legal profession should commit to the mandates of Canon 7, particularly Rule 7.03 thereof, to wit:

> CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION X X X.
>
> Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Although Atty. Dalangin, at that instant, could have been stirred by his frustration or resentment for the disbarment case filed against him by Alvaro, such circumstance could not have absolved him from any responsibility for his conduct. At most, this only serves to mitigate the penalty that the Court deems appropriate to impose, as it likewise considers its finding that Alvaro's allegations in CBD Case No. 11-3215 on the supposed extra-marital affair of Atty. Dalangin with Pascual were indeed not backed by sufficient evidence. The Court finds it appropriate to impose upon Atty. Dalangin a **fine of ₱5,000.00**, with a stern warning that a more severe sanction will be imposed on him for any repetition of the same or similar offense in the future.

Although the Court has admonished Atty. Dalangin in A.C. No. 10758, it finds the imposition of this fine still suitable under the circumstances, given that A.C. No. 10759, although resolved jointly with A.C. No. 10758, is a distinct administrative case that covers a separate complaint that was instituted solely by Alvaro. The severity of this offense likewise varies from the other breaches for which the Court has determined the admonition to be appropriate.

A.C. No. 10760 and A.C. No. 10761

The Court affirms the decision of the IBP to dismiss the administrative complaints filed by Atty. Dalangin against Atty. Torres and Atty. Andres.

In A.C. No. 10760, Atty. Dalangin sought to support his complaint by referring to the supposed participation of Atty. Torres and Atty. Andres in a violation of the Anti-Wiretapping Act. He asserted that the act also violated the lawyer's oath, and breached Canon 1, Rules 1.01 and 1.02 of the CPR which reads:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

The alleged violation of the statute is a serious charge that the Court cannot take lightly, in view of the breach of the basic and constitutional right to privacy of communication that inevitably results from the act. In brief, the law prohibits any person "to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder x x x."[78] It likewise forbids any person from possessing, replaying or furnishing transcriptions of communications that are obtained in violation of the law.

In this case, Atty. Dalangin claimed that Atty. Torres and Atty. Andres conspired with Alejo on the wrongful recording of a private communication with Pineda, along with the use of the transcript thereof to support Alejo's affidavit in CBD Case No. 11-3215. However, Pineda's own denial of the truth of

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[78] R.A. No. 4200, Section 1.

the statements in the transcription lends doubt as to the allegation of a purported secret recording of an actual conversation. While Pineda denied knowledge that her telephone conversation with Alejo was recorded by the latter, she still refused to acknowledge the veracity of the assertions that she allegedly made as contained in the transcript,[79] which then appears to be a rejection of the supposed conversation. Given the circumstances, the IBP correctly ruled that Atty. Dalangin failed to substantiate the charges in his complaint against Atty. Torres and Atty. Andres.

The same conclusion equally applies in A.C. No. 10761. The commission of perjury was imputed upon Atty. Torres, as the person who prepared the affidavits of Marzan and Valdez. As witnesses in CBD Case No. 11-3215, Marzan and Valdez claimed that Atty. Dalangin prepared an affidavit for Atty. Torres' disbarment without fully explaining to them the contents thereof. The fact that Atty. Torres induced the affiants to make perjured statements, however, was not established by clear and convincing proof. Even granting that statements of affiants were eventually determined to be inaccurate and untruthful, it would be wrong to at once ascribe error or fault upon the lawyers who drafted the affidavits, in the absence of clear and sufficient proof that they actively participated in the intentional commission of a fraud or declaration of fabricated statements.

WHEREFORE, in light of the foregoing, the Court rules as follows:

(1) In **A.C. No. 10758**, respondent Atty. Bayani P. Dalangin is **ADMONISHED** to be more prudent and cautious in handling his personal affairs and dealings with courts and the public, with a **STERN WARNING** that any repetition of the same or similar acts in the future shall be dealt with more severely;

(2) In **A.C. No. 10759**, Atty. Bayani P. Dalangin is **FINED** Five Thousand Pesos (₱5,000.00) for his breach of Rule 7.03, Canon 7 of the Code of Professional Responsibility, with a **STERN WARNING** that a more severe sanction will be imposed

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[79] *Rollo* (A.C. No. 10760), p. 2057.

upon him for any repetition of the same or similar offense in the future; and

(3) In **A.C. No. 10760** and **A.C. No. 10761**, Atty. Bayani P. Dalangin's petition for review is **DENIED**. The Court **AFFIRMS** the Integrated Bar of the Philippines (IBP) Board of Governors' Resolution No. XX-2013-768 dated June 21, 2013 and Resolution dated August 8, 2014, insofar as the IBP Board of Governors dismissed the following complaints: (1) CBD Case No. 12-3369 against Atty. Rosita L. Dela Fuente-Torres and Atty. Avelino Andres; and (2) CBD Case No. 12-3458 against Atty. Rosita L. Dela Fuente-Torres.

SO ORDERED.

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

Peralta, J., concurs in the result, see separate opinion.

Bersamin, J., on official leave.

Jardeleza and *Gesmundo, JJ.,* on leave.

SEPARATE OPINION

PERALTA, *J.*:

The *ponencia* finds that there is no sufficient basis to suspend Atty. Bayani P. Dalangin for supposedly having an illicit affair with Julita Pascual, a clerk at the Public Attorney's Office in Talavera, Nueva Ecija, where Dalangin previously worked as district public attorney. It ratiocinated that the existence of such amorous relationship was not adequately proved.

With all due respect, while I agree with the ponencia's finding that there is indeed fault and imprudence on the part of Dalangin, I believe that a mere reprimand is not sufficient to correct his actions, but the more serious penalty of suspension should be imposed, as aptly recommended by the IBP.

Indeed, the quantum of proof required in administrative cases is substantial evidence. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[1]

Certainly, after a thorough investigation, the IBP found the existence of substantial evidence proving the presence of the alleged illicit affair. Several witnesses testified that Pascual was having an affair with Dalangin and even have a child together named Julienne. Complainant Glenda Alvaro testified that Pascual confided to her that she no longer loves her husband and Julienne would call Dalangin "Papa Attorney." This is well known in the courts and the whole of Talavera and even in the community of Sto. Domingo, Nueva Ecija. Dalangin would be seen taking care of Julienne when the latter was still a baby and later, would likewise accompany her in school trips and would also attend her graduation. Dalangin, Pascual, and Julienne were likewise photographed while having a vacation in Puerto Princesa, Palawan. When challenged to submit himself for DNA testing, Dalangin refused.

The abovementioned circumstances and findings made by the IBP all support the conclusion that Dalangin has maintained an adulterous affair with Pascual. And when challenged to submit himself for DNA testing to finally disprove all the accusations against him, instead of grabbing the opportunity to clean his name once and for all, Dalangin simply declined. In fact, he himself admitted demonstrating closeness with Pascual's family, including her children. The *ponencia* even noted that it was such display of affection that could have sparked in the minds of observers the idea of a wrongful relationship and belief that Julienne was a product of said illicit affair.

There is likewise no motive on the part of the witnesses to concoct such a false charge. From all indications, they do not appear to have any ill motive to falsely testify against Dalangin.

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[1] *Miro v. Vda. de Erederos, et al.,* 721 Phil. 772, 787 (2012).

Absent any proof of motive to fabricate such a story and impute such a grave misconduct, the presumption of regularity in the performance of official duty and the findings of the IBP shall prevail.

Section 41 of Rule 130 of the Rules of Court states:

> **Section 41.** *Common reputation*. — Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation.[2]

Settled is the principle that evidence of one's character or reputation must be confined to a time not too remote from the time in question.[3]

Here, Dalangin's relationship with Pascual and Julienne is well known in the courts and the whole of Talavera and even in the community of Sto. Domingo, Nueva Ecija.

The Code of Professional Responsibility provides:

> Rule 1.01- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> Canon 7- A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.
>
> Rule 7.03- A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Morality in our liberal society today is probably a far cry from what it used to be. Notwithstanding this permissiveness, lawyers, as keepers of public faith, are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with greater caution. Indeed, those who have

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[2] Section 41, Rule 130 of the Rules of Court.

[3] *Civil Service Commission v. Belagan*, 483 Phil. 601, 617 (2004).

taken the oath to assist in the dispensation of justice should be more possessed of the consciousness and the will to overcome the weakness of the flesh.[4]

It has been repeatedly held that to justify suspension or disbarment, the act complained of must not only be immoral, but *grossly* immoral. A grossly immoral act is one that is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. It is willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community.[5]

In the instant case, Dalangin's intimate relationship with a woman other than his wife showed his moral indifference to the opinion of the good and respectable members of the community. It manifested his disrespect for the laws on the sanctity of marriage and for his own marital vow of fidelity. It showed his utmost moral depravity and low regard for the fundamental ethics of his profession. Indeed, he has fallen below the moral bar. Such detestable behavior warrants a disciplinary sanction. Even if not all forms of extramarital relations are punishable under penal law, sexual relations outside of marriage are considered disgraceful and immoral as they manifest deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws.[6]

WHEREFORE, IN VIEW OF THE FOREGOING, the Integrated Bar of the Philippines' recommendation to suspend Atty. Bayani P. Dalangin from the practice of law for three (3) years should be upheld.

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[4] *Valdez v. Atty. Dabon, Jr.*, A.C. No. 7353, November 16, 2015, 775 SCRA 1, 18.

[5] *Id*.

[6] *Id*. at 19.

EN BANC

[A.M. No. 14-10-322-RTC. December 5, 2017]

RE: HABITUAL ABSENTEEISM OF RABINDRANATH A. TUZON, OFFICER-IN-CHARGE (OIC)/COURT LEGAL RESEARCHER II, BRANCH 91, REGIONAL TRIAL COURT, BALER, AURORA

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; HABITUAL ABSENTEEISM; PENALTY.— [T]o inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible. Since Tuzon has been absent for 4 days in June, 6 days in August, 10 days in September, 8 days in October, and 4 days in November 2013, there is no dispute that he had been habitually absent. Administrative Circular No. 14-2002 and *The Uniform Rules on Administrative Cases in the Civil Service* impose the penalty of suspension of 6 months and 1 day to 1 year, for the first offense, and dismissal, for the second offense, in case of frequent unauthorized absences. However, in the determination of the penalty to be imposed, attendant circumstances, such as physical fitness, habituality, and length of service in the government, may be considered.

R E S O L U T I O N

***PER CURIAM*:**

A Report[1] submitted by the Leave Division, Office of the Court Administrator *(OCA)* dated 16 October 2014, shows that respondent Rabindranath A. Tuzon *(Tuzon)*, OIC/Legal Researcher II, Branch 91, Regional Trial Court *(RTC)*, Baler, Aurora, had incurred unauthorized absences for the months of June to November 2013, as follows:

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[1] *Rollo,* p. 3.

June 3-4, 13-14	4.0 days
August 5-8, 15, 28	6.0 days
September 2-5, 9-13, 26	10.0 days
October 7-9, 14, 16-18, 21	8.0 days
November 4-6, 14	4.0 days

On 13 November 2014, the OCA issued a 1st Indorsement[2] directing Tuzon to comment on the aforesaid report. However, he failed to comply with the said directive, thus, on 10 August 2015, the OCA issued a Tracer[3] reiterating its earlier directive for him to file a comment. No comment has been filed to this date.

On 27 June 2016, the Court, in A.M. No. 16-04-88-RTC,[4] issued a Resolution dropping Tuzon from the rolls effective 1 March 2014, for having been on absence without official leave *(AWOL)*. The resolution held that respondent Tuzon *"is still qualified to receive any benefit that he may be entitled to under existing laws and be re-employed in the government, without prejudice to the outcome"* of the present case, i.e., A.M. No. 14-10-322-RTC.

In an agenda report dated 10 April 2017, the OCA recommended that:

(1) the Report dated 16 October 2014 of Mr. Ryan U. Lopez, Officer-In-Charge, Employees' Leave Division, Office of Administrative Services, Office of the Court Administrator, be **RE-DOCKETED** as a regular administrative matter against respondent Rabindranath A. Tuzon, OIC/Court Legal Researcher II, Branch 91, Regional Trial Court, Baler, Aurora, for *Habitual Absenteeism*; and

(2) respondent Tuzon be found **GUILTY** of Habitual Absenteeism; and

(3) accordingly, since respondent Tuzon has been dropped from the rolls, the following **ACCESSORY PENALTIES** may

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[2] *Id*. at 5.

[3] *Id*. at 6.

[4] As per Agenda of OCA-Legal Division dated 10 April 2017.

be imposed on him: **CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS, PERPETUAL DISQUALIFICATION OF HOLDING PUBLIC OFFICE AND BAR FROM TAKING CIVIL SERVICE EXAMINATIONS.**

We adopt the findings of the OCA.

Administrative Circular No. 14-2002[5] provides that:

> An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year.[6]

We have often held that, by reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[7]

Since Tuzon has been absent for 4 days in June, 6 days in August, 10 days in September, 8 days in October, and 4 days in November 2013, there is no dispute that he had been habitually absent.

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[5] Reiterating the Civil Service Commission's Policy on Habitual Absenteeism.

[6] Memorandum Circular No. 04, Series 1991, of the Civil Service Commission.

[7] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003*, A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 508, 517-518.

Administrative Circular No. 14-2002 and *The Uniform Rules on Administrative Cases in the Civil Service* impose the penalty of suspension of 6 months and 1 day to 1 year, for the first offense, and dismissal, for the second offense, in case of frequent unauthorized absences. However, in the determination of the penalty to be imposed, attendant circumstances, such as physical fitness, habituality, and length of service in the government, may be considered.[8]

Here, it is noteworthy to stress that the OCA report shows that the Court, in prior resolutions, had penalized Tuzon with a reprimand for his habitual tardiness,[9] and with a six-month suspension for grave misconduct.[10] Hence, we cannot find any circumstance which can mitigate the imposable penalty.

WHEREFORE, the Court finds respondent Rabindranath A. Tuzon, OIC/Legal Researcher II, Branch 91, Regional Trial Court, Baler, Aurora, **GUILTY** of habitual absenteeism. He is hereby ordered **DISMISSED** from the service, with forfeiture of all retirement benefits, except for any accrued leave credits; cancellation of eligibility, bar from taking civil service examinations, and with prejudice to re-employment in any government branch or instrumentality, including government-owned or-controlled corporations.

SO ORDERED.

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

Bersamin, J., on official leave.

Jardeleza and *Gesmundo, JJ.,* on leave.

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[8] CSC Memorandum Circular No. 19, s. 1999, Section 53.

[9] Resolution dated 6 August 2014 in A.M. No. P-14-3250.

[10] *Re: Anonymous Letter v. Judge Soluren, et al.*, 745 Phil. 22 (2014).

EN BANC

[A.M. No. 14-11-350-RTC. December 5, 2017]

RE: JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT, BRANCH 20, CAGAYAN DE ORO CITY, MISAMIS ORIENTAL

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; SERIOUS MISCONDUCT AND GROSS IGNORANCE OF THE LAW AND/OR PROCEDURE COMMITTED IN CASE AT BAR; LIGHTER PENALTY IMPOSED CONSIDERING THE MITIGATING CIRCUMSTANCES; FAILURE TO DECIDE THE CASE SUBMITTED FOR DECISION OR RESOLVE PENDING INCIDENTS WITHIN THE REGLEMENTARY PERIOD.— The records disclose that Judge Macabaya utterly failed to decide the cases submitted for decision or resolve pending incidents within the reglementary period as well as within the time frame that he himself fixed in the initial Action Plan. As noted during the audit, these cases were already deemed submitted for decision much further beyond the period allowed by the Constitution and by statute. x x x [A]side from the delay/s in rendering a Decision or Resolution on cases submitted for decision, the judicial audit team also found errors or irregularities in several orders issued by Judge Macabaya. x x x The audit team also noted that Judge Macabaya's wife meddled or interfered with the court's business. x x x In sum, Judge Macabaya must be held to account for acts constitutive of serious misconduct and gross ignorance of the law and/or procedure. Although this Court has meted out the penalty of dismissal or forfeiture of retirement benefits to judges who were found guilty of several infractions such as in this case, we have nevertheless imposed lighter penalties towards members of the bench when mitigating circumstances merit the same. Judge Macabaya has continuously rendered almost 31 years of government service – x x x In the three decades he has been in public service, this Court has not adjudged him guilty of any infraction – with four of the six administrative cases filed against him dismissed. x x x [W]e believe that a

fine equivalent to two (2) months' salary, with a stern warning that a repetition of the same or similar offenses shall be dealt with severely, is more commensurate.

D E C I S I O N

DEL CASTILLO, *J.*:

The present administrative matter arose from the judicial audit conducted on March 12 and 13, 2013, of Branch 20 of the Regional Trial Court (RTC) of Cagayan de Oro City, Misamis Oriental, then presided by Judge Bonifacio M. Macabaya (Judge Macabaya).

In a Memorandum[1] dated April 17, 2013, the audit team found that out of the 573 cases examined by it, (1) 69 cases were submitted for decision but have yet to be decided despite the lapse of the 90-day period [as mandated by par. 1, Section 15, Article VIII of the 1987 Constitution];[2] (2) 33 cases with pending incidents were not yet resolved despite the lapse of the reglementary period to resolve them; and (3) 155 cases were dormant and unacted upon for a considerable length of time.

The audit team noted the following irregularities:

1. In Criminal Case No. 2001-888 entitled *People [v.] Jabinao,* the [RTC] issued an Order dated 22 November 2011 directing the accused to secure another bond within five (5) days from notice, '*it appearing that the bond put up by the accused had already expired.*' The Order [goes against] Sec. 2(a) of Rule 114 of the Revised Rules of Criminal Procedure, which provides that '*(t)he undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of*

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

[2] Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and **three months for all other lower courts.** (Emphasis supplied)

the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it.'[3]

2. In Criminal Case Nos. 2000-260 and 2000-316, both entitled *People [v.] Alba, et. al.* as well as Criminal Case Nos. 2002-098 and 2002-100, [also] both entitled *People [v.] Alba*, the [RTC] issued twin Orders, both dated 26 September 2006, directing the issuance of a Warrant of Arrest against the accused for his failure to appear[,] and directing the Branch Clerk of Court '*to receive evidence of the prosecution through ex-parte hearing*' – [in violation of] the Revised Rules of Criminal Procedure [and by] existing jurisprudence x x x.[4]

Moreover, the audit team noted inaccuracies in the RTC's February 2013 report. It failed to include 43 cases already submitted for decision and 13 cases with unresolved motions, while it prematurely reported six cases[5] as submitted for decision, although the records did not show that the appellees received the appellants' briefs or memoranda, against which the prescribed period within which to submit the formers' briefs or memoranda should be reckoned.[6] These omissions and inaccuracies in the report violated paragraph 8 of the Guidelines and Instructions in Administrative Circular No. 61-2001 dated December 10, 2001, which state that "*(i)n filling up Item No. VI x x x where all the data needed must be indicated, include all cases with unresolved motions which may determine the disposition of the cases, e.g., Motion to Dismiss on Demurrer to Evidence. Patent non-indication of undecided cases or unresolved motions is tantamount to falsification of official document.*"

In addition, the audit team discovered that the docket books for civil cases were not updated regularly; the docket inventory for the period July-December 2012 suffered from a number of

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[3] *Rollo*, p. 27.

[4] *Id*. at 28.

[5] See *id*. Namely Civil Case No. 2011-174, Criminal Case Nos. 4819, 2010-961, 2010-1037, 2011-772 and 2011-909.

[6] *Id*. at 27.

defects in form; and, there was no judgment book, no book of entries of judgment, nor an execution book.[7]

The audit team furthermore noted the constant presence and active participation of Judge Macabaya's wife during the entire judicial audit although she was not a court employee. She was observed to be handing over case records to, and talking with, the court staff. When this matter was brought to the attention of Judge Macabaya, the latter assured the audit team that he was in full control of the actions of his wife, and even acknowledged "that she has been a big help x x x [in] overseeing the administrative functions of his office, [thus allowing] him to focus his attention on his judicial functions."[8]

In a Letter[9] dated April 4, 2013, Judge Macabaya's Clerk of Court V Atty. Taumaturgo U. Macabinlar (Atty. Macabinlar) submitted a copy of an Action Plan[10] for the Period April 2013 to April 2014, bearing the signature of Judge Macabaya himself. The Action Plan was "formulated as a result of (their) discussions with the Supreme Court Audit Team and (their) brainstorming session with all the Branch 20 staff," and "is intended to make a more lasting plan of action to prevent recurring audit exceptions."[11]

The audit team noted that the action plan provided for a single strategy only and an inflexible time frame for the disposition of three kinds of cases.[12] Hence, the audit team recommended that the Action Plan be revised to make it more specific and more results-oriented for easier measurement of output.

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[7] *Id*. at 28-29.

[8] *Rollo*, p. 30.

[9] *Id*. at 36.

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

[11] *Id*. at 37.

[12] See *id.* at 44. Namely: cases submitted for decision, cases with incidents or motions for resolution and cases for *ex-parte* presentation of evidence.

Taking a holistic approach, the audit team made the following recommendations to Judge Macabaya to:

x x x x x x x x x

1.1 SUBMIT x x x within fifteen (15) days x x x a revised action plan, incorporating therein the strategies, specific courses of action and the corresponding time frame[s], to be measured by specific number of calendar days, for: (a) the disposition of the cases x x x; (b) the resolution of the incidents or motions x x x; and (c) all the other judicial audit findings above x x x;

1.2 Immediately TAKE APPROPRIATE ACTION on the untranscribed stenographic notes taken down by then court stenographer Oscar P. Rabanes, x x x in Civil Case No. 3672, x x x and SUBMIT to this Office within fifteen (15) days from receipt hereof a written report thereon;

1.3 SUBMIT x x x within fifteen (15) days x x x a written status report on the untranscribed stenographic notes x x x in Civil Case No. 6776 and in Criminal Case Nos. 1863 and 3418;

1.4 ENSURE that a request for extension of time to decide a case is filed with the Office of the Court Administrator before the expiration of the mandated period for decision, x x x;

1.5 TAKE APPROPRIATE ACTION immediately in the cases referred to in Item No. I (7) above, and SUBMIT to this Office within thirty (30) days from receipt hereof a written report thereon, attaching thereto copies of the orders or decisions, if any, issued in connection therewith;

1.6 CONDUCT PERSONALLY [a] physical inventory of cases at the end of every semester, and CONSIDER the results of the exercise in the evaluation and assessment of the performance of the court against its existing action plan, and use the same as a basis for drawing up a new action plan to ensure the sustainability of the remedial measures earlier adopted;

1.7 ADOPT a firm policy against improvident postponements and ENSURE that cases are heard and disposed of with deliberate dispatch, x x x;

1.8 COMMENT in writing on the observations raised in Item No. II, Sub-item Nos. 1 and 2 above, and SUBMIT the same to this Office within fifteen (15) days from receipt hereof;

1.9 DISCOURAGE and MINIMIZE his wife's presence in his court, and PREVENT her from interfering with the business of the court with a WARNING that any violation thereof will warrant an administrative action against him; and

1.10 SUBMIT to this Office within fifteen (15) days from receipt hereof a written report on the action/s taken on the immediately preceding directive;

x x x x x x x x x[13]

But in a letter[14] dated July 22, 2013, Judge Macabaya and his Branch Clerk of Court, Atty. Macabinlar, merely submitted copies of the Decisions and Orders in some of the cases enumerated in the April 17, 2013 Memorandum; and this was done despite the passage of almost 10 months. Thus, in a letter-directive[15] to Judge Macabaya dated March 14, 2014, Deputy Court Administrator (DCA) Jenny Lind R. Aldecoa-Delorino (DCA Aldecoa-Delorino) reiterated the recommendations above.

In reply thereto, on May 12, 2014, Judge Macabaya attached another set of copies of orders, resolutions, and decisions, without any other explanation other than the inadvertent attachment of the letter-directive to the RTC's October 2013 monthly report.[16]

Via a Letter[17] dated May 19, 2014, one month after the deadline set in the action plan, DCA Aldecoa-Delorino gave an updated summary on the number of cases that had not yet been decided or resolved, and acted upon. This letter likewise reiterated the directive for Judge Macabaya to comply with the audit team's Memorandum, particularly item nos. 2, 3, 8 and 9, with a reminder that "*all directives coming from the Court Administrator and his deputies are issued in the exercise of the Court's administrative supervision of trial courts and their personnel,*

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

[14] *Id.* at 243-248.

[15] *Id.* at 289.

[16] *Id.* at 298.

[17] *Id.* at 639-640.

hence, should be respected. These directives are not mere requests but should be complied with promptly and completely."[18] Thus, DCA Aldecoa-Delorino directed Judge Macabaya to:

1. EXPLAIN x x x the delay in: (a) deciding the remaining thirty [30] cases x x x; (b) resolving the incidents in the remaining fifteen (15) cases listed x x x; and (c) taking appropriate actions [on] the remaining fifty-seven [57] dormant cases x x x; and SUBMIT the same to this Office within fifteen (15) days from receipt hereof;
2. SUBMIT x x x within fifteen (15) from receipt hereof a copy of each of the decisions, orders[,] or resolutions, if any, rendered or issued in the cases referred to above; and
3. SUBMIT x x x within fifteen (15) days from receipt hereof a written report on the actions x x x taken on x x x the directives contained in our Memorandum dated 19 April 2013.[19]

In a letter-compliance[20] dated June 30, 2014, Judge Macabaya attached copies of the decisions, resolutions and orders rendered or issued by his court. He then asked for a 90-day extension to decide or resolve the remaining cases, giving as reason therefor the court's heavy caseload and claiming that the remaining cases submitted for decision comprised "mainly of those referred to the Branch Clerk of Court, Atty. Taumaturgo U. Macabinlar[,] for ex-parte hearing x x x."[21]

Owing to Judge Macabaya's repeated failure to fully comply with the directives of the Office of the Court Administrator (OCA) for more than one year,[22] this Court on December 1, 2014 resolved to:

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[18] *Id*. at 640. Italics in the original.

[19] *Id*.

[20] *Id*. at 641.

[21] *Id*.

[22] Counting from the Memorandum dated April 19, 2013 reiterating the recommendations in the audit team's April 17, 2013 Memorandum to the Resolution dated December 1, 2014.

1. DIRECT Judge x x x Macabaya, x x x to:

a. SHOW CAUSE x x x why no disciplinary action should be taken against him for his failure to: (a) decide the remaining twenty-eight [28] cases due for decision; (b) resolve the incidents in the remaining eleven [11] cases with incidents for resolution; (c) take appropriate actions [on] the remaining thirty-eight [38] cases found to be dormant at the time of the judicial audit, all despite the lapse of more than one year since the said judicial audit was conducted; and (d) comply with the other directives contained in the 19 April 2013 Memorandum of the OCA, x x x;

b. DECIDE with dispatch the remaining twenty-eight (28) cases submitted for decision x x x and SUBMIT x x x copies of the Decisions within thirty (30) days from notice;

c. RESOLVE with dispatch the incidents in the remaining eleven (11) cases x x x referred to above, and SUBMIT x x x copies of the corresponding Orders or Resolutions within thirty (30) days from notice;

d. TAKE APPROPRIATE ACTIONS immediately in the thirty-eight (38) remaining dormant cases referred to above, and SUBMIT x x x copies of the Orders or Decisions, if any, issued in connection therewith; and

e. SUBMIT x x x within fifteen (15) days from notice his compliance with directive Nos. 2, 3, 8, 9[,] and 10 contained in the 19 April 2013 Memorandum of the OCA, with a STERN WARNING that failure to do so will be dealt with more severely;

2. RELIEVE Judge Macabaya of his judicial and administrative functions, effective immediately and to continue until further orders from the Court, EXCEPT to: (a) DECIDE the remaining twenty-eight (28) cases submitted for decision; (b) RESOLVE the remaining eleven (11) cases with incidents for resolution; and (c) TAKE APPROPRIATE ACTIONS [on] the remaining thirty-eight (38) dormant cases;

3. WITHHOLD the salaries and other benefits accruing to Judge Macabaya, effective immediately until such time that the Court shall have ordered the restoration of his judicial and administrative functions;

4. DESIGNATE Judge Gil G. Bollozos, RTC, Br. 21, Cagayan de Oro City, Misamis Oriental, Acting Presiding Judge of RTC, Br. 20, Cagayan de Oro City, Misamis Oriental, effective immediately and to continue until further orders from the Court, x x x and

5. ENTITLE Judge Bollozos to x x x traveling expenses with *per diems* (if applicable), as well as an additional expense allowance and judicial incentive allowance, x x x[23]

On February 18, 2015, Judge Macabaya filed a Motion for Reconsideration/Explanation[24] claiming that the penalties imposed upon him were unjust because they were solely based on the Memorandum dated April 17, 2013; that no formal charge had been filed against him, nor had any investigation been conducted relative to any administrative case filed against him. Simply put, Judge Macabaya insisted that he was not given his day in court, as he "was not apprised of any administrative complaint about him."[25]

Judge Macabaya then filed a Supplemental Explanation to the Motion for Reconsideration[26] reiterating the arguments he put forward in his MR, and further claiming that some unresolved cases, those filed between 1971 to 2009, had long been submitted for decision, and were well within the extension of time he had requested in his compliance.[27] Judge Macabaya claimed that the judicial audit mistakenly and inaccurately found that there were only 26 inherited cases when in fact he inherited no more than 361 unresolved cases.[28] Judge Macabaya also argued that the audit team's recommendation that he be made to resolve one case per day was "preposterous if not downright impossible."[29] Nevertheless, Judge Macabaya hastened to add that he was ready to dispose of the remaining inherited cases.[30]

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[23] *Rollo*, pp. 722-723.

[24] *Id*. at 725-736, sans Annexes.

[25] *Id*. at 732.

[26] *Id*. at 843-854.

[27] *Id*. at 845.

[28] *Id*. at 847.

[29] *Id*. at 851.

[30] *Id*.

On March 5, 2015, Judge Macabaya filed a Recapitulative Statement with Urgent Reiterative Motion to Lift the Suspension of Administrative and Judicial Functions and the Release of Salaries, Benefits[,] and Emoluments,[31] to enable him to "issue orders and help in the restoration and reconstitution of the records of cases scorched by fire."[32]

On March 16, 2015, this Court referred Judge Macabaya's (1) motion for reconsideration/explanation dated February 16, 2015; (2) supplemental explanation to the motion for reconsideration dated February 27, 2015, and (3) recapitulative statement with urgent reiterative motion to lift the suspension of administrative and judicial function and the release of salaries, benefits and emoluments dated March 4, 2015, to the OCA for evaluation, report, and recommendation.[33]

In a Memorandum[34] dated May 7, 2015, the OCA recommended that the matter be re-docketed as a regular administrative complaint; that Judge Macabaya be adjudged guilty of gross misconduct (due to his failure to comply with the OCA and this Court's directives) and also of gross ignorance of the law or procedure;[35] and that Judge Macabaya be dismissed "from the service, with forfeiture of his retirement benefits, except his accrued leave credits, and with prejudice to reinstatement in any branch of government, including government-owned and controlled corporations."[36]

The OCA explained that Judge Macabaya and his court staff never questioned the findings and observations of the audit team; and that Judge Macabaya even undertook to decide all the cases/incidents listed in the audit findings within one year

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[31] *Id*. at 883-891.

[32] *Id*. at 889.

[33] *Id*. at 892.

[34] *Id*. at 893-920.

[35] *Id*. at 916.

[36] *Id*.

from April 2013. The OCA noted that in all five of his letters-compliance with the April 19, 2013 Memorandum of the OCA, Judge Macabaya never took issue with such findings, but instead merely submitted copies of his Decisions and Orders on the cases submitted for decision in his sala.[37] Needless to say, the derelictions imputed against Judge Macabaya constituted insubordination, disrespect, and disdain against the authority of this Court, as these acts stemmed from his deliberate failure to comply with the directives of the OCA – which directives contained the command to "be complied with promptly and completely."[38] The OCA likewise noted the officious interference of Judge Macabaya's wife in the court's functions – an observation that was never refuted by Judge Macabaya; this, in turn, further tarnished Judge Macabaya's already compromised integrity.[39]

Lastly, the OCA affirmed the findings of the audit team that Judge Macabaya's Order dated November 22, 2011 in Criminal Case No. 2001-888,[40] and his twin Orders dated September 26, 2006 in Criminal Case Nos. 2000-260,[41] 2000-316[42] and 2000-098,[43] were clearly violative of the Constitution and the law, thus rendering Judge Macabaya guilty of ignorance of the law and procedure.

Issue

Whether Judge Macabaya is guilty of gross misconduct and of gross ignorance of the law, warranting his dismissal from the service and the forfeiture of his retirement benefits (except

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[37] *Id.* at 904.

[38] *Id.* at 912.

[39] *Id.* at 911.

[40] Entitled *People v. Jabinao.*

[41] Entitled *People v. Alba.*

[42] Entitled *People v. Alba.*

[43] Entitled *People v. Alba.*

accrued leave credits), with prejudice to reinstatement in any branch of government, including government-owned and controlled corporations.

Our Ruling

We adopt and agree with the OCA's findings but with modification as regards the recommended penalty.

Judge Macabaya claimed that the audit team made vague and sweeping accusations that were allegedly meant to mislead and misinform the Court about the status of cases pending before his sala.[44] He also insisted that the administrative charges against him were made without notice and hearing, hence violative of his right to due process. Judge Macabaya moreover assailed the Report/Memorandum dated April 17, 2013, saying that the 264-working day-period requiring him to decide or resolve 168 cases was unrealistic due to (1) the cases' voluminous records, (2) his sala's receipt of 761 new cases upon his assumption into office, (3) his appointment as acting presiding judge of the RTC Branch 9 in Malaybalay City, Bukidnon, (4) the assignment to his court of other cases from other courts caused by the inhibition of other judges, and (5) his busy schedule of hearings.[45] Lastly, Judge Macabaya maintained that as much as he was willing to decide the 12 remaining cases that he had inherited, he was unable to do so because of the conflagration that gutted the records in the Hall of Justice of Cagayan de Oro.[46]

Judge Macabaya's arguments lack basis.

We find it surprising that throughout the breadth and length of the space and time that were accorded to him as shown in the OCA's (1) Memorandum dated April 19, 2013, (2) the letter dated March 14, 2014, and (3) the letter dated May 19, 2014, Judge Macabaya never protested against the validity or

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[44] See *rollo*, p. 843.

[45] *Id*. at 849-850.

[46] *Id*. at 851.

correctness of the judicial audit's findings. Interestingly, it was only after this Court resolved on December 1, 2014 to withhold his salaries and benefits that he started to question the audit findings. However, his assertion that the audit findings were incorrect or baseless, is self-serving and lacked credence vis-à-vis the clear-cut and well-supported findings of the audit team.

Judge Macabaya's woeful lamentation that his right to due process had been violated fails to persuade. It is axiomatic that due process requires nothing else but the opportunity to be heard – by no means does it require a formal, trial-type hearing. Thus we held in *F/O Ledesma v. Court of Appeals*:[47]

> Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.

Here, Judge Macabaya was given ample opportunities to be heard. Indeed, as early as April 19, 2013, Judge Macabaya was asked to submit a written explanation to answer the directives issued in the Memorandum dated April 17, 2013[48] and to comment (in writing) on the observations raised in the judicial audit.[49] In a letter[50] dated March 14, 2014, the OCA acknowledged receipt of Judge Macabaya's and his clerk of court's compliance letter dated July 22, 2013, but noted the lack of explanation/full compliance to its directives, as mandated

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[47] 565 Phil. 731, 740 (2007). Citations omitted.

[48] See *rollo*, p. 45.

[49] *Id*.

[50] *Id*. at 292.

in the OCA's earlier letters. In the May 19, 2014 OCA letter[51] and December 1, 2014 Court Resolution,[52] Judge Macabaya was directed anew to explain the delay in (1) deciding cases, (2) resolving incidents, and (3) taking appropriate action in dormant cases. Yet, despite such repeated behests and warnings, punctuated by the caveat that "*all directives from the Court Administrator and his deputies are issued in the exercise of the Court's administrative supervision of trial courts and their personnel, hence, said directives should be respected [and should not be construed] as mere requests [and] should be complied with promptly and completely*,"[53] Judge Macabaya only submitted decisions and resolutions on a **piecemeal** basis sans explanation for his failure to comply in full. Judge Macabaya ought to be reminded that:

> A resolution of the Supreme Court should **not** be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive. This contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system. x x x[54]

The records disclose that Judge Macabaya utterly failed to decide the cases submitted for decision or resolve pending incidents within the reglementary period as well as within the time frame that he himself fixed in the initial Action Plan. As noted during the audit, these cases were already deemed submitted for decision much further beyond the period[55] allowed by the Constitution and by statute. In *Re: Judicial Audit of the RTC,*

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[51] *Id*. at 639-640.

[52] *Id*. at 721-724.

[53] *Id*. at 640.

[54] *Office of the Court Administrator v. Judge Indar,* 725 Phil. 164, 177 (2014). Citations omitted.

[55] CONSTITUTION, Article VIII, Section 15, paragraph 1.

Br. 14, Zamboanga City,[56] we cited Rule 3.05 of the Code of Judicial Conduct which underscores the need to speedily resolve cases, thus:

> The Supreme Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.
>
> The office of the judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties. Section 15 (1), Article VIII of the Constitution mandates that cases or matters filed with the lower courts must be decided or resolved within three months from the date they are submitted for decision or resolution. Moreover, Rule 3.05, Canon 3 of the Code of Judicial Conduct directs judges to 'dispose of the court's business promptly and decide cases within the required periods.' Judges must closely adhere to the Code of Judicial Conduct in order to preserve the integrity, competence, and independence of the judiciary and make the administration of justice more efficient. Time and again, we have stressed the need to strictly observe this duty so as not to negate our efforts to minimize, if not totally eradicate, the twin problems of congestion and delay that have long plagued our courts. Finally, Canons 6 and 7 of the Canons of Judicial Ethics [exhort] judges to be prompt and punctual in the disposition and resolution of cases and matters pending before their courts, to wit:
>
> 6. PROMPTNESS
> He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied.
>
> 7. PUNCTUALITY
> He should be punctual in the performance of his judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value and that if the judge is unpunctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction with the administration of justice.

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[56] 517 Phil. 507, 516-518 (2006). Citations omitted.

Parenthetically, Administrative Circular No. 1 dated 28 January 1988, requires all magistrates to observe scrupulously the periods prescribed in Article VIII, Section 15 of the Constitution and to act promptly on all motions and interlocutory matters pending before their courts.

We cannot overstress this policy on prompt disposition or resolution of cases. Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the lowering of its standards.

Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge.

Nor is there merit in Judge Macabaya's claim that at the time his motion for reconsideration was filed, there were only 11 to 12 cases left undecided or unresolved, and that the period to decide or resolve these cases were within the time extension he prayed for.[57] Judge Macabaya ought to know that requests for extension of time are not always granted as a matter of course and, even if they were, such requests for extension of time in no wise operate to absolve him from administrative liability. Here, the records showed that Judge Macabaya asked for additional time to resolve the cases submitted for decision only on June 30, 2014[58] and on November 24, 2014[59] — or 61 and 208 days respectively, past the deadline that Judge Macabaya himself set in the action plan. The audit team even reminded him to submit the request for extension of time before the mandated period to decide would expire.[60] This, he failed to do.

Even so, our independent examination disclosed the following discrepancies between the status of the cases and the allegations of Judge Macabaya:

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[57] See *rollo,* pp. 731, 851 and 884.

[58] *Id*. at 641.

[59] *Id*. at 885.

[60] *Id*. at 33.

1. In Civil Case Nos. 1971-3672 and 1971-3673, Judge Macabaya insisted that the above-mentioned inherited cases were disposed of on June 24, 2014.[61] However, the alleged decision or order disposing of the case has not been attached on record; the only relevant document related to the instant case being an Order dated March 25, 2014 ordering the parties to appear for a preliminary conference on May 2, 2014.[62]

2. There was no decision, resolution or order attached in the records in the following cases:

a. Civil Case No. 1990-258 entitled *Integrated Rural Bank v. Acenas;*[63]

b. Civil Case No. 1995-403 entitled *Minda Development Bank v. Sps. Rabaya;*[64]

c. Civil Case No. 1996-514 entitled *PCI Leasing and Finance, Inc. v. Sps. Lee;*[65]

d. Civil Case No. 1996-521 entitled *BA Savings Bank v. Sps. Yap, et al.;*[66]

e. Civil Case No. 1998-176 entitled *Minda Development Bank v. Agcopra*;[67]

f. Civil Case No. 2004-214 entitled *Veluz v. Morados*;[68]

g. Civil Case No. 2011-220 entitled *Tomarong v. P/Supt. Pimentel*;[69]

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[61] *Id*. at 846.

[62] *Id*. at 309.

[63] See *id*. at 1.

[64] See *id*. at 2.

[65] *Id*.

[66] *Id*.

[67] *Id*.

[68] See *id*. at 3-4.

[69] See *id*. at 4.

h. LRC No. 1999-085, LRC No. 2000-039, and LRC No. 2006-020 all concerning Phividec Industrial Authority as the applicant;[70]

i. Criminal Case No. 2004-100 entitled *People v. Manlunas*;[71]

j. Civil Case No. 1992-503 entitled *Republic of the Philippines v. Yanez, et al.*;[72]

k. Civil Case No. 1996-167 entitled *Dumdum v. Dumdum;*[73]

l. Civil Case No. 2002-195 entitled *Shoreline Environment Association, Inc. v. Reyes, et al.;*[74]

m. Civil Case No. 2002-290 entitled *Asset Pool, et al. v. Sps. Forster;*[75]

n. Civil Case No. 2006-123 entitled *Sps. Nera v. Tobias;*[76]

o. Civil Case No. 2011-062 entitled *Pepsi Cola Products Phils., Inc. v. Escauso*;[77]

p. Civil Case No. 2011-191 entitled *Sps. Encinareal v. Hult, et al.*;[78]

q. Spec. Proc. Case No. 2010-135 with Santiago C. Sabal as petitioner;[79]

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[70] See *id*. at 5. This is notwithstanding Judge Macabaya's Orders relating to LRC Nos. 2002-034, 2006-02, and 2006-005. See also *id*. at 20.

[71] See *id*. at 6.

[72] See *id*. at 12.

[73] *Id*.

[74] See *id*. at 13.

[75] *Id*.

[76] *Id*.

[77] See *id*. at 15.

[78] See *id*. at 16.

[79] See *id*. at 19.

r. Criminal Case No. 4804 entitled *People v. Roque, et al.*;[80]

s. Criminal Case Nos. 2005-103 to 107 and 2005-156 to 157 all entitled *People v. Autor;*[81]

t. Criminal Case Nos. 2005-462 to 463 both entitled *People v. Rosios*;[82]

u. Criminal Case No. 2010-925 entitled *People v. Velez*;[83] and,

v. Criminal Case No. 2011-323 entitled *People v. Gelam*.[84]

In some of the above-mentioned cases,[85] Judge Macabaya claimed that he submitted a decision/order/resolution concerning the same through an alleged Compliance dated November 24, 2014. However, a perusal of the records shows that this alleged Compliance was never submitted to this Court.

3. Judge Macabaya claimed that he already resolved Civil Case No. 1998-04 last December 19, 2014 but failed to attach the same at the earliest possible time. Judge Macabaya submitted a mere photocopy thereof in his Supplemental to the Reiterative Motion to Release of Salaries, Benefits and Other Emoluments Dated 27 October 2015,[86] without any explanation for the belated submission thereof notwithstanding his previous submission of a Motion for Reconsideration/ Explanation[87] dated February 16, 2015; Supplemental

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[80] See *id*. at 20.

[81] See *id*. at 22.

[82] *Id*.

[83] See *id*. at 23.

[84] *Id*.

[85] Particularly Civil Case Nos. 1990-258, 1996-514, 1996-521, 1998-176, 2011-220, 2011-191, and Spec. Proc. No. 2010-135.

[86] *Id*. at 971-985.

[87] *Id*. at 725-736 sans attachments.

Explanation to the Motion for Reconsideration[88] dated February 27, 2015; Recapitulative Statement with Urgent Reiterative Motion to Lift the Suspension of Administrative and Judicial Function[s] and the Release of Salaries, Benefits and Emoluments[89] dated March 4, 2015, Compliance/Report[90] dated September 18, 2015, and Reiterative Motion to Release of Salaries, Benefits and Emoluments[91] dated October 27, 2015.

4. Similar to Civil Case No. 1998-04, Judge Macabaya claimed to have issued a Consolidated Order[92] dated November 20, 2015 dismissing Civil Case No. 2010-103 entitled *Sandigan v. Cagayan De Oro Holy Infant School* and Spec. Proc. Case No. 2010-116 in *Re: Petition to Approve the Will of Gregoria Veloso* but only attached the same to its Letter of Transmittal of Decided Cases Subject to A.M. No. 14-11-350-RTC in the RTC of Cagayan De Oro City, Misamis Oriental, Br. 20 with Reiterative Request for Certification (Letter of Transmittal).[93] Although Judge Macabaya alleged that "he has already submitted them with the Honorable Supreme Court, Second Division as part of his pleadings and compliance with copies furnished to this Honorable Office,"[94] a thorough review of the records reveals that the said cases were not submitted to this Court prior to said Letter of Transmittal.

5. In Criminal Case No. 2002-394, Judge Macabaya issued an Order[95] dated June 28, 2013 recalling the previous order

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[88] *Id.* at 843-854.

[89] *Id.* at 883-891.

[90] *Id.* at 931-936.

[91] *Id.* at 957-963.

[92] *Id.* at 2104-2105.

[93] *Id.* at 1080-1085.

[94] *Id.* at 1084.

[95] *Id.* at 167.

declaring the case submitted for decision on the ground that the records showed "that the prosecution has not yet presented their evidence."[96] However, the audit team noted that "this case may be considered as inherited since the hearing in this cases [sic] was entirely heard by the former judge, although the motion for reconsideration of the Order dated 15 [Sept]. 2003 denying the Formal Offer of Exhibits of the accused was only resolved on 15 Nov. 2011."[97] The audit team's observation runs counter to Judge Macabaya's findings that the prosecution has not yet presented its evidence. To date, no other order has been submitted to this Court regarding the status of the instant case.

6. In Criminal Case Nos. 2011-772, 2011-909 and 2012-732 Judge Macabaya issued Orders dated June 19, 2013[98] and July 3, 2013[99] which deemed the criminal cases submitted for judgment. However, to date, Judge Macabaya has not submitted to this Court a copy of the said judgment (despite the numerous pleadings he has filed in the instant administrative case). Judge Macabaya is reminded of this Court's Resolution dated December 1, 2014 "to take appropriate action on the remaining dormant cases" such as Criminal Case Nos. 2011-772, 2011-909, and 2012-732.

Also, despite this Court's directive for Judge Macabaya to decide or resolve the remaining cases/incidents that were included in the judicial audit, Judge Macabaya failed to comply with the same. Even with Judge Macabaya's own acquiescence that the remaining cases have to be resolved/acted upon by him,[100] he merely attached orders[101] issued by Acting Presiding Judge

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[96] *Id*.

[97] *Id*. at 6.

[98] *Id*. at 237 and 237-A, respectively.

[99] *Id*. at 238.

[100] *Id*. at 961.

[101] Some merely photocopies thereof.

Gil G. Bollozos, concerning cases under the former's responsibility in clear defiance of this Court's mandate, to wit:

1. Civil Case No. 1998-325-R entitled *Heirs of Yacapin v. Buhay*;[102]
2. Civil Case No. 2010-022-R entitled *Emata, Jr. v. Emano*;[103]
3. Civil Case No. 2010-282 entitled *Maybank Philippines, Inc. v. Noval and John Doe*;[104]
4. Civil Case Nos. 1984-9853 entitled *Padilla v. Development Bank of the Philippines* and 1985-10009-R entitled *Development Bank of the Philippines v. Padilla*;[105]
5. Civil Case No. 1996-766 entitled *Nabo v. Lim*;[106]
6. Civil Case No. 2011-055-R entitled *First Standard Finance Corp v. Sps. Pacatan*;[107]
7. Civil Case No. 2011-241-R entitled *Soriano v. Onari*;[108]
8. Civil Case No. 2012-253 entitled *Heirs of Longos v. Kahayag Home Settlers Association, Inc.,*[109]
9. LRC Case No. N-2006-005 with Phividec Industrial Authority as applicant;[110]

Judge Macabaya's negligence does not end here.

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[102] See *rollo*, pp. 968 and 1095.

[103] See *id.* at 1016 and 2125.

[104] See *id*. at 969-970 and 1092-1093.

[105] See *id*. at 1034-1035.

[106] See *id*. at 1091.

[107] *Id*. at 1086.

[108] See *id*. at 1017-1020 and 1087-1090.

[109] See *id*. at 1096-1097 and 2211-2212.

[110] See *id*. at 967, 1099 and 2210.

For, aside from the delay/s in rendering a Decision or Resolution on cases submitted for decision, the judicial audit team also found errors or irregularities in several orders issued by Judge Macabaya.

In Criminal Case No. 2001-888, entitled *People v. Jabinao*, Judge Macabaya issued an Order dated November 22, 2011 directing the accused to secure another bail bond within five days from notice, "it appearing that the bond put up by the accused had already expired,"[111] in clear violation of Section 2(a) Rule 114 of the Revised Rules of Criminal Procedure, which provides:

> SECTION 2. Conditions of the Bail; Requirements. — All kinds of bail are subject to the following conditions:
>
> (a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;

This Court, in its Resolution[112] of July 20, 2004, had already clarified that "[u]nless and until the Supreme Court directs otherwise, the lifetime or duration of the effectivity of any bond issued in criminal and civil action/special proceedings, or in any proceeding or incident therein shall be from its approval by the court until the action or proceeding is finally decided, resolved or terminated."[113]

Then again, in Criminal Case Nos. 2000-260 and 2000-316, both entitled *People v. Alba,* and in Criminal Case Nos. 2002-098 and 2002-100, also entitled *People v. Alba*, Judge Macabaya issued twin Orders directing his Branch Clerk of Court "to receive evidence of the prosecution through *ex-parte* hearing."[114] Nowhere in the Rules of Criminal Procedure are Clerks of Court

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[111] *Id.* at 27.

[112] A.M. No. 04-7-02-SC Guidelines on Corporate Surety Bonds.

[113] *Id.,* Item No. VII.

[114] *Rollo,* p. 28.

allowed to receive evidence *ex-parte* in criminal proceedings – unlike in ordinary civil actions and in special proceedings where the judge may delegate such act to his Clerk of Court.[115] These orders clearly showed gross ignorance of the rules of procedure. Thus, we held in *Spouses Lago v. Judge Abul, Jr.:*[116]

> Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice. (Underscoring supplied)

The audit team also noted that Judge Macabaya's wife meddled or interfered with the court's business. Judge Macabaya, however, saw nothing wrong with that, and even claimed that her presence helped him focus more on his judicial functions. Apparently, Judge Macabaya seems to have missed the point of his being the presiding Judge of his court; he seems to be unaware that this unwholesome atmosphere can only further aggravate the court's already fractured integrity and efficiency. It is not too much to say that the court's official business is

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[115] See: Section 9, Rule 30 of the Rules of Court.

> SECTION 9. Judge to Receive Evidence; Delegation to Clerk of Court. — The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or *ex parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing.

[116] 654 Phil. 479, 491 (2011). Citations omitted.

none of Mrs. Macabaya's officious business. In *Gordon v. Judge Lilagan,*[117] we said:

> As pointed out by the Investigating Justice in his factual findings, there is enough evidence on record to show that respondent [judge] permitted [his wife] to have access to court records in order to monitor the dates when cases are submitted for decision. There is impropriety in this. Records of cases are necessarily confidential, and to preserve their integrity and confidentiality, access thereto ought to be limited only to the judge, the parties or their counsel and the appropriate court personnel in charge of the custody thereof. Since [the judge's wife] is not a court employee, much less the employee specifically in charge of the custody of said records, it was improper for respondent to allow her to have access thereto.
>
> In this regard, the Code of Judicial Conduct states in no uncertain terms that —
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> > Rule 3.08. A judge should diligently discharge administrative responsibilities, maintain professional competence in court management and facilitate the performance of the administrative functions of other judges and court personnel.
> >
> > Rule 3.09. A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business and require at all times the observance of high standards of public service and fidelity.
>
> The foregoing rules should be observed by respondent judge with the help of his staff and without the intervention of his wife who is not a court employee. It needs be stressed in this regard that respondent judge is not wanting in help from his staff to warrant the assistance of one who, while closely related by affinity to respondent judge, is actually an outsider in his sala insofar as official business and court functions are concerned.

In sum, Judge Macabaya must be held to account for acts constitutive of serious misconduct and gross ignorance of the law and/or procedure.

Although this Court has meted out the penalty of dismissal or forfeiture of retirement benefits to judges who were found

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[117] 414 Phil. 221, 229-230 (2001).

guilty of several infractions[118] such as in this case, we have nevertheless imposed lighter penalties towards members of the bench when mitigating circumstances merit the same.

Judge Macabaya has continuously rendered almost 31 years of government service – starting as Trial Attorney II of the Citizen's Legal Assistance Office on December 2, 1986, as Public Attorney II of the Public Attorney's Office from January 1, 1990 to March 31, 1997, as a prosecutor on April 1, 1997 up to his appointment to the Judiciary on March 5, 2010.[119] In the three decades he has been in public service, this Court has not adjudged him guilty of any infraction – with four of the six administrative cases filed against him dismissed.[120]

Also, this Court notes that in the four years Judge Macabaya was sitting as Presiding Judge of Branch 20, 761 new cases were raffled to his sala.[121] At the same time, he was appointed as Acting Presiding Judge of Branch 9 of the RTC of Malaybalay City, Bukidnon – some 93 kilometers away from his sala – to hear, resolve and dispose of cases in that branch.[122] This is notwithstanding the assignment of other cases from other courts where judges had inhibited and his continuous hearings in his sala.[123]

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[118] See *Tuvillo v. Judge Laron,* A.M. Nos. MTJ-10-1755 and MTJ-10-1756, October 18, 2016; *Re: Judicial Audit Conducted in the RTC, Br. 20, Cagayan de Oro City, Misamis Oriental,* 730 Phil. 23 (2014); and *Samson v. Judge Caballero,* 612 Phil. 737 (2009).

[119] Bonifacio Magto Macabaya's Service Records.

[120] A.M. No. 11-3803-RTJ dismissed on December 9, 2013; A.M. No. 11-3815-RTJ dismissed on November 11, 2012; A.M. No. 13-4082-RTJ dismissed on August 7, 2017; and A.M. No. 13-4097-RTJ dismissed on July 18, 2014. Aside from the instant case, A.M. No. RTJ-16-2475 is still pending with this Court.

[121] *Rollo*, p. 849.

[122] See *id*. at 850.

[123] *Id*.

Lastly, this Court notes the fire that engulfed the Cagayan de Oro Hall of Justice last January 30, 2015.[124] Albeit beyond the prescribed period for Judge Macabaya to act on the cases mentioned in the audit, this may have contributed to the difficulty in disposing of or resolving the remaining cases under his responsibility.

In light of the above-mentioned circumstances, we believe that a fine equivalent to two (2) months' salary, with a stern warning that a repetition of the same or similar offenses shall be dealt with severely, is more commensurate.

WHEREFORE, Judge Bonifacio M. Macabaya, Presiding Judge of the Regional Trial Court, Branch 20, Cagayan de Oro City, Misamis Oriental, is hereby found **GUILTY** of: (1) gross misconduct for his repeated failure to comply with the directives of the Office of the Court Administrator and this Court; and (2) gross ignorance of the law and procedure. Nevertheless and in view of the mitigating circumstances mentioned above, the Court hereby imposes upon him a **FINE** equivalent to two (2) months' salary, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

Judge Macabaya is also **ORDERED** to:

1. **SUBMIT** a copy of his Judgment on the following cases within 30 days from receipt of this Decision:

   a. Criminal Case No. 2002-394 entitled *People v. Baylon*;
   b. Criminal Case No. 2011-772 entitled *People v. Valledor*;
   c. Criminal Case No. 2011-909 entitled *People v. Tan*;
   d. Criminal Case No. 2012-732 entitled *People v. Mendoza*; and

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[124] *Id*. at 732. See also *Fire hits Cagayan de Oro Hall of Justice, says Sereno* http://newsinfo.inquirer.net/6692821/fire-hits-cagayan-de-oro-hall-of-justice-says-sereno (visited October 18, 2017).

e. Civil Case No. 2009-003 entitled *Heirs of Ramos v. Heirs of Abejuela, et al.*

2. **FURNISH** a copy of the Decision/Resolution/Order in the following cases:

a. Civil Case No. 1971-3672 entitled *Pabito v. Nicolas*;
b. Civil Case No. 1971-3673 entitled *Rustia v. Pabito*;
c. Civil Case No. 1990-258 entitled *Integrated Rural Bank v. Acenas*;
d. Civil Case No. 1995-403 entitled *Minda Development Bank v. Sps. Rabaya*;
e. Civil Case No. 1996-514 entitled *PCI Leasing and Finance, Inc. v. Sps. Lee*;
f. Civil Case No. 1996-521 entitled *BA Savings Bank v. Sps. Yap*;
g. Civil Case No. 1998-176 entitled *Minda Development Bank v. Agcopra*;
h. Civil Case No. 2004-214 entitled *Veluz v. Morados*;
i. Civil Case No. 2011-220 entitled *Tomarong v. P/ Supt. Pimentel*;
j. LRC No. 1999-085, LRC No. 2000-039, and LRC No. 2006-020 all concerning Phividec Industrial Authority as the applicant;
k. Criminal Case No. 2004-100 entitled *People v. Manlunas*;
l. Civil Case No. 1992-503 entitled *Republic of the Philippines v. Yanez*;
m. Civil Case No. 1996-167 entitled *Dumdum v. Dumdum;*
n. Civil Case No. 2002-195 entitled *Shoreline Environment Association, Inc. v. Reyes;*
o. Civil Case No. 2002-290 entitled *Asset Pool v. Sps. Forster;*
p. Civil Case No. 2006-123 entitled *Sps. Nera v. Tobias;*
q. Civil Case No. 2011-062 entitled *Pepsi Cola Products Phils., Inc. v. Escauso*;
r. Civil Case No. 2011-191 entitled *Sps. Encinareal v. Hult*;

s. Spec. Proc. Case No. 2010-135 with Santiago C. Sabal as petitioner;
t. Criminal case No. 4804 entitled *People v. Roque*;
u. Criminal Case Nos. 2005-103 to 107 and 2005-156 to 157 all entitled *People v. Autor;*
v. Criminal Case Nos. 2005-462 to 463 both entitled *People v. Rosios*;
w. Criminal Case No. 2010-925 entitled *People v. Velez*; and
x. Criminal Case No. 2011-323 entitled *People v. Gelam.*

3. **CREATE, MAINTAIN** and **REGULARLY UPDATE** the following books in accordance with Sections 9 and 10 of Rule 136 of the Rules of Court:

a. Judgment Book;
b. Book of Entries; and
c. Execution Book.

4. **UPDATE** his court's docket books;

5. **UPDATE** and make the necessary **CORRECTIONS** in his court's Docket Inventory Report, particularly:

a. **COMPLY** with the prescribed form of the Docket Inventory Report;

b. **INCLUDE** a column for the following details:

i. "Last Trial/Action Taken and Date thereof;"
ii. Names of the judges to whom cases are assigned;
iii. Pre-trial dates for criminal cases;

c. **REMOVE** the following columns for being unnecessary:

i. "Bonded or Detained;"
ii. "Place of Detention;" and
iii. "Date of Detention."

6. **ENSURE** the accuracy of monthly reports, in accordance with Paragraph 8 of the Guidelines and Instructions in Administrative Circular No. 61-2001 dated December 10, 2001;

7. **DISALLOW** his wife to have access to court records and **MINIMIZE** her presence in his court to prevent the impression of interference in the discharge of his judicial and administrative functions.

Failure to comply with any of the directives set herein shall constitute open defiance of this Court's orders and shall be dealt with accordingly.

Judge Macabaya is **DIRECTED** to report to this Court the actual date of his receipt of this Decision to enable this Court to determine when his suspension shall have taken effect.

The current Acting Presiding Judge of Branch 20 of the Regional Trial Court of Cagayan De Oro City is mandated to **CONTINUE TRIAL** on the following cases **WITH DISPATCH** while Judge Macabaya is serving his two-year period of suspension:

1. Criminal Case Nos. 2000-260 and 2000-316 both entitled *People v. Alba, et al.;* and
2. Criminal Case Nos. 2002-098 and 2002-100 both entitled *People v. Alba.*

The current Acting Presiding Judge of Branch 20 of the Regional Trial Court of Cagayan De Oro City is ordered to **RECALL** Judge Macabaya's previous Order dated November 22, 2011 in Criminal Case No. 2001-888 entitled *People v. Jabinao* as the bail bond put up by the accused in the said case remains valid during the pendency of the case.

Let a copy of this Decision be attached to the personal records of Judge Macabaya and furnished to Branch 20 of the Regional Trial Court of Cagayan De Oro for its proper compliance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Bersamin, J., on official leave.

Jardeleza, J., on leave.

Gesmundo, J., on leave. The *C.J.* certifies that *J.* Gesmundo left his vote of concurrence.

EN BANC

[G.R. No. 217874. December 5, 2017]

OPHELIA HERNAN, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PROPER REMEDY TO ASSAIL A FINAL ORDER OR RESOLUTION THAT DISPOSES THE PROCEEDINGS COMPLETELY.— [T]he Court notes that as pointed out by respondent Office of the Special Prosecutor, petitioner's resort to a petition for *certiorari* under Rule 65 of the Rules of Court is an improper remedy. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail. It bears stressing that the extraordinary remedy of *certiorari* can be availed of only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. If the Order or Resolution sought to be assailed is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65. Petitioner, in the instant case, seeks to assail the Sandiganbayan's Resolutions dated December 4, 2013 and February 2, 2015 wherein said court denied her motion to reopen the malversation case against her. Said resolutions are clearly final orders that dispose the proceedings completely. The instant petition for *certiorari* under Rule 65 is, therefore, improper.

2. ID.; ID.; JUDGMENTS; SERVICE OF JUDGMENTS; IN THE ABSENCE OF A PROPER AND ADEQUATE NOTICE TO THE COURT OF A CHANGE OF ADDRESS, THE SERVICE OF THE ORDER OR RESOLUTION OF A COURT UPON THE PARTIES MUST BE MADE AT THE LAST ADDRESS OF THEIR COUNSEL ON RECORD, AND THE OMISSION OR NEGLECT OF THE COUNSEL TO INFORM THE COURT OFFICIALLY OF A CHANGE IN HIS ADDRESS IS INEXCUSABLE AND WILL NOT STAY THE FINALITY OF THE DECISION.— [T]here is no merit in petitioner's claim that since her counsel was not properly notified of the August 31, 2010 Resolution as notice thereof was erroneously sent to her old office address, the entry of judgment is premature. As the Court sees it, petitioner has no one but herself to blame. Time and again, the Court has held that in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record. It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address. If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office.

3. ID.; ID.; ID.; ID.; LITIGANTS WHO ARE REPRESENTED BY COUNSEL SHOULD NOT EXPECT THAT ALL THEY NEED TO DO IS SIT BACK, RELAX AND AWAIT THE OUTCOME OF THEIR CASE, BUT SHOULD GIVE THE NECESSARY ASSISTANCE TO THEIR COUNSEL AND CHECK THE STATUS OF THEIR CASE FROM TIME TO TIME.— [I]t is undisputed that petitioner's counsel failed to inform the court of the change in her office address from Poblacion, La Trinidad, Benguet, to the Public Attorney's Office in Tayug, Pangasinan. The fact that said new address was indicated in petitioner's Motion for Reconsideration does not suffice as "proper and adequate notice" to the court. As previously stated, courts cannot be expected to take notice of every single

time the counsel of a party changes address. Besides, it must be noted that petitioner even expressly admitted having received the subject resolution "sometime in September or October 2010." Easily, she could have informed her counsel of the same. As respondent posits, it is not as if petitioner had no knowledge of the whereabouts of her counsel considering that at the time of the filing of her Motion for Reconsideration, said counsel was already with the PAO. Moreover, the Court cannot permit petitioner's reliance on the *Chavez* case because there, petitioner did not receive the resolution of the Court of Appeals through no fault or negligence on his part. Here, however, petitioner's non-receipt of the subject resolution was mainly attributable not only to her counsel's negligence but hers, as well. Thus, the Court deems it necessary to remind litigants, who are represented by counsel, that they should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance to their counsel for what is at stake is their interest in the case. It is, therefore, their responsibility to check the status of their case from time to time.

4. ID.; CRIMINAL PROCEDURE; TRIAL; REOPENING A CASE; REQUISITES.— [P]etitioner's claim that the Sandiganbayan's denial of her motion to reopen the case is capricious, despotic, and whimsical since the admission of her additional evidence will prevent a miscarriage has no legal nor factual leg to stand on. Section 24, Rule 119 and existing jurisprudence provide for the following requirements for the reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order. But as the Sandiganbayan ruled, the absence of the first requisite that the reopening must be before the finality of a judgment of conviction already cripples the motion. The records of the case clearly reveal that the August 31, 2010 Resolution of the Sandiganbayan denying petitioner's Motion for Reconsideration had already become final and executory and, in fact, was already recorded in the Entry Book of Judgments on June 26, 2013.

5. ID.; ID.; APPEALS; AN APPELLATE COURT WILL GENERALLY NOT DISTURB THE TRIAL COURT'S

ASSESSMENT OF FACTUAL MATTERS EXCEPT ONLY WHEN IT CLEARLY OVERLOOKED CERTAIN FACTS OR WHERE THE EVIDENCE FAILS TO SUBSTANTIATE THE LOWER COURT'S FINDINGS OR WHEN THE DISPUTED DECISION IS BASED ON A MISAPPREHENSION OF FACTS.— [P]etitioner's supposed predicament about her former counsel failing to present witnesses and documents should have been advanced before the trial court. It is the trial court, and neither the Sandiganbayan nor the Court, which receives evidence and rules over exhibits formally offered. Thus, it was, indeed, too late in the day to advance additional allegations for petitioner had all the opportunity to do so in the lower court. An appellate court will generally not disturb the trial court's assessment of factual matters except only when it clearly overlooked certain facts or where the evidence fails to substantiate the lower court's findings or when the disputed decision is based on a misapprehension of facts.

6. CRIMINAL LAW; REVISED PENAL CODE; MALVERSATION OF PUBLIC FUNDS; ELEMENTS; WHEN A PUBLIC OFFICER FAILS TO HAVE DULY FORTHCOMING ANY PUBLIC FUNDS WITH WHICH HE IS CHARGEABLE, UPON DEMAND BY ANY DULY AUTHORIZED OFFICER, IT SHALL BE *PRIMA FACIE* EVIDENCE THAT HE HAS PUT SUCH MISSING FUNDS TO PERSONAL USES.— [I]t bears stressing that the Court does not find that the Sandiganbayan acted in a capricious, despotic, or whimsical manner when it denied petitioner's motion to reopen especially in view of the fact that the rulings it seeks to refute are legally sound and appropriately based on the evidences presented by the parties. On this score, the elements of malversation of public funds under Article 217 of the Revised Penal Code (*RPC*) are: (1) that the offender is a public officer; (2) that he had the custody or control of funds or property by reason of the duties of his office; (3) that those funds or property were public funds or property for which he was accountable; and (4) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. This article establishes a presumption that when a public officer fails to have duly forthcoming any public funds with which he is chargeable, upon demand by any duly authorized officer, it shall be *prima facie* evidence that he has put such missing funds to personal uses.

7. ID.; ID.; ID.; ID.; SUFFICIENT PROOF THAT THE ACCOUNTABLE OFFICER HAD RECEIVED PUBLIC FUNDS, THAT SHE DID NOT HAVE THEM IN HER POSSESSION WHEN DEMAND THEREFOR WAS MADE, AND THAT SHE COULD NOT SATISFACTORILY EXPLAIN HER FAILURE TO DO SO, IS NECESSARY FOR CONVICTION. — As duly found by the trial court, and affirmed by the Sandiganbayan, petitioner's defense that she, together with her supervisor Cecilia Paraiso, went to the LBP and handed the subject ₱11,300.00 deposit to the teller Ngaosi and, thereafter, had no idea as to where the money went failed to overcome the presumption of law. For one, Paraiso was never presented to corroborate her version. For another, when questioned about the subject deposit, not only did petitioner fail to make the same readily available, she also could not satisfactorily explain its whereabouts. Indeed, in the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that she did not have them in her possession when demand therefor was made, and that she could not satisfactorily explain her failure to do so.

8. ID.; ID.; ID.; A PUBLIC OFFICER MAY BE HELD LIABLE FOR MALVERSATION EVEN IF HE DOES NOT USE PUBLIC PROPERTY OR FUNDS UNDER HIS CUSTODY FOR HIS PERSONAL BENEFIT, WHERE HE CONSENTS TO THE TAKING THEREOF BY ANOTHER PERSON, OR, THROUGH ABANDONMENT OR NEGLIGENCE, PERMITTED SUCH TAKING.— [E]ven if it is assumed that it was somebody else who misappropriated the said amount, petitioner may still be held liable for malversation. The Court quotes, with approval, the trial court's ruling, *viz.*: **Even if the claim of Hernan, *i.e.*, that she actually left the amount of ₱11,300.00 and the corresponding deposit slip with the Bank Teller Ngaosi and she came back to retrieve the deposit slip later, is to be believed and then it came out that the said ₱11,300.00 was not credited to the account of DOTC with the Land Bank and was in fact missing, still accused Hernan should be convicted of malversation because in this latter situation she permits through her inexcusable negligence another person to take the money. And this is still malversation under Article 217.** Said ruling was, in fact, duly reiterated by the Sandiganbayan in its Decision. Shifting our

gaze to the possibility that it was the bank teller Catalina Ngaosi who misappropriated the amount and should therefore be held liable, as the accused would want to portray, the Court doubts the tenability of that position. As consistently ruled by jurisprudence, a public officer may be held liable for malversation even if he does not use public property or funds under his custody for his personal benefit, but consents to the taking thereof by another person, or, through abandonment or negligence, permitted such taking. x x x.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; SECOND AND THIRD MOTIONS FOR RECONSIDERATION OF A JUDGMENT ARE PROHIBITED PLEADINGS WHERE THE GROUNDS RAISED IN THE PETITION FOR RECONSIDERATION ARE MERELY A REHASH OF THOSE RAISED IN THE PREVIOUS MOTIONS FILED BEFORE THE COURT.— [T]he Court agrees with the Sandiganbayan's finding that petitioner's motion to reopen and petition for reconsideration are practically second and third motions for reconsideration from its Decision dated November 13, 2009. Under the rules, the motions are already prohibited pleadings under Section 5, Rule 37 of the Rules of Court due to the fact that the grounds raised in the petition for reconsideration are merely a rehash of those raised in the two (2) previous motions filed before it. These grounds were already thoroughly discussed by the Sandiganbayan in its subject resolutions. Hence, as duly noted by the Sandiganbayan, in the law of pleading, courts are called upon to pierce the form and go into the substance, not to be misled by a false or wrong name given to a pleading because the title thereof is not controlling and the court should be guided by its averments. Thus, the fact that the pleadings filed by petitioner are entitled *Urgent Motion to Reopen the Case with Leave of Court* and *with Prayer to Stay Execution* and *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* does not exempt them from the application of the rules on prohibited pleadings.

10. ID.; ID.; ID.; THE DOCTRINE OF FINALITY OF JUDGMENT IS GROUNDED ON THE FUNDAMENTAL PRINCIPLE OF PUBLIC POLICY AND SOUND PRACTICE THAT, AT THE RISK OF OCCASIONAL ERROR, THE JUDGMENT OF COURTS AND THE

AWARD OF QUASI-JUDICIAL AGENCIES MUST BECOME FINAL ON SOME DEFINITE DATE FIXED BY LAW; EXCEPTIONS; NOT PRESENT.— Let it be remembered that the doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. None of the exceptions is present in this case. Indeed, every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that this Court should write *finis* to this litigation.

11. ID.; ID.; ID.; A JUDGMENT THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT EVEN IF THE MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT OR LAW AND WHETHER IT WILL BE MADE BY THE COURT THAT RENDERED IT OR BY THE HIGHEST COURT OF THE LAND, EXCEPT WHEN CIRCUMSTANCES TRANSPIRE AFTER THE FINALITY OF THE DECISION RENDERING ITS EXECUTION UNJUST AND INEQUITABLE, THE COURT MAY SIT *EN BANC* AND GIVE DUE REGARD TO SUCH EXCEPTIONAL CIRCUMSTANCE WARRANTING THE RELAXATION OF THE DOCTRINE OF IMMUTABILITY.— [T]he Court finds that it is still necessary to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, not for further reception of evidence, however, as petitioner prays for, but in order to modify the penalty imposed by said court. The general

rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability. The same is in line with Section 3(c), Rule II of the Internal Rules of the Supreme Court, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. To the Court, the recent passage of Republic Act (*R.A.*) No. 10951 entitled *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended* which accordingly reduced the penalty applicable to the crime charged herein is an example of such exceptional circumstance.

12. CRIMINAL LAW; REVISED PENAL CODE; MALVERSATION OF PUBLIC FUNDS; PENALTY IMPOSED, MODIFIED.— Pursuant to [Section 40 of Republic Act. No. 10951] therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. Because of this, not only must petitioner's sentence be modified respecting the settled rule on the retroactive effectivity of laws, the sentencing being favorable to the accused, she may even apply for probation, as long as she does not possess any ground for disqualification, in view of recent legislation on probation, or R.A. No. 10707 entitled *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," As Amended*, allowing an accused to apply for probation in the event that she is sentenced to serve a maximum term of imprisonment of not more than six (6) years when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty. Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom,

the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, which imposed the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *prision mayor*, as maximum. Instead, since the amount involved herein is ₱11,300.00, which does not exceed ₱40,000.00, the new penalty that should be imposed is *prision correccional* in its medium and maximum periods, which has a prison term of two (2) years, four (4) months, and one (1) day, to six (6) years. The Court, however, takes note of the presence of the mitigating circumstance of voluntary surrender appreciated by the Sandiganbayan in favor of petitioner. Hence, taking into consideration the absence of any aggravating circumstance and the presence of one (1) mitigating circumstance, the range of the penalty that must be imposed as the maximum term should be *prision correccional* medium to *prision correccional* maximum in its minimum period, or from two (2) years, four (4) months, and one (1) day, to three (3) years, six (6) months, and twenty (20) days, in accordance with Article 64 of the RPC. Applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon petitioners is anywhere within the period of *arresto mayor*, maximum to *prision correccional* minimum with a range of four (4) months and one (1) day to two (2) years and four (4) months. Accordingly, petitioner is sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to three (3) years, six (6) months, and twenty (20) days *prision correccional*, as maximum.

13. ID.; ID.; PENALTIES; REPUBLIC ACT NO. 10951; APPLIED TO THE CASE AT BAR; FOR AS LONG AS IT IS FAVORABLE TO THE ACCUSED, RECENT LEGISLATION SHALL FIND APPLICATION REGARDLESS OF WHETHER ITS EFFECTIVITY COMES AFTER THE TIME WHEN THE JUDGMENT OF CONVICTION IS RENDERED AND EVEN IF SERVICE OF SENTENCE HAS ALREADY BEGUN.— [J]udges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the

imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence.

14. ID.; ID.; ID.; ID.; WHEN EXCEPTIONAL CIRCUMSTANCES EXIST, SUCH AS THE PASSAGE OF AN AMENDATORY LAW IMPOSING PENALTIES MORE LENIENT AND FAVORABLE TO THE ACCUSED, THE COURT SHALL NOT HESITATE TO DIRECT THE REOPENING OF A FINAL AND IMMUTABLE JUDGMENT, THE OBJECTIVE OF WHICH IS TO CORRECT NOT SO MUCH THE FINDINGS OF GUILT BUT THE APPLICABLE PENALTIES TO BE IMPOSED; GUIDELINES IN THE APPLICATION OF REPUBLIC ACT NO. 10951.— [M]oreover, the Court, in the interest of justice and expediency, further directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose**.** Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed. Henceforth: (1) the Directors of the National Penitentiary and Correctional Institution for Women are hereby ordered to determine if there are accused serving final sentences similarly situated as the accused in this particular case and if there are, to coordinate and communicate with the Public Attorney's Office and the latter, to represent and file the necessary pleading before this Court in behalf of these convicted accused in light of this Court's

pronouncement; (2) For those cases where the accused are undergoing preventive imprisonment, either the cases against them are non-bailable or cannot put up the bail in view of the penalties imposable under the old law, their respective counsels are hereby ordered to file the necessary pleading before the proper courts, whether undergoing trial in the RTC or undergoing appeal in the appellate courts and apply for bail, for their provisional liberty; (3) For those cases where the accused are undergoing preventive imprisonment pending trial or appeal, their respective counsels are hereby ordered to file the necessary pleading if the accused have already served the minimum sentence of the crime charged against them based on the penalties imposable under the new law, R.A. No. 10951, for their immediate release in accordance with A.M. No. 12-11-2-SC or the *Guidelines For Decongesting Holding Jails By Enforcing The Rights Of Accused Persons To Bail And To Speedy Trial*; and (4) Lastly, all courts, including appellate courts, are hereby ordered to give priority to those cases covered by R.A. No. 10951 to avoid any prolonged imprisonment.

APPEARANCES OF COUNSEL

Sagampud Ramos Ueda Macwes and Partners Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Resolution[1] dated February 2, 2015 and Decision[2] dated

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[1] Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo, concurring; *rollo*, pp. 35-39.

[2] Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Edilberto G. Sandoval and Samuel R. Martires, concurring; *id*. at 40-49.

November 13, 2009 of the Sandiganbayan 2nd Division which affirmed, with modification, the Decision dated June 28, 2002 of the Regional Trial Court (*RTC*), Branch 7, Baguio City convicting petitioner of the crime of malversation of public funds in Criminal Case No. 15722-R.

The antecedent facts are as follows:

In October 1982, petitioner Ophelia Hernan joined the Department of Transportation and Communication (*DOTC*), Cordillera Administrative Region (*CAR*) in Baguio City wherein she served as an accounting clerk. In September 1984, she was promoted to the position of Supervising Fiscal Clerk by virtue of which she was designated as cashier, disbursement and collection officer.[3] As such, petitioner received cash and other collections from customers and clients for the payment of telegraphic transfers, toll fees, and special message fees. The collections she received were deposited at the bank account of the DOTC at the Land Bank of the Philippines (LBP), Baguio City Branch.[4]

On December 17, 1996, Maria Imelda Lopez, an auditor of the Commission on Audit (*COA*), conducted a cash examination of the accounts handled by petitioner as instructed by her superior, Sherelyn Narag. As a result, Lopez came across deposit slips dated September 19, 1996 and November 29, 1996 bearing the amounts of ₱11,300.00 and ₱81,348.20, respectively.[5] Upon close scrutiny, she noticed that said deposit slips did not bear a stamp of receipt by the LBP nor was it machine validated. Suspicious about what she found, she and Narag verified all the reports and other documents turned-over to them by petitioner.[6] On the basis of said findings, Narag sent a letter to the LBP to confirm the remittances made by petitioner. After adding all the deposits made and upon checking with the teller's

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

[4] *Id*. at 103.

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

[6] *Id*.

blotter, Nadelline Orallo, the resident auditor of LBP, found that no deposits were made by petitioner for the account of DOTC on September 19, 1996 for the amount of ₱11,300.00 and November 29, 1996 for the amount of ₱81,340.20.[7]

Thereafter, the LBP's officer-in-charge, Rebecca R. Sanchez, instructed the bank's teller, Catalina Ngaosi, to conduct their own independent inquiry. It was discovered that on September 19, 1996, the only deposit in favor of the DOTC was that made by its Ifugao office in the Lagawe branch of the LBP.[8] This prompted Lopez to write to petitioner informing her that the two (2) aforesaid remittances were not acknowledged by the bank. The auditors then found that petitioner duly accounted for the ₱81,348.20 remittance but not for the ₱11,300.00. Dissatisfied with petitioner's explanation as to the whereabouts of the said remittance, Narag reported the matter to the COA Regional Director who, in turn wrote to the LBP for confirmation. The LBP then denied receiving any ₱11,300.00 deposit on September 19, 1996 from petitioner for the account of the DOTC.[9] Thus, the COA demanded that she pay the said amount. Petitioner, however, refused. Consequently, the COA filed a complaint for malversation of public funds against petitioner with the Office of the Ombudsman for Luzon which, after due investigation, recommended her indictment for the loss of ₱11,300.00.[10] Accordingly, petitioner was charged before the RTC of Baguio City in an Information, the accusatory portion of which reads:

> That on or about September 16, 1996, or sometime prior or subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honourable Court, the above-named accused, a public officer, being then the Disbursing Officer of the Department of Transportation and Communications, Baguio City, and as such an accountable officer, entrusted with and responsible for the amount of ₱11,300.00 which accused received and collected for the DOTC,

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[7] *Id.* at 103.

[8] *Id.*

[9] *Id.* at 104.

[10] *Id.* at 43.

and intended for deposit under the account of DOTC with the Land Bank of the Philippines-Baguio City, by reason of her position, while in the performance of her official functions, taking advantage of her position, did then and there, wilfully, feloniously, and unlawfully misappropriate or consent, or through abandonment or negligence, permit other persons to take such amount of ₱11,300.00 to the damage and prejudice of the government.

CONTRARY TO LAW.[11]

Upon arraignment on July 31, 1998, petitioner pleaded not guilty to the offense charged. Hence, trial on the merits ensued.

To establish its case, the prosecution presented the testimonies of two (2) COA auditors, namely, Maria Lopez and Sherelyn Narag as well as three (3) LBP employees, namely, Rebecca Sanchez, Catalina Ngaosi, and Nadelline Orallo.[12] In response, the defense presented the lone testimony of petitioner, which can be summarized as follows:

On September 19, 1996, petitioner and her supervisor, Cecilia Paraiso, went to the LBP Baguio branch and personally deposited the exact amount of ₱11,300.00 with accomplished deposit slips in six (6) copies.[13] Since there were many clients who came ahead of her, she decided to go with her usual arrangement of leaving the money with the teller and telling her that she would just come back to retrieve the deposit slip. Thus, she handed the money to Teller No. 2, whom she identified as Catalina Ngaosi. Upon her return at around 3 o'clock in the afternoon, she retrieved four (4) copies of the deposit slip from Ngaosi. She noticed that the same had no acknowledgment mark on it. Being contented with the initials of the teller on the deposit slips, she returned to her office and kept them in her vault. It was only during the cash count conducted by auditor Lopez when she found out that the said amount was not remitted to the account of the LBP. When demand was made on her to

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[11] *Id*. at 9.

[12] *Id*. at 105-106.

[13] *Id*. at 7.

return the amount, she requested that she be allowed to pay only after investigation of a complaint of Estafa that she would file with the National Bureau of Investigation against some personnel of the bank, particularly Catalina Ngaosi.[14] The complaint, however, was eventually dismissed.[15]

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged in the Information. The dispositive portion of the decision states:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered convicting accused Ophelia Hernan of Malversation and hereby sentences her, after applying the Indeterminate Sentence Law, to suffer imprisonment from 7 years, 4 months, and 1 day of *prision mayor* medium period, as minimum, to 11 years, 6 months and 21 days of *prision mayor* as maximum period to *reclusion temporal* maximum period, as maximum, and to pay a fine of ₱11,300.00.
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> Accused Ophelia Hernan is further sentenced to suffer the penalty of perpetual special disqualification.
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> Likewise, accused Ophelia Hernan is hereby ordered to pay back to the government the amount of ₱11,300.00 plus legal interest thereon at the rate of 12% per annum to be computed from the date of the filing of the Information up to the time the same is actually paid.
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> Costs against the accused.
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> SO ORDERED.[16]

Erroneously, petitioner appealed to the Court of Appeals (*CA*), which affirmed her conviction but modified the penalty imposed. Upon motion, however, the CA set aside its decision on the finding that it has no appellate jurisdiction over the case. Instead, it is the Sandiganbayan which has exclusive appellate jurisdiction over petitioner occupying a position lower than Salary Grade 27.[17] Petitioner's new counsel, Atty. Leticia Gutierrez

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[14] *Id.* at 43.

[15] *Id.*

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

[17] *Id.* at 41.

Hayes-Allen, then appealed the case to the Sandiganbayan. In a Decision dated November 13, 2009, the Sandiganbayan affirmed the RTC's judgment of conviction but modified the penalty imposed, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, the appealed decision is hereby AFFIRMED, with the modifications that the indeterminate penalty to be imposed on the accused should be from 6 years and 1 day of *prision mayor* as minimum, to 11 years, 6 months, and 21 days of *prision mayor* as maximum, together with the accessory penalties under Article 42 of the Revised Penal Code, and that interest of only 6% shall be imposed on the amount of P11,300.00 to be restored by the accused.
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> SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration dated December 21, 2009 alleging that during the trial before the RTC, her counsel was unable to elicit many facts which would show her innocence. Said counsel principally failed to present certain witnesses and documents that would supposedly acquit her from the crime charged. The Sandiganbayan, however, denied the motion in a Resolution dated August 31, 2010 on the ground that evidence not formally offered before the court below cannot be considered on appeal.[19]

On June 26, 2013, the Resolution denying petitioner's Motion for Reconsideration became final and executory and was recorded in the Book of Entries of Judgments.[20] On July 26, 2013, petitioner's new counsel, Atty. Meshack Macwes, filed an *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay the Execution*.[21] In a Resolution[22] dated December 4, 2013, however, the Sandiganbayan denied the motion and

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[18] *Id*. at 48.

[19] *Id*. at 50-53.

[20] *Id*. at 67.

[21] *Id*. at 101.

[22] *Id*. at 30-34.

directed the execution of the judgment of conviction. It noted the absence of the following requisites for the reopening of a case: (1) the reopening must be before finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty (30) days from the issuance of the order.[23]

Unfazed, petitioner filed on January 9, 2014 a *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* praying for a reconsideration of the Sandiganbayan's recent Resolution, that the case be reopened for further reception of evidence, and the recall of the Entry of Judgment dated June 26, 2013.[24] In a Resolution dated February 2, 2015, the Sandiganbayan denied the petition for lack of merit. According to the said court, the motion is clearly a third motion for reconsideration, which is a prohibited pleading under the Rules of Court. Also, the grounds raised therein were merely a rehash of those raised in the two previous motions. The claims that the accused could not contact her counsel on whom she merely relied on for appropriate remedies to be filed on her behalf, and that she has additional evidence to present, were already thoroughly discussed in the August 31, 2010 and December 4, 2013 Resolutions. Moreover, the cases relied upon by petitioner are not on point.[25]

On May 14, 2015, petitioner filed the instant petition invoking the following arguments:

I.

THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONCLUDING THAT THE

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[23] *Id*. at 32.

[24] *Id*. at 33.

[25] *Id*. at 37.

MOTION TO REOPEN WAS FILED OUT OF TIME CONSIDERING THE EXTRAORDINARY AND EXCEPTIONAL CIRCUMSTANCES SURROUNDING THE CASE.

II.

THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE EVIDENCE INTENDED TO BE PRESENTED BY PETITIONER SHOULD HER MOTION FOR REOPENING BE GRANTED, WAS PASSED UPON BY THE TRIAL COURT.

III.

THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN PRONOUNCING THAT THE MOTION TO REOPEN AND THE PETITION FOR RECONSIDERATION FILED BY PETITIONER ARE CONSIDERED AS THE SECOND AND THIRD MOTIONS TO THE DENIAL OF THE DECISION.

Petitioner posits that her counsel, Atty. Hayes-Allen, never received the August 31, 2010 Resolution of the Sandiganbayan denying her Motion for Reconsideration. This is because notice thereof was erroneously sent to said counsel's previous office at Poblacion, La Trinidad, Benguet, despite the fact that it was specifically indicated in the Motion for Reconsideration that the new office is at the Public Attorney's Office of Tayug, Pangasinan, following her counsel's appointment as public attorney. Thus, since her counsel was not properly notified of the subject resolution, the entry of judgment is premature.[26] In support of her assertion, she cites Our ruling in *People v. Chavez*,[27] wherein We held that an entry of judgment without receipt of the resolution is premature.

Petitioner also claims that during trial, she could not obtain the necessary evidence for her defense due to the fact that the odds were against her. Because of this, she asks the Court to

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

[27] 411 Phil. 482, 490 (2001).

relax the strict application of the rules and consider remanding the case to the lower court for further reception of evidence.[28] In particular, petitioner seeks the reception of an affidavit of a certain John L. Ziganay, an accountant at the Department of Science and Technology (*DOST*), who previously worked at the DOTC and COA, as well as two (2) deposit slips. According to petitioner, these pieces of evidence would show that the ₱11,300.00 deposited at the Lagawe branch of the LBP was actually the deposit made by petitioner and not by a certain Lanie Cabacungan, as the prosecution suggests. This is because the ₱11,300.00 deposit made by Cabacungan consists of two (2) different amounts, which, if proper accounting procedure is followed, shall be recorded in the bank statement as two (2) separate amounts and not their total sum of ₱11,300.00.[29] Thus, the Sandiganbayan's denial of petitioner's motion to reopen the case is capricious, despotic, and whimsical since the admission of her additional evidence will prevent a miscarriage.

Finally, petitioner denies the Sandiganbayan's ruling that her motion to reopen and petition for reconsideration are considered as a second and third motion for reconsideration, and are thus, prohibited pleadings. This is because the additional evidence she seeks to introduce were not available during the trial of her case.

The petition is devoid of merit.

At the outset, the Court notes that as pointed out by respondent Office of the Special Prosecutor, petitioner's resort to a petition for *certiorari* under Rule 65 of the Rules of Court is an improper remedy. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.[30] It bears stressing that the extraordinary remedy of *certiorari* can be availed of

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[28] *Rollo*, pp. 21-22.

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

[30] *Spouses Bergonia v. Court of Appeals,* 680 Phil. 334, 339 (2012).

only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[31] If the Order or Resolution sought to be assailed is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65.[32] Petitioner, in the instant case, seeks to assail the Sandiganbayan's Resolutions dated December 4, 2013 and February 2, 2015 wherein said court denied her motion to reopen the malversation case against her. Said resolutions are clearly final orders that dispose the proceedings completely. The instant petition for *certiorari* under Rule 65 is, therefore, improper.

Even if We assume the propriety of petitioner's chosen action, the Court still cannot grant the reliefs she prays for, specifically: (1) the reversal of the Sandiganbayan's December 4, 2013 and February 2, 2015 Resolutions denying her motion to reopen and petition for reconsideration; (2) the reopening of the case for further reception of evidence; and (3) the recall of the Entry of Judgment dated June 26, 2013.[33]

First of all, there is no merit in petitioner's claim that since her counsel was not properly notified of the August 31, 2010 Resolution as notice thereof was erroneously sent to her old office address, the entry of judgment is premature. As the Court sees it, petitioner has no one but herself to blame. Time and again, the Court has held that in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record.[34] It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address.[35]

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[31] *Id*.

[32] *Id*.

[33] *Rollo*, p. 26.

[34] *Garrucho v. Court of Appeals, et al.*, 489 Phil. 150, 156 (2005).

[35] *Id*.

If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office.[36]

Here, it is undisputed that petitioner's counsel failed to inform the court of the change in her office address from Poblacion, La Trinidad, Benguet, to the Public Attorney's Office in Tayug, Pangasinan. The fact that said new address was indicated in petitioner's Motion for Reconsideration does not suffice as "proper and adequate notice" to the court. As previously stated, courts cannot be expected to take notice of every single time the counsel of a party changes address. Besides, it must be noted that petitioner even expressly admitted having received the subject resolution "sometime in September or October 2010."[37] Easily, she could have informed her counsel of the same. As respondent posits, it is not as if petitioner had no knowledge of the whereabouts of her counsel considering that at the time of the filing of her Motion for Reconsideration, said counsel was already with the PAO.[38] Moreover, the Court cannot permit petitioner's reliance on the *Chavez* case because there, petitioner did not receive the resolution of the Court of Appeals through no fault or negligence on his part.[39] Here, however, petitioner's non-receipt of the subject resolution was mainly attributable not only to her counsel's negligence but hers, as well. Thus, the Court deems it necessary to remind litigants, who are represented by counsel, that they should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance

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[36] *Karen and Kristy Fishing Industry, et al. v. The Honorable Court of Appeals, Fifth Division*, 562 Phil. 236, 243 (2007).

[37] *Rollo*, p. 18.

[38] *Id*. at 116.

[39] *Id.* at 37.

to their counsel for what is at stake is their interest in the case. It is, therefore, their responsibility to check the status of their case from time to time.[40]

To recall, petitioner, on December 21, 2009, filed her Motion for Reconsideration seeking a reversal of the Sandiganbayan's November 13, 2009 Decision which affirmed the RTC's ruling convicting her of the crime of malversation. In a Resolution dated August 31, 2010, the Sandiganbayan denied petitioner's Motion for Reconsideration. Said resolution became final in the absence of any pleading filed thereafter, and hence, was recorded in the Book of Entries of Judgments on June 26, 2013. Subsequently, on July 12, 2013, petitioner, through her new counsel, filed an *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay the Execution*, which was denied through the Sandiganbayan's Resolution dated December 4, 2013.[41] Undeterred, petitioner filed her *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for the Stay of Execution of Judgement* on January 9, 2014 which was likewise denied in the Sandiganbayan's February 2, 2015 Resolution.

It seems, therefore, that petitioner waited almost an entire three (3)-year period from the denial of her Motion for Reconsideration to act upon the malversation case against her through the filing of her urgent motion to reopen. In fact, her filing of said motion may very well be prompted only by her realization that the case has finally concluded by reason of the entry of judgment. Stated otherwise, the Court is under the impression that had she not heard of the recording of the August 31, 2010 Resolution in the Book of Entries of Judgments on June 26, 2013, petitioner would not even have inquired about the status of her case. As respondent puts it, the urgent motion to reopen appears to have been filed as a substitute for the lost remedy of an appeal via a petition for review on *certiorari*

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[40] *Garrucho v. Court of Appeals, et al.*, *supra* note 34, at 157.

[41] *Rollo*, p. 36.

before the Court.[42] On this inexcusable negligence alone, the Court finds sufficient basis to deny the instant petition.

Second of all, petitioner's claim that the Sandiganbayan's denial of her motion to reopen the case is capricious, despotic, and whimsical since the admission of her additional evidence will prevent a miscarriage has no legal nor factual leg to stand on. Section 24, Rule 119 and existing jurisprudence provide for the following requirements for the reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.[43]

But as the Sandiganbayan ruled, the absence of the first requisite that the reopening must be before the finality of a judgment of conviction already cripples the motion. The records of the case clearly reveal that the August 31, 2010 Resolution of the Sandiganbayan denying petitioner's Motion for Reconsideration had already become final and executory and, in fact, was already recorded in the Entry Book of Judgments on June 26, 2013. Moreover, petitioner's supposed predicament about her former counsel failing to present witnesses and documents should have been advanced before the trial court.[44] It is the trial court, and neither the Sandiganbayan nor the Court, which receives evidence and rules over exhibits formally offered.[45] Thus, it was, indeed, too late in the day to advance additional allegations for petitioner had all the opportunity to do so in the lower court. An appellate court will generally not disturb the trial court's assessment of factual matters except

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[42] *Id*. at 114.

[43] *Id*. at 32.

[44] *Id*.

[45] *Id*. at 33.

only when it clearly overlooked certain facts or where the evidence fails to substantiate the lower court's findings or when the disputed decision is based on a misapprehension of facts.[46]

Ultimately, it bears stressing that the Court does not find that the Sandiganbayan acted in a capricious, despotic, or whimsical manner when it denied petitioner's motion to reopen especially in view of the fact that the rulings it seeks to refute are legally sound and appropriately based on the evidences presented by the parties. On this score, the elements of malversation of public funds under Article 217 of the Revised Penal Code (*RPC*) are: (1) that the offender is a public officer; (2) that he had the custody or control of funds or property by reason of the duties of his office; (3) that those funds or property were public funds or property for which he was accountable; and (4) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. This article establishes a presumption that when a public officer fails to have duly forthcoming any public funds with which he is chargeable, upon demand by any duly authorized officer, it shall be *prima facie* evidence that he has put such missing funds to personal uses.[47]

As duly found by the trial court, and affirmed by the Sandiganbayan, petitioner's defense that she, together with her supervisor Cecilia Paraiso, went to the LBP and handed the subject ₱11,300.00 deposit to the teller Ngaosi and, thereafter, had no idea as to where the money went failed to overcome the presumption of law. For one, Paraiso was never presented to corroborate her version. For another, when questioned about the subject deposit, not only did petitioner fail to make the same readily available, she also could not satisfactorily explain its whereabouts. Indeed, in the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that she did not have them in her possession when demand therefor was made, and that

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[46] *Id.* at 31-32.

[47] *Id.* at 45.

she could not satisfactorily explain her failure to do so.[48] Thus, even if it is assumed that it was somebody else who misappropriated the said amount, petitioner may still be held liable for malversation. The Court quotes, with approval, the trial court's ruling, *viz.*:

> **Even if the claim of Hernan, *i.e.*, that she actually left the amount of ₱11,300.00 and the corresponding deposit slip with the Bank Teller Ngaosi and she came back to retrieve the deposit slip later, is to be believed and then it came out that the said ₱11,300.00 was not credited to the account of DOTC with the Land Bank and was in fact missing, still accused Hernan should be convicted of malversation because in this latter situation she permits through her inexcusable negligence another person to take the money. And this is still malversation under Article 217.**[49]

Said ruling was, in fact, duly reiterated by the Sandiganbayan in its Decision, thus:

> Shifting our gaze to the possibility that it was the bank teller Catalina Ngaosi who misappropriated the amount and should therefore be held liable, as the accused would want to portray, the Court doubts the tenability of that position. As consistently ruled by jurisprudence, a public officer may be held liable for malversation even if he does not use public property or funds under his custody for his personal benefit, but consents to the taking thereof by another person, or, through abandonment or negligence, permitted such taking. **The accused, by her negligence, simply created the opportunity for the misappropriation. Even her justification that her deposits which were not machine-validated were nonetheless acknowledged by the bank cannot fortify her defense. On the contrary, it all the more emphasizes her propensity for negligence each time that she accepted deposit slips which were not machine-validated, her only proof of receipt of her deposits.**[50]

In view of the foregoing, the Court agrees with the Sandiganbayan's finding that petitioner's motion to reopen and

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[48] *Id.* at 47.

[49] *Id.* at 120.

[50] *Id.* at 47. (Emphasis ours; citation omitted)

petition for reconsideration are practically second and third motions for reconsideration from its Decision dated November 13, 2009. Under the rules, the motions are already prohibited pleadings under Section 5, Rule 37 of the Rules of Court due to the fact that the grounds raised in the petition for reconsideration are merely a rehash of those raised in the two (2) previous motions filed before it. These grounds were already thoroughly discussed by the Sandiganbayan in its subject resolutions. Hence, as duly noted by the Sandiganbayan, in the law of pleading, courts are called upon to pierce the form and go into the substance, not to be misled by a false or wrong name given to a pleading because the title thereof is not controlling and the court should be guided by its averments.[51] Thus, the fact that the pleadings filed by petitioner are entitled *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay Execution* and *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* does not exempt them from the application of the rules on prohibited pleadings.

Let it be remembered that the doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[52] None of the exceptions is present in this case.

Indeed, every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the

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[51] *Id.* at 38.

[52] *Judge Angeles v. Hon. Gaite,* 661 Phil. 657, 674 (2011).

finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that this Court should write *finis* to this litigation.[53]

The foregoing notwithstanding, the Court finds that it is still necessary to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, not for further reception of evidence, however, as petitioner prays for, but in order to modify the penalty imposed by said court. The general rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[54] When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability. The same is in line with Section 3(c),[55] Rule II of the Internal Rules of the Supreme Court, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. To the Court, the recent passage of Republic Act (*R.A.*) No. 10951 entitled *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as*

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[53] *De Leon v. Public Estates Authority*, 640 Phil. 594, 612 (2010).

[54] *Apo Fruits Corporation and Hijo Plantation, Inc. v. The Hon. Court of Appeals and Land Bank of the Philippines*, 622 Phil. 215, 230 (2009).

[55] Section 3(c) of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC, as amended) provides:

Section 3. *Court en banc matters and cases*. – The Court *en banc* shall act on the following matters and cases:

x x x x x x x x x

(c) cases raising novel questions of law;

Amended which accordingly reduced the penalty applicable to the crime charged herein is an example of such exceptional circumstance. Section 40 of said Act provides:

> SEC. 40. Article 217 of the same Act, as amended by Republic Act. No. 1060, is hereby further amended to read as follows:
>
> ART. 217. *Malversation of public funds or property; Presumption of malversation.*– Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:
>
> **1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000.00).**
>
> x x x x x x x x x
>
> In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

Pursuant to the aforequoted provision, therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. Because of this, not only must petitioner's sentence be modified respecting the settled rule on the retroactive effectivity of laws, the sentencing being favorable to the accused,[56] she may even apply for probation,[57]

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[56] *People v. Morilla*, 726 Phil. 244, 255 (2014).

[57] Section 1 of R.A. No. 10707 provides:

SECTION 1. Section 4 of Presidential Decree No. 968, as amended, is hereby further amended to read as follows:

as long as she does not possess any ground for disqualification,[58] in view of recent legislation on probation, or R.A. No. 10707 entitled *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," As Amended,* allowing an accused to apply for probation in the event that she is sentenced to serve a maximum term of imprisonment of not more than six (6) years when a judgment of conviction imposing a non-

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SEC. 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction: **Provided, That when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final.** The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

[58] Section 2 of R.A. No. 10707 provides:

SEC. 2. Section 9 of the same Decree, as amended, is hereby further amended to read as follows:

SEC. 9. Disqualified Offenders. — The benefits of this Decree shall not be extended to those:

a. sentenced to serve a maximum term of imprisonment of more than six (6) years;

b. convicted of any crime against the national security;

c. who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (₱1,000.00);

d. who have been once on probation under the provisions of this Decree; and

e. who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.

probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty.[59]

Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom, the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, which imposed the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *prision mayor*, as maximum. Instead, since the amount involved herein is ₱11,300.00, which does not exceed ₱40,000.00, the new penalty that should be imposed is *prision correccional* in its medium and maximum periods, which has a prison term of two (2) years, four (4) months, and one (1) day, to six (6) years. The Court, however, takes note of the presence of the mitigating circumstance of voluntary surrender appreciated by the Sandiganbayan in favor of petitioner.[60] Hence, taking into consideration the absence of any aggravating circumstance and the presence of one (1) mitigating circumstance, the range of the penalty that must be imposed as the maximum term should be *prision correccional* medium to *prision correccional* maximum in its minimum period, or from two (2) years, four (4) months, and one (1) day, to three (3) years, six (6) months, and twenty (20) days, in accordance with Article 64[61] of the

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[59] *Supra* note 57.

[60] *Rollo*, p. 47.

[61] Article 64 of the Revised Penal Code provides:

Article 64. Rules for the application of penalties which contain three periods. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

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2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

RPC. Applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon petitioners is anywhere within the period of *arresto mayor*, maximum to *prision correccional* minimum with a range of four (4) months and one (1) day to two (2) years and four (4) months. Accordingly, petitioner is sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to three (3) years, six (6) months, and twenty (20) days *prision correccional*, as maximum.

On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. In the latter case, moreover, the Court, in the interest of justice and expediency, further directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.

Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the

objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed.

Henceforth: (1) the Directors of the National Penitentiary and Correctional Institution for Women are hereby ordered to determine if there are accused serving final sentences similarly situated as the accused in this particular case and if there are, to coordinate and communicate with the Public Attorney's Office and the latter, to represent and file the necessary pleading before this Court in behalf of these convicted accused in light of this Court's pronouncement; (2) For those cases where the accused are undergoing preventive imprisonment, either the cases against them are non-bailable or cannot put up the bail in view of the penalties imposable under the old law, their respective counsels are hereby ordered to file the necessary pleading before the proper courts, whether undergoing trial in the RTC or undergoing appeal in the appellate courts and apply for bail, for their provisional liberty; (3) For those cases where the accused are undergoing preventive imprisonment pending trial or appeal, their respective counsels are hereby ordered to file the necessary pleading if the accused have already served the minimum sentence of the crime charged against them based on the penalties imposable under the new law, R.A. No. 10951, for their immediate release in accordance with A.M. No. 12-11-2-SC or the *Guidelines For Decongesting Holding Jails By Enforcing The Rights Of Accused Persons To Bail And To Speedy Trial*;[62] and (4) Lastly, all courts, including appellate courts, are hereby ordered to give priority to those cases covered by R.A. No. 10951 to avoid any prolonged imprisonment.

WHEREFORE, premises considered, the instant petition is **DENIED.** The Resolution dated February 2, 2015 and Decision

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[62] Sec. 5. Release after service of minimum imposable penalty. — The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him. [Sec. 16, Rule 114 of the Rules of Court and Sec. 5 (b) of R.A. l0389].

dated November 13, 2009 of the Sandiganbayan 2nd Division are **AFFIRMED** with **MODIFICATION**. Petitioner is hereby sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor,* as minimum term, to three (3) years, six (6) months, and twenty (20) days *prision correccional,* as maximum term.

Let copies of this Decision be furnished to the Office of the Court Administrator (*OCA*) for dissemination to the First and Second Level courts, and also to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

Likewise, let the Office of the President, the Senate of the Philippines, and the House of Representatives, be furnished copies of this Decision for their information.

SO ORDERED.

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

Bersamin, J., on wellness leave.

Jardeleza and *Gesmundo, JJ.,* on leave.

Martires, J., no part, prior action in Sandiganbayan.

EN BANC

[G.R. No. 231658. December 5, 2017]

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, GARY C. ALEJANO, EMMANUEL A. BILLONES, and TEDDY BRAWNER BAGUILAT, JR., *petitioners, vs.* **HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY; HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; and GEN. EDUARDO AÑO, CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR,** *respondents.*

[G.R. No. 231771. December 5, 2017]

EUFEMIA CAMPOS CULLAMAT, VIRGILIO T. LINCUNA, ATELIANA U. HIJOS, ROLAND A. COBRADO, CARL ANTHONY D. OLALO, ROY JIM BALANGHIG, RENATO REYES, JR., CRISTINA E. PALABAY, AMARYLLIS H. ENRIQUEZ, ACT TEACHERS' REPRESENTATIVE ANTONIO L. TINIO, GABRIELA WOMEN'S PARTY REPRESENTATIVE ARLENE D. BROSAS, KABATAAN PARTY-LIST REPRESENTATIVE SARAH JANE I. ELAGO, MAE PANER, GABRIELA KRISTA DALENA, ANNA ISABELLE ESTEIN, MARK VINCENT D. LIM, VENCER MARI CRISOSTOMO, JOVITA MONTES, *petitioners*, *vs.* **EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GENERAL EDUARDO AÑO, PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL RONALD DELA ROSA,** *respondents*.

[G.R. No. 231774. December 5, 2017]

NORKAYA S. MOHAMAD, SITTIE NUR DYHANNA S. MOHAMAD, NORAISAH S. SANI, ZAHRIA P. MUTIMAPANDI, *petitioners*, vs. **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY (OFFICER-IN-CHARGE) CATALINO S. CUY, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GEN. EDUARDO M. AÑO, PHILIPPINE NATIONAL POLICE (PNP) CHIEF DIRECTOR GENERAL RONALD M. DELA ROSA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.,** *respondents*.

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; EMERGENCY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; SUFFICIENCY OF THE FACTUAL BASES THEREOF HAS BEEN RENDERED MOOT BY THE EXPIRATION OF THE SAID PROCLAMATION.— Section 18, Article VII of the Constitution provides that "the President x x x may, **for a period not exceeding sixty days,** suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. x x x Upon the initiative of the President, the **Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress,** if the invasion or rebellion shall persist and public safety requires it." x x x The act of declaring martial law and/or suspending the privilege of the writ of *habeas corpus* by the President, however, is separate from the approval of the extension of the declaration and/or suspension by Congress. The initial declaration of martial law

and/or suspension of the writ of *habeas corpus* is determined solely by the President, while the extension of the declaration and/or suspension, although initiated by the President, is approved by Congress. In this case, Proclamation No. 216 issued on May 23, 2017 expired on July 23, 2017. Consequently, the issue of whether there were sufficient factual bases for the issuance of the said Proclamation has been rendered moot by its expiration. x x x As correctly pointed out by the OSG, "the martial law and suspension of the privilege of the writ of *habeas corpus* now in effect in Mindanao no longer finds basis in Proclamation No. 216" but in Resolution of Both Houses No. 11 (RBH No. 11) adopted on July 22, 2017. RBH No. 11 is totally different and distinct from Proclamation No. 216. The former is a joint executive-legislative act while the latter is purely executive in nature. The decision of the Congress to extend the same is of no moment. The approval of the extension is a distinct and separate incident, over which we have no jurisdiction to review as the instant Petition only pertains to the President's issuance of Proclamation No. 216.

2. **ID.; ID.; ID.; ID.; ID.; THE CONSTITUTION REQUIRES SUFFICIENCY OF FACTUAL BASIS THEREOF, NOT ACCURACY.—** Petitioners, in essence, posit that the Court is required to determine the accuracy of the factual basis of the President for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*. x x x Requiring the Court to determine the accuracy of the factual basis of the President contravenes the Constitution as Section 18, Article VII only requires the Court to determine the sufficiency of the factual basis. Accuracy is not the same as sufficiency as the former requires a higher degree of standard. x x x This is consistent with our ruling that "the President only needs to convince himself that there is probable cause or evidence showing that **more likely than not** a rebellion was committed or is being committed." The standard of proof of probable cause does not require absolute truth. Since "martial law is a matter of urgency x x x the President x x x is not expected to completely validate all the information he received before declaring martial law or suspending the privilege of the writ of *habeas corpus*."

3. **ID.; ID.; ID.; ID.; ID.; ID.; IN SO RULING, THE COURT DOES NOT ABDICATE ITS POWER TO REVIEW; CASE AT BAR.—** There is absolutely no basis to petitioners' claim

that the Court abdicated its power to review. To be sure, our findings that there was sufficient factual basis for the issuance of Proclamation No. 216 and that there was probable cause, that is, that more likely than not, rebellion exists and that public safety requires the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, were reached after due consideration of the facts, events, and information enumerated in the proclamation and report to Congress. x x x The Court's acknowledgment of the President's superior data gathering apparatus, and the fact that it has given the Executive much leeway and flexibility, should never be understood as a prelude to surrendering the judicial power to review.

CARPIO, *J.*, *dissenting opinion*:

POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; EMERGENCY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; THE TERRITORIAL SCOPE OF THE PRESIDENT'S PROCLAMATION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* MUST BE CONFINED ONLY TO THE TERRITORY WHERE ACTUAL REBELLION EXISTS.— The letter and intent of the 1987 Constitution is that the territorial scope of the President's proclamation of martial law and the suspension of the privilege of the writ must be confined only to the territory where actual rebellion exists. The absence of an actual rebellion as defined by the Revised Penal Code prohibits the President, acting as Commander-in-Chief, from declaring martial law or suspending the privilege of the writ in any territory of the Philippines. x x x Proclamation No. 216 and the President's Report to Congress do not show the existence of actual rebellion outside of Marawi City. In fact, the Proclamation itself states that the Maute-Hapilon armed fighters in Marawi City intended to remove "**this part of Mindanao,**" referring to Marawi City, from Philippine sovereignty. The Proclamation itself admits that only "this part of Mindanao," referring to Marawi City, is the subject of separation from Philippine sovereignty by the rebels. The

President's Report did not mention any other city, province, or territory in Mindanao, other than Marawi City, that had a similar public uprising by a rebel group, an element of actual rebellion. Thus, the President's Report concludes that "based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups *in Marawi City*." **To extend the territorial scope of martial law to areas outside of Marawi City where there is no actual rebellion would uphold a clear violation of the letter and intent of the 1987 Constitution.**

CAGUIOA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; SECTION 18, ARTICLE VII THEREOF; EMERGENCY POWERS OF THE PRESIDENT AS COMMANDER-IN-CHIEF; PROCLAMATION NO. 216 DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO; THE PETITION FOR REVIEW OF THE SUFFICIENCY OF FACTUAL BASIS OF PROCLAMATION NO. 216 IS NOT MOOTED BY ITS EXPIRATION.— In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.),* the Court explained: x x x [C]ourts will decide cases, otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review." x x x This case falls within the second, third, and fourth exceptions. *First*, the state of martial law and suspension of the writ of *habeas corpus* is an exception to the normal workings of our system of government and involves paramount public interest in view of the attendant curtailment of civil liberties. *Second*, the issues raised by the petitions require formulation of controlling principles to guide the bench, the bar and the public, more specifically, the agents of the Executive department, the police, and the military, with respect to the nature and threshold of evidence required in a Section 18 petition, and the scope of and standards in the implementation of martial

law, among others. *Lastly*, the events (*e.g.*, skirmishes, kidnappings, explosions) that led to the issuance of Proclamation No. 216 are neither rare nor exceptional so as to foreclose the possibility of repetition.

2. ID.; ID.; ID.; ID.; ID.; THE VERACITY AND ACCURACY OF THE FACTUAL BASIS OFFERED BY THE EXECUTIVE IS INEXTRICABLY LINKED TO THE REVIEW OF ITS SUFFICIENCY.— Since the function of the Court's Section 18 review is NOT to ascribe fault to the Executive in declaring martial law or suspending the writ of *habeas corpus*, but to determine the sufficiency of the factual basis for the proclamation of martial law — an anomalous situation that directly affects the operations of government and the enjoyment of the people of their civil liberties within the scope of its implementation — with a view of either upholding or nullifying the same, a finding of sufficient factual basis should necessarily mean **sufficient truthful, accurate, or at the very least, credible, factual basis**. This is because the Court's judgment is not temporally-bound to the time the proclamation was issued — the ultimate question not being the liability of the Executive for the proclamation or suspension, but whether the abnormal state of affairs should continue. x x x The *ponencia* pushes a false dichotomy of "accuracy" versus "sufficiency" that reeks of avoidance. In a court of law, the judge deals with evidence. As defined, evidence is the means of ascertaining in a judicial proceeding the truth respecting a matter of fact. Inescapably, therefore, **truth, veracity, and accuracy are indispensable qualities of the evidence that the Court shall accept to support a finding of a certain fact** — in this case, the existence of the twin requirements for the declaration and suspension.

APPEARANCES OF COUNSEL

Lagman Lagman & Mones Law Firm for petitioners in G.R. No. 231658.

National Union of Peoples' Lawyers and *Union of Peoples' Lawyers in Mindanao* for petitioners in G.R. No. 231771.

The Solicitor General for public respondents.

R E S O L U T I O N

DEL CASTILLO, *J.*:

On July 4, 2017, the Court rendered its Decision finding sufficient factual bases for the issuance of Proclamation No. 216 and declaring it as constitutional. Petitioners timely filed separate Motions for Reconsideration. The Office of the Solicitor General (OSG) also filed its Comment.

After a careful review of the arguments raised by the parties, we find no reason to reverse our July 4, 2017 Decision.

All three Motions for Reconsideration question two aspects of the July 4, 2017 Decision, *i.e.*, the sufficiency of the factual bases of Proclamation No. 216 and the parameters used in determining the sufficiency of the factual bases. Petitioners, however, failed to present any substantial argument to convince us to reconsider our July 4, 2017 Decision.

Sufficiency of the Factual Bases of Proclamation No. 216 has been rendered moot by the expiration of the said Proclamation.

Section 18, Article VII of the Constitution provides that "the President x x x may, **for a period not exceeding sixty days**, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. x x x Upon the initiative of the President, the **Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress**, if the invasion or rebellion shall persist and public safety requires it."

From the foregoing, it is clear that the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* is effective for 60 days. As aptly described by Commissioner Monsod, "this declaration has a time fuse. It is only good for a maximum of 60 days. At the end of 60 days,

it automatically terminates."[1] Any extension thereof should be determined by Congress. The act of declaring martial law and/or suspending the privilege of the writ of *habeas corpus* by the President, however, is separate from the approval of the extension of the declaration and/or suspension by Congress. The initial declaration of martial law and/or suspension of the writ of *habeas corpus* is determined solely by the President, while the extension of the declaration and/or suspension, although initiated by the President, is approved by Congress.

In this case, Proclamation No. 216 issued on May 23, 2017 expired on July 23, 2017. Consequently, the issue of whether there were sufficient factual bases for the issuance of the said Proclamation has been rendered moot by its expiration. We have consistently ruled that a case becomes moot and academic when it "ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value."[2] As correctly pointed out by the OSG, "the martial law and suspension of the privilege of the writ of *habeas corpus* now in effect in Mindanao no longer finds basis in Proclamation No. 216"[3] but in Resolution of Both Houses No. 11 (RBH No. 11) adopted on July 22, 2017. RBH No. 11 is totally different and distinct from Proclamation No. 216. The former is a joint executive-legislative act while the latter is purely executive in nature.

The decision of the Congress to extend the same is of no moment. The approval of the extension is a distinct and separate incident, over which we have no jurisdiction to review as the instant Petition only pertains to the President's issuance of Proclamation No. 216.

Thus, considering the expiration of Proclamation No. 216 and considering further the approval of the extension of the

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[1] II RECORD, CONSTITUTIONAL COMMISSION 476 (July 30, 1986).

[2] *Agriex Co., Ltd. v. Commissioner Villanueva,* 742 Phil. 574, 583 (2014).

[3] Comment of the Office of the Solicitor General, pp. 7-8; *rollo* (G.R. No. 231658), Vol. 2, pp. 1419-1420.

declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* by Congress, we find no reason to disturb our finding that there were sufficient factual bases for the President's issuance of Proclamation No. 216.

However, although the Motions for Reconsideration are dismissible on the ground of mootness, we deem it prudent to emphasize our discussion on the parameters for determining the sufficiency of factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*.

The Constitution requires sufficiency of factual basis, not accuracy.

Petitioners, in essence, posit that the Court is required to determine the accuracy of the factual basis of the President for the declaration of martial law and/or the suspension of the privilege of the writ of *habeas corpus*. To recall, we held that "the parameters for determining the sufficiency of factual basis are as follows: 1) actual rebellion or invasion; 2) public safety requires it; the first two requirements must concur; and 3) there is probable cause for the President to believe that there is actual rebellion or invasion."[4] Moreover, we stated in the assailed Decision that "the phrase 'sufficiency of factual basis' in Section 18, Article VII of the Constitution should be understood as the only test for judicial review of the President's power to declare martial law and suspend the privilege of the writ of *habeas corpus*."[5] Requiring the Court to determine the accuracy of the factual basis of the President contravenes the Constitution as Section 18, Article VII only requires the Court to determine the sufficiency of the factual basis. Accuracy is not the same as sufficiency as the former requires a higher degree of standard. As we have explained in our July 4, 2017 Decision:

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[4] Decision, p. 53; *id*. at 857.

[5] *Id*. at 48; *id*. at 852.

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to 'immediately put an end to the root cause of the emergency'. Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

Besides, the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment, as appears to be the case here.

At this point, it is wise to quote the pertinent portions of the Dissenting Opinion of Justice Presbitero J. Velasco, Jr. in *Fortun*:

> President Arroyo cannot be blamed for relying upon the information given to her by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the 'Maguindanao massacre,' which may be an indication that there is a threat to the public safety warranting a declaration of martial law or suspension of the writ.
>
> Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision in establishing the fact of rebellion. The President is called to act as public safety requires.

Corollary, as the President is expected to decide quickly on whether there is a need to proclaim martial law even only on the basis of intelligence reports, it is irrelevant, for purposes of the Court's review, if subsequent events prove that the situation had not been accurately reported to him. After all, the Court's review is confined to the sufficiency, not accuracy, of the information at hand during the declaration or suspension; subsequent events do not have any bearing insofar as the Court's review is concerned. x x x

Hence, the maxim *falsus in uno, falsus in omnibus* finds no application in this case. Falsities of and/or inaccuracies **in some of the facts** stated in the proclamation and written report are **not enough reasons** for the Court to invalidate the declaration and/or suspension **as long as there are other facts in the proclamation and the written Report that support the conclusion that there is an actual invasion or rebellion and that public safety requires the declaration and/or suspension.**

In sum, the Court's power to review is limited to the determination of whether the President in declaring martial law and suspending the privilege of the writ of *habeas corpus* had sufficient factual basis. Thus, our review would be limited to an examination on whether the President acted within the bounds set by the Constitution, *i.e.,* whether the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ of *habeas corpus.*[6] (Emphasis supplied)

This is consistent with our ruling that "the President only needs to convince himself that there is probable cause or evidence showing that **more likely than not** a rebellion was committed or is being committed."[7] The standard of proof of probable cause does not require absolute truth. Since "martial law is a matter of urgency x x x the President x x x is not expected to completely validate all the information he received before declaring martial law or suspending the privilege of the writ of *habeas corpus.*"[8]

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[6] *Id*. at 49-51; *id*. at 853-855.

[7] *Id*. at 53; *id*. at 857.

[8] *Id*. at 54; *id*. at 858.

Notably, out of the several facts advanced by the President as basis for Proclamation No. 216, only five of them were being questioned by the petitioners. However, they were not even successful in their refutation since their "counter-evidence were derived solely from unverified news articles on the internet, **with neither the authors nor the sources shown to have affirmed the contents thereof. It was not even shown that efforts were made to secure such affirmation albeit the circumstances proved futile**."[9] Even granting that the petitioners were successful in their attempt to refute the aforesaid five incidents, there are other facts sufficient to serve as factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus.*

There is absolutely no basis to petitioners' claim that the Court abdicated its power to review. To be sure, our findings that there was sufficient factual basis for the issuance of Proclamation No. 216 and that there was probable cause, that is, that more likely than not, rebellion exists and that public safety requires the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, were reached after due consideration of the facts, events, and information enumerated in the proclamation and report to Congress. The Court did not content itself with the examination only of the pleadings/documents submitted by the parties. In addition, it conducted a closed-door session where it tried to ferret additional information, confirmation and clarification from the resource persons, particularly Secretary of National Defense Delfin Lorenzana and Armed Forces of the Philippines Chief of Staff Eduardo Año. At this juncture, it must be stated that the Court is not even obliged to summon witnesses as long as it satisfies itself with the sufficiency of the factual basis; it is purely discretionary on its part whether to call additional witnesses. In any event, reliance on so-called intelligence reports, even without presentation of its author, is proper and allowed by law.

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[9] *Id*. at 63; *id*. at 867.

The Court's acknowledgment of the President's superior data gathering apparatus, and the fact that it has given the Executive much leeway and flexibility, should never be understood as a prelude to surrendering the judicial power to review. The Court never intended to concede its power to verify the sufficiency of factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus.* The leeway and flexibility accorded to the Executive must be construed in the context of the present set up wherein the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* are grounded on actual invasion or rebellion, not on imminent threat or danger thereof; as such, time is of the essence for the President to act quickly to protect the country. It is also a recognition of the unassailable fact that as Commander-in-Chief, the President has access to confidential information. In fact, Fr. Joaquin Bernas even opined that the Court might have to rely on the fact-finding capabilities of the Executive; in turn, the Executive should share its findings with the Court if it wants to convince the latter of the propriety of its action.[10] Moreover, it is based on the understanding that martial law is a flexible concept; that "the precise extent or range of the rebellion [cannot] be measured by exact metes and bounds;"[11] that public safety requirement cannot be quantified or measured by metes and bounds; that the Constitution does not provide that the territorial scope or coverage of martial law should be confined only to those areas where the armed public uprising actually transpired; that it will be impractical to expand the territorial application of martial law each time the coverage of actual rebellion expands and in direct proportion therewith; and, that there is always a possibility that the rebellion and other accompanying hostilities will spill over.

As regards the other arguments raised by petitioners, the same are a mere rehash which have already been considered and found to have no merit.

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[10] *Id*. at 68; *id*. at 872.

[11] *Id*. at 72; *id*. at 876.

WHEREFORE, petitioners' Motions for Reconsideration are hereby **DENIED WITH FINALITY** for mootness and lack of merit.

No further pleadings shall be entertained.

Let entry of judgment be made immediately.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Martires, Tijam, and *Reyes, Jr., JJ.,* concur.

Bersamin and *Gesmundo, JJ.,* certified that they left their votes of concurrence.

Perlas-Bernabe, J., concurs in the result to deny the MR, on the merits, maintains her separate opinion.

Sereno, C.J., and *Leonen, J.,* reiterate their dissents in the main opinion.

Carpio and *Caguioa, JJ.,* see separate dissents.

Jardeleza, J., on leave.

DISSENTING OPINION

CARPIO, *J.*:

The Motion for Reconsideration seeks to review the 4 July 2017 Decision of this Court declaring valid Presidential Proclamation No. 216 dated 23 May 2017 which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* (writ) in the whole Mindanao group of islands. Exercising this Court's power to review the sufficiency of the factual basis of the proclamation of martial law and suspension of the privilege of the writ under the third paragraph of Section 18, Article VII of the 1987 Constitution, this Court sustained the validity of the territorial application of martial law in Marawi City and the whole Mindanao group of islands.

In the 4 July 2017 Decision, the *ponente* held that there is "no constitutional edict that martial law should be confined only in the particular place where the armed public uprising actually transpired."[1] The *ponente* gave two reasons for this: (1) as a crime, rebellion has a unique character of absorbing other crimes punishable under the Revised Penal Code and other special laws which may be committed outside the particular place where the actual rebellion transpired; and (2) the prerogative to declare martial law lies with the President, meaning he has a wide leeway and flexibility in determining the territorial scope of martial law.

I disagree with the *ponente* that the 1987 Constitution does not provide the exact territorial scope or coverage of martial law and that the proclamation of martial law throughout the whole of Mindanao including areas outside of Marawi City is valid. The *ponente* states:

> [M]artial law is a flexible concept; that the "precise extent or range of the rebellion [cannot] be measured by exact metes and bounds;" that public safety requirement cannot be quantified or measured by metes and bounds; that the Constitution does not provide that the territorial scope or coverage of martial law should be confined only to those areas where the armed public uprising actually transpired; that it will be impractical to expand the territorial application of martial law each time the coverage of actual rebellion expands and in direct proportion therewith; and, that there is always a possibility that the rebellion and other accompanying hostilities will spill over.[2]

The *ponente* is wrong in holding that the 1987 Constitution **does not** provide for the exact territorial scope of martial law and that the President has the latitude to determine the territorial scope of martial law and the suspension of the privilege of the writ. Section 18, Article VII of the 1987 Constitution provides:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary,

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[1] Decision, p. 73.

[2] Resolution, p. 7.

he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* **or place the Philippines or any part thereof under martial law.** (Emphasis supplied)

Before the President can declare martial law or suspend the privilege of the writ, the 1987 Constitution requires that the President establish the following: **(1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion**. Needless to say, the presence of an **actual rebellion** is necessary before the President is authorized by the Constitution to declare martial law in any part of the country.

According to the Revised Penal Code, actual rebellion exists when the following elements concur: (1) there is (a) a public uprising and (b) taking up of arms against the Government; and (2) the purpose of the uprising is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[3]

The letter and intent of the 1987 Constitution is that the territorial scope of the President's proclamation of martial law and the suspension of the privilege of the writ must be confined only to the territory where actual rebellion exists. The absence of an actual rebellion as defined by the Revised Penal Code prohibits the President, acting as Commander-in-Chief, from declaring martial law or suspending the privilege of the writ in any territory of the Philippines. **In short, actual rebellion must exist in a particular territory in the Philippines before the President is authorized by the Constitution to declare martial law or suspend the privilege of the writ in a particular territory.**

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[3] *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

Proclamation No. 216 and the President's Report to Congress do not show the existence of actual rebellion outside of Marawi City. In fact, the Proclamation itself states that the Maute-Hapilon armed fighters in Marawi City intended to remove "**this part of Mindanao**," referring to Marawi City, from Philippine sovereignty. The Proclamation itself admits that only "this part of Mindanao," referring to Marawi City, is the subject of separation from Philippine sovereignty by the rebels. The President's Report did not mention any other city, province, or territory in Mindanao, other than Marawi City, that had a similar public uprising by a rebel group, an element of actual rebellion. Thus, the President's Report concludes that "based on various verified intelligence reports from the AFP and the PNP, there exists a strategic mass action of lawless armed groups *in Marawi City*."[4] **To extend the territorial scope of martial law to areas outside of Marawi City where there is no actual rebellion would uphold a clear violation of the letter and intent of the 1987 Constitution.**

By way of background, the concept of martial law was first introduced into the organic law of the Philippines through the Philippine Autonomy Act of 1916 or the Jones Law.[5] Under the law, the Governor-General of the Philippine Islands may place the Islands or any part thereof under martial law in case of rebellion or imminent danger thereof and public safety requires it:

Section 21.

x x x x x x x x x

[The Governor-General of the Philippine Islands] shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the *posse comitatus*, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion,

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[4] Decision, p. 7.

[5] See Justice Leonen's Concurring and Dissenting Opinion in *Padilla v. Congress of the Philippines*, G.R. Nos. 231671 and 231694, 25 July 2017.

insurrection, or rebellion; and he **may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it**, suspend the privileges of the writ of *habeas corpus*, or **place the Islands, or any part thereof, under martial law**: Provided, That whenever the Governor-General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General. (Emphasis supplied)

With the passage of the Tydings-McDuffie Act or the Philippine Independence Act, the 1935 Constitution was subsequently enacted. Section 10(2), Article VII of the 1935 Constitution, as amended, provided for the power of the President to place the country or any part thereof under martial law in case of rebellion or imminent danger thereof and public safety requires it:

ARTICLE VII
Executive Department

Section 10. x x x x

(2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. **In case of invasion, insurrection, or rebellion or <u>imminent danger</u> thereof, when the public safety requires it, he may** suspend the privilege of the writ of habeas corpus, or **place the Philippines <u>or any part thereof</u> under Martial Law**. (Boldfacing and underscoring supplied)

The text of paragraph 2, Section 10, Article VII of the 1935 Constitution was reproduced in Section 9, Article VII of the 1973 Constitution:

ARTICLE VII
The President and Vice-President

Section 9. The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. **In case of** invasion, insurrection, or **rebellion, or imminent danger thereof, when the public safety**

requires it, he may suspend the privilege of the writ of habeas corpus, or **place the Philippines or any part thereof under martial law**. (Emphasis supplied)

As I stated in my Dissenting Opinion to the 4 July 2017 Decision, the 1987 Constitution gives the President the discretion and prerogative to decide how to deal with an actual rebellion. The President may either call out the armed forces to suppress the rebellion or he may declare martial law, with or without the suspension of the privilege of the writ.[6] However, he does not have a wide leeway in determining the territorial scope of martial law. Section 18, Article VII of the 1987 Constitution is clear that martial law must be founded on two factual bases: (1) the existence of actual rebellion or invasion; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress rebellion or invasion. These two factual bases cannot be stretched to mean that martial law can be proclaimed or the privilege of the writ may be suspended in those areas outside of Marawi City where "there is [a] possibility that the rebellion and other accompanying hostilities will spill over"[7] (as held by the *ponente*). The President cannot proclaim martial law or suspend the privilege of the writ in areas outside of Marawi City simply because of the possibility that the rebels might escape to areas outside of Marawi City.

Indeed, the Jones Law,[8] the 1935 Constitution, and the 1973 Constitution seemed to have conferred to the President the absolute prerogative to determine the territorial scope of martial law because of the phrase "the Philippines or any part thereof." However, this seeming absolute discretion must also be interpreted in relation to the legal reality then that the "imminent danger" of rebellion was a valid ground to declare martial law. In other words, the three organic laws expressly empowered

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[6] Justice Antonio T. Carpio's Dissenting Opinion, p. 14.

[7] Resolution, p. 7.

[8] Under the Jones Law, it is the Governor-General who may place the Philippines or any part thereof under martial law. The President of the United States shall have the power to modify or vacate the action of the Governor-General.

the President to place the entire country under martial law, even if the rebellion was limited to a particular locality, because of the "imminent danger" that it would spread or spill over outside the place of actual rebellion.

This no longer holds true under the 1987 Constitution. With the intentional removal of "imminent danger" as a ground to declare martial law, the President cannot proclaim martial law or suspend the privilege of the writ because of a possibility of a "spill-over of hostilities" outside the place of actual rebellion. As I stated in my Dissenting Opinion:

> Moreover, imminent danger or threat of rebellion or invasion is not sufficient. The 1987 Constitution requires the existence of **actual rebellion or actual invasion**. "Imminent danger" as a ground to declare martial law or suspend the privilege of the writ, which was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution. By the intentional deletion of the words "imminent danger" in the 1987 Constitution, the President can no longer use imminent danger of rebellion or invasion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an **actual rebellion or actual invasion**. This is the clear, indisputable letter and intent of the 1987 Constitution.[9]
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> x x x. The fear that the rebellion in Marawi City will spread to other areas in Mindanao is a **mere danger or threat** and may not even amount to an imminent danger or threat. In any event, to allow martial law outside Marawi City on the basis of an imminent danger or threat would unlawfully reinstate the ground of "imminent danger" of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution.[10] (Emphasis supplied)

To validate the President's action of declaring martial law outside of Marawi City on the basis of a "spill-over of hostilities" would unlawfully reinstate "imminent danger," a ground not present in the 1987 Constitution, as a ground to declare martial

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[9] Justice Antonio T. Carpio's Dissenting Opinion, p. 19.

[10] *Id*. at 23.

law or suspend the privilege of the writ. **To reiterate, the President must be confined strictly to the existence of the two elements under Section 18, Article VII of the 1987 Constitution of actual rebellion or invasion and the satisfaction of the public safety requirement for the declaration of martial law and the suspension of the privilege of the writ in any part of the Philippines. The two elements under the Constitution are only present in Marawi City and are absent in geographic areas of Mindanao outside of Marawi City.**

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Motion for Reconsideration in G.R. Nos. 231658, 231771, and 231774, and **DECLARE** Proclamation No. 216 **UNCONSTITUTIONAL as to geographic areas of Mindanao outside of Marawi City,** for failure to comply with Section 18, Article VII of the 1987 Constitution. Proclamation No. 216 is valid, effective, and **CONSTITUTIONAL** only within Marawi City.

DISSENTING OPINION

CAGUIOA, *J.*:

I maintain my dissent.

I maintain that no sufficient factual basis was shown for the declaration of martial law and suspension of the writ of *habeas corpus* over the entire Mindanao. As well, I maintain that the Court's review under Section 18 to determine the sufficiency of factual basis necessarily requires an examination of the veracity and accuracy of the factual basis offered by the Executive.

To reiterate, Section 18, being a neutral and straightforward fact-checking mechanism, serves the functions of *(1)* preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, *(2)* providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, and *(3)* at the very least, assuring the people that a separate department

independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ.[1]

This is what is owed to the sovereign people in this case

The petition for the review of the sufficiency of factual basis of Proclamation No. 216 is not mooted by its expiration.

In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.)*,[2] the Court explained:

> An action is considered 'moot' when it no longer presents a justiciable controversy because the issues involved have become academic or dead, or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.
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> Nonetheless, courts will decide cases, otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review." x x x[3]

Guided by these exceptions, the Court had ruled on the case and ultimately enjoined the field testing of *Bt talong* despite its termination. Similarly, the Court ruled on the constitutionality

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[1] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, p. 5.

[2] 774 Phil. 508 (2015) [*En Banc*, Per *J.* Villarama, Jr.].

[3] *Id*. at 577-578.

of the Memorandum of Agreement on the Ancestral Domain Aspect (MOA-AD) of the GRP-MILF Tripoli Agreement on Peace of 2001 despite the government's claim of satisfaction of the reliefs prayed for in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*,[4] certain provisions in the national budget despite the end of the fiscal year for which the law was passed in *Belgica v. Ochoa*,[5] and a declaration of a state of emergency and the corresponding implementing General Order despite their having been lifted in *David v. Macapagal-Arroyo*,[6] among the catena of cases where the issue of mootness was raised.

This case falls within the second, third, and fourth exceptions. *First*, the state of martial law and suspension of the writ of *habeas corpus* is an exception to the normal workings of our system of government and involves paramount public interest in view of the attendant curtailment of civil liberties. *Second*, the issues raised by the petitions require formulation of controlling principles to guide the bench, the bar and the public, more specifically, the agents of the Executive department, the police, and the military, with respect to the nature and threshold of evidence required in a Section 18 petition, and the scope of and standards in the implementation of martial law, among others. *Lastly*, the events (*e.g.,* skirmishes, kidnappings, explosions) that led to the issuance of Proclamation No. 216 are neither rare nor exceptional so as to foreclose the possibility of repetition.

The first exception is irrelevant in a Section 18 review because its function is not to determine a grave violation of the Constitution. In this regard, I had summarized in my Dissent to the July 4, 2017 Decision the essence of the Court's duty to review under Section 18 is, thus:

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[4] 589 Phil. 387 (2008) [*En Banc*, Per *J.* Carpio Morales].

[5] 721 Phil. 416 (2013) [*En Banc*, Per *J.* Perlas-Bernabe].

[6] 522 Phil. 705 (2006) [*En Banc*, Per *J.* Sandoval-Gutierrez].

x x x to embrace and actively participate in the neutral, straightforward, apolitical fact-checking mechanism that is mandated by Section 18, Article VII of the Constitution, and accordingly determine the sufficiency of the factual basis of the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. The Court, under Section 18, steps in, receives the submissions relating to the factual basis of the declaration of martial law or suspension of the privilege of the writ, and then renders a decision on the question of whether there is sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ. Nothing more.

To be sure, the Court will even ascribe good faith to the Executive in its decision to declare martial law or suspend the privilege of the writ of *habeas corpus*. But that does not diminish the Court's duty to say, if it so finds, that there is insufficient factual basis for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. That is the essence of the Court's duty under Section 18.

In discharging this duty, the Court does not assign blame, ascribe grave abuse or determine that there was a culpable violation of the Constitution. It is in the courageous and faithful discharge of this duty that the Court fulfills the most important task of achieving a proper balance between freedom and order in our society. It is in this way that the Court honors the sacrifice of lives of the country's brave soldiers — that they gave their last breath not just to suppress lawless violence, but in defense of freedom and the Constitution that they too swore to uphold.[7] (Emphasis supplied)

And:

Since Section 18 is a neutral straightforward fact-checking mechanism, any nullification necessarily does not ascribe any grave abuse or attribute any culpable violation of the Constitution to the Executive. Meaning, the fact that Section 18 checks for sufficiency and not mere arbitrariness does not, as it was not intended to, denigrate the power of the Executive to act swiftly and decisively to ensure public safety in the face of emergency. Thus, **the Executive will not be exposed to any kind of liability should the Court, in fulfilling its mandate under Section 18, make a finding that there were no**

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[7] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 1, at 24.

sufficient facts for the declaration of martial law or the suspension of the privilege of the writ.[8] (Emphasis supplied)

The veracity and accuracy of the factual basis offered by the Executive is inextricably linked to the review of its sufficiency.

This appears to be the where the case turns. The *ponencia*, in drawing distinctions between a review of sufficiency and accuracy, adverts to Justice Velasco's Dissenting Opinion in *Fortun v. Macapagal-Arroyo*[9]:

> **President Arroyo cannot be blamed for relying upon the information given to her** by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the "Maguindanao massacre," which may be an indication that there is a threat to public safety warranting a declaration of martial law or suspension of the writ.
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> Certainly, **the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision** in establishing the fact of rebellion. The President is called to act as public safety requires.[10] (Emphasis supplied)

This justification misses the mark. Since the function of the Court's Section 18 review is NOT to ascribe fault to the Executive in declaring martial law or suspending the writ of *habeas corpus*, but to determine the sufficiency of the factual basis for the proclamation of martial law — an anomalous situation that directly affects the operations of government and the enjoyment of the people of their civil liberties within the scope of its implementation — with a view of either upholding or nullifying

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[8] *Id*. at 11.

[9] 684 Phil. 526, 620-631 (2012) [*En Banc*, Per *J*. Abad].

[10] *Id*. at 629.

the same, a finding of sufficient factual basis should necessarily mean **sufficient truthful, accurate, or at the very least, credible, factual basis.** This is because the Court's judgment is not temporally-bound to the time the proclamation was issued — the ultimate question not being the liability of the Executive for the proclamation or suspension, but whether the abnormal state of affairs should continue. The transitory nature of the actions of the legislative and judicial branches was discussed by the framers, thus:

> MR. BENGZON: And if the Supreme Court promulgates its decision ahead of Congress, Congress is foreclosed because the Supreme Court has 30 days within which to look into the factual basis. If the Supreme Court comes out with the decision one way or the other without Congress having acted on the matter, is Congress foreclosed?
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> FR. BERNAS: **The decision of the Supreme Court will be based on its assessment of the factual situation. Necessarily, therefore, the judgment of the Supreme Court on that is a transitory judgment because the factual situation can change.** So, while the decision of the Supreme Court may be valid at that certain point of time, the situation may change so that Congress should be authorized to do something about it.
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> MR. BENGZON: Does the Gentleman mean the decision of the Supreme Court then would just be something transitory?
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> FR. BERNAS: Precisely.
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> MR. BENGZON: It does not mean that if the Supreme Court revokes or decides against the declaration of martial law, the Congress can no longer say, "no, we want martial law to continue" because the circumstances can change.
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> FR. BERNAS: The Congress can still come in because the factual situation can change.
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> MR. BENGZON: Thank you, Madam President.[11] (Emphasis supplied)

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[11] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 494 (1986).

In the same manner that the Congress has the latitude to extend martial law in the event that factual circumstances change despite a theoretical antecedent contrary judgment on the part of the Court, the latter, in parity of reasoning, can and should declare the proclamation as having been issued without sufficient basis if the facts relied upon by the Executive in the proclamation have been shown to be false or inaccurate during the pendency of the Court's review. As a consequence, the proclamation or suspension is nullified, and the normal workings of government shall be restored. This is the only reasonable interpretation.

Therefore, I harken back to my previous discussion on this point:

> As well, in the same manner that the Court is not limited to the four corners of Proclamation No. 216 or the President's report to Congress, it is similarly not temporally bound to the time of proclamation to determine the sufficiency of the factual basis for both the existence of rebellion **and** the requirements of public safety. In other words, if enough of the factual basis relied upon for the existence of rebellion or requirements of public safety are shown to have been inaccurate or no longer obtaining at the time of the review to the extent that the factual basis is no longer sufficient for the declaration of martial law or suspension of the privilege of the writ, then there is nothing that prevents the Court from nullifying the proclamation.
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> In the same manner, if the circumstances had changed enough to furnish sufficient factual basis at the time of the review, then the proclamation could be upheld though there might have been insufficient factual basis at the outset. A contrary interpretation will defeat and render illusory the purpose of review.
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> To illustrate, say a citizen files a Section 18 petition on day 1 of the proclamation, and during the review it was shown that while sufficient factual basis existed at the outset (for both rebellion and public necessity) such no longer existed at the time the Court promulgates its decision at say, day 30 — then it makes no sense to uphold the proclamation and allow the declaration of martial law or suspension of the privilege of the writ to continue for another thirty days, assuming it is not lifted earlier.

Conversely, if it was shown that while there was insufficient factual basis at the outset, circumstances had changed during the period of review resulting in a finding that there is now sufficient factual basis for the declaration of martial law or suspension of the privilege of the writ, then the Court is called upon to uphold the proclamation.[12]

The *ponencia* pushes a false dichotomy of "accuracy" versus "sufficiency" that reeks of avoidance. In a court of law, the judge deals with evidence. As defined, evidence is the means of ascertaining in a judicial proceeding the truth respecting a matter of fact.[13] Inescapably, therefore, **truth, veracity, and accuracy are indispensable qualities of the evidence that the Court shall accept to support a finding of a certain fact** — in this case, the existence of the twin requirements for the declaration and suspension.

Otherwise, if any fact offered by a party is acceptable despite being false or inaccurate, the laying down of the nature and quantum of evidence required in a Section 18 review becomes illusory. Furthermore, a finding of sufficiency of factual basis from the Court that does not carry with it what would otherwise be the silent premise in every other judicial proceeding that the **evidence relied upon is true, accurate, or at the very least "credible"**[14] falls short of its duty under Section 18 —

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[12] *J.* Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 1, at 12.

[13] Rule 128, Section 1. *Evidence defined.* — Evidence is the means, sanctioned by these Rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact.

[14] MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus beli* for the suspension of the privilege of the writ of *habeas corpus*. **But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion or invasion because this is usually the evidence presented.**

MR. PADILLA. **Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.**

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence or documents. Does the Commissioner still accept that as evidence?

which is, again, to determine not whether the Executive committed error in issuing the declaration or suspension but whether there is sufficient factual basis to warrant the continuation of the abnormal state of affairs that such declaration or suspension brings about. I reiterate my discussion on this point:

> The use of the word "sufficiency," signals that the Court's role in the neutral straightforward fact-checking mechanism of Section 18 is precisely to check *post facto*, and with the full benefit of hindsight, the validity of the declaration of martial law or suspension of the privilege of the writ, based upon the presentation by the Executive of the sufficient factual basis therefor (*i.e.*, evidence tending to show the requirements of the declaration of martial law or suspension of the privilege of the writ: actual rebellion or invasion, and requirements of public safety). This means that the Court is also called upon to investigate the accuracy of the facts forming the basis of the proclamation — whether there is actual rebellion and whether the declaration of martial law and the suspension of the privilege of the writ are necessary to ensure public safety.

For truly, without ascertaining the accuracy of the factual basis offered for the proclamation, the Court is sending a perverse message that the Executive, in this case and in future Section 18 reviews that may come before it, may offer any and all kinds of "factual" bases, without regard to accuracy. It is truly baffling how the majority's concession of the Executive's superior "competence," "logistical machinery," and "superior data gathering apparatus" does not equate to the Court imposing upon the Executive the obligation to produce before the Court sufficient evidence that is **true, accurate, or at the very least, credible.** This superiority must lead the Court to raise the bar

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MR. PADILLA. It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ. After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law. (Emphasis supplied) II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 470 (1986).

instead of lower it. Else, it leads precisely to a nugatory Court finding I already adverted to:

> x x x The Executive needs to reveal so much of its factual basis for the declaration of martial law and suspension of the privilege of the writ so that it produces in the mind of the Court the conclusion that the declaration and suspension meets the requirements of the Constitution. **Otherwise, the Court's finding of sufficiency becomes anchored upon bare allegations, or silence. In any proceeding, mere allegation or claim is not evidence; neither is it equivalent to proof.**[15] (Emphasis supplied)

The holding that the review of sufficiency of factual basis does not involve an examination of the accuracy of factual basis is but one degree removed from allowing the use of presumptions of constitutionality and regularity in a Section 18 review, which, as well, I have already described as incompatible to the nature of the exercise:

> x x x The presumption disposes of the need to present evidence — which is totally opposite to the fact-checking exercise of Section 18; to be sure, reliance on the presumption in the face of an express constitutional requirement amounts to a **failure by the Executive to show sufficient factual basis, and judicial rubberstamping on the part of the Court.**[16] (Emphasis supplied)

Again, and in fine, a Section 18 review functions not to fix blame, but to be an avenue for the restoration of the normal workings of government and the enjoyment of individual liberties should there be showing of insufficient factual basis.[17] In a

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[15] *J*. Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 1, at 8.

[16] *J*. Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 1, at 8.

[17] "[I]f the Executive satisfies the requirement of showing sufficient factual basis, then the proclamation is upheld, and the sovereign people are either informed of the factual basis or assured that such has been reviewed by the Court. If the Executive fails to show sufficient factual basis, then the proclamation is nullified and the people are restored to full enjoyment of their civil liberties." *J*. Caguioa, Dissenting Opinion, *Lagman v. Medialdea*, *supra* note 1, at 11.

democracy like ours, a ruling that directly affects these terminal values requires no less than accuracy and truth. The Court must uphold this standard.

Therefore, I vote to grant the Motions for Reconsideration and to declare the proclamation of martial law over the entire Mindanao as having been issued without sufficient factual basis, and the proclamation can be justified only in Lanao del Sur, Maguindanao, and Sulu.

SECOND DIVISION

[OCA IPI No. 15-4429-P. December 6, 2017]

ISAGANI R. RUBIO, *complainant, vs.* **IGMEDIO J. BASADA, Court Legal Researcher II, Branch 117, Regional Trial Court [RTC], Pasay City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PERFORMING A CIVIC DUTY AS PRESIDENT OF HOMEOWNERS' ASSOCIATION DOES NOT CONSTITUTE ENGAGING IN OUTSIDE EMPLOYMENT OR PROFESSION; THE REQUIREMENT OF OBTAINING AUTHORITY FROM THE HEAD OF OFFICE DOES NOT APPLY.— [R]espondent Basada is neither engaged in outside employment nor in any private business or profession. Respondent Basada is not receiving any salary from the services he renders as president of the homeowners' association. In performing his duties as president of the homeowners' association, respondent Basada is merely exercising a civic duty as a member of the community. His involvement in the homeowners' association should be commended rather than censured. As pointed out by the OCA,

the allegations raised by complainant Rubio against respondent Basada stem from their rivalry within the homeowners' association, and have nothing to do with respondent Basada's duties as legal researcher. Complainant Rubio failed to establish that respondent Basada was remiss in his duties as Court Legal Researcher. Although respondent Basada admitted that there were occasions when he had to take a leave of absence to attend to matters involving the homeowners' association, he was able to explain that he secured authorization and was on official leave of absence on those occasions. Accordingly, since respondent Basada is merely performing a civic duty and is not actually engaged in outside employment or any private business or profession, the requirement of obtaining authority from the head of office to engage in outside employment obviously does not apply to him.

2. ID.; ID.; ID.; ID.; TO REQUIRE RESPONDENT TO RELINQUISH HIS POST AS PRESIDENT OF HOMEOWNERS' ASSOCIATION WOULD DEPRIVE HIM OF HIS FREEDOM OF ASSOCIATION GUARANTEED BY ARTICLE III, SECTION 8 OF THE 1987 CONSTITUTION.— [T]o require respondent Basada to relinquish his post as president of the homeowner's association would effectively deprive him of his freedom of association guaranteed by Article III (Bill of Rights), Section 8 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."

R E S O L U T I O N

CAGUIOA, *J.*:

An Administrative Complaint[1] dated May 28, 2015 was filed by complainant Isagani R. Rubio against respondent Igmedio J. Basada, Legal Researcher II, Branch 117, Regional Trial Court (RTC), Pasay City, for violations of the Code of Conduct for

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

Court Personnel, Republic Act (R.A.) Nos. 6173[2] and 3019,[3] as well as regulations of the Housing and Land Use Regulatory Board (HLURB).

The charges of complainant Rubio against respondent Basada stem from their rivalry in the administration of the Camella Springville City West Homeowners' Association.

Complainant Rubio accused respondent Basada of misrepresenting himself as a law graduate, and questioned the qualifications of respondent Basada as Legal Researcher II.[4] Complainant Rubio claimed that respondent Basada's duties as president of the homeowners' association conflicts with his functions as court legal researcher, citing several instances when respondent Basada attended meetings and hearings for and in behalf of the homeowners' association.[5] Complainant Rubio also accused respondent Basada of violating the Anti-Graft and Corrupt Practices Act when he solicited and accepted donations from several individuals without properly informing the general membership of the homeowners' association.[6]

Complainant Rubio further faulted respondent Basada for violating HLURB rules and procedures, particularly through the following acts: (a) declaring himself president of the homeowners' association following the resignation of its president on December 27, 2013; (b) accepting honorarium/ remuneration as an officer of the board without informing the members of the homeowners' association, and suppressing their freedom to air their legitimate concerns; (c) causing complainant Rubio's expulsion from the association on the ground that he is a *persona non grata*, without giving him the benefit of due process of law; and (d) causing the filing of criminal cases

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[2] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

[3] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[4] *Rollo*, pp. 1, 192.

[5] *Id*. at 191-192.

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

against complainant Rubio and other officials and members of the association who opposed respondent Basada's administration.[7]

In his defense, respondent Basada denied misleading anyone about his academic background.[8] Respondent Basada asserted that he performs his duties as a legal researcher during regular office hours and only attends to his tasks as president of the homeowners' association after office hours and during weekends.[9] Respondent Basada admitted that as president of the homeowners' association, he solicited and accepted donations from certain politicians, however, he vehemently denied receiving said donations in his personal capacity or in the course of his official duties and functions as an employee of the court.[10]

Respondent Basada surmised that the instant administrative complaint was filed as a form of leverage for the criminal cases he filed against complainant Rubio.[11] Respondent Basada argued that the issues raised in the instant complaint, which involve the administration of the homeowners' association, are not related to his work in the judiciary, and therefore must be dismissed for lack of jurisdiction.[12]

In a Report[13] dated February 23, 2017, the OCA recommended that the Administrative Complaint against respondent Basada be dismissed for lack of merit. However, the OCA also recommended that respondent Basada be directed to relinquish his position as president of the homeowners' association in order to fully devote his time in his duties and functions as Court Legal Researcher.[14]

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[7] *Id*. at 1-5.

[8] *Id*. at 173.

[9] *Id*. at 172.

[10] *Id*. at 178.

[11] *Id*. at 179.

[12] *Id*. at 174, 180.

[13] *Id*. at 280-284.

[14] *Id*. at 284.

After considering the allegations in the Administrative Complaint and respondent Basada's explanation, the OCA found as follows:

The instant administrative complaint should be dismissed for insufficiency of evidence, but this notwithstanding, respondent Basada should be directed to relinquish his post as president of the homeowners association and concentrate on his work as a legal researcher.

Most allegations raised by complainant Rubio against respondent Basada stem from their rivalry within the homeowners association, and have nothing to do with respondent Basada's duties as legal researcher. It is alleged that respondent Basada did not follow the procedures of the HLURB when he assumed the post of president of the homeowners association. Respondent Basada is also accused of failing to properly discharge the duties as president and of indiscriminately filing criminal cases against complainant Rubio and anyone else who opposed the legitimacy of his administration.

In *Re: Rivaras Compound Homeowners Association vs. Mr. Francis A. Cervantes*, where the court employee was accused of failing to properly account for the funds collected during his term as president of the homeowners association, the Court held that it "*cannot take cognizance of a number of the allegations leveled against respondent Cervantes being of the nature that should properly be threshed out in a court or agency clothed with jurisdiction*." In the instant administrative complaint, the allegations against respondent Basada in the performance of his duty as president of the homeowners association should be addressed to the HLURB, the agency that has the jurisdiction to resolve controversies and disputes relating to homeowners associations.

Regarding the allegation that respondent Basada claimed to be a law graduate when he did not even reach second year in law school, the records in his 201 file show that he earned 47 units in Bachelor of Laws at New Era University and 20 units in Pamantasan ng Lungsod ng Maynila, covering a total of six (6) semesters, or almost three (3) years. This is attested to by Mr. Gertrudes L. Villalon, School Registrar, Pamantasan [ng] Lun[g]sod ng Maynila. It is also worth stressing that all papers relative to respondent Basada's appointment as a legal researcher were duly scrutinized by the Supreme Court Selection and Promotion Board — Lower Courts. In the absence of proof to the contrary, the presumption is that he met the requirements for the said position.

Anent the allegation that respondent Basada has been remiss in the performance of his duties in court because of his additional obligation as president of the homeowners association, this is belied by his "very satisfactory" ratings in his Performance Evaluation reports. However, in Administrative Matter No. 88-6-002-SC, 21 June 1988, the Court denied the request of Ms. Esther C. Rabanal, Technical Assistant II, Leave Section, Office of the Administrative Services, this Court, to work as an insurance agent after office hours, including Saturdays, Sundays, and holidays. The Court held that the entire time of judiciary officials and employees must be devoted to government service to insure efficient and speedy administration of justice. As compared to an insurance agent, the position of president of a homeowners association is far more demanding. Respondent Basada himself admitted that there were occasions when he had to take a leave of absence from work to attend to the meetings of the homeowners association. The needs of the homeowners, both being multiple and pressing, require full-time attention, and with this, respondent Basada should relinquish his position as president of the homeowners association.[15]

The Court agrees with the recommendation of the OCA to dismiss the instant administrative complaint against respondent Basada. However, the Court sees no reason to require respondent Basada to relinquish his post as president of the homeowners' association.

Section 5, Canon III of the Code of Conduct for Court Personnel[16] allows court personnel to obtain outside employment provided the head of office authorizes it and that the following requirements are fulfilled:

(a) The outside employment is not with a person or entity that practices law before the courts or conducts business with the Judiciary;

(b) The outside employment can be performed outside of normal working hours and is not incompatible with the performance of the court personnel's duties and responsibilities;

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[15] *Id*. at 282-284; citation omitted.

[16] A.M. No. 03-06-13-SC, May 15, 2004.

(c) The outside employment does not require the practice of law; *Provided, however*, that court personnel may render services as professor, lecturer, or resource person in law schools, review or continuing education centers or similar institutions;

(d) The outside employment does not require or induce the court personnel to disclose confidential information acquired while performing official duties; and

(e) The outside employment shall not be with legislative or executive branch of government, unless specifically authorized by the Supreme Court.

Section 18, Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions[17] also proscribes government officers or employees from engaging directly or indirectly in any private business or profession, except where a written permission from the head of agency is obtained, and the time devoted outside of office hours is fixed by the head of the agency so that the efficiency of the officer or employee is not impaired and to avoid any conflict with official functions.

The nature of work of court officials and employees requires them to serve with the highest degree of efficiency and responsibility, and devote their entire time to government service in order to ensure efficient and speedy disposition of justice.[18] Thus, in *Benavidez v. Vega*,[19] the Court suspended Court Stenographer Estrella Vega for moonlighting during office hours, while working as an insurance agent. Similarly, in *Anonymous Letter-Complaint against Atty. Morales, Clerk of Court, MTC, Manila*,[20] the Court suspended Court Stenographer Isabel Siwa

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[17] CSC Memorandum Circular No. 40-98, December 14, 1998, as amended by CSC Memorandum Circular No. 15-99, "Additional Provisions and Amendments to CSC Memorandum Circular No. 40, s. 1998," August 27, 1999.

[18] *Anonymous Letter-Complaint against Atty. Morales, Clerk of Court, MTC, Manila*, 592 Phil. 102, 122 (2008); *Concerned Citizen v. Bautista*, 480 Phil. 692, 697 (2004).

[19] 423 Phil. 437 (2001).

[20] *Supra* note 18.

for engaging in the business of lending and rediscounting checks. In both cases, the Court emphasized that officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure that full-time officers of the court render full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases.[21]

However, in *Ramos v. Rada*[22] the Court merely reprimanded respondent messenger Rada who, without prior permission from the head of office, accepted the appointment and discharged the duties as administrator of the real properties of a private corporation. The Court ruled that considering that respondent's private business connection has not resulted in any prejudice to the government service, his violation was merely a technical one.[23] The Court offered the following rationalization:

> The duties of messenger Rada are generally ministerial which do not require that his entire day of 24 hours be at the disposal of the Government. Such being his situation, it would be to stifle his willingness to apply himself to a productive endeavor to augment his income, and to award a premium for slothfulness if he were to be banned from engaging in or being connected with a private undertaking outside of office hours and without foreseeable detriment to the Government service. His connection with Avesco Marketing Corporation need not be terminated, but he must secure a written permission from the Executive Judge of the Court of First Instance of Camarines Norte, who is hereby authorized to grant or revoke such permission, under such terms and conditions as will safeguard the best interests of the service, in general, and the court, in particular.[24]

In this case, respondent Basada is neither engaged in outside employment nor in any private business or profession.

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[21] *Benavidez v. Vega*, *supra* note 19, at 441-442, cited in *Anonymous Letter-Complaint against Atty. Morales, Clerk of Court, MTC, Manila*, *supra* note 18, at 121-122.

[22] 160 Phil. 185 (1975).

[23] *Id*. at 187.

[24] *Id*.

Respondent Basada is not receiving any salary from the services he renders as president of the homeowners' association.[25] In performing his duties as president of the homeowners' association, respondent Basada is merely exercising a civic duty as a member of the community. His involvement in the homeowners' association should be commended rather than censured.

As pointed out by the OCA, the allegations raised by complainant Rubio against respondent Basada stem from their rivalry within the homeowners' association, and have nothing to do with respondent Basada's duties as legal researcher. Complainant Rubio failed to establish that respondent Basada was remiss in his duties as Court Legal Researcher. Although respondent Basada admitted that there were occasions when he had to take a leave of absence to attend to matters involving the homeowners' association,[26] he was able to explain that he secured authorization and was on official leave of absence on those occasions.

Accordingly, since respondent Basada is merely performing a civic duty and is not actually engaged in outside employment or any private business or profession, the requirement of obtaining authority from the head of office to engage in outside employment obviously does not apply to him.

Finally, to require respondent Basada to relinquish his post as president of the homeowners' association would effectively deprive him of his freedom of association guaranteed by Article III (Bill of Rights), Section 8 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."

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[25] *Rollo*, p. 172.

[26] *Id*. at 231.

WHEREFORE, premises considered, the instant administrative complaint against respondent Igmedio J. Basada, Court Legal Researcher II, Branch 117, RTC, Pasay City, is **DISMISSED** for lack of merit.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 183004. December 6, 2017]

ALFONSO DIGAN, TIBALDO BUELTA, BERNARDO MARIANO, SANTIAGO ACQUIDAN, FERNANDO AGNNO, JOHNNY ORIE and FELIMON GACETA (deceased) rep. by his wife LOLITA GACETA, *petitioners, vs.* **NOEMI MALINES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TENANT EMANCIPATION DECREE (PRESIDENTIAL DECREE NO. 27); THE RIGHT OF RETENTION MAY ONLY BE CLAIMED AND EXERCISED BY THE LANDOWNER IDENTIFIED TO BE SUCH AS OF 21 OCTOBER 1972, AND/OR ANY OF HIS/HER HEIRS WHO INHERITED SUCH AGRICULTURAL LANDS AFTER THE SAID DATE.— [M]alines, as well as Melecio, could not be the landowner referred to in P.D. No. 27 or the several letters of instruction issued in relation thereto. From the wordings of P.D. No. 27, the "landowner" referred to pertains to a person identified to be the owner of tenanted rice or corn land as of

21 October 1972. This is only logical considering that tenanted rice and corn lands were deemed acquired by the Government in favor of the tenant-farmers as of the date of the issuance of P.D. No. 27, and any transfer of ownership thereof is void. As such, it would not be possible to have a new "landowner" after 21 October 1972, except if such land was acquired by hereditary succession. Thus, under P.D. No. 27, the right of retention may only be claimed and exercised by the landowner identified to be such as of 21 October 1972, and/or any of his heirs who inherited such agricultural lands after the said date. Consequently, Malines and Melecio, who were neither the owners of the subject land when P.D. No. 27 was issued nor were the heirs of the landowner thereof, could not claim the right of retention. Therefore, the Court finds erroneous the ruling of the CA that respondents' right of retention was violated.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ALTHOUGH NOT A TRIER OF FACTS, THE SUPREME COURT MAY ANALYZE, REVIEW, AND EVEN REVERSE FINDINGS OF FACTS IF THERE IS COMPELLING REASON TO DO SO, SUCH AS WHEN THE FACTUAL FINDINGS OF THE TRYING COURT OR BODY ARE IN CONFLICT WITH THOSE OF THE APPELLATE COURT, OR THERE WAS A MISAPPREHENSION OF FACTS, OR WHEN THE INFERENCE DRAWN FROM SUCH FACTS WAS MANIFESTLY MISTAKEN.— It is settled that an appeal, once accepted by this Court, throws the entire case open to review. This Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case. Furthermore, although not a trier of facts, this Court may analyze, review, and even reverse findings of facts if there is compelling reason to do so, such as when the factual findings of the trying court or body are in conflict with those of the appellate court, or there was a misapprehension of facts, or when the inference drawn from such facts was manifestly mistaken. After a thorough review of the records, the Court finds that the PA, the DARAB Central Office, and the CA overlooked and misapprehended an admitted fact crucial to the resolution of this case.

3. LABOR AND SOCIAL LEGISLATION; TENANT EMANCIPATION DECREE (PRESIDENTIAL DECREE NO. 27); ANY TRANSFER OF OWNERSHIP OVER TENANTED RICE AND/OR CORN LANDS AFTER 21 OCTOBER 1972 TO PERSONS OTHER THAN THE HEIRS OF THE LANDOWNER, VIA HEREDITARY SUCCESSION, IS PROHIBITED, EXCEPT WHEN THE CONVEYANCE WAS MADE IN FAVOR OF THE ACTUAL TENANT-TILLER THEREON, BUT IN STRICT CONFORMITY TO THE PROVISIONS OF PRESIDENTIAL DECREE NO. 27 AND THE REQUIREMENTS OF THE DEPARTMENT OF AGRARIAN REFORM (DAR).— [P].D. No. 27 prohibited the transfer of rice and corn lands. Thus, in a plethora of cases, the Court struck down contracts of sale involving tenanted rice and corn lands executed after 21 October 1972, in violation of the provisions of P.D. No. 27. Nevertheless, not all conveyances involving tenanted rice and corn lands are prohibited. To achieve its purpose, P.D. No. 27 laid down a system for the purchase by tenant-farmers of the lands they were tilling. In furtherance, the DAR issued several memorandum circulars (*MC*) which recognized the validity of a direct sale between the landowner and the tenant-beneficiary under a direct payment scheme (*DPS*) and at liberal terms and subject to conditions. Among these regulations are MC Nos. 2 and 2-A, series of 1973, and MC No. 8, series of 1974. MC No. 2-A, which amended MC No. 2, provides the following explicit prohibition, among others: h. Transfer of ownership after October 21, 1972, **except to the actual tenant-farmer tiller**. If transferred to him, the cost should be that prescribed by Presidential Decree No. 27. On the other hand, MC No. 8, series of 1974, which repealed and/or modified MC Nos. 2 and 2-A and other circulars or memoranda inconsistent with it, provided that x x x. f) Transferring ownership to tenanted rice and/or corn lands after October 21, 1972, **except to the actual tenant-farmers or tillers but in strict conformity to the provisions of Presidential Decree No. 27 and the requirements of the DAR.** In fine, the general rule is that any transfer of ownership over tenanted rice and/or corn lands after 21 October 1972 to persons other than the heirs of the landowner, via hereditary succession, is prohibited. However, when the conveyance was made in favor of the actual tenant-tiller thereon, such sale is valid.

4. ID.; ID.; ID.; THE SALE OF RICE AND CORN LANDS TO QUALIFIED BENEFICIARIES AND ACTUAL TILLERS THEREOF AFTER 21 OCTOBER 1972 IS VALID; THUS, THE SAID LANDS COULD NO LONGER BE BOUND BY SEPARATE EMANCIPATION PATENTS (EPs) IN FAVOR OF OTHER PERSONS.— It is not disputed that ownership over the subject land was transferred by Paris to Malines and Melecio sometime in 1978 or after 21 October 1972. Apparently, judging from this fact alone, the subject transaction is void. However, a reading of petitioners' answer to the petition in the first DARAB case would reveal that this is not the case. In the said answer, petitioners admitted that Malines and Melecio were among those identified as qualified beneficiaries, and were in possession, of the subject land, albeit with the caveat that the sale to them was made to circumvent the provisions of P.D. No. 27 x x x. Such admission, having been made in a pleading, is conclusive as against the pleader — the petitioners in this case. It may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. Unfortunately for the petitioners, they failed to contradict their admission. Clearly, Malines and Melecio being qualified beneficiaries and actual tillers of the subject land, the sale thereof to them is valid. Indeed, the sale of the subject land emancipated Malines and Melecio from the bondage of the soil they were tilling. The very purpose of P.D. No. 27 was therefore achieved. Consequently, the subject land, having been acquired in a valid sale pursuant to P.D. No. 27, could no longer be bound by separate EPs in favor of other persons.

5. ID.; ID.; ABANDONMENT DISQUALIFIES THE BENEFICIARY OF THE LOTS AWARDED UNDER P.D. NO. 27; ABANDONMENT, DEFINED; REQUISITES; PETITIONERS' EXECUTION OF THE AFFIDAVIT OF WAIVER CONSTITUTED THE EXTERNAL ACT OF ABANDONMENT.— Another factor which militates against the claim of petitioners is the joint affidavit of waiver they executed. The petitioners never denied its genuineness and its due execution on 31 October 1978, or prior to the execution of the sale of the subject land x x x. Under Section 22 of R.A. No. 6657 in relation to DAR Administrative Order (*AO*) No. 02-94, abandonment disqualifies the beneficiary of the lots

awarded under P.D. No. 27. Abandonment has been defined as the willful failure of the beneficiary, together with his farm household, to cultivate, till, or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years. For abandonment to exist, the following requisites must concur: (1) a clear intent to abandon; and (2) an external act showing such intent. What is critical in abandonment is intent which must be shown to be deliberate and clear. The intent must be established by the factual failure to work on the landholding absent any valid reason as well as a clear intent, which is shown as a separate element. In *Buensuceso v. Perez*, the Court had the occasion to rule that an agrarian reform beneficiary who allowed and acquiesced to the execution of a contract of leasehold in favor of another person over the agricultural land awarded to him effectively surrenders his rights over the said land. His act of signing the lease contract, even as a witness, constitutes the external act of abandonment. As in the aforementioned case, the petitioners' execution of the affidavit of waiver demonstrated their clear intent to abandon and surrender their rights over the subject land. Their acts of signing the waiver likewise constituted the external act of abandonment. Thus, they are disqualified to be beneficiaries of the subject land.

6. ID.; ID.; MERE ISSUANCE OF AN EMANCIPATION PATENTS (EPs) DOES NOT PUT THE OWNERSHIP OF THE AGRARIAN REFORM BENEFICIARY BEYOND ATTACK AND SCRUTINY, AS EPs ISSUED MAY BE CORRECTED AND CANCELLED FOR VIOLATIONS OF AGRARIAN LAWS, RULES AND REGULATIONS; GROUNDS FOR CANCELLATION OF EPs. — Mere issuance of an EP does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. EPs issued to such beneficiaries may be corrected and cancelled for violations of agrarian laws, rules and regulations. Under DAR AO No. 02-94, the grounds for the cancellation of registered EPs include: x x x [8]. Neglect or abandonment of the awarded land continuously for a period of two (2) calendar years x x x; (Section 22 of RA No. 6657) 9. The land is found to be exempt/excluded from P.D. No. 27/EO No. 228 or CARP coverage or to be part of the landowner's 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. [P]etitioners abandoned whatever right they may have over the subject land when they executed a joint affidavit of waiver on 31 October 1978. This alone is sufficient ground for the cancellation of the EPs registered in their names.

7. ID.; ID.; ID.; EMANCIPATION PATENTS (EPs) WHICH HAVE BEEN IRREGULARLY ISSUED, AS THE SAME COVER LAND ALREADY CONVEYED TO QUALIFIED FARMER-BENEFICIARIES THROUGH A VALID SALE, DECLARED NULL AND VOID.— [P]etitioners' EPs could be cancelled considering that their issuance circumvents laws related to the implementation of the agrarian reform program. Ownership over the subject land had already been transferred to qualified farmer beneficiaries when it was sold in 1978, in accordance with the provisions of P.D. No. 27 and its implementing rules. Since it has not been shown that said acquisition is tainted by any irregularity, Malines and Melecio's respective titles to the subject land must be respected. The subject land cannot, therefore, be awarded to other farmer-beneficiaries because it is no longer available for distribution under P.D. No. 27, and to do so would defeat the very purpose of the agrarian reform law. The EPs of the petitioners, which covers land already conveyed to qualified farmer-beneficiaries through a valid sale, have been irregularly issued and must perforce be declared null and void.

8. ID.; ID.; ID.; SUSTAINING THE VALIDITY OF EMANCIPATION PATENTS DESPITE GLARING IRREGULARITY THEREOF, AND IN SPITE OF THE FACT THAT THE SAME COVER LAND ALREADY LEGALLY CONVEYED TO QUALIFIED TENANTS-TILLERS WOULD UNJUSTLY AND UNDULY DEPRIVE THE LATTER OF THEIR PROPERTY.— Inasmuch as the Court commiserates with the petitioners' plight, their prayers could not be granted. Sustaining the validity of the subject EPs despite its glaring irregularity and in spite of the fact that the same covers land already legally conveyed to qualified tenants-tillers thereof would unjustly and unduly deprive the latter of their property. Justice is in every case for the deserving, and it must be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance for petitioners.

Gacayan Paredes Agmata & Associates Law Offices for respondent.

D E C I S I O N

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 3 January 2008 Decision[1] and 20 May 2008 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 98012, which reversed and set aside the 4 October 2006 decision[3] of the Department of Agrarian Reform Arbitration Board *(DARAB)* Central Office in DARAB Case Nos. 9319 & 13535, and reinstated the 13 November 2003 decision of the Provincial Adjudicator *(PA)* in DARAB Case No. 1-03297-03-I.S. (the *second DARAB case*).

THE FACTS

Modesta Paris *(Paris)* was the owner of three (3) parcels of agricultural land situated in the Municipality of Cervantes, Ilocos Sur, with an aggregate area of 318,876 square meters (31.89 hectares). The three (3) parcels of land were registered under Transfer Certificates of Title *(TCT)* Nos. T-1420, T-3244, and T-3245 with respective land areas of 228,444 square meters (22.84 hectares), 45,216 square meters (4.52 hectares), and 45,216 square meters (4.52 hectares).[4]

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[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justice Amelia G. Tolentino, and Associate Justice Lucenito N. Tagle, concurring, *rollo*, pp. 50-58.

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

[3] Penned by DAR Adjudication Board Member Delfin B. Samson, with Board Member Augusto P. Quijano, Board Member Edgar A. Igano, and Board Member Ma. Patricia P. Rualo-Bello, concurring, *id*. at 169-174.

[4] Records (DARAB Case No. 148-156-99-I.S.) pp. 40-42.

In 1972, the landholdings of Paris were placed under the coverage of Operation Land Transfer *(OLT)* pursuant to Presidential Decree *(P.D.)* No. 27. In December 1972, the landholdings of Paris were consolidated and then subdivided into six (6) lots. Sometime in 1976, the Department of Agrarian Reform *(DAR)* identified herein petitioners as among the qualified farmer-beneficiaries of the landholdings of Paris.[5]

On 29 November 1978, Paris sold to respondent Noemi Malines *(Malines)* and Jones Melecio *(Melecio)* one of the six lots from her landholdings containing an area of 52,419 square meters or 5.2 hectares *(subject land),* with Malines acquiring 45,668.25 square meters or 4.567 hectares and Melecio acquiring 6,750.75 square meters or 0.675 hectare. Petitioners gave their consent to the said sale by virtue of a Joint Affidavit of Waiver,[6] dated 31 October 1978. On 12 December 1978, TCT No. T-16519 covering the subject land was issued in favor of the respondents.[7]

Later, unknown to Malines and Melecio, the Register of Deeds *(RD)* of Ilocos Sur cancelled TCT No. T-16519. Thereafter, Emancipation Patents[8] *(EP)* covering the subject land were issued to the petitioners on 11 May 1989, which were subsequently registered with the RD of Ilocos Sur on 8 November 1989, to wit:

TCT No. EP 1211	441 sqm	Tibaldo Buelta
TCT No. EP 1213	524 sqm	Fernando Agnno
TCT No. EP 1217	1,552 sqm	Bernardo Mariano
TCT No. EP 1225	1,238 sqm	Johnny Orie
TCT No. EP 1231	804 sqm	Alfonso A. Digan
TCT No. EP 1240	7,381 sqm	Felimon Gaceta
TCT No. EP 1246	1,023 sqm	Santiago Acquidan

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

[6] *Id*. at 8.

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

[8] *Id*. at 9-26.

The First DARAB Case

Upon discovery of the cancellation of their title, and the issuance of EPs covering the subject land in favor of petitioners, Malines and Melecio filed a Petition for the Cancellation of the EPs[9] issued to the petitioners before the Provincial Agrarian Reform Adjudication Board *(PARAD)* in Vigan City, Ilocos Sur. The case was docketed as DARAB Case No. 85-98-I.S.

In the said petition, Malines and Melecio alleged, among others, that the sale of the subject land was with the consent of the petitioners who consented to the said conveyance through a joint affidavit of waiver; that their respective shares in the subject land forms part of their retained area under either P.D. No. 27 or Republic Act *(R.A.)* No. 6657; that they were never informed of the taking of the subject land in grave violation of their constitutional right to due process; that they did not receive any sum from the petitioners or from the Land Bank of the Philippines *(LBP)* as compensation for the subject land; and that the EPs issued to herein petitioners were null and void considering that no Certificate of Land Transfer *(CLT)* were previously issued in their favor.

In their Answer,[10] herein petitioners admitted that no CLT was issued in their favor prior to the issuance of the EPs. They further averred that Malines and Melecio, just like them, had been identified as farmer-beneficiaries of the subject land as evidenced by the lot description[11] therefor. They however impugned the validity of the sale of the subject land alleging that the same was executed to undermine the intent and provisions of P.D. No. 27 and the letters of instruction, memoranda, and directives in relation thereto.

On 15 December 1998, the PA rendered a decision[12] dismissing the petition for cancellation. The PA ruled that the validity

[9] *Id*. at 1-4.

[10] *Id*. at 36-39.

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

[12] *Id*. at 65-66.

and regularity of the issuance of the questioned EPs must be maintained based on the presumption of regularity in the performance of official duties. It further opined that the sale of the subject land was done to subvert the intent and purpose of the agrarian reform laws. The dispositive portion of the said decision reads:

> WHEREFORE, premises considered, judgment is rendered DISMISSING the instant case, and directing the private respondents to pay their respective amortizations.[13]

Malines and Melecio moved for the reconsideration of the PA's decision.[14] The motion for reconsideration was given due course and the case was re-docketed as DARAB Case No. 148-156-99-I.S.[15] On 17 August 1999, however, the motion was denied for the movants' failure to appear at the scheduled hearing for their presentation of additional evidence.[16]

On 28 December 1999, only Malines elevated an appeal before the DARAB Central Office.[17] The appeal was docketed as DARAB Case No. 9319.

The Second DARAB Case

During the pendency of DARAB Case No. 9319, Malines filed before the PARAD a Petition for Declaration of Nullity and/or Cancellation of the subject EPs.[18] The petition was docketed as DARAB Case No. 1-03-297-03-I.S. Malines raised petitioners' failure to pay their respective amortizations as an additional ground for the cancellation of the questioned EPs. It pointed out that the LBP issued a certification,[19] dated 11

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[13] *Id*. at 66.

[14] *Id*. at 72-81.

[15] *Id*. at 110.

[16] *Id*. at 119.

[17] *Id*. at 141-150.

[18] Records (DARAB Case No. 1-03297-03-I.S.); pp. 1-6.

[19] *Id*. at 38.

March 2003, to the effect that it did not receive any Land Transfer Claim Folder in the name of Malines.

In its 13 November 2003 decision,[20] the PA disqualified petitioners from being beneficiaries of the DAR's OLT program for their failure to pay their respective amortizations. Consequently, the PA ordered the cancellation of the EPs issued in their names.

Petitioners moved for reconsideration, but the same was denied by the PA in its order, dated 13 January 2004.[21]

On 28 January 2004, petitioners filed their notice of appeal.[22] The appeal was docketed as DARAB Case No. 13535.

On 26 February 2004, petitioners filed a motion for the consolidation of DARAB Case No. 9319 and DARAB Case No. 13535.[23] The DARAB Central Office granted the motion for consolidation in its Order,[24] dated 9 November 2005.

The DARAB Central Office Ruling

In its decision, dated 4 October 2006, the DARAB Central Office affirmed the PA's 15 December 1998 decision insofar as it dismissed the first DARAB case. It likewise dismissed the second DARAB case, thereby reversing the PA's 13 November 2003 decision therein.

The DARAB ruled that there was no violation of the right to due process when no notice of coverage of the subject land was served to Malines and Melecio. It reasoned that at the time the subject land was placed under the OLT coverage, it was still under the ownership of Paris and, as such, separate notices

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[20] Penned by Provincial Adjudicator Atty. Roberto E. Caoayan; *id*. at 73-75.

[21] *Id*. at 86.

[22] *Id*. at 94.

[23] *Id*. at 96-99.

[24] Records, (DARAB Case Nos. 9319 & 13535); pp. 223-224.

to Malines or Melecio were no longer necessary. It further ruled under DAR Memorandum Circular No. 8, Series of 1974, that the transfer of ownership of tenanted rice and/or corn lands after 21 October 1972, except to actual tenant-farmers or tillers, is prohibited. Thus, the sale of the subject land is void having been executed in violation of the provisions of P.D. No. 27.

As to the allegation of failure to pay the amortizations, the Board pointed out that upon the coverage of the subject landholding under the OLT, the farmer-beneficiaries may no longer be required to pay the landowner their lease-rentals as they were to pay instead the amortization to the LBP. And even assuming that the farmer-beneficiaries indeed failed to pay the value of the subject land, the proper remedy would be to ask for the payment of just compensation from the DAR or the LBP and not for the cancellation of the subject EPs.

The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the decision dated 15 December 1998 is MODIFIED, dismissing the petition for cancellation of EP. As to the decision dated 13 November 2003, the same is REVERSED and SET ASIDE and a new judgment is entered DISMISSING the petition.
>
> SO ORDERED.[25]

Aggrieved, Malines filed a petition for review before the CA.[26]

The CA Ruling

In its assailed decision, the CA reversed the DARAB Central Office's 4 October 2006 decision and reinstated the PA's 13 November 2003 decision in the second DARAB case.

In finding for Malines, the CA ruled that the subject land is exempt from OLT coverage because it is part of her and Melecio's

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[25] *Id*. at 230.

[26] *Rollo*, pp. 178-194.

retained areas considering that it is less than seven (7) hectares in land area, pursuant to DAR Memorandum Circular No. 2-14, Series of 1973. The appellate court likewise noted that no evidence was presented to show that Malines was notified of the taking of her property. Thus, her right to due process of the law was violated. The dispositive portion of the assailed decision provides:

> WHEREFORE, the impugned Decision of the public respondent dated October 4, 2006 is REVERSED and SET ASIDE. The Decision of the Provincial Adjudicator dated November 13, 2003 is REINSTATED.
>
> No costs.
>
> SO ORDERED.[27]

Petitioners moved for reconsideration, but the same was denied by the CA in its resolution, dated 20 May 2008.

Hence, this present petition raising the following:

THE ISSUES

I

WHETHER OR NOT THE FINDINGS OF THE HONORABLE COURT OF APPEALS REVERSING AND SETTING ASIDE THE DECISION OF PUBLIC RESPONDENT DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) SOLELY ON REASON THAT THE SUBJECT AGRICULTURAL LAND IS PART OF THE LANDOWNER'S RETAINED AREA WHERE IN TRUTH AND IN FACT, AND RECORDS WOULD ATTEST THAT NO ORDER HAS BEEN ISSUED BY THE DAR, NEITHER WAS THERE AN APPLICATION FOR RETENTION.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT TAKING COGNIZANCE THAT: (1) UPON COVERAGE OF THE SUBJECT PROPERTY UNDER OPERATION LAND TRANSFER RESPONDENTS, WHO

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[27] *Id*. at 57.

ACQUIRED THE SAME TWO (2) YEARS AFTER ITS COVERAGE CAN STILL EXERCISE THE RIGHT OF RETENTION; AND (2) THE EMANCIPATION PATENTS HAVE BECOME INDEFEASIBLE ONE (1) YEAR FROM THE DATE OF ISSUANCE.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT TAKING COGNIZANCE THAT AT THE TIME OF COVERAGE OF THE SUBJECT LAND UNDER OPERATION LAND TRANSFER THE PROPERTY SUBJECT OF CONTROVERSY WAS STILL OWNED BY THE PREVIOUS OWNER MODESTA PARIS, HENCE, PETITIONERS HEREIN HAS VESTED RIGHTS PROTECTED BY THE GOVERNMENT PARAMOUNT OVER THE RIGHTS OF HEREIN RESPONDENTS WHO ACQUIRED THE SAME TWO (2) YEARS AFTER THE DAR HAS PLACED THE PROPERTY UNDER ITS PROGRAM.

IV

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS A VIOLATION OF DUE PROCESS OF LAW WHEN THE SUBJECT AGRICULTURAL LAND WAS PLACED UNDER THE OPERATION LAND TRANSFER PURSUANT TO PRESIDENTIAL DECREE NO. 27.[28]

THE COURT'S RULING

The errors assigned by the petitioners could be summarized into a singular issue – whether the appellate court erred in ordering the cancellation of their respective EPs.

The Court affirms the result of the 03 January 2008 Decision but for reasons entirely different from those advanced by the appellate court.

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[28] *Id*. at 26.

Malines could not Claim any Right of Retention

P.D. No. 27, issued on 21 October 1972, covers tenanted rice and corn lands. It proclaimed the entire country as a land reform area and decreed the emancipation of tenants from bondage of the soil. Upon its issuance, the tenant-farmer was deemed owner of a portion of the land he tills constituting a family-sized farm of five (5) hectares, if not irrigated, and three (3) hectares, if irrigated.

To further protect the rights of tenant-farmers, P.D. No. 27 decreed that titles to land acquired pursuant to it or the land reform program shall not be transferable except by hereditary succession or to the Government in accordance with its provisions and other pertinent laws and regulations.

P.D. No. 27 also provided a mechanism to mitigate the effects of compulsory land acquisition. To strike a balance between the rights of the landowners and the tenant, landowners covered by P.D. No. 27 were given the right to retain a portion of their lands provided that such retained portion shall not exceed seven (7) hectares, and provided further that the said landowner was cultivating or will cultivate such retained land as of 21 October 1972.

The appellate court ruled that the OLT coverage over the subject land violated Malines' right of retention considering that the subject land or at least her share thereof was below the retention limit.

The Court disagrees.

In the first place, Malines, as well as Melecio, could not be the landowner referred to in P.D. No. 27 or the several letters of instruction issued in relation thereto. From the wordings of P.D. No. 27, the "landowner" referred to pertains to a person identified to be the owner of tenanted rice or corn land as of 21 October 1972. This is only logical considering that tenanted rice and corn lands were deemed acquired by the Government in favor of the tenant-farmers as of the date of the issuance of

P.D. No. 27, and any transfer of ownership thereof is void. As such, it would not be possible to have a new "landowner" after 21 October 1972, except if such land was acquired by hereditary succession.

Thus, under P.D. No. 27, the right of retention may only be claimed and exercised by the landowner identified to be such as of 21 October 1972, and/or any of his heirs who inherited such agricultural lands after the said date. Consequently, Malines and Melecio, who were neither the owners of the subject land when P.D. No. 27 was issued nor were the heirs of the landowner thereof, could not claim the right of retention. Therefore, the Court finds erroneous the ruling of the CA that respondents' right of retention was violated.

The direct sale of the subject land in favor of Malines and Melecio is valid.

It is settled that an appeal, once accepted by this Court, throws the entire case open to review. This Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[29] Furthermore, although not a trier of facts, this Court may analyze, review, and even reverse findings of facts if there is compelling reason to do so, such as when the factual findings of the trying court or body are in conflict with those of the appellate court, or there was a misapprehension of facts, or when the inference drawn from such facts was manifestly mistaken.[30]

After a thorough review of the records, the Court finds that the PA, the DARAB Central Office, and the CA overlooked and misapprehended an admitted fact crucial to the resolution of this case.

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[29] *Barcelona v. Lim,* 734 Phil. 767, 795 (2014).

[30] *Almagro v. Amaya,* 711 Phil. 493, 504 (2013).

As previously discussed, P.D. No. 27 prohibited the transfer of rice and corn lands. Thus, in a plethora of cases,[31] the Court struck down contracts of sale involving tenanted rice and corn lands executed after 21 October 1972, in violation of the provisions of P.D. No. 27.

Nevertheless, not all conveyances involving tenanted rice and corn lands are prohibited. To achieve its purpose, P.D. No. 27 laid down a system for the purchase by tenant-farmers of the lands they were tilling. In furtherance, the DAR issued several memorandum circulars *(MC)* which recognized the validity of a direct sale between the landowner and the tenant-beneficiary under a direct payment scheme *(DPS)* and at liberal terms and subject to conditions.[32] Among these regulations are MC Nos. 2 and 2-A, series of 1973, and MC No. 8, series of 1974. MC No. 2-A, which amended MC No. 2, provides the following explicit prohibition, among others:

> h. Transfer of ownership after October 21, 1972**, except to the actual tenant-farmer tiller.** If transferred to him, the cost should be that prescribed by Presidential Decree No. 27. (emphasis supplied)

On the other hand, MC No. 8, series of 1974, which repealed and/or modified MC Nos. 2 and 2-A and other circulars or memoranda inconsistent with it, provided that:

> 4. No act shall be done to undermine or subvert the intent and provisions of Presidential Decrees, Letters of Instructions, Memoranda and Directives, such as the following and/or similar acts:
>
> x x x x x x x x x
>
> f) Transferring ownership to tenanted rice and/or corn lands after October 21, 1972, **except to the actual tenant-farmers or tillers but in strict conformity to the provisions of Presidential Decree No. 27 and the requirements of the DAR.** (emphasis supplied)

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[31] *Saguinsin v. Liban*, G.R. No. 189312, 11 July 2016, 796 SCRA 99, 104.

[32] *Sigre v. Court of Appeals,* 435 Phil. 711, 719 (2002).

In fine, the general rule is that any transfer of ownership over tenanted rice and/or corn lands after 21 October 1972 to persons other than the heirs of the landowner, via hereditary succession, is prohibited. However, when the conveyance was made in favor of the actual tenant-tiller thereon, such sale is valid.[33]

It is not disputed that ownership over the subject land was transferred by Paris to Malines and Melecio sometime in 1978 or after 21 October 1972. Apparently, judging from this fact alone, the subject transaction is void. However, a reading of petitioners' answer to the petition in the first DARAB case would reveal that this is not the case. In the said answer, petitioners admitted that Malines and Melecio were among those identified as qualified beneficiaries, and were in possession, of the subject land, albeit with the caveat that the sale to them was made to circumvent the provisions of P.D. No. 27, to wit:

X.

That petitioner[s] Jose Melecio and Noemi Malines had been identified as Farmer Beneficiaries being in possession and cultivation of the land particularly Lot No. 4.0 and Lot No. 4-1 respectively, attached hereto and form an integral part and marked as Annex[es] "D-1" and "D-2" are the Survey PSD-014230 (OLT) Lot Description;[34] (emphasis supplied)

Such admission, having been made in a pleading, is conclusive as against the pleader – the petitioners in this case.[35] It may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[36] Unfortunately for the petitioners, they failed to contradict their admission.

Clearly, Malines and Melecio being qualified beneficiaries and actual tillers of the subject land, the sale thereof to them

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[33] *Borromeo v. Mina,* 710 Phil. 454, 464 (2013).

[34] *Rollo*, p. 65.

[35] *Spouses Binarao v. Plus Builders, Inc.,* 524 Phil. 361, 364 (2006).

[36] RULES OF COURT, Rule 129, Section 4.

is valid. Indeed, the sale of the subject land emancipated Malines and Melecio from the bondage of the soil they were tilling. The very purpose of P.D. No. 27 was therefore achieved. Consequently, the subject land, having been acquired in a valid sale pursuant to P.D. No. 27, could no longer be bound by separate EPs in favor of other persons.

Petitioners had already abandoned whatever right they may have had over the subject land.

Another factor which militates against the claim of petitioners is the joint affidavit of waiver they executed. The petitioners never denied its genuineness and its due execution on 31 October 1978, or prior to the execution of the sale of the subject land. In the said affidavit, the petitioners jointly declared:

> 3. That the owner of said rice land/land-lord-lessor Mrs. Modesta Paris offered by written notice, dated September 20, 1978, to sell to us said rice land by written notice served to us individually;
>
> 4. That we hereby manifest and voluntarily through this Joint Affidavit of Waiver that we are not interested to buy said rice land, and that the rice land described above could be offered to other persons, or outside buyers.

Under Section 22 of R.A. No. 6657 in relation to DAR Administrative Order *(AO)* No. 02-94, abandonment disqualifies the beneficiary of the lots awarded under P.D. No. 27.[37] Abandonment has been defined as the willful failure of the beneficiary, together with his farm household, to cultivate, till, or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years.[38] For abandonment to exist, the following requisites must concur: (1) a clear intent to abandon; and (2) an external act showing such intent.[39] What is critical in

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[37] *Buensuceso v. Perez,* 705 Phil. 460, 475 (2013).

[38] DAR Administrative Order No. 02-94, Article III, Section B.

[39] *Estolas v. Mabalot,* 431 Phil. 462, 471 (2002).

abandonment is intent which must be shown to be deliberate and clear. The intent must be established by the factual failure to work on the landholding absent any valid reason as well as a clear intent, which is shown as a separate element.[40]

In *Buensuceso v. Perez*,[41] the Court had the occasion to rule that an agrarian reform beneficiary who allowed and acquiesced to the execution of a contract of leasehold in favor of another person over the agricultural land awarded to him effectively surrenders his rights over the said land. His act of signing the lease contract, even as a witness, constitutes the external act of abandonment. As in the aforementioned case, the petitioners' execution of the affidavit of waiver demonstrated their clear intent to abandon and surrender their rights over the subject land. Their acts of signing the waiver likewise constituted the external act of abandonment. Thus, they are disqualified to be beneficiaries of the subject land.

Emancipation Patents issued in favor of the petitioners may still be cancelled.

Petitioners insist that the EPs issued to them had already become indefeasible after the lapse of one (1) year from their issuance and, thus, could no longer be cancelled.

The argument is misplaced.

Mere issuance of an EP does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. EPs issued to such beneficiaries may be corrected and cancelled for violations of agrarian laws, rules and regulations.[42] Under DAR AO No. 02-94, the grounds for the cancellation of registered EPs include:

1. Misuse or diversion of financial and support services extended to the ARB; (Section 37 of RA No. 6657)

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[40] *Buensuceso v. Perez, supra* note 41.

[41] *Id*.

[42] *Almagro v. Amaya, Sr.,* 711 Phil. 493, 509 (2013).

2. Misuse of the land; (Section 22 of RA No. 6657)
3. Material misrepresentation of the ARB's basic qualifications as provided under Section 22 of RA No. 6657, PD No. 27, and other agrarian laws;
4. Illegal conversion by the ARB; (cf. Section 73, paragraphs C and E of RA 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 RA No. 6657, PD No. 27, and other agrarian laws;
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 RA No. 6657)
8. Neglect or abandonment of the awarded land continuously for a period of two (2) calendar years x x x; (Section 22 of RA No. 6657)
9. The land is found to be exempt/excluded from P.D. No. 27/ EO No. 228 or CARP coverage or to be part of the landowner's 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.

To recall, petitioners abandoned whatever right they may have over the subject land when they executed a joint affidavit of waiver on 31 October 1978. This alone is sufficient ground for the cancellation of the EPs registered in their names.

Similarly, petitioners' EPs could be cancelled considering that their issuance circumvents laws related to the implementation of the agrarian reform program. Ownership over the subject land had already been transferred to qualified farmer beneficiaries

when it was sold in 1978, in accordance with the provisions of P.D. No. 27 and its implementing rules. Since it has not been shown that said acquisition is tainted by any irregularity, Malines and Melecio's respective titles to the subject land must be respected. The subject land cannot, therefore, be awarded to other farmer-beneficiaries because it is no longer available for distribution under P.D. No. 27, and to do so would defeat the very purpose of the agrarian reform law. The EPs of the petitioners, which covers land already conveyed to qualified farmer-beneficiaries through a valid sale, have been irregularly issued and must perforce be declared null and void.

Inasmuch as the Court commiserates with the petitioners' plight, their prayers could not be granted. Sustaining the validity of the subject EPs despite its glaring irregularity and in spite of the fact that the same covers land already legally conveyed to qualified tenants-tillers thereof would unjustly and unduly deprive the latter of their property. Justice is in every case for the deserving, and it must be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[43]

WHEREFORE, the assailed Decision, dated 3 January 2008, of the Court of Appeals in CA-G.R. SP No. 98012 which affirmed the 13 November 2003 Decision of the Provincial Adjudicator in DARAB Case No. 1-03-297-03-I.S. is **AFFIRMED** insofar as it ordered the cancellation of the Emancipation Patents issued in favor of the petitioners.

SO ORDERED.

Velasco, Jr. (*Chairperson*) and *Leonen, JJ.,* concur.

Bersamin, J., on official leave.

Gesmundo, J., on leave.

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[43] *Magsaysay Maritime Corporation v. National Labor Relations Commission,* 630 Phil. 352, 369 (2010).

THIRD DIVISION

[G.R. No. 191274. December 6, 2017]

ERMA INDUSTRIES, INC., ERNESTO B. MARCELO and FLERIDA O. MARCELO, *petitioners, vs.* **SECURITY BANK CORPORATION and SERGIO ORTIZ-LUIS, JR.**, *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PENALTY OR COMPENSATORY INTEREST FOR THE DELAY IN THE PAYMENT OF A FIXED SUM OF MONEY IS SEPARATE AND DISTINCT FROM THE CONVENTIONAL INTEREST ON THE PRINCIPAL LOAN; CASE AT BAR.— The Regional Trial Court did not delete altogether the 2% monthly penalty charges and stipulated interests of 7.5% (on the dollar obligations) and 20% (on peso obligations). The trial court, in fact, adjudged petitioner Erma liable to pay the amounts of ₱17,995,214.47 and US$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, on the basis of Article 1308 of the Civil Code and jurisprudential pronouncements on the obligatory force of contracts – not otherwise contrary to law, morals, good customs or public policy – between contracting parties. The stipulated 7.5% or 21% per annum interest constitutes the monetary or conventional interest for borrowing money and is allowed under Article 1956 of the New Civil Code. On the other hand, the penalty charge of 2% per month accrues from the time of Erma's default in the payment of the principal and/or interest on due date. This 2% per month charge is penalty or compensatory interest for the delay in the payment of a fixed sum of money, which is separate and distinct from the conventional interest on the principal of the loan. In this connection, this Court, construing Article 2209 of the Civil Code, held that: [T]he appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum or money, is the payment of penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest, then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been

agreed upon, then payment of legal interest or six percent (6%) per annum.

2. ID.; ID.; PENALTY MAY BE EQUITABLY REDUCED WHEN THERE IS PARTIAL OR IRREGULAR COMPLIANCE WITH THE PRINCIPAL OBLIGATION, OR WHEN THE PENALTY IS INIQUITOUS OR UNCONSCIONABLE; CASE AT BAR.— What the trial court did was to stop the continued accrual of the 2% monthly penalty charges on October 31, 1994, and to thereafter impose instead a straight 12% per annum on the total outstanding amounts due. In making this ruling, the Regional Trial Court took into account the partial payments made by petitioners, their efforts to settle/restructure their loan obligations and the serious slump in their export business in 1993. The Regional Trial Court held that, under those circumstances, it would be "iniquitous, and tantamount to merciless forfeiture of property" if the interests and penalty charges would be continually imposed. x x x The Regional Trial Court, as affirmed by the Court of Appeals, acted in accordance with Article 1229 of the Civil Code, which allows judges to equitably reduce the penalty when there is partial or irregular compliance with the principal obligation, or when the penalty is iniquitous or unconscionable. Whether a penalty charge is reasonable or iniquitous is addressed to the sound discretion of the courts and determined according to the circumstances of the case. The reasonableness or unreasonableness of a penalty would depend on such factors as "the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties[.]"

3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE; CASE AT BAR.— [W]e find no cogent reason to disturb the sums of ₱17,995,214.47 and US$289,730.10 adjudged against the petitioners in favor of Security Bank. Time and again, this Court has held that factual determinations of the Regional Trial Court, especially when adopted and confirmed by the Court of Appeals, are final and conclusive barring a showing that the findings were devoid of support or that a substantial matter had been overlooked by the lower courts, which would have

materially affected the result if considered. This case does not fall within any of the recognized exceptions justifying a factual review in a Rule 45 petition.

4. CIVIL LAW; DAMAGES; AWARD OF ATTORNEY'S FEES; GRANT THEREOF IS NOT PROPER WHEN THERE IS NO SUFFICIENT SHOWING OF BAD FAITH OF THE OTHER PARTY.— The award of attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. Even when a claimant is compelled to litigate to defend himself/herself, still attorney's fees may not be awarded where there is no sufficient showing of bad faith of the other party. It is well within Security Bank's right to institute an action for collection and to claim full payment. Absent any proof that respondent Bank intended to prejudice or injure petitioners when it rejected petitioners' offer and filed the action for collection, we find no basis to grant attorney's fees.

5. ID.; OBLIGATIONS AND CONTRACTS; SURETYSHIP; ACCOMMODATION SURETY DISTINGUISHED FROM COMPENSATED CORPORATE SURETY; A SURETY IS SOLIDARILY LIABLE WITH THE DEBTOR AND CO-SURETIES; CASE AT BAR.— [R]espondent Ortiz's claim that he is a mere accommodation party is immaterial and does not discharge him as a surety. He remains to be liable according to the character of his undertaking and the terms and conditions of the Continuing Suretyship, which he signed in his personal capacity and not in representation of Erma. The Court has elucidated on the distinction between an accommodation and a compensated surety and the reasons for treating them differently: The law has authorized the formation of corporations for the purpose of conducting surety business, and the corporate surety differs significantly from the individual private surety. First, unlike the private surety, the corporate surety signs for cash and not for friendship. The private surety is regarded as someone doing a rather foolish act for praiseworthy motives; the corporate surety, to the contrary, is in business to make a profit and charges a premium depending upon the amount of guaranty and the risk involved. Second, the corporate surety, like an insurance company, prepares the instrument, which is a type of contract of adhesion whereas the private surety usually does not prepare the note or bond which he signs. Third, the obligation of the private surety often is assumed simply on the

> basis of the debtor's representations and without legal advice, while the corporate surety does not bind itself until a full investigation has been made. For these reasons, the courts distinguish between the individual gratuitous surety and the vocational corporate surety. In the case of the corporate surety, the rule of *strictissimi juris* is not applicable, and courts apply the rules of interpretation . . . of appertaining to contracts of insurance. Consequently, the rule of strict construction of the surety contract is commonly applied to an accommodation surety but is not extended to favor a compensated corporate surety. x x x The nature and extent of respondent Ortiz's liability are set out in clear and unmistakable terms in the Continuing Suretyship agreement. Under its express terms, respondent Ortiz, as surety, is "bound by all the terms and conditions of the credit instruments." His liability is solidary with the debtor and co-sureties; and the surety contract remains in full force and effect until full payment of Erma's obligations to the Bank.

APPEARANCES OF COUNSEL

Tiongco Siao Bello & Associates for petitioners.
Clemente San Agustin for respondent Sergio Ortiz Luis, Jr.
Lariba Perez Mangrobang Miralles Dumbrique Avila De Peralta & Castro for respondent Security Bank Corporation.

D E C I S I O N

LEONEN, *J.*:

This Petition for Review[1] is an appeal from the Court of Appeals: (1) Decision[2] dated June 17, 2009, which affirmed *in toto* the Decision[3] dated May 31, 2004 of Branch 64, Regional

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[1] *Rollo*, pp. 7-22.

[2] *Id*. at 24-52. The Decision was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Eighth Division, Court of Appeals, Manila.

[3] *Id*. at 141-154. The Decision was penned by Judge Delia H. Panganiban.

Trial Court, Makati City; and (2) Resolution[4] dated February 3, 2010, which denied petitioners' motion for reconsideration.

On May 5, 1992, Erma Industries, Inc. (Erma) obtained from Security Bank Corporation (Security Bank) a credit facility, the conditions for which are embodied in the Credit Agreement[5] executed between the parties.[6]

On the same date, a Continuing Suretyship[7] agreement was executed in favor of Security Bank, and signed by Spouses Ernesto and Flerida Marcelo and Spouses Sergio and Margarita Ortiz-Luis. Under the Continuing Suretyship Agreement, the sureties agreed to be bound by the provisions of the Credit Agreement and to be jointly and severally liable with Erma in case the latter defaults in any of its payments with Security Bank.

Following the execution of the two agreements and during the period covering May 1992 to July 1993, Erma obtained various peso and dollar denominated loans from Security Bank evidenced by promissory notes,[8] as follows:

Promissory Note No.	Principal Amount Loaned	Date Loan was obtained	Maturity Date
(Batch One)			
FCDL/82/013/92	US$175,000.00	5/14/92	8/10/92
FCDL/82/022/92	US$135,000.00	11/3/92	1/29/93
OACL/82/490/93	₱7,300,000.00	7/26/93	10/25/93
OACL/82/509/92	₱3,000,000.00	11/9/92	1/29/93
OACL/82/520/92	₱1,700,000.00	11/13/92	1/29/93
OACL/82/548/92	₱2,000,000.00	11/25/92	1/29/93

[4] *Id*. at 54-55. The Resolution was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Former Eighth Division, Court of Appeals, Manila.

[5] *Id*. at 82-85.

[6] *Id*. at 25.

[7] *Id*. at 86-89.

[8] *Id*. at 90-109.

(Batch Two)			
OACL/82/179/92	₱5,580,000.00	8/10/92	11/8/92
OACL/82/341/93	₱350,000.00	5/31/93	7/7/93
OACL/82/347/93	₱120,000.00	6/2/93	7/7/93
OACL/82/352/93	₱479,000.00	6/3/93	7/7/93[9]

The promissory notes uniformly contain the following stipulations:

1. Interest on the principal at varying rates (7.5% per annum for dollar obligation and 16.75% or 21% per annum on peso obligation);
2. Interest not paid when due shall be compounded monthly from due date;
3. Penalty charge of 2% per month of the total outstanding principal and interest due and unpaid; and
4. Attorney's fees equivalent to 20% of the total amount due plus expenses and costs of collection.[10]

After defaulting in the payment of the loans, Erma, through its President, Ernesto Marcelo, wrote a letter[11] dated February 2, 1994 to Security Bank, requesting for the restructuring of the whole of Erma's obligations and converting it into a five-year loan.[12] A certain property valued at ₱12 million covered by TCT No. M-7021 and registered in the name of petitioner Ernesto Marcelo was also offered as security.[13] The title was received by Security Bank and has since then remained in its possession.[14]

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[9] *Id.* at 26.

[10] The promissory notes (*rollo*, pp. 90–109) have substantially similar provisions except for the due dates, the amounts of the principal and the monetary interest rate. See for example, PN FCDL/82/013/92 (*rollo*, p. 90).

[11] *Rollo,* p. 133.

[12] *Id.* at 30.

[13] *Id.*

[14] *Id.* at 31.

In a letter[15] dated April 27, 1994, Security Bank approved the partial restructuring of the loans or only up to ₱5 million.[16]

On May 10, 1994, Erma reiterated its request for the restructuring of the entire obligation. Erma also stated that the property they offered as collateral could answer for a far bigger amount than what Security Bank had recommended. Nevertheless, Erma suggested that it could add another property as additional security so long as the entire obligation is covered.[17]

Through a letter[18] dated November 8, 1994, Security Bank demanded payment, from Erma and the sureties, of Erma's outstanding peso and dollar obligations in the total amounts of ₱17,995,214.47 and US$289,730.10, respectively, as of October 31, 1994.

On January 10, 1995, Security Bank filed a Complaint[19] with the Regional Trial Court of Makati City, for payment of Erma's outstanding loan obligation plus interests and penalties.

Upon the filing of said Complaint and as "it became clear that the Bank would agree only to partial restructuring,"[20] Erma requested the return of the TCT in its letter dated June 10, 1996.[21] However, Security Bank retained possession of TCT M-7021.

On June 24, 1999 (after the case was reraffled to Branch 64 from Branch 143),[22] Security Bank filed its Amended Complaint[23] for Sum of Money praying that Erma, Spouses Marcelo, and

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[15] *Id*. at 134-137.

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

[17] *Id*. at 31.

[18] *Id*. at 114-120.

[19] *Id*. at 59-70.

[20] *Id*. at 364.

[21] *Id*. at 31.

[22] *Id*. at 363.

[23] *Id*. at 71-81.

Spouses Ortiz be compelled to execute a Real Estate Mortgage in its favor over the property covered by TCT M-7021.

In Erma and Spouses Marcelo's Amended Answer[24] dated November 9, 1999, a counterclaim against Security Bank was included for the return of said title to its rightful owner, petitioner Ernesto Marcelo.

Spouses Ortiz, for their part, essentially denied liability. Sergio claimed that he signed the Suretyship Agreement only as an accommodation party and nominal surety; and his obligation, if any, was extinguished by novation when the loan was restructured without his knowledge and consent. Margarita, on the other hand, claimed that she signed the Suretyship Agreement only to signify her marital consent.[25]

After trial, the Regional Trial Court rendered its Decision[26] dated May 31, 2004, where it adjudged Erma liable to pay Security Bank the amounts of ₱17,995,214.47 and US$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, plus legal interest of 12% per annum from November 1, 1994 until full payment is made.[27] Given Erma's partial payments of its loan obligation, and the serious slump suffered by its export business, the trial court considered iniquitous to still require Erma to pay 2% penalty per month and legal interest on accrued interest after October 1994.[28] The Regional Trial Court further denied Security Bank's prayer for attorney's fees on the ground that "there was no conscious effort to evade payment of the obligation."[29] It likewise denied Erma's prayer for attorney's fees.[30]

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[24] *Id*. at 128-132.

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

[26] *Id*. at 141-154.

[27] *Id*. at 147.

[28] *Id*. at 153.

[29] *Id*.

[30] *Id*.

Ernesto Marcelo and Sergio Ortiz-Luis were also held liable to Security Bank as sureties.[31] Their spouses, on the other hand, were not held liable as sureties as they affixed their signatures in the Continuing Suretyship Agreement only to signify their marital consent.[32] The trial court further held that there was no novation because the restructuring of Erma's loan obligation whether total or partial, did not materialize.[33] Consequently, Security Bank was ordered to return TCT No. M-7021 to Spouses Marcelo.[34]

The Court of Appeals affirmed the Regional Trial Court's Decision *in toto*.[35] It held that there was no perfected agreement on the restructuring of the loans because Erma never complied with the condition to submit documentary requirements;[36] and Erma did not accept the partial restructuring of the loan offered by Security Bank.[37] On the issue of Sergio Ortiz's liability, the Court of Appeals held that under the terms of the Continuing Suretyship agreement, Sergio Ortiz undeniably bound himself jointly and severally with Ernesto Marcelo for the obligations of Erma.[38]

Finally, the Court of Appeals agreed with the Regional Trial Court that "the 2% penalty per month . . . imposed by the [B]ank on top of the 20% interest per annum on the peso obligation and 7.5% interest per annum on the dollar obligation was iniquitous[.]"[39] Consequently, the Court of Appeals held that a straight 12% per annum interest on the total amount due would

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[31] *Id*. at 148.

[32] *Id*.

[33] *Id*. at 149.

[34] *Id*. at 154.

[35] *Id*. at 51.

[36] *Id*. at 41.

[37] *Id*. at 42.

[38] *Id*. at 45.

[39] *Id*. at 50.

be fair and equitable. In this regard, Erma's prayer to remand the case to the court *a quo* for reception of additional evidence that would further reduce their outstanding obligation was rejected by the Court of Appeals on the grounds that Erma should have presented all evidence at the trial and that it would unduly delay the case even further.[40]

On April 5, 2010, Erma and Spouses Marcelo filed their Petition for Review. In a Resolution[41] dated April 28, 2010, the Court denied the petition for failure:

(1) to state the material dates when the assailed decision of the Court of Appeals was received and when petitioners' motion for reconsideration was filed, in violation of Sections 4(b) and 5, Rule 45 in relation to Section 5(d), Rule 56 of the 1997 Rules of Civil Procedure, as amended; and

(2) to sufficiently show any reversible error committed by the Court of Appeals in its decision and resolution.

However, in a Resolution dated September 27, 2010, the Court granted petitioners' Motion for Reconsideration and reinstated the Petition. Security Bank Corporation and Sergio R. Ortiz-Luis, Jr. filed their respective Comments; and petitioners their Consolidated Reply.[42]

In compliance with the Court's Resolution[43] dated October 8, 2012, petitioners and respondents filed their respective memoranda.

The issues for resolution are:

First, whether the Court of Appeals and the Regional Trial Court erred in finding that petitioners are liable to pay respondent

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[40] *Id*. at 50-51.

[41] *Id*. at 219.

[42] *Id*. at 307-311.

[43] *Id*. at 316-317.

Bank the amounts of ₱17,995,214.47 and US$289,730.10, inclusive of interests and penalty charge as of October 31, 1994;

Second, whether the Court of Appeals and the Regional Trial Court erred in finding that petitioners are liable to pay respondent Bank legal interest of twelve percent (12%) per annum from October 1994 until full payment is made;

Third, whether petitioners are entitled to attorney's fees; and

Fourth, whether the Court of Appeals erred in holding respondent Sergio Ortiz-Luis, Jr. solidarily liable with the petitioners to pay the sums of ₱17,995,214.47 and US$289,730.10 plus 12% legal interest.

We deny the petition. The Court of Appeals committed no reversible error in affirming in *toto* the decision of the Regional Trial Court.

I

In its Amended Complaint, Security Bank claimed for payment of the total outstanding peso obligation of ₱17,995,214.47 and total outstanding dollar obligation of US$289,730.10 as of October 31, 1994. The Bank additionally claimed for:

(1) Interest of 20% per annum on the peso obligation and 7.5% per annum on the dollar obligation from November 1, 1994 until fully paid;

(2) Penalty charges of 2% per month on the total outstanding obligation from November 1, 1994 until fully paid;

(3) Legal interest on the accrued interest from the filing of the Complaint until fully paid; and

(4) Attorney's fees equivalent to 20% of total outstanding obligations, including interests and penalties.[44]

The Regional Trial Court denied Security Bank's additional claims for interests and penalty charges for being iniquitous,

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[44] *Id*. at 79.

and imposed instead a 12% legal interest on the total outstanding obligation. Agreeing with the trial court, the Court of Appeals explained that it would only be fair and equitable to impose a straight 12% per annum on the total amount due starting October 1994, rather than the 2% penalty per month on top of the 20% and 7.5% interest on the peso and dollar obligation, respectively, being demanded by the Bank.

Petitioners now contend that since the trial and appellate courts found the stipulated interests and penalty charges to be excessive and iniquitous,[45] then the amounts of ₱17,995,214.47 and US$289,730.10 adjudged against them (which already incorporated the interests and penalty charges) should have been reduced to the actual unpaid principals of ₱12,957,500.00 and US$209,941.55, respectively, devoid of any interests and penalty charges.[46]

Security Bank counters that petitioners raise purely factual questions, which are not proper in a Rule 45 petition before this Court;[47] and petitioners' arguments were a mere rehash of their arguments before the Court of Appeals, which have already been judiciously passed upon.[48]

Petitioners are mistaken.

The Regional Trial Court did not delete altogether the 2% monthly penalty charges and stipulated interests of 7.5% (on the dollar obligations) and 20% (on peso obligations). The trial court, in fact, adjudged petitioner Erma liable to pay the amounts of ₱17,995,214.47 and US$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, on the basis of Article 1308[49] of the Civil Code and jurisprudential

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[45] *Id*. at 370.

[46] *Id*. at 371.

[47] *Id*. at 352-353.

[48] *Id*. at 354.

[49] CIVIL CODE, Art. 1308 provides:

Article 1308. The contract must bind both contracting parties, its validity or compliance cannot be left to the will of one of them.

pronouncements on the obligatory force of contracts – not otherwise contrary to law, morals, good customs or public policy – between contracting parties.[50]

The stipulated 7.5% or 21% per annum interest constitutes the monetary or conventional interest for borrowing money and is allowed under Article 1956 of the New Civil Code.[51] On the other hand, the penalty charge of 2% per month accrues from the time of Erma's default in the payment of the principal and/or interest on due date.[52] This 2% per month charge is penalty or compensatory interest for the delay in the payment of a fixed sum of money, which is separate and distinct from the conventional interest on the principal of the loan.[53] In this connection, this Court, construing Article 2209[54] of the Civil Code, held that:

> [T]he appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum or money, is the payment of penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest, then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been agreed upon, then payment of legal interest or six percent (6%) per annum.[55]

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[50] *Rollo*, p. 147.

[51] *Spouses Abella v. Spouses Abella,* 763 Phil. 372, 382 (2015) [Per *J.* Leonen, Second Division]; *Tan v. Court of Appeals,* 419 Phil. 857, 865 (2001) [Per *J.* De Leon, Jr., Second Division].

[52] See for example PN No. FCDL/82/013/92 (*rollo*, p. 90).

[53] *Tan v. Court of Appeals,* 419 Phil. 857, 865 (2001) [Per *J.* De Leon, Jr., Second Division].

[54] CIVIL CODE, Art. 2209 provides:

> Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum."

[55] *State Investment House, Inc. v. Court of Appeals,* 275 Phil. 433, 444 (1991) [Per *J.* Feliciano, Third Division].

Furthermore, the promissory notes provide for monthly compounding of interest: "Interest not paid when due shall be compounded monthly from due date."[56] Compounding is sanctioned under Article 1959 of the Civil Code:

> Article 1959. Without prejudice to the provisions of Article 2212, interest due and unpaid shall not earn interest. *However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest.* (Emphasis supplied)

What the trial court did was to stop the continued accrual of the 2% monthly penalty charges on October 31, 1994, and to thereafter impose instead a straight 12% per annum on the total outstanding amounts due. In making this ruling, the Regional Trial Court took into account the partial payments made by petitioners, their efforts to settle/restructure their loan obligations and the serious slump in their export business in 1993. The Regional Trial Court held that, under those circumstances, it would be "iniquitous, and tantamount to merciless forfeiture of property"[57] if the interests and penalty charges would be continually imposed. The Regional Trial Court held:

> It is no longer disputed that defendant ERMA was paying interest on its loan obligation until October 1994; that defendant ERMA exerted efforts to settle its obligation to SBC, as in fact it proposed to SBC the restructuring of its loan; and delivered to SBC, TCT No. M-7021 to manifest its sincere effort to settle the obligation by way of restructuring its loan obligation into five-year term loan. Additionally, plaintiff-ERMA's export business suffered serious slump in 1993 which prompted it to seek a restructuring of its entire loan. Were it not for said financial crisis, defendant ERMA would not have defaulted in the payment of its obligation, or at least the interest thereon.
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> Recognizing the predicament which ERMA found itself, it is considered iniquitous, and tantamount to merciless forfeiture of property to require defendant ERMA to continue paying 2% penalty per month as well as payment of legal interest upon all accrued interest

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[56] *Rollo*, pp. 90, 92, 94, 96, 98, 100, 102, 104, 106 & 108.

[57] *Id*. at 153.

after October 1994. This court therefore finds plaintiff SBC not entitled to the recovery of the amount corresponding to 2% penalty per month and to the legal interest on the accrued interest.[58]

The Regional Trial Court, as affirmed by the Court of Appeals, acted in accordance with Article 1229 of the Civil Code, which allows judges to equitably reduce the penalty when there is partial or irregular compliance with the principal obligation, or when the penalty is iniquitous or unconscionable.

Whether a penalty charge is reasonable or iniquitous is addressed to the sound discretion of the courts and determined according to the circumstances of the case.[59] The reasonableness or unreasonableness of a penalty would depend on such factors as "the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties[.]"[60]

For instance, in *Palmares v. Court of Appeals*,[61] the Court eliminated altogether the payment of the penalty charge of 3% per month for being inequitable and unreasonable. It ruled that the purpose of the penalty interest – that is to punish the obligor – have been sufficiently served by the compounded interest of 6% per month on the ₱30,000 loan.[62]

In *Tan v. Court of Appeals*,[63] the continued monthly accrual of the 2% penalty on the total amount due of about ₱7.996 million was held to be unconscionable. Considering the debtor's partial payments and offer to settle his outstanding loan in good

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[58] *Rollo*, p. 153.

[59] *Land Bank of the Phils. v. David,* 585 Phil. 167, 174 (2008) [Per *J.* Carpio Morales, Second Division].

[60] *Ligutan v. Court of Appeals,* 427 Phil. 42, 52 (2002) [Per *J.* Vitug, Third Division].

[61] 351 Phil. 664, 690-691 (1998) [Per *J.* Regalado, Second Division].

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

[63] 419 Phil. 857 (2001) [Per *J.* De Leon, Jr., Second Division].

faith, the Court found it fair and equitable to reduce the 2% penalty charge, compounded monthly, to a straight twelve (12%) per annum.[64]

Similarly, in this case, the Regional Trial Court and the Court of Appeals found it reasonable to reduce the 2% penalty charges, compounded monthly as to interests due and unpaid, to 12% per annum of the total outstanding obligations, in light of petitioners' partial payments and their good faith to settle their obligations. This reduction is essentially discretionary with the trial court and, in the absence of any abuse of discretion will not be disturbed.

Furthermore, we find no cogent reason to disturb the sums of ₱17,995,214.47 and US$289,730.10 adjudged against the petitioners in favor of Security Bank. Time and again, this Court has held that factual determinations of the Regional Trial Court, especially when adopted and confirmed by the Court of Appeals, are final and conclusive[65] barring a showing that the findings were devoid of support or that a substantial matter had been overlooked by the lower courts, which would have materially affected the result if considered. This case does not fall within any of the recognized exceptions justifying a factual review in a Rule 45 petition.[66]

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[64] *Id*. at 865.

[65] *Polotan, Sr. v. Court of Appeals,* 357 Phil. 250, 256-257 (1998) [Per *J*. Romero, Third Division].

[66] THE INTERNAL RULES OF THE SUPREME COURT, Rule 3, Sec. 4 enumerates the following exceptions:

Section 4. *Cases when the Court May Determine Factual Issues.* – The Court shall respect the factual findings of lower courts, unless any of the following situations is present:

(a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture;
(b) the inference made is manifestly mistaken;
(c) there is grave abuse of discretion;
(d) the judgment is based on a misapprehension of facts;
(e) the findings of fact are conflicting;

Petitioners further assert that they should be awarded at least ₱50,000.00 as attorney's fees for having been forced to defend themselves in needless litigation.[67]

The Court is not persuaded.

The award of attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. Even when a claimant is compelled to litigate to defend himself/herself, still attorney's fees may not be awarded where there is no sufficient showing of bad faith of the other party.[68] It is well within Security Bank's right to institute an action for collection and to claim full payment.[69] Absent any proof that respondent Bank intended to prejudice or injure petitioners when it rejected petitioners' offer and filed the action for collection, we find no basis to grant attorney's fees.

II

For his part, respondent Sergio Ortiz-Luis, Jr. insists that he is not liable to Security Bank because he merely signed the Suretyship Agreement as an accommodation party being the

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(f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee;
(g) the findings of fact of the collegial appellate courts are contrary to those of the trial court;
(h) said findings of fact are conclusions without citation of specific evidence on which they are based;
(i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;
(j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and
(k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact.

[67] *Rollo*, p. 371.

[68] *PNCC v. APAC Marketing Corp.,* 710 Phil. 389, 395 (2013) [Per *C.J.* Sereno, First Division].

[69] *Barons Marketing Corp. v. Court of Appeals,* 349 Phil. 769, 775 (1998) [Per *J.* Kapunan, Third Division].

Administrative Vice President of Erma at that time; and there was novation of the Credit Agreement.[70]

Respondent Ortiz's position had been consistently rejected by the Regional Trial Court and the Court of Appeals. The lower courts found that while respondent Ortiz signed the Credit Agreement as an officer of Erma, as shown by his signature under Erma Industries Inc. (Borrower),[71] this does not absolve him from liability because he subsequently executed a Continuing Suretyship agreement[72] wherein he guaranteed the "due and full payment and performance"[73] of all credit accommodations granted to Erma and bound himself solidarily liable with Ernesto Marcelo for the obligations of Erma. Sections 3 and 11 of the Continuing Suretyship clearly state as follows:

> 3. Liability of the Surety. – *The liability of the Surety is solidary* and not contingent upon the pursuit by the Bank of whatever remedies it may have against the Debtor or the collaterals/liens it may possess. If any of the Guaranteed Obligations is not paid or performed on due date (at stated maturity or by acceleration), the Surety shall, without need for any notice, demand or any other act or deed, immediately become liable therefor and the Surety shall pay and perform the same.
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> . . . . . .
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> 11. Joint and Several Suretyship. – *If the Surety is more than one person, all of their obligations under this Suretyship shall be joint and several with the Debtor and with each other.* The Bank may proceed under this Suretyship against any of the sureties for the entire Guaranteed Obligations, without first proceeding against the Debtor or any other surety or sureties of the Guaranteed Obligations, and without exhausting the property of the Debtor, the Surety hereby expressly waiving all benefits under Article 2058 and Article 2065 and Articles 2077 to 2081, inclusive, of the Civil Code.[74] (Emphasis supplied)

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[70] *Rollo*, p. 323.

[71] *Id.* at 85.

[72] *Id.* at 45 and 148-149.

[73] *Id.* at 86.

[74] *Id.* at 87-88.

Furthermore, respondent Ortiz's claim that he is a mere accommodation party is immaterial and does not discharge him as a surety. He remains to be liable according to the character of his undertaking and the terms and conditions of the Continuing Suretyship, which he signed in his personal capacity and not in representation of Erma.

The Court has elucidated on the distinction between an accommodation and a compensated surety and the reasons for treating them differently:

> The law has authorized the formation of corporations for the purpose of conducting surety business, and the corporate surety differs significantly from the individual private surety. First, unlike the private surety, the corporate surety signs for cash and not for friendship. The private surety is regarded as someone doing a rather foolish act for praiseworthy motives; the corporate surety, to the contrary, is in business to make a profit and charges a premium depending upon the amount of guaranty and the risk involved. Second, the corporate surety, like an insurance company, prepares the instrument, which is a type of contract of adhesion whereas the private surety usually does not prepare the note or bond which he signs. Third, the obligation of the private surety often is assumed simply on the basis of the debtor's representations and without legal advice, while the corporate surety does not bind itself until a full investigation has been made. For these reasons, the courts distinguish between the individual gratuitous surety and the vocational corporate surety. In the case of the corporate surety, the rule of *strictissimi juris* is not applicable, and courts apply the rules of interpretation . . . of appertaining to contracts of insurance.[75]

Consequently, the rule of strict construction of the surety contract is commonly applied to an accommodation surety but is not extended to favor a compensated corporate surety.

The rationale of this doctrine is reasonable; an accommodation surety acts without motive of pecuniary gain and, hence, should be protected against unjust pecuniary impoverishment by imposing on

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[75] *Laurente v. Rizal Surety and Ins. Co.,* 123 Phil. 359, 364-365 (1966) [Per *J*. Regala, *En Banc*] *citing* Slovenko, Suretyship, 39 TUL. L. REV. 427, 442-443 (1965).

the principal duties akin to those of a fiduciary. This cannot be said of a compensated corporate surety which is a business association organized for the purpose of assuming classified risks in large numbers, for profit and on an impersonal basis, through the medium of standardized written contractual forms drawn by its own representatives with the primary aim of protecting its own interests.[76]

The nature and extent of respondent Ortiz's liability are set out in clear and unmistakable terms in the Continuing Suretyship agreement. Under its express terms, respondent Ortiz, as surety, is "bound by all the terms and conditions of the credit instruments."[77] His liability is solidary with the debtor and co-sureties; and the surety contract remains in full force and effect until full payment of Erma's obligations to the Bank.[78]

Respondent Ortiz's claim of novation was likewise rejected by the lower courts. The Regional Trial Court and the Court of Appeals were in agreement that while there were ongoing negotiations between Erma and Security Bank for the restructuring of the loan, the same did not materialize.[79] Erma offered to restructure its entire outstanding obligation and delivered TCT No. M-7021 as collateral, to which Security Bank counter-offered a partial restructuring or only up to ₱5,000,000. This counter-offer was not accepted by Erma. There was no new contract executed between the parties evidencing the restructured loan. Neither did Erma execute a real estate mortgage over the property covered by TCT No. M-7021.

WHEREFORE, the Petition is **DENIED.** The Decision dated June 17, 2009 and Resolution dated February 3, 2010 of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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[76] *Pacific Tobacco Corp. v. Lorenzana,* 102 Phil. 234, 242 (1957) [Per J. Felix, First Division].

[77] *Rollo*, p. 87.

[78] *Id.* at 88.

[79] *Id.* at 40-42 and 149.

Velasco, Jr. (*Chairperson*) and *Martires, JJ.,* concur.

Bersamin, J., on official leave.

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 197475. December 6, 2017]

MARK MONTELIBANO, *petitioner, vs.* **LINDA YAP,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; THE SUBSEQUENT SUBMISSION OF THE CERTIFIED TRUE COPY OF THE ASSAILED DECISION WITH THE MOTION FOR RECONSIDERATION IS SUBSTANTIAL COMPLIANCE WITH THE RULES.—** The Court has held that the subsequent submission of the certified true copy of the assailed decision with the motion for reconsideration is substantial compliance with the rules. Thus, this point may be conceded to petitioner.

2. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; CRIMINAL ACTIONS ARE TO BE PROSECUTED UNDER THE DIRECTION AND CONTROL OF THE PUBLIC PROSECUTOR, AS SUCH, THE DISCRETION ON WHO TO PRESENT AS WITNESSES IS VESTED WITH THE PUBLIC PROSECUTOR, AND NO AUTHORITY FROM THE PRIVATE COMPLAINANT IS REQUIRED.—** [P]etitioner must be reminded that in criminal cases, the offended party is the State, and "the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime . . . . In this sense, the parties to the action are

the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state." As such, the Rules dictate that criminal actions are to be prosecuted under the direction and control of the public prosecutor. Clearly, the discretion on who to present as witnesses is vested with the public prosecutor, and no authority from the private complainant is required.

3. ID.; EVIDENCE; OFFER AND OBJECTION; THE DATE OF RECEIPT EMBODIED IN THE DEMAND LETTER, WHICH WAS FORMALLY OFFERED IN EVIDENCE, IS PART AND PARCEL OF SAID DEMAND LETTER, SUCH THAT THE DATE OF RECEIPT BY PETITIONER THEREIN MAY BE CONSIDERED BY THE TRIAL COURT ALONG WITH THE OTHER CONTENTS OF THE LETTER; THUS NO SEPARATE IDENTIFICATION AND OFFER OF THE DATE OF RECEIPT IS NECESSARY.— [T]he date of receipt embodied in the demand letter, which was formally offered in evidence, is part and parcel of said demand letter, such that the date of receipt by petitioner therein may be considered by the trial court along with the other contents of the letter. No separate identification and offer of the date of receipt is necessary, because the Rules only dictate that "the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified." The demand letter was formally offered, and the date of receipt is contained therein. A perusal of the prosecution's Formal Offer of Documentary Exhibits reveals that the purpose specified for the offer of the letter was "to show the fact that the **accused was duly notified of the dishonor of the subject checks** and likewise demanded to settle the same, but he failed until the present." The purpose of showing due notification necessarily includes the date of said notification, which is the date of receipt as stated in the demand letter offered.

4. CRIMINAL LAW; REVISED PENAL CODE; BOUNCING CHECKS LAW (BP BLG. 22); THE ACCUSED/ISSUER MUST BE NOTIFIED IN WRITING OF THE FACT OF DISHONOR TO GIVE HIM/HER AN OPPORTUNITY TO PAY THE AMOUNT ON THE CHECK OR TO MAKE ARRANGEMENTS FOR ITS PAYMENT WITHIN FIVE (5) DAYS FROM RECEIPT THEREOF, IN ORDER TO PREVENT THE PRESUMPTION OF KNOWLEDGE OF

THE INSUFFICIENCY OF FUNDS FROM ARISING. — [W]hat the Bouncing Checks Law requires is that the accused must be **notified in writing** of the fact of dishonor. This notice gives the issuer an opportunity to pay the amount on the check or to make arrangements for its payment within five (5) days from receipt thereof, in order to prevent the presumption of knowledge of the insufficiency of funds from arising. x x x. [I]t appears on record that during the proceedings before the MTCC, both the prosecution and the defense jointly moved for the termination of pre-trial due to the possibility that the case could be settled amicably as to its civil aspect, which the trial court granted — indicating petitioner's awareness that the subject check was dishonored and that he had an outstanding obligation to private complainant. It was never shown that petitioner paid nor made arrangements to pay the amount on the check, as in fact the trial before the MTCC proceeded and the court ordered petitioner to pay the amount. Clearly, the 5-day period within which to settle his obligation had long expired and petitioner is presumed to have had knowledge of the insufficiency of his funds at the time he issued the subject check.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; IDENTIFICATION OF ACCUSED; IN-COURT IDENTIFICATION IS NOT ESSENTIAL WHERE THERE IS NO DOUBT THAT THE PERSON ALLEGED TO HAVE COMMITTED THE CRIME AND THE PERSON CHARGED IN THE INFORMATION AND SUBJECT OF THE TRIAL ARE ONE AND THE SAME.— [T]his Court has already clarified that in-court identification is not essential where there is no doubt that the person alleged to have committed the crime and the person charged in the information and subject of the trial are one and the same, *viz*: x x x **While positive identification by a witness is required by the law to convict an accused, it need not always be by means of a physical courtroom identification**. x x x **In-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial. This is especially true in cases wherein the identity of the accused, who is a stranger to the prosecution witnesses, is dubitable**. x x x. This Court does not find that such doubt exists in this case.

6. ID.; ID.; ID.; ID.; PETITIONER'S ATTEMPT TO SETTLE AN OBLIGATION CREATED BY A BOUNCING CHECK IS A PATENT ACKNOWLEDGMENT THAT HE IS THE SAME PERSON BEING CHARGED WITH ISSUING IT.— [P]etitioner never denied that he is the person indicted in the information, much less offered proof that he is not the same person being charged with the offense. He merely proffers that he was not identified in open court by the prosecution's sole witness as the one who issued and signed the check. He does not dispute that he issued and signed the check as, in fact, on the date set for his arraignment and after being arraigned, he and the prosecution jointly moved to terminate the pre-trial in an attempt to settle the obligation arising from the issued check. This is a patent acknowledgment that he is the person being charged with committing the offense and subject of the trial. It strains credulity to believe that he would willingly attempt to settle an obligation created by a bouncing check if he were not the same person charged with issuing it.

7. ID.; ID.; ID.; ID.; WHERE THE FAILURE TO IDENTIFY PETITIONER IN OPEN COURT WAS DIRECTLY ATTRIBUTABLE TO HIS ACTIONS, ABSOLVING HIM OF PENAL LIABILITY ON THIS GROUND ALONE WOULD OPEN THE FLOODGATES FOR MALEFACTORS TO EVADE CONVICTION BY THE SIMPLE EXPEDIENT OF REFUSING TO APPEAR ON SCHEDULED HEARINGS WHERE THEY EXPECT TO BE IDENTIFIED IN COURT.— [I]t must be noted that the lack of identification by the witness in open court was due to petitioner's failure to appear, despite due notice, on the date set for the prosecution's presentation of evidence, in which the testimony of Nelson was offered. In its judgment, the MTCC noted that the initial presentation of evidence for the prosecution was postponed at the instance of accused until it was finally heard on 20 October 2004, despite the petitioner's absence, even though the latter was aware of the scheduled hearing. Again, when the cross-examination was set for hearing, petitioner and counsel failed to appear, prompting the MTCC to deem his absence as a waiver of his right to cross-examination and to direct the prosecution to formally offer its documentary exhibits. Clearly, the failure to identify petitioner in open court was directly attributable to his actions. To sustain petitioner's assertion and

absolve him of penal liability on this ground alone would open the floodgates for malefactors to evade conviction by the simple expedient of refusing to appear on scheduled hearings where they expect to be identified in court. This sets a dangerous precedent and is undoubtedly antithetical to the foundations of our justice system.

8. CRIMINAL LAW; REVISED PENAL CODE; BOUNCING CHECKS LAW (BP BLG. 22); PENALTY OF FINE IMPOSED INSTEAD OF THE PENALTY OF IMPRISONMENT FOR VIOLATION OF BP BLG. 22 WHERE THE ACCUSED WAS NOT SHOWN TO BE A HABITUAL DELINQUENT OR A RECIDIVIST. — While petitioner's conviction is affirmed, this Court deems it proper to impose a fine instead of the penalty of imprisonment meted by the MTCC and sustained by the RTC, in view of Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001, establishing a rule of preference in the application of the penalties provided for in BP Blg. 22. The Court has held that the policy of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness should be considered in favor of an accused who is not shown to be a habitual delinquent or a recidivist. Here, there is no indication that petitioner is a habitual delinquent or a recidivist. Forbearing to impose imprisonment would also not depreciate the seriousness of the offense, or work violence on the social order, or otherwise be contrary to the imperatives of justice.

APPEARANCES OF COUNSEL

Lobedica Law Office for petitioner.
Siu Riñen and Associates Law Firm for respondent.
Gascon and Associates Law Office, collaborating counsel for respondent.

D E C I S I O N

MARTIRES, *J.*:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside

the 17 February 2011[1] and 8 June 2011[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. CEB-CR No. 00571.

THE FACTS

Private complainant Linda Yap *(private complainant)* asserted that petitioner Mark Montelibano *(petitioner)* obtained a loan from her as additional capital for his business. Thereafter, petitioner issued a Metrobank – Cebu Guadalupe Branch check dated 31 May 2001 in the amount of ₱2,612,500.00[3] *(the check)* as partial payment. When the check was presented for payment, it was dishonored for the reason that the account was closed.[4]

As petitioner failed to settle his obligation despite demands, he was charged with violation of Batas Pambansa Bilang 22 *(BP Blg. 22)* in an Information[5] which reads as follows:

> That sometime in the month of May, 2001, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of the issuance of the check, he did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent to gain and of causing damage, did then and there issue, make or draw METROBANK – CEBU GUADALUPE BRANCH, Check No. 0127947 dated May 31, 2001, in the amount of ₱2,612,500.00 payable to Linda Yap, which check was issued in payment of an obligation, but which check when presented with the said bank, the same was dishonored for reason "ACCOUNT CLOSED", and despite notice and demands made to redeem or make good said check, said accused failed and refused an still fails and refuses to do so, to the damage and prejudice of said Linda Yap, in the amount aforestated.

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[1] *Rollo,* pp. 37-39; penned by Associate Justice Socorro B. Inting, with Associate Justices Pampio A. Abarintos and Edwin D. Sorongon, concurring.

[2] *Id*. at 52-53; penned by Associate Justice Pampio A. Abarintos, with Associate Justices Eduardo B. Peralta and Gabriel T. Ingles, concurring.

[3] *Id*. at 99.

[4] *Id*. at 143.

[5] *Id*. at 96.

CONTRARY TO LAW.

In an Order[6] dated 2 December 2003, the Municipal Trial Court in Cities *(MTCC),* Branch 2, Cebu City, directed the issuance of a bench warrant against the petitioner for failure to appear, despite due notice, when the case was called for arraignment and pre-trial.

Subsequently, the case was called again for arraignment and pre-trial on 10 March 2004, where the petitioner entered a plea of not guilty. On said date, the parties also moved for the termination of the pre-trial due to the possibility of an amicable settlement, which the MTCC granted.

When the case proceeded to trial, the MTCC gave petitioner an opportunity to file counter-affidavits and other controverting evidence within ten (10) days from receipt of any additional evidence which the prosecution may file. However, none was filed by petitioner even after receipt of the prosecution's additional affidavits and evidence.

The initial presentation of evidence for the prosecution was postponed several times at the instance of the accused. On 20 October 2004, said presentation of evidence finally proceeded despite the absence of petitioner, who was notified of the scheduled hearing.

The prosecution presented the lone testimony of Nelson Arendain *(Nelson),* an employee of private complainant, who affirmed the veracity of the contents of the affidavit he had filed relative to the case.

Said affidavit confirmed that the check was issued by the petitioner, who signed the same in Nelson's presence; and that the check, when presented to the bank, was dishonored for the reason "account closed."

The prosecution also offered in evidence a demand letter dated 21 June 2001,[7] addressed to and received by the petitioner,

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[6] *Id*. at 76.

[7] *Id*. at 100.

notifying the petitioner of the check's dishonor and Linda's demand to be paid the amount therein.

The hearing for the cross-examination was scheduled on 7 December 2004; however, petitioner and counsel failed to appear at the scheduled hearing despite notice. The MTCC deemed said failure as a waiver of petitioner's right to cross-examine the prosecution's witness. The prosecution thereafter filed its formal offer of documentary exhibits, which were admitted for failure of the petitioner to comment and /or object thereto.

Subsequently, the petitioner failed to present its evidence despite due notice when the case was called for reception of evidence for the defense. As a consequence, the right of petitioner to present evidence was deemed waived but, upon motion for reconsideration, the MTCC allowed the reception of evidence and scheduled a hearing therefor.

On the date set for the hearing, however, the defense counsel filed a motion to withdraw as counsel, with the conformity of the petitioner, which was granted. Again, the hearing for the reception of evidence for the petitioner was reset to 5 July 2005. On said date, petitioner again failed to appear; the MTCC granted the prosecution's motion to consider petitioner's right to present evidence as waived.

On 11 July 2005, petitioner, through his new counsel, filed a motion for reconsideration of said order. This was granted by the MTCC because the prosecution failed to appear during the hearing for said motion despite notice. A hearing was again set for the reception of evidence for the defense.

However, instead of presenting evidence, the defense filed a memorandum,[8] asserting that the prosecution failed to establish petitioner's guilt beyond reasonable doubt because he was never identified as the one who signed and issued the check. The defense alleged that the accused was not present in court when the sole witness for the prosecution testified, such that the latter was not able to identify him.

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[8] *Id*. at 81-84.

After the prosecution filed its comment thereto, the case was submitted for decision.

The MTCC Ruling

The MTCC found petitioner guilty beyond reasonable doubt of the crime charged and sentenced him to imprisonment of one (1) year.[9] He was also ordered to pay the amount appearing on the subject check, with interest at twelve percent (12%) per annum from the date of demand. The MTCC found petitioner's contention untenable, because the prosecution's failure to personally identify the petitioner during hearing can be attributed to petitioner's failure to appear despite due notice.

The RTC Ruling

Aggrieved, petitioner appealed to the Regional Trial Court *(RTC).* The RTC rendered judgment[10] affirming *in toto* the decision of the MTCC. It ruled that the positive identification of the accused must be established beyond reasonable doubt when the defense pleads alibi. However, the defense of petitioner is not alibi. The RTC ruled, moreover, that the petitioner's right to adduce evidence on his behalf was considered waived due to his failure to appear in court and present its defense from the time the prosecution presented evidence up to the time the case was submitted for decision. Further, it opined that no justice or equity is served if the accused can evade conviction by simply failing to appear during trial despite due notice.

The CA Ruling

When petitioner elevated the case to the CA on a petition for review under Rule 42, the CA dismissed the petition for failure of the petitioner to attach to the petition a certified true copy of the decision rendered by the MTCC, in violation of Section 2, Rule 42, of the Rules of Court. The petitioner filed

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[9] *Id.* at 47-50; penned by Presiding Judge Anatalio S. Necesario.

[10] *Id.* at 74-75; penned by Presiding Judge Geraldine Faith A. Econg.

a motion for reconsideration which the CA denied in a Resolution[11] dated 8 June 2011.

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, THE SPECIAL EIGHTEENTH (18TH) DIVISION AND NINETEENTH (19TH) DIVISION, HAVE DECIDED A QUESTION OF SUBSTANCE PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISION OF THE SUPREME COURT WHEN IT ERRONEOUSLY DISMISSED WITH PREJUDICE THE PETITION FOR REVIEW RELYING ON SHEER TECHNICALITIES RATHER THAN ON THE MERITS WHICH CLEARLY CAUSED GREAT INJUSTICE AND UNDUE PREJUDICE TO THE PETITIONER DESPITE HIS HAVING COMPLIED WITH AND SUBMITTED THE REQUIREMENTS MANDATED BY THE RULES.

II.

WHETHER OR NOT THE HONORABLE APPELLATE COURT ERRED PALPABLY IN NOT ALLOWING THE SUBSTANTIVE ARGUMENTS OF PETITIONER MERITING REVERSAL OF PETITIONER'S CONVICTION PARTICULARLY ON FAILURE OF PRIVATE RESPONDENT TO IDENTIFY THE PETITIONER AND LACK OF AUTHORITY OF HER SOLE WITNESS TO TESTIFY IN COURT RESULTING IN PETITIONER'S CONVICTION THEREBY DEPRIVING HIM OF OTHER ADEQUATE REMEDY THAN SEEKING RELIEF THROUGH THIS INSTANT PETITION FOR REVIEW ON CERTIORARI.

In sum, petitioner contends that the CA rigidly applied the rules of procedure and should have allowed his petition in the interest of substantial justice, especially since petitioner had subsequently complied with the required attachments by submitting with his motion for reconsideration a certified true copy of the MTCC's decision. More importantly, petitioner asserts that his substantive arguments merit a reversal of his conviction on the grounds that he was never identified in open

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

court, casting reasonable doubt that he is the accused charged with violation of BP Blg. 22, and that there was no evidence establishing that the lone prosecution witness was authorized by private complainant to testify.

Moreover, petitioner posits that the prosecution failed to establish the elements of the offense because the date of receipt of the notice of dishonor given to petitioner, while contained in the demand letter offered as documentary evidence, was never separately and independently marked and offered in evidence. Thus, according to petitioner, there is uncertainty as to when the five (5)-day period given to an accused to satisfy the amount of the check or make arrangements for its payment would be reckoned, because the court cannot consider evidence not formally offered. Consequently, petitioner asseverates that the presumption of knowledge by the issuer of the insufficiency of his funds did not arise.

THE COURT'S RULING

This Court finds no reason to reverse the judgment of conviction rendered by the MTCC and affirmed by the RTC.

On the procedural aspect, the Court has held that the subsequent submission of the certified true copy of the assailed decision with the motion for reconsideration is substantial compliance with the rules.[12] Thus, this point may be conceded to petitioner.

Nonetheless, petitioner's contentions on the merits of this case miserably fail to convince this Court.

Petitioner asks this Court to reverse his conviction on the following grounds: (1) that the lone prosecution witness was not authorized by the private complainant to testify; (2) that the date of receipt of notice of dishonor was not separately marked and identified in the prosecution's formal offer of evidence, preventing the presumption of knowledge from arising;

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[12] *Quilo v. Bajao,* G.R. No. 186199, 7 September 2016.

and (3) there is reasonable doubt as to his identity as the accused in the instant case because he was never identified in open court.

Anent the first ground, petitioner must be reminded that in criminal cases, the offended party is the State, and "the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime . . . . In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state."[13] As such, the Rules dictate that criminal actions are to be prosecuted under the direction and control of the public prosecutor.[14] Clearly, the discretion on who to present as witnesses is vested with the public prosecutor, and no authority from the private complainant is required.

On the second ground, the date of receipt embodied in the demand letter, which was formally offered in evidence, is part and parcel of said demand letter, such that the date of receipt by petitioner therein may be considered by the trial court along with the other contents of the letter. No separate identification and offer of the date of receipt is necessary, because the Rules only dictate that "the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."[15] The demand letter was formally offered, and the date of receipt is contained therein. A perusal of the prosecution's Formal Offer of Documentary Exhibits[16] reveals that the purpose specified for the offer of the letter was "to show the fact that the **accused was duly notified of the dishonor of the subject checks** and likewise demanded to settle the same, but he failed until the present."[17] The purpose of

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[13] *Bumatay v. Bumatay,* G.R. No. 191320, 25 April 2017.

[14] Section 5, Rule 110, Revised Rules of Criminal Procedure, as amended by A.M. No. 02-2-07-SC.

[15] Section 34, Rule 132, Rules of Court.

[16] *Rollo*, pp. 112-113.

[17] *Id*. at 113.

showing due notification necessarily includes the date of said notification, which is the date of receipt as stated in the demand letter offered.

Moreover, what the Bouncing Checks Law requires is that the accused must be **notified in writing** of the fact of dishonor.[18] This notice gives the issuer an opportunity to pay the amount on the check or to make arrangements for its payment within five (5) days from receipt thereof, in order to prevent the presumption of knowledge of the insufficiency of funds from arising.

Petitioner admittedly received the 21 June 2001 demand letter of private complainant, expressing the dishonor of the subject check. In the memorandum he filed before the CA, petitioner admits that he is "not unaware of the fact that a date, June 11 [sic], 2001 appeared at the bottom of the NOTICE OF DISHONOR just below the signature of PETITIONER-APPELLANT."[19] He never disputed receipt of said letter, as in fact, he does not dispute that the signature below said date of receipt is his. He merely harps on the alleged infirmity in the marking and offer of said date.

Notably also, it appears on record that during the proceedings before the MTCC, both the prosecution and the defense jointly moved for the termination of pre-trial due to the possibility that the case could be settled amicably as to its civil aspect, which the trial court granted[20]— indicating petitioner's awareness that the subject check was dishonored and that he had an outstanding obligation to private complainant. It was never shown that petitioner paid nor made arrangements to pay the amount on the check, as in fact the trial before the MTCC proceeded and the court ordered petitioner to pay the amount. Clearly, the 5-day period within which to settle his obligation had long expired and petitioner is presumed to have had knowledge of

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[18] *Azarcon v. People,* 636 Phil. 347, 355 (2010).

[19] *Rollo*, p. 106.

[20] *Id.* at 47.

the insufficiency of his funds at the time he issued the subject check.

Anent the third ground, this Court has already clarified that in-court identification is not essential where there is no doubt that the person alleged to have committed the crime and the person charged in the information and subject of the trial are one and the same, *viz*:

> Indeed, during her testimony, complainant positively and categorically identified appellant, husband of her sister Loida, as the offender. This categorical and positive identification leaves no doubt as to the identity of Appellant Quezada as the rapist.
>
> We do not see the absolute need for complainant to point to appellant in open court as her attacker. **While positive identification by a witness is required by the law to convict an accused, it need not always be by means of a physical courtroom identification**. As the Court held in *People v. Paglinawan*:
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> > ". . . . Although it is routine procedure for witnesses to point out the accused in open court by way of identification, the fact that the witness . . . did not do so in this case was because the public prosecutor failed to ask her to point out appellant, hence such omission does not in any way affect or diminish the truth or weight of her testimony."
>
> **In-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial. This is especially true in cases wherein the identity of the accused, who is a stranger to the prosecution witnesses, is dubitable**. In the present case, however, there is no doubt at all that the rapist is the same individual mentioned in the Informations and described by the victim during the trial.[21] (emphasis supplied)

This Court does not find that such doubt exists in this case.

Notably, petitioner never denied that he is the person indicted in the information, much less offered proof that he is not the

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[21] *People v. Quezada,* 425 Phil. 877, 883 (2002).

same person being charged with the offense. He merely proffers that he was not identified in open court by the prosecution's sole witness as the one who issued and signed the check. He does not dispute that he issued and signed the check as, in fact, on the date set for his arraignment and after being arraigned, he and the prosecution jointly moved to terminate the pre-trial in an attempt to settle the obligation arising from the issued check. This is a patent acknowledgment that he is the person being charged with committing the offense and subject of the trial. It strains credulity to believe that he would willingly attempt to settle an obligation created by a bouncing check if he were not the same person charged with issuing it.

Moreover, it must be noted that the lack of identification by the witness in open court was due to petitioner's failure to appear, despite due notice, on the date set for the prosecution's presentation of evidence, in which the testimony of Nelson was offered. In its judgment, the MTCC noted that the initial presentation of evidence for the prosecution was postponed at the instance of accused until it was finally heard on 20 October 2004, despite the petitioner's absence, even though the latter was aware of the scheduled hearing. Again, when the cross-examination was set for hearing, petitioner and counsel failed to appear, prompting the MTCC to deem his absence as a waiver of his right to cross-examination and to direct the prosecution to formally offer its documentary exhibits.[22]

Clearly, the failure to identify petitioner in open court was directly attributable to his actions. To sustain petitioner's assertion and absolve him of penal liability on this ground alone would open the floodgates for malefactors to evade conviction by the simple expedient of refusing to appear on scheduled hearings where they expect to be identified in court. This sets a dangerous precedent and is undoubtedly antithetical to the foundations of our justice system.

While petitioner's conviction is affirmed, this Court deems it proper to impose a fine instead of the penalty of imprisonment

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[22] *Rollo,* p. 48.

meted by the MTCC and sustained by the RTC, in view of Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001, establishing a rule of preference in the application of the penalties provided for in BP Blg. 22.

The Court has held that the policy of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness should be considered in favor of an accused who is not shown to be a habitual delinquent or a recidivist.[23] Here, there is no indication that petitioner is a habitual delinquent or a recidivist. Forbearing to impose imprisonment would also not depreciate the seriousness of the offense, or work violence on the social order, or otherwise be contrary to the imperatives of justice.

WHEREFORE, the conviction of petitioner Mark Montelibano is **AFFIRMED** with the following **MODIFICATIONS:** The penalty of imprisonment is deleted. Instead, petitioner is ordered to pay a fine of ₱200,000.00, subject to subsidiary imprisonment in case of insolvency pursuant to Article 39 of the Revised Penal Code, as amended by Republic Act No. 10159. Petitioner is also ordered to pay the private complainant the amount of ₱2,612,500.00, at six percent (6%) legal interest per annum from the date of finality of herein judgment until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*) and *Leonen, JJ.,* concur.

Bersamin, J., on official leave.

Gesmundo, J., on leave.

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[23] *Saguiguit v. People,* 526 Phil. 618, 629 (2006).

SECOND DIVISION

[G.R. No. 206184. December 6, 2017]

SPOUSES ED DANTE LATONIO AND MARY ANN LATONIO and the minor ED CHRISTIAN LATONIO, *petitioners, vs.* **MCGEORGE FOOD INDUSTRIES INC., CEBU GOLDEN FOODS INDUSTRIES, INC., and TYKE PHILIP LOMIBAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE APPELLATE COURTS WILL NOT DISTURB THE FINDINGS OF THE TRIAL COURT, WHICH IS IN A BETTER POSITION TO DETERMINE THE SAME, EXCEPT WHEN ITS EVALUATION WAS REACHED ARBITRARILY, OR IT OVERLOOKED OR FAILED TO APPRECIATE SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE WHICH COULD AFFECT THE RESULT OF THE CASE.— The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court. It is also settled that the appellate courts will not as a general rule disturb the findings of the trial court, which is in a better position to determine the same. The trial court has the distinct advantage of actually hearing the testimony of and observing the deportment of the witnesses. Nevertheless, the rule admits of exceptions such as when its evaluation was reached arbitrarily, or it overlooked or failed to appreciate some facts or circumstances of weight and substance which could affect the result of the case, as what happened in the instant case. In the instant case, there is no dispute that petitioners suffered damages because of Ed Christian's fall. However, as to the issues on negligence and proximate cause, the Court of Appeals and the trial court gave contradicting findings.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; PROXIMATE LEGAL CAUSE, DEFINED. — [M]ary Ann's negligence was the proximate cause of Ed Christian's fall which caused him injury. Proximate cause is defined as – that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.

3. ID.; ID.; DAMAGES; TO WARRANT THE RECOVERY OF DAMAGES, THERE MUST BE BOTH A RIGHT OF ACTION FOR A LEGAL WRONG INFLICTED BY THE DEFENDANT, AND DAMAGE RESULTING TO THE PLAINTIFF THEREFROM, FOR WRONG WITHOUT DAMAGE, OR DAMAGE WITHOUT WRONG, DOES NOT CONSTITUTE A CAUSE OF ACTION, SINCE DAMAGES ARE MERELY PART OF THE REMEDY ALLOWED FOR THE INJURY CAUSED BY A BREACH OR WRONG.— [I]n the absence of negligence on the part of respondents Cebu Golden Foods and Lomibao, as well as their management and staff, they cannot be made liable to pay for the damages prayed for by the petitioners. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong. Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favour. In such cases, the

consequences must be borne by the injured person alone. The law affords no remedy resulting from an act which does not amount to a legal injury or wrong.

APPEARANCES OF COUNSEL

Tanco & Partners Law Offices for petitioners.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review[1] via Rule 45 of the Rules of Court assailing the Decision[2] dated September 28, 2012 and Resolution[3] dated January 31, 2013 of the Court of Appeals (*CA*), Cebu City in CA-G.R. CV No. 03079, which reversed and set aside the Decision[4] of the Regional Trial Court (*RTC*) Branch 22, Cebu City and denied the motion for reconsideration, respectively.

The facts are as follows:

On September 17, 2000, the petitioners, spouses Ed Dante (*Ed*) and Mary Ann Latonio (*Mary Ann*), accompanied their eight-month-old child Ed Christian to a birthday party at the McDonald's Restaurant, Ayala Center, Cebu City.

During the party and as part of the birthday package, McDonald's presented two mascots – "Birdie" and "Grimace" – to entertain and dance for the guests. Respondent Tyke Philip

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[1] *Rollo*, pp. 3-25.

[2] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Melchor Q.C. Sadang, concurring; *id.* at 27-40.

[3] *Rollo,* pp. 42-43.

[4] CA *rollo*, pp. 120-152.

Lomibao (*Lomibao*)[5] was the person inside the "Birdie" mascot suit.

After the mascots danced, guests had their pictures taken with them. Intending to have her child's photo taken with the mascots, Mary Ann placed Ed Christian on a chair in front of the mascot "Birdie." The mascot positioned itself behind the child and extended its "wings" to give a good pose for the camera.

As photos were about to be taken, Mary Ann released her hold of Ed Christian. Seconds later, the child fell head first from the chair onto the floor.

Several guests attended to Ed Christian. Meanwhile, the employees of respondent McDonald's Cebu Golden Food[6] (*Cebu Golden Food*) assisted petitioners in giving first aid treatment to Ed Christian. Petitioners, nevertheless, remained and continued with the party and left only after the party was over.

At about 9:30 in the evening of the same day, Mary Ann called up Cebu Golden Food to inform them that their doctor advised them to get an x-ray examination on Ed Christian. Cebu Golden Food then assured her that they were willing to shoulder the expenses for the x-ray examination of Ed Christian. Later, McDonald's reimbursed Mary Ann for the expenses incurred relative to the x-ray examination. It further offered to pay the expenses for the CT scan to be conducted on Ed Christian.

For some time, nothing was heard from petitioners. Nonetheless, a staff of Cebu Golden Food visited the Latonios in their residence to follow up the results of the CT scan test. The staff was met by the brother of Mary Ann, who allegedly repeatedly shouted at them saying that they would file a case against Cebu Golden Food. Thus, Cebu Golden Food reported the incident to their licensor, McGeorge Food Industries, Inc.

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[5] Respondent Tyke Philip Lomibao is an employee of Cebu Golden Food Industries.

[6] Cebu Golden Food Industries, Inc. is the licensee of respondent McGeorge for the operation of a restaurant business developed by the McDonald's Corporation, a foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A.

Sometime in October 2000, McGeorge received a Letter from the lawyer of the Latonios regarding the September 17, 2000 incident. In its reply, McGeorge immediately assured the Latonios that the health and safety of all McDonald's customers is its utmost concern and that the best medical and hospital care would be made available to Ed Christian.

McGeorge also sent its Field Service Director, together with its lawyer, to meet with the Latonios and their lawyers to assure them that McDonald's was ready to assist in whatever medical attention would be required of Ed Christian.

During the meeting, McGeorge agreed to contact a neurologist for consultation to ensure Ed Christian's health. McGeorge conferred and consulted with two neurosurgeons at the St. Luke's Medical Center and the Makati Medical Center, who both recommended to first study the x-ray results and CT scan to determine the extent of the injury sustained by the baby.

Thereafter, McGeorge relayed the doctor's requirement to the Latonios who initially agreed to give McGeorge copies of the x-ray and CT scan results. However, the Latonios had a change of heart and informed McGeorge that they had decided against lending them the x-ray and CT scan results and other related medical records.

Instead, the Latonios sent a Letter to McGeorge demanding for compensation in the amount of Fifteen Million Pesos (₱15,000,000.00).

As their demand remained unheeded, the Latonios caused the publication of the accident in the local newspaper, *Sun Star Cebu* on February 8, 2001 with a headline "*Food outlet sued for ₱9 M damages.*" Simultaneously, the Latonios also instituted a complaint for damages and attorney's fees against McGeorge.

On March 3, 2009, the RTC, in Civil Case No. CEB-26126, issued a Decision,[7] the dispositive portion of which reads:

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[7] CA *rollo*, pp. 120-152.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants Tyke Philip Lomibao and Cebu Golden Foods, Inc., finding defendant Tyke Philip Lomibao liable for acts of negligence causing the fall of baby Ed Christian Latonio and correspondingly, finding defendant Cebu Golden Foods, Inc. liable solidarily with defendant Tyke Philip Lomibao, pursuant to Article 2180 of the New Civil Code inasmuch as defendant Cebu Golden Foods, Inc. was the employer of defendant Tyke Philip Lomibao.

Accordingly, defendants Tyke Philip Lomibao and Cebu Golden Foods, Incorporated, are hereby ordered to pay to the plaintiffs the following:

1. ₱900,000.00 as Moral Damages;
2. ₱50,000.00 as Exemplary Damages, and
3. ₱300,000.00 as Attorney's fees.

The case against defendant McGeorge Food Industries Inc., is hereby dismissed for lack of evidence.

SO ORDERED.

Aggrieved, Cebu Golden Food and Lomibao filed an appeal before the Court of Appeals-Cebu City.

On September 28, 2012, in its assailed Decision, the Court of Appeals reversed the trial court's decision and said that the trial court overlooked substantial facts and circumstances which, if properly considered, would justify a different conclusion and alter the results of the case. The dispositive portion of the decision reads, thus:

WHEREFORE, the appeal is **GRANTED.** The Decision dated 03 March 2009 of the Regional Trial Court, Branch 22, Cebu City is **REVERSED** and **SET ASIDE**. Civil Case No. CEB-26126 is **DISMISSED** for lack of merit. The compulsory counterclaims of defendants-appellants are **DENIED**. No costs.

SO ORDERED.[8]

Thus, the instant petition for review under Rule 45 of the Rules of Court brought before this Court raising the sole issue

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[8] *Id.* at 40. (Emphasis in the original)

of: *Whether the Court of Appeals erred in ruling that the proximate cause of Ed Christian's fall was the negligence of petitioner Mary Ann Latonio.*[9]

The trial court held Cebu Golden Food is liable because the proximate cause of Ed Christian's fall is the negligence of their employee, Lomibao. On the other hand, the Court of Appeals reversed the trial court's decision and held that Ed Christian's mother, Mary Ann, is liable because the proximate cause of the child's fall was Mary Ann's act of leaving her eight-month-old child, Ed Christian, in the "hands" of Lomibao who was at the time wearing the Birdie mascot costume.

We find no merit on this instant petition.

The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court.[10]

However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court.[11] It is also settled that the appellate courts will not as a general rule disturb the findings of the trial court, which is in a better position to determine the same. The trial court has the distinct advantage of actually hearing the testimony of and observing the deportment of the witnesses. Nevertheless, the rule admits of exceptions such as when its evaluation was reached arbitrarily, or it overlooked or failed to appreciate some facts or circumstances of weight and substance which could affect the result of the case,[12] as what happened in the instant case.

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[9] *Rollo*, p. 10.

[10] *Golden Apple Realty v. Sierra Grande Realty Corp.*, 640 Phil. 62, 70-71 (2010).

[11] *Philippine Rabbit Bus Lines, Inc. v. Intermediate Appellate Court*, 267 Phil. 188, 191 (1990).

[12] *Jarco Marketing Corp. v. Court of Appeals*, 378 Phil. 991, 1008 (1999).

In the instant case, there is no dispute that petitioners suffered damages because of Ed Christian's fall. However, as to the issues on negligence and proximate cause, the Court of Appeals and the trial court gave contradicting findings.

As the action is predicated on negligence, the relevant law is Article 2176 of the Civil Code, which states that —

> 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 was no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this chapter.

The trial court held that the proximate cause of Ed Christian's fall and the resulting injury was Lomibao's act of holding the baby during the party which was purportedly prohibited under the rules and policy of the establishment.

We disagree.

Indeed, the testimony of Mary Ann herself on cross-examination is telling. Thus:

x x x x x x x x x

Q. And when you said that you informed the mascot, what exact words did you use?
A. **I tap** (sic) **him on his side** and then I called him that I am going to have the taking of pictures with my baby.

x x x x x x x x x

Q. Now did you wait for the mascots to make a reply?
A. He was looking at me and he look (sic) at my face.

Q. **Did he make a reply?**
A. No, Ma'am.

Q. Did you see his eyes looking at you?
A. No, Ma'am.

x x x x x x x x x.[13]

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[13] TSN, December 8, 2003, pp. 7-8. (Emphasis ours)

ATTY. ABELLA

x x x x x x x x x

Q. And at the time you already observed that **the person was wearing a thick leather suit?**
A. **Yes.**

Q. Did you actually see the body of the person who lift (sic) your baby then?
A. **No.**

Q. Did you see the hands inside the costume?
A. Of course, **I cannot see the hands.**

Q. Did you see the arms of the person inside the mascot?
A. **I cannot because he is** (sic) **wearing a costume.**[14]

COURT

Q. You were not sure that when you handed the baby it was firmly held by the mascot?
A. **I placed the baby in front of the mascot.**

Q. You were not aware about the hands when you turned over the baby because it was a mascot?
A. I was sure because I can feel the hands and my baby was standing in front of him; and he is doing like this (witness demonstrating).[15]

ATTY. ABELLA

Q. Did you see the eyes of the person inside the mascot costume?
A. **No.**

Q. Were you aware if there were openings for the eyes of the person inside the mascot?
A. Yes, I was aware.

Q. **The eyes in this mascot costume actually had no opening?**
A. **Yes, no opening.**[16]

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[14] TSN, October 23, 2007, p. 21. (Emphasis ours)

[15] *Id*. at 21-22.

[16] *Id*. at 22.

COURT

Q. You entrusted the baby even if there was no opening of the eyes?
A. There was an opening of the costume near the mouth. If the mascot cannot see, then how can he play with the kids?

Q. You said that you told the mascot that you were leaving the baby to him?
A. **I pat** (sic) **him.**

Q. Did you see the ears of the person inside the mascot?
A. **No.**

Q. Did you even know if there was an opening for the ears at the person wearing the mascot costume?
A. **No,** but I was nearer the mascot.

x x x x x x x x x.[17]

We agree with the appellate court that despite Mary Ann's insistence that she made sure that her baby was safe and secured before she released her grasp on Ed Christian, her own testimony revealed that she had, in fact, acted negligently and carelessly, to wit:

Q. Now when you said that you made sure that the mascot was holding your baby, what action did you do to insure that?
A. When I saw that the mascot was holding my baby so I make (sic) a motion to my husband for the picture taking so I left beside. I backed off a little bit.

x x x x x x x x x.

Q. I will not risk my baby if I am not sure that the mascot was not inserting his hands over my baby when I left the scene. The (sic) I am sure that the baby was already safe in the hands of the mascot.

Q. When you say that you make (sic) sure you just relied on your sight?
A. Yes, ma'am.[18]

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[17] *Id*.

[18] TSN, December 8, 2003, p. 11.

x x x x x x x x x

Q: Did you check what part of your child's body was in contact in any part of the mascot's body?
A: Partly it was here on the waist of the child until (sic) the armpit.

Q: Now you said that you move (sic) further to the side from where your baby was standing, is that your testimony?
A: Yes, ma'am.

Q: Can you tell us or can you give us any reason why you move (sic) to the side?
A: Because I motioned my husband already that he would take a picture of the baby and the mascot before I left and I am so sure that the baby is securely (sic) with the mascot holding the baby.[19]

x x x x x x x x x

Q. And your child at that time was eight (8) months old?
A: Yes, ma'am.

Q: He cannot stand on his own?
A: He can stand but he has to have support.

Q: He cannot walk on his own at that time?
A: At that time with support."

x x x x x x x x x.[20]

More telling is the ratiocination of the Court of Appeals, which we quote with approval:

Indeed, ***it is irresponsible for a mother to entrust the safety, even momentarily, of her eight-month-old child to a mascot, not to mention a bird mascot in thick leather suit that had no arms to hold the child and whose diminished ability to see, hear, feel, and move freely was readily apparent. Moreover, by merely tapping the mascot and saying "pa-picture ta", Mary Ann Latonio cannot be said to have "told, informed and instructed the mascot that she was letting the mascot hold the baby momentarily.***" Releasing her grasp of the baby without waiting for any indication that the mascot heard and understood her is just plain negligence on the part of Mary Ann.

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

[20] *Id.* at 14. (Emphasis ours)

To Our mind, what is more in accord with human experience and dictates of reason is that a diligent mother would naturally ensure first and foremost the safety of her child before releasing her hold on him. Such is not the case here. Mary Ann Latonio, in placing Ed Christian on a chair and expecting a bird mascot to ensure the child's safety, utterly failed to observe the degree of diligence expected of her as a mother of an eight-month-old baby.[21]

Clearly, based on the foregoing, Mary Ann's negligence was the proximate cause of Ed Christian's fall which caused him injury. Proximate cause is defined as –

that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[22]

Here, it is beyond dispute that the cause of Ed Christian's fall is traceable to the negligent act of Mary Ann of leaving him in the "hands" of Lomibao who was wearing the Birdie mascot suit. We noted that "hands" and "wings" were used interchangeably during the testimonies of the witnesses, thus, causing confusion. However, it must be stressed that while indeed Lomibao has hands of his own, at the time of the incident he was wearing the Birdie mascot suit. Suffice it to say that the Birdie mascot suit have no hands but instead have wings. Lomibao cannot possibly hold or grasp anything while wearing the thick Birdie mascot suit. In fact, even if he wanted to hold

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[21] *Rollo,* pp. 35-36. (Emphasis ours)

[22] *McKee v. Intermediate Appellate Court*, 286 Phil. 649, 677-678 (1992).

Ed Christian or anything, he could not possibly do so because he was wearing the Birdie mascot suit which do not even have hands or fingers to be able to hold or grasp firmly.

Notably, while the CA and the trial court made conflicting rulings on the negligence of Cebu Golden Food and Lomibao, they, however, concur on Mary Ann's own negligence. The trial court's summation of Mary Ann's own negligence is as follows:

x x x x x x x x x

A review of their testimonies would reveal that although we ascribe negligence of defendant Lomibao we, likewise, unraveled that plaintiff herself was not entirely blameless. ***Therefore, plaintiff Mary Ann Latonio was likewise negligent. Why was she negligent can be traced to the fact as established that she left her eight-month-old baby on top of a chair to the temporary custody of a mascot.*** Even if the baby was only left for a few seconds or minutes that could already spell a disaster, in fact, it really happened. The baby fell from the chair and went straight into the floor head first. Even if she already informed and told the mascot that she was leaving the baby to his hold she should not have let go of her grip because as a mother she ought to exercise the commensurate prudence and case.

x x x x x x x x x."[23]

Thus, all the aforementioned circumstances lead us to no other conclusion than that the proximate cause of the injury sustained by Ed Christian was due to Mary Ann's own negligence.

All told, in the absence of negligence on the part of respondents Cebu Golden Foods and Lomibao, as well as their management and staff, they cannot be made liable to pay for the damages prayed for by the petitioners.

To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause

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[23] CA *rollo*, p. 140. (Emphasis ours)

of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.[24]

Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy resulting from an act which does not amount to a legal injury or wrong.[25]

WHEREFORE, premises considered, the Decision dated September 28, 2012 and Resolution dated January 31, 2013 of the Court of Appeals in CA-G.R. CV No. 03079 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 209376. December 6, 2017]

JOSE DIAZ, JR. (herein substituted by his legal heirs VERONICA BOLAGOT-DIAZ and RIO ANGELA BOLAGOT-DIAZ) and ADELINA D. McMULLEN, *petitioners, vs.* **SALVADOR VALENCIANO, JR., [deceased] substituted by MADELINE A. VALENCIANO, RANIL A. VALENCIANO, ROSEMARIE V. SERRANO, SHEILA VALENCIANO-MOLO and JOHN-LYN VALENCIANO-VARGAS,** *respondent.*

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[24] *Spouses Custodia v. CA*, 323 Phil. 575, 585 (1996).

[25] *Id*. at 586.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; BAR BY PRIOR JUDGMENT; REQUISITES.— *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action. Apart from petitioners' insistence as to the absence of the three requisites — judgment on the merits, identity of parties, and identity of causes of action — the presence of all the other elements of *res judicata* are beyond dispute. As can be gleaned from the records and allegations in the Complaints docketed as Civil Case Nos. 3931 and 5570, the Compromise Agreement in the first unlawful detainer case involving the same property in Legazpi City subject of the second unlawful detainer case, is already final and executory, as it was duly approved by the MTCC of Legazpi City, which has jurisdiction over the ejectment case and the parties.

2. ID.; ID.; ID.; ID.; JUDGMENT ON THE MERITS; DEFINED AS THAT WHICH IS RENDERED BY THE COURT AFTER THE PARTIES HAVE INTRODUCED THEIR RESPECTIVE EVIDENCE, WITH THE PRIMARY OBJECTIVE IN VIEW OF CONCLUDING CONTROVERSIES OR DETERMINING THE RIGHTS OF THE PARTIES; TERM "MERITS," DEFINED.— [A] judgment is said to be "on the merits" when it amounts to a legal declaration of the respective rights and duties of the parties based upon disclosed facts. It is that which rendered by the court after the parties have introduced their respective evidence, with the primary objective in view of concluding controversies or determining the rights of the parties. "*Merits*" has been defined as a matter of substance in law, as distinguished from a matter of form; it refers to the real or substantial grounds of action or defense, as contrasted with some technical or collateral matter raised in the course of the suit.

3. ID.; ID.; ID.; ID.; ID.; EVEN A DISMISSAL ON THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION

MAY OPERATE AS *RES JUDICATA* ON A SUBSEQUENT CASE INVOLVING THE SAME PARTIES, SUBJECT MATTER, AND CAUSES OF ACTION, PROVIDED THAT THE ORDER OF DISMISSAL ACTUALLY RULED ON THE ISSUES RAISED.— The Court held in one case that a ruling based on a motion to dismiss, without any trial on the merits or formal presentation of evidence, can still be a judgment on the merits. Even a dismissal on the ground of failure to state a cause of action may operate as *res judicata* on a subsequent case involving the same parties, subject matter, and causes of action, provided that the order of dismissal actually ruled on the issues raised. What appears to be essential to a judgment on the merits is that it be a reasoned decision, which clearly states the facts and the law on which it is based.

4. **ID.; ID.; ID.; ID.; A JUDGMENT BASED ON COMPROMISE AGREEMENT IS A JUDGMENT ON THE MERITS, WHEREIN THE PARTIES HAVE VALIDLY ENTERED INTO STIPULATIONS AND THE EVIDENCE WAS DULY CONSIDERED BY THE TRIAL COURT THAT APPROVED THE AGREEMENT.—** Contrary to petitioners' view and the RTC ruling that the Compromise Agreement approved by the MTCC does not constitute as a judgment on the merits, jurisprudence holds that a judgment based on Compromise Agreement is a judgment on the merits, wherein the parties have validly entered into stipulations and the evidence was duly considered by the trial court that approved the Agreement.

5. **ID.; ID.; ID.; ID.; COMPROMISE JUDGMENT, DEFINED; A COMPROMISE APPROVED BY FINAL ORDER OF THE COURT HAS THE FORCE OF *RES JUDICATA* BETWEEN THE PARTIES, AND CANNOT AND SHOULD NOT BE DISTURBED EXCEPT FOR VICES OF CONSENT OR FORGERY.—** A judgment by Compromise is a judgment embodying a Compromise Agreement entered into by the parties in which they make reciprocal concessions in order to terminate a litigation already instituted. A Compromise approved by final order of the court has the force of *res judicata* between the parties, and cannot and should not be disturbed except for vices of consent or forgery, it being the obvious purpose of such Compromise to settle once and for all the issues involved and bar all future disputes and controversies. Clearly, the Resolution

dated August 10, 1992 of the MTCC approving the Compromise Agreement has the same effect as an ordinary judgment, which immediately became final and executory with the force of *res judicata*.

6. ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; WHEN EXISTS; PRIVITY EXISTS BETWEEN A DECEDENT AND HIS HEIR, NEXT OF KIN, DEVISEE, OR LEGATEE, AND A JUDGMENT FOR OR AGAINST A DECEDENT PRIOR TO HIS DEATH WILL CONCLUDE SUCH PERSONS AS TO ALL MATTERS IN ISSUE IN THE CASE AND DETERMINED BY THE JUDGMENT.— Equally devoid of merit is petitioners' stance that there is no substantial identity of parties between the first unlawful detainer case where Salvador Sr. was the defendant, and the second case where Salvador Jr. is the defendant. There is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. Privity exists between a decedent and his heir, next of kin, devisee, or legatee, and a judgment for or against a decedent prior to his death will conclude such persons as to all matters in issue in the case and determined by the judgment. In this case, substantial identity of parties in both unlawful detainer cases is aptly underscored by the CA x x x. Considerably, Petitioner Valenciano [Salvador Jr.] and Salvador [Sr.] during the latter's lifetime, have shared the same interest over the said property and have occupied the same Lot prior to the institution of the First case. Such identity of interest is sufficient to make them privy-in-law, thereby satisfying the requisite of substantial identity of parties. Considering further that family, relatives, and other privies of the defendant are as much bound by the judgment in an ejectment case as the party from whom they derive their possession, petitioners cannot claim that there is no identity of parties in the first and second unlawful detainer cases.

7. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTIONS; SAME EVIDENCE RULE; IN ASCERTAINING THE IDENTITY OF CAUSES OF ACTION, THE TEST IS TO LOOK INTO WHETHER OR NOT THE SAME EVIDENCE FULLY SUPPORTS AND ESTABLISHES BOTH THE PRESENT AND THE FORMER CAUSES OF ACTION; IF

THE ANSWER IS IN THE AFFIRMATIVE, THE FORMER JUDGMENT WOULD BE A BAR; OTHERWISE, THAT PRIOR JUDGMENT WOULD NOT SERVE AS SUCH A BAR TO THE SUBSEQUENT ACTION.— The Rules of Court defines cause of action as an act or omission by which a party violates a right of another. One of the tests to determine the identity of causes of action so as to warrant application of *res judicata* is the "same evidence rule." In ascertaining the identity of causes of action, the test is to look into whether or not the same evidence fully supports and establishes both the present and the former causes of action. If the answer is in the affirmative, the former judgment would be a bar; otherwise, that prior judgment would not serve as such a bar to the subsequent action. x x x. Applying the "same evidence rule," the Court cannot fully agree with the MTCC that the evidence necessary to obtain affirmative in the second unlawful detainer case based on tolerance is the same as in the first one which is also based on tolerance. While petitioners correctly rely on the same transfer certificate of title (TCT No. 20126) as proof of ownership and right to possession of the property subject of both cases, the Court finds that separate and distinct demand letters are required to prove the different breaches of implied promise to vacate the property, namely, the demand letter addressed to Salvador Sr., and the demand letter dated February 9, 2009 addressed to Salvador Jr. It bears stressing the refusal to comply with the first demand to vacate constitutes a cause of action for unlawful detainer in Civil Case No. 3931, while the refusal to comply with the second demand to vacate creates a different cause of action for unlawful detainer in Civil Case No. 5570. The first case deals with Salvador Sr.'s possession by mere tolerance of petitioners, while the second case refers to Salvador Jr.'s possession by mere tolerance, which arose when they neglected to execute the judgment in the first case. The CA thus committed reversible error when it overlooked that fact that the cause of action in the first unlawful detainer case is Salvador Sr.'s breach of the implied promise to vacate the property being occupied by his family by mere tolerance of petitioners, whereas the cause of action in the second case is another breach of implied promise to vacate the same property by Salvador Jr., the son and successor-in-interest of Salvador Sr., despite the judicially-approved Compromise Agreement which petitioners neglected to enforce even after the issuance of a writ of execution.

8. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; WHERE A PERSON OCCUPIES THE LAND OF ANOTHER AT THE LATTER'S TOLERANCE OR PERMISSION, WITHOUT ANY CONTRACT BETWEEN THEM, IT MUST BE PROVEN THAT SUCH POSSESSION IS BY MERE TOLERANCE, AND THAT THERE WAS A BREACH OF IMPLIED PROMISE TO VACATE THE LAND UPON DEMAND. — In an unlawful detainer case, the evidence needed to establish the cause of action would be the lease contract and the violation of that lease. However, in this case where a person occupies the land of another at the latter's tolerance or permission, without any contract between them, what must be proven is that such possession is by mere tolerance, and that there was a breach of implied promise to vacate the land upon demand.

9. ID.; ID.; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENTS; WHERE PARTIES CAN NO LONGER ENFORCE THE JUDGMENT IN THE FIRST UNLAWFUL DETAINER CASE DUE TO THE LAPSE OF THE REGLEMENTARY PERIOD TO EXECUTE THE SAME, THEY CAN STILL FILE A SIMILAR ACTION INVOLVING THE SAME PROPERTY BASED ON THE DIFFERENT CAUSE OF ACTION.— The CA likewise erred in ruling that petitioners' inaction for a period of about 15 years after the issuance of the writ of execution calls for the application of the equitable doctrine of *estoppel* by *laches* under Article 1144 (3) of the New Civil Code. Suffice it to state that said provision pertains to the prescriptive period to enforce or revive a final judgment. Granted that respondents can no longer enforce the judgment in the first unlawful detainer case due to the lapse of the reglementary period to execute the same, they can still file a similar action involving the same property based on the different cause of action. Under Article 1144 (3), in relation to Article 1152 of the New Civil Code and Section 6, Rule 39 of the Rules of Court, once a judgment becomes final and executory, the prevailing party may have it executed as a matter of right by mere motion within five (5) years from the date of entry of judgment. If such party fails to have the decision enforced by a motion after the lapse of 5 years, the same judgment is reduced to a right of action which must be enforced by the institution of a petition in a regular court within ten (10) years

from the time the judgment becomes final; otherwise, the judgment can no longer be executed, for being barred by *laches*. Verily, the said provisions on enforcement and revival of judgment do not apply to the filing of a subsequent action which is based on a different cause of action.

10. ID.; ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE REGISTERED OWNERS' RIGHT TO EJECT ANY PERSON ILLEGALLY OCCUPYING THEIR PROPERTY IS IMPRESCRIPTIBLE AND CAN NEVER BE BARRED BY LACHES, EVEN IF THEY WERE AWARE THAT ANOTHER PERSON IS OCCUPYING THE PROPERTY, AND REGARDLESS OF THE LENGTH OF THAT POSSESSION.— [A]s the registered owners, petitioners' right to eject any person illegally occupying their property cannot be barred by *laches*. In *Labrador v. Pobre*, the Court held that: ... As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches. In *Bishop v. Court of Appeals*, we held, thus: As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.

11. ID.; ID.; ID.; ID.; TAX DECLARATIONS AND REALTY TAX PAYMENTS ARE NOT CONCLUSIVE PROOF OF OWNERSHIP OR POSSESSION, BUT A CERTIFICATE OF TITLE UNDER THE TORRENS SYSTEM SERVES AS EVIDENCE OF AN INDEFEASIBLE TITLE TO THE PROPERTY IN FAVOR OF THE PERSON WHOSE NAME APPEARS THEREON.— It bears emphasis that Salvador Jr.'s claim of right of ownership and possession of the subject property is merely anchored on a tax declaration dated October 13, 1978 and a sworn statement of the current and fair market value thereof dated June 23, 1983, both under the name of his father, Salvador Sr. In contrast, petitioners' claim over the subject property is based on TCT No. 20126, a tax declaration and a certification of payment of realty taxes issued under the name of petitioner

Diaz Jr. Considering the principles that tax declarations and realty tax payments are not conclusive proof of ownership or possession, and that a certificate of title under the Torrens system serves as evidence of an indefeasible title to the property in favor of the person whose name appears thereon, the Court holds that petitioners have proven by preponderant evidence better right to ownership and possession of the subject property, and that Salvador Jr.'s occupation is by mere tolerance of petitioners.

12. ID.; ID.; ID.; ID.; A PERSON WHO OCCUPIES THE LAND OF ANOTHER AT THE LATTER'S TOLERANCE OR PERMISSION, WITHOUT ANY CONTRACT BETWEEN THEM, IS BOUND BY AN IMPLIED PROMISE THAT HE/SHE WILL VACATE THE SAME UPON DEMAND, FAILING WHICH A SUMMARY ACTION FOR EJECTMENT IS THE PROPER REMEDY AGAINST HIM/HER.— The oft-repeated rule is that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against him. Since Salvador Jr.'s occupation is by mere tolerance of petitioners, he is bound by an implied promise that he will vacate the property upon demand. His status is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner.

13. ID.; ID.; ID.; THE ADJUDICATION OF OWNERSHIP IN AN EJECTMENT CASE IS MERELY PROVISIONAL, AS IT WILL NOT BAR OR PREJUDICE AN ACTION BETWEEN THE SAME PARTIES INVOLVING TITLE TO THE PROPERTY.— [T]he adjudication of ownership in an ejectment case may be necessary to decide the question of material possession, but such determination is merely provisional, as it will not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.

APPEARANCES OF COUNSEL

The Law Offices of Ian L.l. Macasinag & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* of the Court of Appeals Decision[1] dated April 30, 2013, which reversed and set aside the Decision[2] dated July 9, 2010 of the Regional Trial Court of Legazpi City, and reinstated the Decision[3] dated January 5, 2010 of the Municipal Trial Court in the Cities (*MTCC*), dismissing the complaint for unlawful detainer on the ground of *res judicata*.

The facts are undisputed.

On June 2, 1992, a complaint for unlawful detainer was filed by petitioners Jose Diaz, Jr. and his sister Adelina D. McMullen against Salvador Valenciano Sr., the father of respondent Salvador Valenciano Jr. In their complaint docketed as Civil Case No. 3931, petitioners alleged that they are the lawful and registered owners of a parcel of land (Lot No. 163-A) located at Rosario St., Old Albay, Legazpi City, and covered by Transfer Certificate of Title (*TCT*) No. 20126. On the other hand, Salvador Jr. countered that his father, Salvador Valenciano Sr., and the rest of his family have been in open, peaceful and actual possession of the same property since 1958 when petitioner Diaz mortgaged it to Salvador Sr.

On July 30, 1992, petitioners and Salvador Sr. entered into a Compromise Agreement where they agreed to amicably settle the civil case provided that: (a) Salvador Sr. will vacate and surrender the property to petitioner Diaz within a period of

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[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes, concurring; *rollo,* pp. 21-33.

[2] Penned by RTC of Legazpi City, Branch 5, Presiding Judge Pedro R. Soriao; *id.* at 34-37.

[3] Penned by MTCC of Legazpi City Branch 3, Presiding Judge Jose Noel R. Rubio; *id.* at 38-42.

one-and-a-half (1½) years or on January 31, 1994; and (b) Diaz shall pay to Salvador Sr. the sum of ₱1,600.00 on or before January 31, 1993. On August 10, 1992, the MTCC issued a Resolution approving the Agreement.

For failure of Salvador Sr. and his family to vacate the subject property in accordance with the Compromise Agreement, Diaz filed on February 1, 1994 an *Ex-Parte* Motion for Execution. The MTCC granted the motion for execution on February 4, 1994. A writ of execution was then issued, commanding the sheriff to cause Salvador Sr., or anyone acting in his behalf, to vacate the property and surrender complete possession thereof to Diaz.

By sheer tolerance, petitioners allegedly chose not to implement the writ of execution, and allowed Salvador Sr. and his family to stay on the property, subject to the condition that they will vacate the same when petitioners need it. Meanwhile, Salvador Sr. passed away.

On February 9, 2009, or after more than fifteen (15) years from the issuance of the writ of execution, petitioners sent a demand letter to Salvador Jr., who refused to vacate the property despite notice.

On June 1, 2009, petitioners filed against Salvador Jr. a Complaint[4] for unlawful detainer which was docketed as Civil Case No. 5570. Petitioners claimed to be the lawful and registered owners of the property covered by TCT No. 20126, and subject of the previous case for unlawful detainer docketed as Civil Case No. 3931. Attached to their complaint was a certified copy of TCT No. 20126, Tax Declaration No. 01300117, and a Certification from the Office of the Treasurer of the City of Legaspi stating that realty taxes for the subject property are declared in the name of Jose and Adelina Diaz for 2008 and previous years.

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[4] CA *rollo,* pp. 38-42.

In his Answer with Affirmative Defense and Counterclaim,[5] Salvador Jr. contended that the complaint was barred by *res judicata* in view of the judicially-approved Compromise Agreement in the first unlawful detainer case between petitioners and his father, Salvador Sr. He also claimed that he and his predecessor-in-interest have been occupying the subject property in the concept of an owner for more than forty-five (45) years, and have declared the same in their names for taxation purposes, paying taxes therefor. Attached to the Answer was Tax Declaration No. 02917 and the Sworn Statement of the True Current and Fair Market Value of Real Estate Properties both issued under the name of Salvador Sr.

On January 5, 2010, the MTCC rendered a judgment in favor of Salvador Jr., dismissing the complaint on the ground of *res judicata.* The MTCC found that there is substantial identity of parties in the first and second unlawful detainer cases because Salvador Jr. is the successor-in-interest of his father, who is the defendant in the first case, and he is the new possessor of the same property subject of the second case. With respect to the identity of the subject matter and cause of action, the MTCC held that the first and second actions for unlawful detainer were both based on tolerance, and that the acts of dispossession or unlawful withholding of possession were the same wrong alleged and prayed for by petitioners in both Complaints. The MTCC ruled that the second action is barred by *res judicata* because the same evidence in the first action would support and establish the cause of action in the second action, namely, the TCT to prove ownership, and the written demand to vacate, as proof of breach.

Aggrieved, petitioners filed an appeal before the RTC.

On July 9, 2010, the RTC rendered a Decision, finding the appeal meritorious and holding that the August 10, 1992 MTCC Resolution approving the Compromise Agreement was not a judgment on the merits, hence, the principle of *res judicata* does not apply. Since both parties claim ownership

[5] *Id.* at 62-65.

over Lot 163-A, the RTC made a provisional determination that petitioners' TCT No. 20126 vested them better title than Salvador Jr. The dispositive portion of the Decision reads:

> WHEREFORE, Premises Considered, the lower court's (MTCC, Branch 3, Legazpi City) judgment dated 05 January 2010 in Civil Case No. 5570 is set aside, and thus this Court renders judgment, as follows, to wit:
>
> 1. Ordering the appellee Salvador Valenciano, Jr., as well as his agents, representatives, privies, successors-in-interest, or any other person/s claiming any right to possess under him to leave and vacate Lot 163-A, and thereafter transfer possession of this lot to the appellants Jose Diaz, Jr. and Adelinda D. McMullen;
> 2. Ordering the appellee Salvador Valenciano, Jr. to pay rentals for the use of Lot 163-A in the amount of 500 pesos per month from the time that the complaint in this case was filed in court until such time that he will vacate this lot;
> 3. Ordering the appellee Salvador Valenciano, Jr. to pay the appellants Jose Diaz, Jr. and Adelinda D. McMullen the sums of 30,000 pesos and 20,000 pesos as attorney's fees and litigation expenses, respectively; and
> 4. Ordering the appellee Salvador Valenciano, Jr. to pay the costs of suit.
>
> SO ORDERED.[6]

Dissatisfied with the RTC Decision, Salvador Jr. filed a petition for review before the Court of Appeals.

On April 30, 2013, the CA rendered a Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the instant petition is **GRANTED**. The RTC Decision dated 09 July 2010 in Civil Case No. 10897 is **REVERSED** and **SET ASIDE**. The MTCC Decision dated 05 January 2010 in Civil Case No. 5570 is thereby **REINSTATED**. Without costs.
>
> SO ORDERED.[7]

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[6] *Rollo*, p. 37.

[7] *Id*. at 33. (Emphasis in the original)

The CA held that the RTC erred in ruling that there is no identity of parties in the two unlawful detainer cases, and that there is no judgment on the merits in the first case. Since petitioners and Salvador Sr. envisioned an end to the litigation of the first case, subject to compliance with the respective obligations under the Compromise Agreement, the CA ruled that the MTCC resolution approving the Agreement had the same effect of an ordinary court judgment, which is a judgment on the merits that immediately became final and executory. The CA noted that there is substantial identity of parties in both cases because Salvador Jr. is the son of the defendant in the first case, and they have shared interest and occupied the same property prior to the filing of such case. The CA also stated that after the issuance of the writ of execution in the first case and the lapse of the period for its implementation, petitioners slept on their rights for 15 years, which is beyond the period to enforce a judgment under the Statute of Limitations; hence, *estoppel* by *laches* bars the filing of the second case.

Unconvinced by the CA Decision, petitioners filed a motion for reconsideration which was denied for lack of merit.

In this Petition for Review on *Certiorari*, petitioners argue that the CA decided a question of substance not in accord with laws and jurisprudence when it reversed the RTC Decision, and held that all the elements of *res judicata* are present.[8]

The core issue to be resolved is whether petitioners' subsequent unlawful detainer case against Salvador Jr. involving the same property is barred by *res judicata* and *estoppel* by *laches* due to a previous unlawful detainer case they had filed against his father, which was subject of a judicially-approved Compromise Agreement that was never executed by mere tolerance of petitioners.

Petitioners argue that the CA erred in ruling that *res judicata* bars the second complaint for unlawful detainer because of the

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[8] *Id*. at 14.

absence of three (3) elements, namely: final judgment on the merits, identity of parties, and of cause of action.

First, petitioners assert that the Compromise Agreement was a mere consensual contract that cannot be considered as a judgment on the merits, because there was no actual adjudication of the respective rights, contention and issues raised by the opposing parties.

Second, petitioners insist that there is no identity of parties in the first and second cases for unlawful detainer because he cannot be considered as successor-in-interest of his father Salvador Sr. Petitioners stress that prior to the death of Salvador Sr., he had already entered into a Compromise Agreement with them whereby he acknowledged and affirmed their legal right of possession of the subject property. As such, it cannot be said that Salvador Jr.'s occupation of the property was by mere transference of rights or by stepping into the shoes of his father, because there was nothing to transmit or step into, as the Compromise Agreement had effectively barred the same.

Third, petitioners assert that there is a variance in the cause of action in the two unlawful detainer cases, which negates the existence of *res judicata.* They claim that the occupation of Salvador Jr. is based on his own right and distinct from that of his father. They also submit that Salvador Jr.'s occupation is akin to that made through stealth and strategy, which is forcible entry.

In his Comment, Salvador Jr. argues that all the elements of *res judicata* are present. With respect to the element of final judgment on the merits, he cites the well-settled rule that a Compromise Agreement, once approved by order of the court, is immediately final and executory with the force of *res judicata*, and becomes more than a mere private contract binding upon the parties, as the court's sanction imbues it with the same effect as any other judgment. Anent the element of identity of parties, Salvador Jr. points out that he and petitioners are substantially the same parties as those who were involved in the first unlawful detainer case, because he is the son and successor-in-interest of the defendant in the said case.

The petition is meritorious.

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action.[9]

Apart from petitioners' insistence as to the absence of the three requisites — judgment on the merits, identity of parties, and identity of causes of action — the presence of all the other elements of *res judicata* are beyond dispute. As can be gleaned from the records and allegations in the Complaints docketed as Civil Case Nos. 3931 and 5570, the Compromise Agreement in the first unlawful detainer case involving the same property in Legazpi City subject of the second unlawful detainer case, is already final and executory, as it was duly approved by the MTCC of Legazpi City, which has jurisdiction over the ejectment case and the parties.

Anent the first disputed requisite of *res judicata*, a judgment is said to be "on the merits" when it amounts to a legal declaration of the respective rights and duties of the parties based upon disclosed facts.[10] It is that which rendered by the court after the parties have introduced their respective evidence, with the primary objective in view of concluding controversies or determining the rights of the parties.[11] "*Merits*" has been defined as a matter of substance in law, as distinguished from a matter of form; it refers to the real or substantial grounds of action or defense, as contrasted with some technical or collateral matter raised in the course of the suit.

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[9] *Agustin v. Spouses Delos Santos*, 596 Phil. 630, 642-643 (2009).

[10] *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 527 (2005).

[11] *The Revised Rules of Court in the Philippines*, *Civil Procedure*, Volume II, by Vicente J. Francisco, p. 466 (1966).

The Court held in one case[12] that a ruling based on a motion to dismiss, without any trial on the merits or formal presentation of evidence, can still be a judgment on the merits. Even a dismissal on the ground of failure to state a cause of action may operate as *res judicata* on a subsequent case involving the same parties, subject matter, and causes of action, provided that the order of dismissal actually ruled on the issues raised.[13] What appears to be essential to a judgment on the merits is that it be a reasoned decision, which clearly states the facts and the law on which it is based.[14]

Contrary to petitioners' view and the RTC ruling that the Compromise Agreement approved by the MTCC does not constitute as a judgment on the merits, jurisprudence holds that a judgment based on Compromise Agreement is a judgment on the merits,[15] wherein the parties have validly entered into stipulations and the evidence was duly considered by the trial court that approved the Agreement.[16]

A judgment by Compromise is a judgment embodying a Compromise Agreement entered into by the parties in which they make reciprocal concessions in order to terminate a litigation already instituted.[17] A Compromise approved by final order of the court has the force of *res judicata* between the parties, and cannot and should not be disturbed except for vices of consent or forgery, it being the obvious purpose of such Compromise to settle once and for all the issues involved and bar all future disputes and controversies.[18] Clearly, the Resolution dated August 10, 1992 of the MTCC approving the Compromise

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[12] *Escarte v. Office of the President*, 270 Phil. 99, 106 (1990).

[13] *Luzon Development Bank v. Conquilla*, *supra* note 10, at 531.

[14] *Id.*

[15] *Uy v. Chua*, 616 Phil. 768, 779 (2009).

[16] *Sps. Romero v. Tan*, 468 Phil. 224, 240 (2004).

[17] *The Revised Rules of Court in the Philippines*, *Civil Procedure*, Volume II, by Vicente J. Francisco, p. 470 (1966)

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

Agreement has the same effect as an ordinary judgment, which immediately became final and executory with the force of *res judicata.* As correctly noted by the CA:

> [O]nce stamped with judicial *imprimatur*, a Compromise Agreement becomes more than a mere contract binding upon the parties. Having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. Thus, the Resolution approving the Compromise Agreement had the same effect of an ordinary court judgment, which immediately became final and executory as to those who are bound thereby. Verily, [petitioners] and Salvador [Sr.] envisioned an end to the litigation of the First Case except only as regards to the compliance with [the] respective obligations thereunder in the conclusion of the said Agreement. Indeed, the Resolution was a judgment on the merits, thus satisfying the third element of *res judicata.*[19]

In *Palarca v. De Anzon*,[20] the Court rejected appellants' argument questioning the validity of the judgment upon the contention that the lower court, in merely transcribing the Compromise Agreement, has failed to make findings of fact and conclusions of law in the decision, as the law requires. The Court held that in contemplation of law, the lower court is deemed to have adopted the same statement of facts and conclusions of law made and resolved by the parties themselves in their Compromise Agreement; and their consent has rendered it both unnecessary and improper for the court to still make preliminary adjudication of the matters thereunder covered.

Equally devoid of merit is petitioners' stance that there is no substantial identity of parties between the first unlawful detainer case where Salvador Sr. was the defendant, and the second case where Salvador Jr. is the defendant. There is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same

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[19] *Rollo*, p. 30. (Citations omitted.)

[20] 110 Phil. 194, 196 (1960).

capacity.[21] Privity exists between a decedent and his heir, next of kin, devisee, or legatee, and a judgment for or against a decedent prior to his death will conclude such persons as to all matters in issue in the case and determined by the judgment.[22] In this case, substantial identity of parties in both unlawful detainer cases is aptly underscored by the CA:

> In the instant case, it is undisputed that petitioner Valenciano [Salvador Jr.] is the son of the deceased Salvador [Sr.], against whom the First Case was instituted. In his Position Paper, petitioner Valenciano [Salvador Jr.] stated that he, his father Salvador, and the rest of their family have been in "open, peaceful, and actual possession" of Lot No. 163-A until the institution of the First Case. Moreover, petitioner Valenciano [Salvador Jr.] likewise alleged that after the death of his father, he continued the possession of the said lot up to the present. Considerably, **petitioner Valenciano [Salvador Jr.] and Salvador [Sr.] during the latter's lifetime, have shared the same interest over the said property and have occupied the same Lot prior to the institution of the First Case.** Such identity of interest is sufficient to make them privy-in-law, thereby satisfying the requisite of substantial identity of parties.[23]

Considering further that family, relatives, and other privies of the defendant are as much bound by the judgment in an ejectment case as the party from whom they derive their possession,[24] petitioners cannot claim that there is no identity of parties in the first and second unlawful detainer cases.

Be that as it may, petitioners are partly correct that there is no identity of cause of action between the first and second unlawful detainer cases, but not for the reason that Salvador Jr.'s occupation is akin to forcible entry made through stealth and strategy — an allegation that is nowhere to be found in the Complaints.

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[21] *Taganas v. Emuslan*, 457 Phil. 305, 312 (2003).

[22] 50 C.J.S. § 814, Judgments.

[23] *Rollo*, pp. 30-31. (Emphasis added).

[24] *Ariem v. Hon. De los Angeles, etc., et al.,* 151 Phil. 440, 445 (1973).

The Rules of Court defines cause of action as an act or omission by which a party violates a right of another.[25] One of the tests to determine the identity of causes of action so as to warrant application of *res judicata* is the "same evidence rule." In ascertaining the identity of causes of action, the test is to look into whether or not the same evidence fully supports and establishes both the present and the former causes of action.[26] If the answer is in the affirmative, the former judgment would be a bar; otherwise, that prior judgment would not serve as such a bar to the subsequent action.[27] In an unlawful detainer case, the evidence needed to establish the cause of action would be the lease contract and the violation of that lease.[28] However, in this case where a person occupies the land of another at the latter's tolerance or permission, without any contract between them, what must be proven is that such possession is by mere tolerance, and that there was a breach of implied promise to vacate the land upon demand.

Applying the "same evidence rule," the Court cannot fully agree with the MTCC that the evidence necessary to obtain affirmative in the second unlawful detainer case based on tolerance is the same as in the first one which is also based on tolerance. While petitioners correctly rely on the same transfer certificate of title (TCT No. 20126) as proof of ownership and right to possession of the property subject of both cases, the Court finds that separate and distinct demand letters are required to prove the different breaches of implied promise to vacate the property, namely, the demand letter[29] addressed to Salvador Sr., and the demand letter dated February 9, 2009 addressed to

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[25] Rule 2, Section 2.

[26] *Bachrach Corporation v. CA*, 357 Phil. 483, 492 (1998).

[27] *Id.*

[28] *Id.*

[29] Not found on record, but supposedly attached as Annex "A" of Civil Case No. 3931 for Unlawful Detainer.

Salvador Jr. It bears stressing the refusal to comply with the first demand to vacate constitutes a cause of action for unlawful detainer in Civil Case No. 3931, while the refusal to comply with the second demand to vacate creates a different cause of action for unlawful detainer in Civil Case No. 5570. The first case deals with Salvador Sr.'s possession by mere tolerance of petitioners, while the second case refers to Salvador Jr.'s possession by mere tolerance, which arose when they neglected to execute the judgment in the first case.

The CA thus committed reversible error when it overlooked that fact that the cause of action in the first unlawful detainer case is Salvador Sr.'s breach of the implied promise to vacate the property being occupied by his family by mere tolerance of petitioners, whereas the cause of action in the second case is another breach of implied promise to vacate the same property by Salvador Jr., the son and successor-in-interest of Salvador Sr., despite the judicially-approved Compromise Agreement which petitioners neglected to enforce even after the issuance of a writ of execution.

The CA likewise erred in ruling that petitioners' inaction for a period of about 15 years after the issuance of the writ of execution calls for the application of the equitable doctrine of *estoppel* by *laches* under Article 1144 (3)[30] of the New Civil Code. Suffice it to state that said provision pertains to the prescriptive period to enforce or revive a final judgment. Granted that respondents can no longer enforce the judgment in the first unlawful detainer case due to the lapse of the reglementary period to execute the same, they can still file a similar action involving the same property based on the different cause of action.

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[30] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

x x x x x x x x x

(3) Upon a judgment

Under Article 1144 (3), in relation to Article 1152[31] of the New Civil Code and Section 6, Rule 39[32] of the Rules of Court, once a judgment becomes final and executory, the prevailing party may have it executed as a matter of right by mere motion within five (5) years from the date of entry of judgment. If such party fails to have the decision enforced by a motion after the lapse of 5 years, the same judgment is reduced to a right of action which must be enforced by the institution of a petition in a regular court within ten (10) years from the time the judgment becomes final; otherwise, the judgment can no longer be executed, for being barred by *laches.* Verily, the said provisions on enforcement and revival of judgment do not apply to the filing of a subsequent action which is based on a different cause of action.

In *Limpan Investment Corporation v. Sy*,[33] the Court held that although the first action of the owner for the ejectment of the tenant was dismissed by the court under a judgment that became final and executory, such dismissal does not preclude the owner from making a new demand upon the tenant to vacate should the latter again fail to pay the rents due. This is because the second demand for the payment of the rents and for the surrender of the possession of the leased premises and the refusal of the tenant to vacate constitutes a new cause of action. Thus, the action on the first case could not serve as a bar to the second action for ejectment.

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[31] Art. 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment commences from the time the judgment became final.

[32] Sec. 6. *Execution by motion or by judgment.*– A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

[33] 243 Phil. 15, 22 (1988).

Significantly, as the registered owners, petitioners' right to eject any person illegally occupying their property cannot be barred by *laches*.[34] In *Labrador v. Pobre*,[35] the Court held that:

> . . . As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches. In Bishop v. Court of Appeals, we held, thus:
>
> As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.

It bears emphasis that Salvador Jr.'s claim of right of ownership and possession of the subject property is merely anchored on a tax declaration[36] dated October 13, 1978 and a sworn statement of the current and fair market value thereof dated June 23, 1983, both under the name of his father, Salvador Sr. In contrast, petitioners' claim over the subject property is based on TCT No. 20126,[37] a tax declaration[38] and a certification[39] of payment of realty taxes issued under the name of petitioner Diaz Jr. Considering the principles that tax declarations and realty tax payments are not conclusive proof of ownership or possession, and that a certificate of title under the Torrens system serves as evidence of an indefeasible title to the property in favor of the person whose name appears thereon, the Court holds that petitioners have proven by preponderant evidence better right

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[34] *Spouses Esmaquel and Sordevilla v. Coprada*, 653 Phil. 96, 108 (2010).

[35] 641 Phil. 388, 396 (2010).

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

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

[38] *Id.* at 48-49.

[39] *Id.* at 50.

to ownership and possession of the subject property, and that Salvador Jr.'s occupation is by mere tolerance of petitioners.

The oft-repeated rule is that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against him.[40] Since Salvador Jr.'s occupation is by mere tolerance of petitioners, he is bound by an implied promise that he will vacate the property upon demand. His status is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner.[41]

On a final note, the adjudication of ownership in an ejectment case may be necessary to decide the question of material possession, but such determination is merely provisional, as it will not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.[42]

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated April 30, 2013 of the Court of Appeals in CA-G.R. SP No. 115316 is **REVERSED** and **SET ASIDE**, while the Decision dated July 9, 2010 of the Regional Trial Court of Legazpi City, Branch 5, in Civil Case No. 10897 is **REINSTATED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[40] *Catedrilla v. Spouses Lauron*, 709 Phil. 335, 349 (2013).

[41] *Id.*

[42] *Deanon v. Mag-abo*, 636 Phil. 184, 198 (2010).

SECOND DIVISION

[G.R. No. 211892. December 6, 2017]

INNODATA KNOWLEDGE SERVICES, INC., *petitioner, vs.* **SOCORRO D'MARIE T. INTING, ISMAEL R. GARAYGAY, EDSON S. SOLIS, MICHAEL A. REBATO, JAMES HORACE BALONDA, STEPHEN C. OLINGAY, DENNIS C. RIZON, JUNETH A. RENTUMA, HERNAN ED NOEL I. DE LEON, JR., JESS VINCENT A. DELA PEÑA, RONAN V. ALAMILLO, ENNOH CHENTIS R. FERNANDEZ, FRITZ J. SEMBRINO, DAX MATTHEW M. QUIJANO, RODOLFO M. VASQUEZ, MA. NAZELLE B. MIRALLES, MICHAEL RAY B. MOLDE, WENDELL B. QUIBAN, ALDRIN O. TORRENTIRA, and CARL HERMES CARSKIT,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT MAY TAKE COGNIZANCE OF FACTUAL ISSUES WHEN THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE LABOR ARBITER AND/OR THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ARE INCONSISTENT WITH THOSE OF THE COURT OF APPEALS.—** It is true that factual findings of administrative or quasi-judicial bodies which are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded, not only respect, but even finality, and bind the Court when supported by substantial evidence. However, the Court may take cognizance of factual issues when the findings of fact and conclusions of law of the LA and/or the NLRC are inconsistent with those of the CA, as in the case at bar.

2. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; EMPLOYMENT; PROVISIONS OF APPLICABLE STATUTES ARE DEEMED WRITTEN INTO THE EMPLOYMENT CONTRACT, AND THE PARTIES ARE NEVER AT LIBERTY TO INSULATE THEMSELVES AND**

THEIR RELATIONSHIPS FROM THE IMPACT OF LABOR LAWS AND REGULATIONS BY SIMPLY ENTERING INTO CONTRACTS WITH EACH OTHER.— The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Thus, provisions of applicable statutes are deemed written into the contract, and the parties are never at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply entering into contracts with each other.

3. **ID.; ID.; ID.; KINDS OF EMPLOYEES; THE LAW DETERMINES THE NATURE OF THE EMPLOYMENT, REGARDLESS OF ANY AGREEMENT EXPRESSING OTHERWISE. —** Article 295 of the Labor Code provides the distinction between a regular and a project employment x x x. The aforecited provision contemplates four (4) kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence later added a fifth (5th) kind, the fixed-term employee. Based on Article 295, the law determines the nature of the employment, regardless of any agreement expressing otherwise. The supremacy of the law over the nomenclature of the contract and its pacts and conditions is to bring life to the policy enshrined in the Constitution to afford full protection to labor. Thus, labor contracts are placed on a higher plane than ordinary contracts since these are imbued with public interest and, therefore, subject to the police power of the State.

4. **ID.; ID.; ID.; PROJECT EMPLOYMENT; WHILE PROJECT EMPLOYMENT CONTRACTS, WHICH FIX THE EMPLOYMENT FOR A SPECIFIC PROJECT OR**

UNDERTAKING, ARE VALID UNDER THE LAW, SAID CONTRACTS ARE NOT LOPSIDED AGREEMENTS IN FAVOR OF ONLY ONE PARTY, AS THE EMPLOYER'S INTEREST IS EQUALLY IMPORTANT AS THAT OF THE EMPLOYEES.— Project employment contracts, which fix the employment for a specific project or undertaking, are valid under the law. By entering into such a contract, an employee is deemed to understand that his employment is coterminous with the project. He may no longer be employed after the completion of the project for which he was hired. But project employment contracts are not lopsided agreements in favor of only one party. The employer's interest is equally important as that of the employees. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts must not prejudice the employee.

5. ID.; ID.; ID.; ID.; EMPLOYERS CLAIMING THAT THEIR WORKERS ARE PROJECT EMPLOYEES HAVE THE BURDEN OF SHOWING THAT THE DURATION AND SCOPE OF THE EMPLOYMENT WAS SPECIFIED AT THE TIME THEY WERE ENGAGED, THAT THERE WAS INDEED A PROJECT, AND THAT THEY WERE MADE TO WORK ONLY FOR THE SPECIFIC PROJECT INDICATED IN THEIR EMPLOYMENT CONTRACTS. — In order to safeguard the rights of workers against the arbitrary use of the word "project" which prevents them from attaining regular status, employers claiming that their workers are project employees have the burden of showing that: (a) the duration and scope of the employment was specified at the time they were engaged; and (b) there was indeed a project. Therefore, as evident in Article 295, the litmus test for determining whether particular employees are properly characterized as project employees, as distinguished from regular employees, is whether or not the employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project. Here, while IKSI was able to show the presence of a specific project, the ACT Project, in the contract and the alleged duration of the same, it failed to prove, however, that respondents were in reality made to work only for that specific project indicated in their employment documents and that it adequately informed

them of the duration and scope of said project at the time their services were engaged. It is well settled that a party alleging a critical fact must support his allegation with substantial evidence, as allegation is not evidence. The fact is IKSI actually hired respondents to work, not only on the ACT Project, but on other similar projects such as the Bloomberg. When respondents were required to work on the Bloomberg project, without signing a new contract for that purpose, it was already outside of the scope of the particular undertaking for which they were hired; it was beyond the scope of their employment contracts. The fact that the same happened only once is inconsequential. What matters is that IKSI required respondents to work on a project which was separate and distinct from the one they had signed up for. This act by IKSI indubitably brought respondents outside the realm of the project employees category.

6. ID.; ID.; ID.; ID.; PROJECT EMPLOYMENT AND FIXED-TERM EMPLOYMENT, DISTINGUISHED.— [W]hile the CA erred in simply relying on the Court's rulings on previous cases involving Innodata Phils., Inc. since there is no substantial proof that Innodata Phils., Inc. and herein petitioner, IKSI, are one and the same entity, it would appear, however, that respondents indeed entered into fixed-term employment contracts with IKSI, contracts with a fixed period of five (5) years. But project employment and fixed-term employment are not the same. While the former requires a particular project, the duration of a fixed-term employment agreed upon by the parties may be any day certain, which is understood to be "that which must necessarily come although it may not be known when." The decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.

7. ID.; ID.; ID.; ID.; WHILE FIXED-TERM EMPLOYMENT CONTRACTS ARE RECOGNIZED AS VALID, THEY SHALL BE STRUCK DOWN AS CONTRARY TO PUBLIC POLICY OR MORALS WHERE FROM THE CIRCUMSTANCES IT IS APPARENT THAT THE PERIODS HAVE BEEN IMPOSED TO PRECLUDE ACQUISITION OF TENURIAL SECURITY BY THE EMPLOYEES.— The Court has previously recognized the validity of fixed-term employment contracts, but it has

consistently held that this is more of an exception rather than the general rule. Aware of the possibility of abuse in the utilization of fixed-term employment contracts, the Court has declared that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals.

8. ID.; ID.; ID.; ID.; THE TERMS OF THE FIXED-TERM CONTRACT SHOULD BE CONSTRUED STRICTLY AGAINST THE EMPLOYER, FOR BEING THE PARTY WHO PREPARED IT, AND ANY AMBIGUITY IN SAID CONTRACTS MUST BE RESOLVED AGAINST THE COMPANY, AS ALL LABOR CONTRACTS SHALL BE CONSTRUED IN FAVOR OF THE WORKER IN CASE OF DOUBT. — It is evident that IKSI's contracts of employment are suspect for being highly ambiguous. In effect, it sought to alternatively avail of project employment and employment for a fixed term so as to preclude the regularization of respondents' status. The fact that respondents were lawyers or law graduates who freely and with full knowledge entered into an agreement with the company is inconsequential. The utter disregard of public policy by the subject contracts negates any argument that the agreement is the law between the parties and that the fixed period was knowingly and voluntarily agreed upon by the parties. In the interpretation of contracts, obscure words and provisions shall not favor the party that caused the obscurity. Consequently, the terms of the present contract should be construed strictly against the employer, for being the party who prepared it. Verily, the private agreement of the parties can never prevail over Article 1700 of the Civil Code x x x. Thus, there were no valid fixed-term or project contracts and respondents were IKSI's regular employees who could not be dismissed except for just or authorized causes. Any ambiguity in said contracts must be resolved against the company, especially because under Article 1702 of the Civil Code, in case of doubt, all labor contracts shall be construed in favor of the worker. The Court cannot simply allow IKSI to construe otherwise what appears to be clear from the wordings of the contract itself. The interpretation which IKSI seeks to conjure is wholly unacceptable, as it would result in the violation of respondents' right to security of tenure guaranteed in Section 3 of Article XIII of the Constitution and in Article 294 of the Labor Code.

9. ID.; ID.; TERMINATION OF EMPLOYMENT; RETRENCHMENT; DEFINED; A LAY-OFF WOULD AMOUNT TO DISMISSAL ONLY IF IT IS PERMANENT, BUT WHEN IT IS ONLY TEMPORARY, THE EMPLOYMENT STATUS OF THE EMPLOYEE IS NOT DEEMED TERMINATED, BUT MERELY SUSPENDED; IN BOTH PERMANENT AND TEMPORARY LAY-OFFS, THE EMPLOYER MUST ACT IN GOOD FAITH.— Among the authorized causes for termination under Article 298 of the Labor Code is retrenchment , or what is sometimes referred to as a lay-off x x x. Retrenchment is the severance of employment, through no fault of and without prejudice to the employee, which management resorts to during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation. In other words, lay-off is an act of the employer of dismissing employees because of losses in the operation, lack of work, and considerable reduction on the volume of its business. However, a lay-off would amount to dismissal only if it is permanent. When it is only temporary, the employment status of the employee is not deemed terminated, but merely suspended. Article 298, however, speaks of permanent retrenchment as opposed to temporary lay-off, as in the present case. There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a specific period or duration. Notably, in both permanent and temporary lay-offs, the employer must act in good faith — that is, one which is intended for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under the law or under valid agreements.

10. ID.; ID.; ID.; ID.; AN EMPLOYER MAY VALIDLY PUT ITS EMPLOYEES ON FORCED LEAVE OR FLOATING STATUS UPON *BONA FIDE* SUSPENSION OF THE OPERATION OF ITS BUSINESS FOR A PERIOD NOT EXCEEDING SIX (6) MONTHS; IN SUCH A CASE, THERE IS NO TERMINATION OF THE EMPLOYMENT OF THE EMPLOYEES, BUT ONLY A TEMPORARY DISPLACEMENT; WHEN THE SUSPENSION OF THE

BUSINESS OPERATIONS EXCEEDS SIX (6) MONTHS, THEN THE EMPLOYMENT OF THE EMPLOYEES WOULD BE DEEMED TERMINATED, AND THE EMPLOYER WOULD BE HELD LIABLE FOR THE SAME.— Certainly, the employees cannot forever be temporarily laid-off. Hence, in order to remedy this situation or fill the hiatus, Article 301 may be applied to set a specific period wherein employees may remain temporarily laid-off or in floating status. x x x. The law set six (6) months as the period where the operation of a business or undertaking may be suspended, thereby also suspending the employment of the employees concerned. The resulting temporary lay-off, wherein the employees likewise cease to work, should also not last longer than six (6) months. After the period of six (6) months, the employees should either then be recalled to work or permanently retrenched following the requirements of the law. Failure to comply with this requirement would be tantamount to dismissing the employees, making the employer responsible for such dismissal. Elsewise stated, an employer may validly put its employees on forced leave or floating status upon *bona fide* suspension of the operation of its business for a period not exceeding six (6) months. In such a case, there is no termination of the employment of the employees, but only a temporary displacement. When the suspension of the business operations, however, exceeds six (6) months, then the employment of the employees would be deemed terminated, and the employer would be held liable for the same.

11. ID.; ID.; ID.; ID.; CLOSURE OR SUSPENSION OF OPERATIONS FOR ECONOMIC REASONS IS RECOGNIZED AS A VALID EXERCISE OF MANAGEMENT PREROGATIVE, BUT THE EMPLOYER HAS THE BURDEN OF PROVING, WITH SUFFICIENT AND CONVINCING EVIDENCE, THAT SAID CLOSURE OR SUSPENSION IS *BONA FIDE*.— Indeed, closure or suspension of operations for economic reasons is recognized as a valid exercise of management prerogative. But the burden of proving, with sufficient and convincing evidence, that said closure or suspension i*s bona fide* falls upon the employer. In the instant case, IKSI claims that its act of placing respondents on forced leave after a decrease in work volume, subject to recall upon availability of work, was a valid exercise of its

right to lay-off, as an essential component of its management prerogatives. The Court agrees with the LA's pronouncement that requiring employees on forced leave is one of the cost-saving measures adopted by the management in order to prevent further losses. However, IKSI failed to discharge the burden of proof vested upon it. Having the right should not be confused with the manner in which that right is exercised; the employer cannot use it as a subterfuge to run afoul of the employees' guaranteed right to security of tenure. The records are bereft of any evidence of actual suspension of IKSI's business operations or even of the ACT Project alone. In fact, while IKSI cited Article 301 to support the temporary lay-off of its employees, it never alleged that it had actually suspended the subject undertaking to justify such lay-off. It merely indicated changes in business conditions and client requirements and specifications as its basis for the implemented forced leave/ lay-off.

12. ID.; ID.; ID.; ID.; TO JUSTIFY RETRENCHMENT, THE LOSSES MUST BE SUBSTANTIAL AND THE RETRENCHMENT MUST BE REASONABLY NECESSARY TO AVERT SUCH LOSSES; THE FAILURE OF THE EMPLOYER TO PROVE WITH CLEAR AND SATISFACTORY EVIDENCE THAT LEGITIMATE BUSINESS REASONS EXIST IN ACTUALITY TO JUSTIFY ANY RETRENCHMENT WOULD RESULT IN A FINDING THAT THE DISMISSAL IS UNJUSTIFIED.— In light of the well-entrenched rule that the burden to prove the validity and legality of the termination of employment falls on the employer, IKSI should have established the *bona fide* suspension of its business operations or undertaking that could legitimately lead to the temporary lay-off of its employees for a period not exceeding six (6) months, in accordance with Article 301. The LA severely erred when it sustained respondents' temporary retrenchment simply because the volume of their work would sometimes decline, thus, several employees at the ACT Project stream experienced unproductive time. Considering the grave consequences occasioned by retrenchment, whether permanent or temporary, on the livelihood of the employees to be dismissed, and the avowed policy of the State to afford full protection to labor and to assure the employee's right to enjoy security of tenure, the Court stresses that not

every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment must be reasonably necessary to avert such losses. The employer bears the burden of proving this allegation of the existence or imminence of substantial losses, which by its nature is an affirmative defense. It is the employer's duty to prove with clear and satisfactory evidence that legitimate business reasons exist in actuality to justify any retrenchment. Failure to do so would inevitably result in a finding that the dismissal is unjustified. Otherwise, such ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures to dispose of their employees.

13. ID.; ID.; ID.; ID.; THE EMPLOYER MUST PROVE THAT IT FACED A CLEAR AND COMPELLING ECONOMIC REASON WHICH REASONABLY CONSTRAINED IT TO TEMPORARILY SHUT DOWN ITS BUSINESS OPERATIONS, INCIDENTALLY RESULTING IN THE TEMPORARY LAY-OFF OF ITS EMPLOYEES ASSIGNED TO SAID PARTICULAR UNDERTAKING, AND THAT THERE WERE NO OTHER AVAILABLE POSTS TO WHICH THE EMPLOYEES TEMPORARILY PUT OUT OF WORK COULD BE POSSIBLY ASSIGNED; ABSENT A VALID SUSPENSION OF OPERATIONS, THE TEMPORARY RETRENCHMENT OF EMPLOYEES AMOUNTED TO CONSTRUCTIVE DISMISSAL.— Here, IKSI never offered any evidence that would indicate the presence of a *bona fide* suspension of its business operations or undertaking. IKSI's paramount consideration should be the dire exigency of its business that compelled it to put some of its employees temporarily out of work. This means that it should be able to prove that it faced a clear and compelling economic reason which reasonably constrained it to temporarily shut down its business operations or that of the ACT Project, incidentally resulting in the temporary lay-off of its employees assigned to said particular undertaking. Due to the grim economic repercussions to the employees, IKSI must likewise bear the burden of proving that there were no other available posts to which the employees temporarily put out of work could be possibly assigned. Unfortunately, IKSI was not able to fulfill any of the aforementioned duties. IKSI cannot simply rely

solely on the alleged decline in the volume of work for the ACT Project to support the temporary retrenchment of respondents. Businesses, by their very nature, exist and thrive depending on the continued patronage of their clients. Thus, to some degree, they are subject to the whims of clients who may suddenly decide to discontinue patronizing their services for a variety of reasons. Being inherent in any enterprise, employers should not be allowed to take advantage of this entrepreneurial risk and use it in a scheme to circumvent labor laws. Otherwise, no worker could ever attain regular employment status. x x x. There being no valid suspension of business operations, IKSI's act amounted to constructive dismissal of respondents since it could not validly put the latter on forced leave or floating status pursuant to Article 301. And even assuming, without admitting, that there was indeed suspension of operations, IKSI did not recall the employees back to work or place them on valid permanent retrenchment after the period of six (6) months, as required of them by law.

14. ID.; ID.; ID.; ID.; IN BOTH PERMANENT AND TEMPORARY LAY-OFFS, THE ONE (1)-MONTH NOTICE RULE TO BOTH THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND THE EMPLOYEE IS MANDATORY.— Withal, in both permanent and temporary lay-offs, jurisprudence dictates that the one (1)-month notice rule to both the DOLE and the employee under Article 298 is mandatory. Here, both the DOLE and respondents did not receive any prior notice of the temporary lay-off. The DOLE Region VII Office was only informed on January 11, 2010 or four (4) days after the forced leave had already taken effect. On the other hand, respondents received the notice of forced leave on January 7, 2010, after the business day of which the same forced leave was to take effect. Respondents also pointed out that when they received said notice, they were told to no longer report starting the next day, made to completely vacate their workstations and surrender their company identification cards, and were not even allowed to use their remaining unused leave credits, which gave them the impression that they would never be returning to the company ever again.

15. ID.; ID.; ID.; TO BE VALID, THE DISMISSAL FROM EMPLOYMENT MUST BE FOR A JUST OR AUTHORIZED CAUSE, AND THE EMPLOYEE MUST

BE AFFORDED DUE PROCESS; NOT COMPLIED WITH.— Since dismissal is the ultimate penalty that can be meted to an employee, the requisites for a valid dismissal from employment must always be met, namely: (1) it must be for a just or authorized cause; and (2) the employee must be afforded due process, meaning, he is notified of the cause of his dismissal and given an adequate opportunity to be heard and to defend himself. Our rules require that the employer be able to prove that said requisites for a valid dismissal have been duly complied with. Indubitably, IKSI's intent was not merely to put respondents' employment on hold pending the existence of the unfavorable business conditions and call them back once the same improves, but really to sever the employer-employee relationship with respondents right from the very start. The Court cannot just turn a blind eye to IKSI's manifest bad faith in terminating respondents under the guise of placing them on a simple floating status. It is positively aware of the unpleasant practice of some employers of violating the employees' right to security of tenure under the pretense of a seemingly valid employment contract and/or valid termination. We must abate the culture of employers bestowing security of tenure to employees, not on the basis of the latter's performance on the job, but on their ability to toe the line. Unfortunately for IKSI, they chanced upon respondents who, unlike the ordinary workingman who always plays an easy prey to these perfidious companies, are fully aware of their rights under the law and simply refuse to ignore and endure in silence the flagrant irruption of their rights, zealously safeguarded by the Constitution and our labor laws.

16. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; COMMITTED BY THE NLRC IN CASE AT BAR AS ITS FINDINGS AND CONCLUSIONS THAT THE RESPONDENTS WERE MERELY PROJECT EMPLOYEES AND WERE NOT ILLEGALLY DISMISSED ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, OR THAT AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— The Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that

respondents were merely IKSI's project employees and that they were validly put on floating status as part of management prerogative, when they had satisfactorily established by substantial evidence that they had become regular employees and had been constructively dismissed. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions, as in the case at bar, are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

17. ID.; ID.; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; NON-COMPLIANCE WITH THE REQUIREMENTS ON, OR SUBMISSION OF DEFECTIVE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING, GUIDELINES.— The Court has previously set the guidelines pertaining to non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping; 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served; 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct; 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of substantial compliance or the presence of special circumstances or compelling reasons; 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under

reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule; and 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

18. ID.; RULES OF PROCEDURE; SHOULD BE VIEWED AS MERE TOOLS DESIGNED TO FACILITATE THE ATTAINMENT OF JUSTICE, AND THEIR STRICT AND RIGID APPLICATION, WHICH WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE, MUST ALWAYS BE ESCHEWED.— In the case at hand, only twelve (12) of respondents were able to sign the Verification and Certification Against Forum Shopping since they were only given ten (10) days from the receipt of the LA's decision to perfect an appeal. Some of them were even no longer based in Cebu City. But it does not mean that those who failed to sign were no longer interested in pursuing their case. In view of the circumstances of this case and the substantive issues raised by respondents, the Court finds justification to liberally apply the rules of procedure to the present case. Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.

19. ID.; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; WHERE IT IS HIGHLY IMPRACTICAL TO REQUIRE ALL THE PLAINTIFFS TO SIGN THE CERTIFICATE OF NON-FORUM SHOPPING, IT IS SUFFICIENT, IN ORDER NOT TO DEFEAT THE ENDS OF JUSTICE, FOR ONE OF THE PLAINTIFFS, ACTING AS REPRESENTATIVE, TO SIGN THE CERTIFICATE, PROVIDED THAT THE PLAINTIFFS SHARE A COMMON INTEREST IN THE SUBJECT MATTER OF THE CASE OR FILED THE CASE

AS A COLLECTIVE RAISING ONLY ONE COMMON CAUSE OF ACTION OR DEFENSE.— The Court previously held that the signature of only one of the petitioners substantially complied with the Rules if all the petitioners share a common interest and invoke a common cause of action or defense. In cases, therefore, where it is highly impractical to require all the plaintiffs to sign the certificate of non-forum shopping, it is sufficient, in order not to defeat the ends of justice, for one of the plaintiffs, acting as representative, to sign the certificate, provided that the plaintiffs share a common interest in the subject matter of the case or filed the case as a "collective" raising only one common cause of action or defense. Thus, when respondents appealed their case to the NLRC and the CA, they pursued the same as a collective body, raising only one argument in support of their rights against the illegal dismissal allegedly committed by IKSI. There was sufficient basis, therefore, for the twelve (12) respondents to speak and file the Appeal Memorandum before the NLRC and the petition in the CA for and in behalf of their co-respondents.

20. **ID.; ID.; ID; ID.; VERIFICATION IS A FORMAL REQUIREMENT, NOT JURISDICTIONAL, AND THE NON-COMPLIANCE THEREOF DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE.—** [V]erification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in this case, the court may simply order the correction of the unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served.

21. **ID.; RULES OF PROCEDURE; THE APPLICATION OF TECHNICAL RULES OF PROCEDURE MAY BE RELAXED IN LABOR CASES TO SERVE THE DEMAND OF SUBSTANTIAL JUSTICE.—** [N]o less than the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities, while Section 10, Rule VII of

the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of non-compliance with the process required. For this reason, the Court cannot indulge IKSI in its tendency to nitpick on trivial technicalities to boost its self-serving arguments.

22. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGALLY DISMISSED EMPLOYEES ARE ENTITLED TO BACKWAGES AND REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS, OR SEPARATION PAY, IN LIEU OF REINSTATEMENT, WHERE REINSTATEMENT IS NO LONGER FEASIBLE BECAUSE OF THE PALPABLE STRAINED RELATIONS BETWEEN THE PARTIES AND THE POSSIBILITY THAT THE POSITIONS PREVIOUSLY HELD BY DISMISSED EMPLOYEES ARE ALREADY BEING OCCUPIED BY NEW HIRES.— Inasmuch as IKSI failed to adduce clear and convincing evidence to support the legality of respondents' dismissal, the latter is entitled to reinstatement without loss of seniority rights and backwages computed from the time compensation was withheld up to the date of actual reinstatement, as a necessary consequence. However, reinstatement is no longer feasible in this case because of the palpable strained relations between the parties and the possibility that the positions previously held by respondents are already being occupied by new hires. Thus, separation pay equivalent to one (1) month salary for every year of service should be awarded in lieu of reinstatement.

23. ID.; ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES FOR AN ILLEGALLY DISMISSED EMPLOYEE IS PROPER WHERE THE EMPLOYEE HAD BEEN HARASSED AND ARBITRARILY TERMINATED

BY THE EMPLOYER.— The Court sustains the CA's award of moral and exemplary damages. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the unreasonable dismissal. The Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith, where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based, not on the Labor Code, but on Article 2220 of the Civil Code. In line with recent jurisprudence, the Court finds the amount of ₱50,000.00 for each of moral and exemplary damages adequate.

24. ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES TO ILLEGALLY DISMISSED EMPLOYEES, AFFIRMED; RATE OF INTEREST IMPOSED ON MONETARY AWARDS, MODIFIED. — The award of attorney's fees is likewise due and appropriate since respondents incurred legal expenses after they were forced to file an action to protect their rights. The rate of interest, however, has been changed to 6% starting July 1, 2013, pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for respondent.
Edson Solis for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review seeking the reversal of the Decision[1] of the Court of Appeals (*CA*), Cebu, Twentieth (20th)

[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla; concurring; *rollo*, Vol. 1, pp. 53-71.

Division, dated August 30, 2013 and its Resolution[2] dated March 12, 2014 in CA-G.R. CEB-SP No. 06443 which reversed and set aside Decision[3] of the National Labor Relations Commission (*NLRC*) on May 31, 2011.

The factual and procedural antecedents, as evidenced by the records of the case, are the following:

Petitioner Innodata Knowledge Services, Inc. (*IKSI*) is a company engaged in data processing, encoding, indexing, abstracting, typesetting, imaging, and other processes in the capture, conversion, and storage of data and information. At one time, Applied Computer Technologies (*ACT*), a company based in the United States of America, hired IKSI to review various litigation documents. Due to the nature of the job, ACT required IKSI to hire lawyers, or at least, law graduates, to review various litigation documents, classify said documents into the prescribed categories, and ensure that outputs are delivered on time. For this purpose, IKSI engaged the services of respondents Socorro D'Marie Inting, Ismael R. Garaygay, Edson S. Solis, Michael A. Rebato, James Horace Balonda, Stephen C. Olingay, Dennis C. Rizon, Juneth A. Rentuma, Hernan Ed Noel I. de Leon, Jr., Jess Vincent A. dela Peña, Ronan V. Alamillo, Ennoh Chentis R. Fernandez, Wendell B. Quiban, Aldrin O. Torrentira, Michael Ray B. Molde, Fritz J. Sembrino, Dax Matthew M. Quijano, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles and Carl Hermes Carskit as senior and junior reviewers with a contract duration of five (5) years.

On January 7, 2010, however, respondents received a Notice of Forced Leave from IKSI informing them that they shall be placed on indefinite forced leave effective that same day due to changes in business conditions, client requirements, and specifications. Hence, respondents filed a complaint for illegal

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[2] *Id*. at 74-76.

[3] Penned by Commissioner Aurelio D. Menzon, with Commissioners Julie C. Rendoque and Violeta Ortiz-Bantug, concurring; *rollo*, Vol. II, pp. 412-424.

dismissal, reinstatement or payment of separation pay, backwages, and damages against IKSI.

Subsequently, IKSI sent respondents separate notices dated May 27, 2010 informing them that due to the unavailability of new work related to the product stream and uncertainties pertaining to the arrival of new workloads, their project employment contracts would have to be terminated.

On November 10, 2010, the Labor Arbiter (*LA*), in the consolidated cases of NLRC RAB VII Case No. 01-0159-10, NLRC RAB VII Case No. 01-0182-10, and NLRC RAB VII Case No. 02-0301-10, declared that there was no illegal dismissal, thus:

> WHEREFORE**,** in view of the foregoing, a decision is hereby rendered declaring that complainants were not constructively dismissed but were placed on forced leave as a cost-saving measure. Consequently, herein respondents are directed to recall complainants back to work as soon as work becomes available. Complainants are likewise directed to report back to work within ten (10) days from receipt of the order of respondents to report back to work, otherwise, their failure to do so would be construed as an abandonment. In the event that reinstatement is no longer feasible, in lieu thereof, separation pay is granted equivalent to one (1) month salary for every year of service, a fraction of six (6) months is considered as one (1) whole year, sans backwages.
>
> The claim for moral and exemplary damages as well as attorney's fees are DISMISSED for lack of merit.
>
> SO ORDERED.[4]

The NLRC, on May 31, 2011, affirmed the LA Ruling with modification, to wit:

> WHEREFORE**,** the Decision of the Labor Arbiter is hereby AFFIRMED WITH MODIFICATION, in that in lieu of reinstatement, to pay the twelve (12) complainants-appellants namely: Michael A. Rebato, Hernan Ed Noel L. de Leon, Jr., Wendell B. Quiban, Fritz

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[4] *Rollo*, Vol. I, p. 269.

Sembrino, Ismael R. Garaygay III, Edson S. Solis, Stephen Olingay, Ronan Alamillo, Jess Vincent A. dela Peña, Dax Matthew M. Quijano, Juneth A. Rentuma and Socorro D'Marie T. Inting, the total amount of Php563,500.00.

SO ORDERED.[5]

Undaunted, the employees elevated the matter to the CA Cebu, alleging grave abuse of discretion on the NLRC's part. On August 30, 2013, the CA granted their petition and reversed the assailed NLRC ruling, thus:

WHEREFORE, premises considered, this petition is **GRANTED**. The assailed *Decision* dated May 31, 2011 and *Resolution* dated August 26, 2011 of public respondent in NLRC Case No. VAC-01-000042-2011 are **REVERSED and SET ASIDE.** Petitioners Socorro D'Marie Inting, Ismael R. Garaygay, Edson S. Solis, Michael A. Rebato, James Horace Balonda, Stephen C. Olingay, Dennis C. Rizon, Juneth A. Rentuma, Hernan Ed Noel I. de Leon, Jr., Jess Vincent A. dela Peña, Ronan V. Alamillo, Ennoh Chentis R. Fernandez, Wendell B. Quiban, Aldrin O. Torrentira, Michael Ray B. Molde, Fritz J. Sembrino, Dax Matthew M. Quijano, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles and Carl Hermes Carskit are declared to have been illegally dismissed by Innodata and hence, each of them is entitled to the payment of the following:

a) Backwages reckoned from the start of their employment up to the finality of this Decision with interest as six percent (6%) per annum, and 12% legal interest thereafter until fully paid;

(b) Separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their employment up to the finality of this decision;

(c) Moral damages of Php50,000 and exemplary damages of Php25,000; and

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[5] *Rollo*, Vol. II, p. 423.

(d) Attorney's fees equivalent to 10 percent (10%) of the total award.

The case is hereby ordered **REMANDED** to the labor arbiter for the computation of the amounts due each petitioner.

Costs on private respondent Innodata.

SO ORDERED.[6]

IKSI then filed a Motion for Reconsideration, but the same was denied in a Resolution dated March 12, 2014. Hence, the instant petition.

The main issue in this case is whether or not the CA committed an error when it reversed the NLRC, which declared that respondent employees, as mere project employees, were validly placed on floating status and, therefore, were not illegally dismissed.

The Court rules in the negative.

Substantive Issues

Nature of respondents' employment contracts

It is true that factual findings of administrative or quasi-judicial bodies which are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded, not only respect, but even finality, and bind the Court when supported by substantial evidence. However, the Court may take cognizance of factual issues when the findings of fact and conclusions of law of the LA and/or the NLRC are inconsistent with those of the CA,[7] as in the case at bar.

Here, the NLRC ruled that respondents were project employees. It ratiocinated that their contracts specifically indicated that they were to hold their positions for the duration of the project which was expected to be completed after a

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[6] *Rollo*, Vol. I, p. 70. (Emphasis in the original)

[7] *Dacles v. Millenium Erectors Corporation*, 763 Phil. 550 (2015).

maximum of five (5) years, or on or before July 2, 2013.[8] But the CA found that respondents' employment contracts are fixed-term, which are contrary to the Constitution and labor laws. It then cited several cases[9] that supposedly involved IKSI itself and would reveal that its fixed-term employment contracts have been consistently held as a form of circumvention to prevent employees from acquiring tenurial rights and benefits.

The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Thus, provisions of applicable statutes are deemed written into the contract, and the parties are never at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply entering into contracts with each other.[10]

Article 295[11] of the Labor Code provides the distinction between a regular and a project employment:

> Art. 295. *Regular and casual employment*. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking

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[8] *Rollo*, Vol. II, p. 20.

[9] *Villanueva v. NLRC and Innodata*, 356 Phil. 638 (1998); *Servidad v. NLRC*, 364 Phil. 518 (1999); *Innodata Philippines, Inc. v. Quejada-Lopez*, 535 Phil. 263 (2006); and *Price v. Innodata Phils., Inc.*, 588 Phil. 568 (2008).

[10] *Price v. Innodata Phils., Inc.*, *supra*, at 580.

[11] Formerly Article 280, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

> the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The aforecited provision contemplates four (4) kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence later added a fifth (5th) kind, the fixed-term employee. Based on Article 295, the law determines the nature of the employment, regardless of any agreement expressing otherwise. The supremacy of the law over the nomenclature of the contract and its pacts and conditions is to bring life to the policy enshrined in the Constitution to afford full protection to labor. Thus, labor contracts are placed on a higher plane than ordinary contracts since these are imbued with public interest and, therefore, subject to the police power of the State.[12]

Project employment contracts, which fix the employment for a specific project or undertaking, are valid under the law. By entering into such a contract, an employee is deemed to

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[12] *Leyte Geothermal Power Progressive Employees-Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corp.*, 662 Phil. 225, 234 (2011).

understand that his employment is coterminous with the project. He may no longer be employed after the completion of the project for which he was hired. But project employment contracts are not lopsided agreements in favor of only one party. The employer's interest is equally important as that of the employees'. While it may be true that it is the employer who drafts project employment contracts with its business interest as overriding consideration, such contracts must not prejudice the employee.[13]

As stated in IKSI's petition itself, the following are the basic provisions of the employment contracts which respondents signed with the company:

(a) the contracts are entitled "**Project-Based Employment Contracts**";

(b) the first Whereas clause states "the Company [IKSI] desires the services of a Project Employee for the **Content Supply Chain** Project";

(c) Clause 1 on *Term of Employment* provides:

> **The Employee shall hold the position of [Junior/Senior] Reviewer and shall perform the duties and responsibilities of such for the duration of the Project, which is expected to be completed after a maximum of five (5) years, or on or before _____, (the "Term").**
>
> …Further, the Employee is granted one Saturday-off per month on a scheduled basis for the duration of this **PROJECT-BASED EMPLOYMENT CONTRACT**…

(d) The second paragraph of Clause 2 on *Work Description* provides:

> The Employee shall render work in accordance with the schedule and/or program to which he/she may be assigned or reassigned from time to time, **in accordance with the operational requirements for the completion of the Project. In addition, the Employee shall perform such other duties, functions, and services related or**

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[13] *Id*.

incidental to the Project which, for purposes of expediency, convenience, economy, customer interest, may be assigned by the Company.

(e) Clause 5 on *Termination of Employment* provides:

At any time during the Term of this Contract, or any extension thereof, the Company may terminate this Contract, upon thirty (30) days' prior notice to the Employee…in the following instances:

a. the **services contracted for by the Company under the Project** is completed prior to the agreed upon completion date; or

b. the **specific phase of the Project** requiring the Employee's services is sooner completed; or

c. substantial decrease in the volume of work for the Project; or

d. the **contract for the Project is cancelled, indefinitely suspended or terminated**;

(e) the first paragraph of Clause 6 on *Compensation and Benefits* provides:

The Employee shall receive a gross salary of … In addition to his/her basic pay, Management may grant an additional incentive pay should the Employee exceed the **Project quota**.[14]

IKSI argued that based on the contract, it is undeniable that respondents' employment was fixed for a specific project or undertaking, with its completion or termination clearly determined at the time of the employee's engagement. Indeed, records would disclose that respondents signed employment contracts specifically indicating the Content Supply Chain Project,[15] also known as the ACT Project, as the project for which they were being hired, which was expected to be completed after a maximum of five (5) years. However, sometime in

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[14] *Rollo*, Vol. I, pp. 20-21. (Emphasis ours)

[15] *Id.* at 332-335.

November 2008, IKSI required respondents to work on another project called "Bloomberg," which was not included in the original contracts that they signed and without entering into a new project employment contracts. Such fact was never refuted by IKSI. During that time, respondents were required to read and review decided cases in the United States of America and they were no longer called Senior or Junior Reviewers, but referred to as Case Classifiers. Respondents initially opposed working on said project but eventually agreed, in fear of losing their employment altogether. Months later, they were again required to work on the ACT Project and reverted to their previous designation as Document Reviewers.[16]

In the case of *ALU-TUCP v. NLRC*,[17] the Court made a pronouncement on the two (2) categories of project employees. The project for which project employees are hired would ordinarily have some relationship to the usual business of the employer. There should be no difficulty in distinguishing the employees for a certain project from ordinary or regular employees, as long as the duration and scope of the project were determined or specified at the time of engagement of said project employees.[18]

In order to safeguard the rights of workers against the arbitrary use of the word "project" which prevents them from attaining regular status, employers claiming that their workers are project employees have the burden of showing that: (a) the duration and scope of the employment was specified at the time they were engaged; and (b) there was indeed a project.[19] Therefore, as evident in Article 295, the litmus test for determining whether particular employees are properly characterized as project employees, as distinguished from regular employees, is whether or not the employees were assigned to carry out a specific project

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[16] *Id.* at 264.

[17] 304 Phil. 844, 850 (1994).

[18] *Dacles v. Millenium Erectors Corporation, supra* note 7, at 560-561.

[19] *Id.* at 558-559.

or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project.[20]

Here, while IKSI was able to show the presence of a specific project, the ACT Project, in the contract and the alleged duration of the same, it failed to prove, however, that respondents were in reality made to work only for that specific project indicated in their employment documents and that it adequately informed them of the duration and scope of said project at the time their services were engaged. It is well settled that a party alleging a critical fact must support his allegation with substantial evidence, as allegation is not evidence. The fact is IKSI actually hired respondents to work, not only on the ACT Project, but on other similar projects such as the Bloomberg. When respondents were required to work on the Bloomberg project, without signing a new contract for that purpose, it was already outside of the scope of the particular undertaking for which they were hired; it was beyond the scope of their employment contracts. The fact that the same happened only once is inconsequential. What matters is that IKSI required respondents to work on a project which was separate and distinct from the one they had signed up for. This act by IKSI indubitably brought respondents outside the realm of the project employees category.

IKSI likewise fell short in proving that the duration of the project was reasonably determinable at the time respondents were hired. As earlier mentioned, the employment contracts provided for "the duration of the Project, which is expected to be completed after a maximum of five (5) years, or on or before _____." The NLRC upheld the same, finding that the contracts clearly provided for the duration of the project which was expected to end after a maximum of five (5) years, or on or before July 2, 2013. It is interesting to note, however, that the five (5)-year period is not actually the duration of the project but merely that of the employment contract. Naturally, therefore, not all of respondents' employment would end on July 2, 2013,

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[20] *Id*. at 560.

as the completion of the five (5)-year period would depend on when each employee was employed, thus:[21]

	Hiring Date	Completion Date
Carl Hermes R. Carskit	Nov. 1, '07	May 31, '12
Ismael R. Garaygay III	Mar. 5, '08	Mar. 4, '13
Socorro D' Marie T. Inting	Apr. 7, '08	Apr. 6, '13
James Horace A. Balonda	May 12, '08	May 11, '13
Wendell B. Quiban	May 12, '08	May 11, '13
Fritz J. Sembrino	May 12, '08	May 11, '13
Edson S. Solis	May 12, '08	May 11, '13
Rodolfo M. Vasquez, Jr.	May 12, '08	May 11, '13
Stephen C. Olingay	May 16, '08	May 15, '13
Michael A. Rebato	May 19, '08	May 18, '13
Ma. Nazelle B. Miralles	May 21, '08	May 20, '13
Dennis C. Rizon	July 3, '08	July 2, '13
Ronan V. Alamillo	July 10, '08	July 9, '13
Juneth A. Rentuma	July 17, '08	July 16, '13
Jess Vincent A. Dela Peña	Aug. 12, '08	Aug. 11, '13
Dax Matthew M. Quijano	Nov. 17, '08	Nov. 16, '13
Michael Ray B. Molde	May 18, '09	May 17, '14
Aldrin O. Torrentira	May 25, '09	May 24, '14
Ennoh Chentis R. Fernandez	May 28, '09	May 27, '14
Hernan Ed Noel L. De Leon, Jr.	June 3, '09	June 2, '14

This is precisely the reason why IKSI originally left a blank for the termination date because it varied for each employee. If respondents were truly project employees, as IKSI claims and as found by the NLRC, then the termination date would have been uniform for all of them.

Thus, while the CA erred in simply relying on the Court's rulings on previous cases involving Innodata Phils., Inc. since there is no substantial proof that Innodata Phils., Inc. and herein petitioner, IKSI, are one and the same entity, it would appear, however, that respondents indeed entered into fixed-term employment contracts with IKSI, contracts with a fixed period of five (5) years. But project employment and fixed-term employment are not the same. While the former requires a particular project, the duration of a fixed-term employment agreed upon by the parties may be any day certain, which is understood

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[21] *Rollo*, Vol. II, pp. 468-470; *rollo*, Vol. III, pp. 1338-1530.

to be "that which must necessarily come although it may not be known when." The decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.[22]

The Court has previously recognized the validity of fixed-term employment contracts, but it has consistently held that this is more of an exception rather than the general rule. Aware of the possibility of abuse in the utilization of fixed-term employment contracts, the Court has declared that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals.[23]

It is evident that IKSI's contracts of employment are suspect for being highly ambiguous. In effect, it sought to alternatively avail of project employment and employment for a fixed term so as to preclude the regularization of respondents' status. The fact that respondents were lawyers or law graduates who freely and with full knowledge entered into an agreement with the company is inconsequential. The utter disregard of public policy by the subject contracts negates any argument that the agreement is the law between the parties[24] and that the fixed period was knowingly and voluntarily agreed upon by the parties. In the interpretation of contracts, obscure words and provisions shall not favor the party that caused the obscurity. Consequently, the terms of the present contract should be construed strictly against the employer, for being the party who prepared it.[25] Verily, the private agreement of the parties can never prevail over Article 1700 of the Civil Code, which states:

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[22] *GMA Network, Inc. v. Pabriga, et al.*, 722 Phil. 161, 178 (2013).

[23] *Brent School, Inc. v. Zamora*, 260 Phil. 747, 761 (1990).

[24] *Servidad v. NLRC*, *supra* note 9, at 527.

[25] *Innodata Philippines, Inc. v. Quejada-Lopez*, *supra* note 9, at 272.

Art. 1700. The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to special laws on labor unions, collective bargaining, strikes and lockouts, closed shops, wages, working conditions, hours of labor and similar subjects.

Thus, there were no valid fixed-term or project contracts and respondents were IKSI's regular employees who could not be dismissed except for just or authorized causes. Any ambiguity in said contracts must be resolved against the company, especially because under Article 1702 of the Civil Code, in case of doubt, all labor contracts shall be construed in favor of the worker. The Court cannot simply allow IKSI to construe otherwise what appears to be clear from the wordings of the contract itself. The interpretation which IKSI seeks to conjure is wholly unacceptable, as it would result in the violation of respondents' right to security of tenure guaranteed in Section 3 of Article XIII of the Constitution and in Article 294[26] of the Labor Code.[27]

Presence of Just or Authorized Causes for Termination of Employment

Here, IKSI placed respondents on forced leave, temporary lay-off, or floating status in January 2010 for the alleged decline in the volume of work in the product stream where they were assigned. When respondents filed a complaint for illegal dismissal, the LA dismissed the same for having been filed prematurely, since placing employees on forced leave or floating status is a valid exercise of management prerogative and IKSI never really had an intention to terminate their employment.

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[26] Formerly Article 279, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

[27] *Villanueva v. NLRC and Innodata*, *supra* note 9, at 646.

It relied on the memoranda[28] which IKSI issued to respondents, the tenor of which would show the intention to recall the affected employees back to work once the company's condition improves. The NLRC affirmed the LA's ruling and declared that the fact of dismissal, whether legal or illegal, is absent in this case.

Among the authorized causes for termination under Article 298[29] of the Labor Code is retrenchment, or what is sometimes referred to as a lay-off, thus:

Art. 298. Closure of Establishment and Reduction of Personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of

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[28] *Rollo*, Vol. I, p. 145; IKSI's notice of the forced leave reads:

Please be informed that due to changes in business conditions, client requirements and specifications, we regret to inform you that you shall be placed on forced leave effective end of business day of January 7, 2010 until further notice. We shall be calling upon you once the Company's condition relative to work requirements stabilizes, which may necessitate your services anew.

x x x x x x x x x

[29] Formerly Article 283, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Retrenchment is the severance of employment, through no fault of and without prejudice to the employee, which management resorts to during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation. In other words, lay-off is an act of the employer of dismissing employees because of losses in the operation, lack of work, and considerable reduction on the volume of its business. However, a lay-off would amount to dismissal only if it is permanent. When it is only temporary, the employment status of the employee is not deemed terminated, but merely suspended.[30]

Article 298, however, speaks of permanent retrenchment as opposed to temporary lay-off, as in the present case. There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a specific period or duration.[31] Notably, in both permanent and temporary lay-offs, the employer must act in good faith - that is, one which is intended for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under the law or under valid agreements.[32]

Certainly, the employees cannot forever be temporarily laid-off. Hence, in order to remedy this situation or fill the hiatus, Article 301[33] may be applied to set a specific period wherein

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[30] *Lopez v. Irvine Construction Corp.,* 741 Phil. 728, 740 (2014).

[31] *Id.*, citing *PT&T v. NLRC*, 496 Phil. 164, 177 (2005).

[32] *Lopez v. Irvine Construction, Corp.*, *supra* note 30, at 741.

[33] Formerly Article 286, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the

employees may remain temporarily laid-off or in floating status.[34] Article 301 states:

> Art. 301. When Employment not Deemed Terminated. The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

The law set six (6) months as the period where the operation of a business or undertaking may be suspended, thereby also suspending the employment of the employees concerned. The resulting temporary lay-off, wherein the employees likewise cease to work, should also not last longer than six (6) months. After the period of six (6) months, the employees should either then be recalled to work or permanently retrenched following the requirements of the law. Failure to comply with this requirement would be tantamount to dismissing the employees, making the employer responsible for such dismissal.[35] Elsewise stated, an employer may validly put its employees on forced leave or floating status upon *bona fide* suspension of the operation of its business for a period not exceeding six (6) months. In such a case, there is no termination of the employment of the employees, but only a temporary displacement. When the suspension of the business operations, however, exceeds six (6) months, then the employment of the employees would be deemed terminated,[36] and the employer would be held liable for the same.

Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

[34] *PT&T v. NLRC*, *supra* note 31.

[35] *Id*.

[36] *Nasipit Lumber Company v. NOWM*, 486 Phil. 348, 362 (2004).

Indeed, closure or suspension of operations for economic reasons is recognized as a valid exercise of management prerogative. But the burden of proving, with sufficient and convincing evidence, that said closure or suspension is *bona fide* falls upon the employer. In the instant case, IKSI claims that its act of placing respondents on forced leave after a decrease in work volume, subject to recall upon availability of work, was a valid exercise of its right to lay-off, as an essential component of its management prerogatives. The Court agrees with the LA's pronouncement that requiring employees on forced leave is one of the cost-saving measures adopted by the management in order to prevent further losses. However, IKSI failed to discharge the burden of proof vested upon it. Having the right should not be confused with the manner in which that right is exercised; the employer cannot use it as a subterfuge to run afoul of the employees' guaranteed right to security of tenure. The records are bereft of any evidence of actual suspension of IKSI's business operations or even of the ACT Project alone. In fact, while IKSI cited Article 301 to support the temporary lay-off of its employees, it never alleged that it had actually suspended the subject undertaking to justify such lay-off. It merely indicated changes in business conditions and client requirements and specifications as its basis for the implemented forced leave/lay-off.[37]

In light of the well-entrenched rule that the burden to prove the validity and legality of the termination of employment falls on the employer, IKSI should have established the *bona fide* suspension of its business operations or undertaking that could legitimately lead to the temporary lay-off of its employees for

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[37] *Supra* note 28:

Please be informed that due to changes in business conditions, client requirements and specifications, we regret to inform you that you shall be placed on forced leave effective end of business day of January 7, 2010 until further notice. We shall be calling upon you once the Company's condition relative to work requirements stabilizes, which may necessitate your services anew.

x x x x x x x x x

a period not exceeding six (6) months, in accordance with Article 301.[38] The LA severely erred when it sustained respondents' temporary retrenchment simply because the volume of their work would sometimes decline, thus, several employees at the ACT Project stream experienced unproductive time.[39] Considering the grave consequences occasioned by retrenchment, whether permanent or temporary, on the livelihood of the employees to be dismissed, and the avowed policy of the State to afford full protection to labor and to assure the employee's right to enjoy security of tenure, the Court stresses that not every loss incurred or expected to be incurred by a company will justify retrenchment. The losses must be substantial and the retrenchment must be reasonably necessary to avert such losses. The employer bears the burden of proving this allegation of the existence or imminence of substantial losses, which by its nature is an affirmative defense. It is the employer's duty to prove with clear and satisfactory evidence that legitimate business reasons exist in actuality to justify any retrenchment. Failure to do so would inevitably result in a finding that the dismissal is unjustified. Otherwise, such ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures to dispose of their employees.[40]

Here, IKSI never offered any evidence that would indicate the presence of a *bona fide* suspension of its business operations or undertaking. IKSI's paramount consideration should be the dire exigency of its business that compelled it to put some of its employees temporarily out of work. This means that it should be able to prove that it faced a clear and compelling economic reason which reasonably constrained it to temporarily shut down its business operations or that of the ACT Project, incidentally

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[38] *Lopez v. Irvine Construction Corp., supra* note 30, at 743.

[39] *Rollo*, Vol. I, p. 268.

[40] *Lopez v. Irvine Construction Corp.*, *supra* note 30, at 605; *Nasipit Lumber Company v. NOWM*, *supra* note 36, at 364; *Somerville Stainless Steel Corporation v. NLRC*, 359 Phil. 859, 869 (1998).

resulting in the temporary lay-off of its employees assigned to said particular undertaking. Due to the grim economic repercussions to the employees, IKSI must likewise bear the burden of proving that there were no other available posts to which the employees temporarily put out of work could be possibly assigned.[41] Unfortunately, IKSI was not able to fulfill any of the aforementioned duties. IKSI cannot simply rely solely on the alleged decline in the volume of work for the ACT Project to support the temporary retrenchment of respondents. Businesses, by their very nature, exist and thrive depending on the continued patronage of their clients. Thus, to some degree, they are subject to the whims of clients who may suddenly decide to discontinue patronizing their services for a variety of reasons. Being inherent in any enterprise, employers should not be allowed to take advantage of this entrepreneurial risk and use it in a scheme to circumvent labor laws. Otherwise, no worker could ever attain regular employment status.[42] In fact, IKSI still continued its operations and retained several employees who were also working on the ACT Project even after the implementation of the January 2010 forced leave. Much worse, it continued to hire new employees, with the same qualifications as some of respondents, through paid advertisements and placements in *Sunstar Cebu*,[43] a local newspaper, dated February 24, 2010 and March 7, 2010. The placing of an employee on floating status presupposes, among others, that there is less work than there are employees. But if IKSI continued to hire new employees then it can reasonably be assumed that there was a surplus of work available for its existing employees. Hence, placing respondents on floating status was unnecessary. If any, respondents – with their experience, knowledge, and familiarity with the workings of the company – should be preferred to be given new projects and not new hires who have little or no experience working for IKSI.[44]

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[41] *Lopez v. Irvine Construction Corp. supra* note 30, at 744.

[42] *Innodata Phils., Inc. v. Quejada-Lopez, supra* note 25.

[43] *Rollo*, Vol. I, pp. 370-371.

[44] *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 523 (2015).

There being no valid suspension of business operations, IKSI's act amounted to constructive dismissal of respondents since it could not validly put the latter on forced leave or floating status pursuant to Article 301. And even assuming, without admitting, that there was indeed suspension of operations, IKSI did not recall the employees back to work or place them on valid permanent retrenchment after the period of six (6) months, as required of them by law. IKSI could not even use the completion of the duration of the alleged project as an excuse for causing the termination of respondents' employment. It must be pointed out that the termination was made in 2010 and the expected completion of the project in respondents' contracts was still in 2012 to 2014. Also, if the Court would rely on IKSI's own Notice of Partial Appeal and Memorandum on Partial Appeal[45] before the NLRC dated December 10, 2010, respondents might even had been put on floating status for a period exceeding the required maximum of six (6) months. Evidence reveal that the assailed forced leave took effect on January 7, 2010 and IKSI eventually sent its termination letters four (4) months after, or on May 27, 2010, with the effectivity of said termination being on July 7, 2010. But as of December 10, 2010, IKSI was still insisting that respondents were never dismissed and were merely placed on forced leave. It was only in its Comment on Complainants' Motion for Reconsideration dated August 3, 2011 did IKSI admit the fact of dismissal when it appended its own termination letters dated May 27, 2010.

But even on May 27, 2010, there was still no basis for IKSI to finally make the retrenchment permanent. While it acknowledged the fact that respondents could not be placed on an indefinite floating status, it still failed to present any proof of a *bona fide* closing or cessation of operations or undertaking to warrant the termination of respondents' employment. The termination letter[46] reads:

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[45] *Rollo*, Vol. II, pp. 398-399.

[46] *Id.* at 503. (Emphasis ours)

As you are probably already been aware by now, our Product Stream ACTDR of Project CSP, have been experiencing a considerably downward trend in terms of workload. The Company has undertaken every effort to obtain new commitments from its clients abroad in order to proceed with the expected volume of work under the same product stream.

Unfortunately, however, it has become evident that despite said efforts being exerted by the Company, the prospect of new work related to the product stream coming in, remains uncertain at this point. Management has already utilized all available options, which include placing its project employees on forced leave. This, however, cannot go on indefinitely.

It is therefore, with deep regret, that we inform you that **in view of the unavailability of work of the aforementioned product stream as well as the uncertainties pertaining to the arrival of new workloads thereof**, we are constrained to **terminate** your Project Employment Contract **in accordance with the terms and conditions stated under the Termination of Employment** of your Project Employment Contract, effective **7/7/2010**.

x x x x x x x x x

It bears to point out that said termination letter did not even state any of the following valid grounds under the law as anchor for the dismissal:

Art. 297. Termination by Employer. An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
(e) Other causes analogous to the foregoing.[47]

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[47] Formerly Article 282, Department Advisory No. 01, Renumbering of the Labor Code of the Philippines, as Amended, Series of 2015; pursuant

Art. 298. Closure of Establishment and Reduction of Personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

The NLRC likewise committed a grave error when it held that there was no basis for respondents' reliance on the case of *Bontia v. NLRC*[48] on the sole ground that, in the present case, the employees were neither actually nor constructively dismissed. The Court affirms respondents' contention that when IKSI feigned suspension of operations and placed respondents on forced leave, the same had already amounted to constructive dismissal. And when IKSI sent letters informing them that they would be terminated effective July 7, 2010, respondents then had been actually dismissed. In *Bontia*, the manner by which the employer severed its relationship with its employees was remarkably similar to the one in the case at bar, which was held to be an underhanded circumvention of the law. Consolidated Plywood Industries summarily required its employees to sign applications for forced leave deliberately

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to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

[48] 325 Phil. 443 (1996).

crafted to be without an expiration date, like in this case. This consequently created an uncertain situation which necessarily discouraged, if not altogether prevented, the employees from reporting, or determining when or whether to report for work. The Court further ruled that even assuming that the company had a valid reason to suspend operations and had filed the necessary notice with the Department of Labor and Employment (*DOLE*), it still would not be a legitimate excuse to cursorily dismiss employees without properly informing them of their rights and status or paying their separation pay in case they were eventually laid off. Under the Labor Code, separation pay is payable to an employee whose services are validly terminated as a result of retrenchment, suspension, closure of business or disease. Thus, the Court held that Consolidated Plywood's employees should, at the very least, have been given separation pay and properly informed of their status so as not to leave them in a quandary as to how they would properly respond to such a situation.[49] Similarly, respondents never received any separation pay when they were terminated in July of 2010 since IKSI had been denying the existence of a dismissal, whether actual or constructive.

Withal, in both permanent and temporary lay-offs, jurisprudence dictates that the one (1)-month notice rule to both the DOLE and the employee under Article 298 is mandatory.[50] Here, both the DOLE and respondents did not receive any prior notice of the temporary lay-off. The DOLE Region VII Office was only informed on January 11, 2010[51] or four (4) days after the forced leave had already taken effect. On the other hand, respondents received the notice[52] of forced leave on January 7, 2010, after the business day of which the same forced leave was to take effect. Respondents also pointed out that when they received said notice, they were told to no longer report

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[49] *Id*.

[50] *Lopez v. Irvine Construction Corp., supra* note 30, at 741.

[51] *Rollo*, Vol. I, p. 186.

[52] *Supra* note 28.

starting the next day, made to completely vacate their workstations and surrender their company identification cards, and were not even allowed to use their remaining unused leave credits, which gave them the impression that they would never be returning to the company ever again.

Since dismissal is the ultimate penalty that can be meted to an employee, the requisites for a valid dismissal from employment must always be met, namely: (1) it must be for a just or authorized cause; and (2) the employee must be afforded due process,[53] meaning, he is notified of the cause of his dismissal and given an adequate opportunity to be heard and to defend himself. Our rules require that the employer be able to prove that said requisites for a valid dismissal have been duly complied with. Indubitably, IKSI's intent was not merely to put respondents' employment on hold pending the existence of the unfavorable business conditions and call them back once the same improves, but really to sever the employer-employee relationship with respondents right from the very start. The Court cannot just turn a blind eye to IKSI's manifest bad faith in terminating respondents under the guise of placing them on a simple floating status. It is positively aware of the unpleasant practice of some employers of violating the employees' right to security of tenure under the pretense of a seemingly valid employment contract and/or valid termination. We must abate the culture of employers bestowing security of tenure to employees, not on the basis of the latter's performance on the job, but on their ability to toe the line.[54] Unfortunately for IKSI, they chanced upon respondents who, unlike the ordinary workingman who always plays an easy prey to these perfidious companies, are fully aware of their rights under the law and simply refuse to ignore and endure in silence the flagrant irruption of their rights, zealously safeguarded by the Constitution and our labor laws.

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[53] *Visayan Electric Company Employees Union-ALU-UCP v. VECO*, 764 Phil. 608, 621 (2015).

[54] *ICT Marketing Services, Inc. v. Sales, supra* note 44.

Procedural Issues

Tested against the above-discussed considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that respondents were merely IKSI's project employees and that they were validly put on floating status as part of management prerogative, when they had satisfactorily established by substantial evidence that they had become regular employees and had been constructively dismissed.[55] Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction.[56] In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions, as in the case at bar, are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[57]

In the NLRC's Decision, only the following petitioners were included: Michael A. Rebato, Hernan Ed Noel L. de Leon, Jr., Wendell B. Quiban, Fritz Sembrino, Ismael R. Garaygay III, Edson S. Solis, Stephen Olingay, Ronan Alamillo, Jess Vincent A. dela Peña, Dax Matthew M. Quijano, Juneth A. Rentuma and Socorro D'Marie T. Inting. On the other hand, James Horace Balonda, Dennis C. Rizon, Ennoh Chentis R. Fernandez, Aldrin O. Torrentira, Michael Ray B. Molde, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles, and Carl Hermes Carskit were excluded. IKSI argued that those eight (8) who were excluded did not sign the required Verification and Certification of Non-Forum Shopping of the Appeal Memorandum before the NLRC, and some of them also failed to execute the Verification in the Petition for *Certiorari* before the CA.

The Court has previously set the guidelines pertaining to non-compliance with the requirements on, or submission of

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[55] *Dacles v. Millenium Erectors Corporation, supra* note 7, at 561.

[56] *Id*. at 557.

[57] *Id.*

defective, verification and certification against forum shopping:[58]

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping;

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served;

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct;

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of substantial compliance or the presence of special circumstances or compelling reasons;

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule; and

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

In the case at hand, only twelve (12) of respondents were able to sign the Verification and Certification Against Forum

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[58] *Spouses Salise, et al. v. DARAB*, G.R. No. 202830, June 20, 2016, citing *Altres, et al. v. Empleo, et al.*, 594 Phil. 246, 261-262 (2008).

Shopping since they were only given ten (10) days from the receipt of the LA's decision to perfect an appeal. Some of them were even no longer based in Cebu City. But it does not mean that those who failed to sign were no longer interested in pursuing their case.

In view of the circumstances of this case and the substantive issues raised by respondents, the Court finds justification to liberally apply the rules of procedure to the present case. Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[59]

In a similar case, the Court found that the signing of the Verification by only 11 out of the 59 petitioners already sufficiently assured the Court that the allegations in the pleading were true and correct and not the product of the imagination or a matter of speculation; that the pleading was filed in good faith; and that the signatories were unquestionably real parties-in-interest who undoubtedly had sufficient knowledge and belief to swear to the truth of the allegations in the petition.[60] In the same vein, the twelve (12) respondents who signed the Verification in the instant case had adequate knowledge to swear to the truth of the allegations in their pleadings, attesting that the matters alleged therein have been made in good faith or are true and correct. With respect to the failure of some of respondents to sign the Certification Against Forum Shopping, IKSI cited the case of *Altres, et al. v. Empleo*[61] which ruled that the non-signing petitioners were dropped as parties to the case. However, the reason of the Court for removing said petitioners from the case was not because of the failure to sign *per se*, but actually because of the fact that they could no longer be contacted or were indeed no longer interested in pursuing

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[59] *Spouses Salise, et al. v. DARAB*, *supra*.

[60] *Altres, et al. v. Empleo, et al., supra* note 58, at 260.

[61] *Id*.

the case.[62] Here, as mentioned earlier, those who failed to sign the certification against forum shopping will not be dropped as parties to the case since reasonable or justifiable circumstances are extant, as all respondents share a common interest and invoke a common cause of action or defense; the signatures of some or even only one of them substantially complies with the Rule.

The Court previously held that the signature of only one of the petitioners substantially complied with the Rules if all the petitioners share a common interest and invoke a common cause of action or defense. In cases, therefore, where it is highly impractical to require all the plaintiffs to sign the certificate of non-forum shopping, it is sufficient, in order not to defeat the ends of justice, for one of the plaintiffs, acting as representative, to sign the certificate, provided that the plaintiffs share a common interest in the subject matter of the case or filed the case as a "collective" raising only one common cause of action or defense.[63] Thus, when respondents appealed their case to the NLRC and the CA, they pursued the same as a collective body, raising only one argument in support of their rights against the illegal dismissal allegedly committed by IKSI. There was sufficient basis, therefore, for the twelve (12) respondents to speak and file the Appeal Memorandum before the NLRC and the petition in the CA for and in behalf of their co-respondents.

Clearly, verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional.[64] Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective.[65] It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in this case, the court may simply

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[62] *Id.*

[63] *Pacquing v. Coca-Cola Philippines, Inc.,* 567 Phil. 323, 333 (2008).

[64] *Heirs of Mesina v. Heirs of Fian*, 708 Phil. 327, 336 (2013).

[65] *Pacquing v. Coca-Cola Philippines, Inc., supra* note 63, at 335.

order the correction of the unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served.[66] Moreover, no less than the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities, while Section 10, Rule VII of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of non-compliance with the process required. For this reason, the Court cannot indulge IKSI in its tendency to nitpick on trivial technicalities to boost its self-serving arguments.[67]

The CA, however, erred when it still considered Atty. Ennoh Chentis Fernandez as one of the petitioners before it and included him in the dispositive portion of its decision. It must be noted that Fernandez was one of those who filed the Motion for Execution of Decision[68] dated May 28, 2012, which prayed for the issuance of a writ of execution of the LA and NLRC's rulings. The movants likewise admitted therein that while some of them elevated the case to the NLRC, they, however, did not. Corollarily, Fernandez should have been dropped as one of the parties to the case before the CA since the rulings of the labor tribunals had already attained finality with respect to him.

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[66] *Heirs of Mesina v. Heirs of Fian, supra* note 64.

[67] *Pacquing v. Coca-Cola Philippines, Inc., supra* note 63.

[68] *Rollo*, Vol. IV, pp. 1882-1884.

Award of Damages

Inasmuch as IKSI failed to adduce clear and convincing evidence to support the legality of respondents' dismissal, the latter is entitled to reinstatement without loss of seniority rights and backwages computed from the time compensation was withheld up to the date of actual reinstatement, as a necessary consequence. However, reinstatement is no longer feasible in this case because of the palpable strained relations between the parties and the possibility that the positions previously held by respondents are already being occupied by new hires. Thus, separation pay equivalent to one (1) month salary for every year of service should be awarded in lieu of reinstatement.[69]

The Court sustains the CA's award of moral and exemplary damages. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the unreasonable dismissal. The Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith, where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based, not on the Labor Code, but on Article 2220 of the Civil Code. In line with recent jurisprudence, the Court finds the amount of ₱50,000.00 for each of moral and exemplary damages adequate.[70]

The award of attorney's fees is likewise due and appropriate since respondents incurred legal expenses after they were forced to file an action to protect their rights.[71] The rate of interest, however, has been changed to 6% starting July 1, 2013, pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.[72]

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[69] *ICT Marketing Services, Inc. v. Sales, supra* note 44.

[70] *SPI Technologies, Inc. v. Mapua*, 731 Phil. 480, 500 (2014).

[71] *Tangga-an v. Philippine Transmarine Carriers, Inc., et al.,* 706 Phil. 339, 354 (2013).

[72] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **DISMISSES** the petition, and **AFFIRMS** with **MODIFICATIONS** the Decision of the Court of Appeals Cebu, Twentieth (20th) Division, dated August 30, 2013 and Resolution dated March 12, 2014 in CA-G.R. CEB-SP No. 06443. Respondents Socorro D'Marie Inting, Ismael R. Garaygay, Edson S. Solis, Michael A. Rebato, James Horace Balonda, Stephen C. Olingay, Dennis C. Rizon, Juneth A. Rentuma, Hernan Ed Noel I. de Leon, Jr., Jess Vincent A. dela Peña, Ronan V. Alamillo, Wendell B. Quiban, Aldrin O. Torrentira, Michael Ray B. Molde, Fritz J. Sembrino, Dax Matthew M. Quijano, Rodolfo M. Vasquez, Ma. Nazelle B. Miralles and Carl Hermes Carskit are declared to have been illegally dismissed by petitioner Innodata Knowledge Services, Inc. and hence, the latter is hereby **ORDERED to PAY** each of them the following:

a) Backwages and all other benefits from the time compensation was withheld on January 8, 2010 until finality of this Decision;

b) Separation pay equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months to be considered as one (1) whole year, to be computed from the date of their employment up to the finality of this Decision;

c) Moral and exemplary damages, each in the amount of ₱50,000.00;

d) Attorney's fees equivalent to ten percent (10%) of the total awards; and

e) Legal interest of twelve percent (12%) *per annum* of the total monetary awards computed from January 8, 2010 up to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.

The case is hereby ordered **REMANDED** to the labor arbiter for the computation of the amounts due each respondent.

Costs on petitioner Innodata Knowledge Services, Inc.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 216871. December 6, 2017]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MAYOR JULIUS CESAR VERGARA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE LOCAL GOVERNMENT CODE OF 1991; LOCAL ELECTIVE OFFICIALS; THE DOCTRINE OF CONDONATION OF ADMINISTRATIVE LIABILITY IS STILL APPLICABLE IN CASES THAT TRANSPIRED PRIOR TO THE RULING OF THE COURT IN *CARPIO MORALES V. CA AND JEJOMAR BINAY, JR.* (G.R. NOS. 217126-27, NOVEMBER 10, 2015); RESPONDENT IS ENTITLED TO THE DOCTRINE OF CONDONATION. — In November 10, 2015, this Court, in *Conchita Carpio Morales v. CA and Jejomar Binay, Jr.*, extensively discussed the doctrine of condonation and ruled that such doctrine has no legal authority in this jurisdiction. x x x. The x x x ruling, however, was explicit in its pronouncement that the abandonment of the doctrine of condonation is prospective in application, hence, the same doctrine is still applicable in cases that transpired prior to the ruling of this Court in *Carpio Morales v. CA and Jejomar Binay, Jr*. It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. x x x. Considering that the present case was instituted prior to the above-cited ruling of this Court, the doctrine of condonation may still be applied.

2. ID.; ID.; ID.; ID.; ID.; THE DOCTRINE OF CONDONATION OF ADMINISTRATIVE LIABILITY CAN BE APPLIED TO A PUBLIC OFFICER EVEN IF HIS RE-ELECTION BE ON ANOTHER PUBLIC OFFICE OR ON AN ELECTION YEAR THAT IS NOT IMMEDIATELY

SUCCEEDING THE LAST, AS LONG AS THE MISCONDUCT WAS DONE ON A PRIOR TERM AND THE ELECTORATE THAT RE-ELECTED THE PUBLIC OFFICIAL BE THE SAME.— The application of the doctrine does not require that the official must be re-elected to the same position in the immediately succeeding election. In *Giron v. Ochoa*, the Court recognized that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is the same. Thus, the Court ruled: On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in Carpio-Morales, the basic considerations are the following: first, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; second, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same. From the above ruling of this Court, it is apparent that the most important consideration in the doctrine of condonation is the fact that the misconduct was done on a prior term and that the subject public official was eventually re-elected by the same body politic. It is inconsequential whether the said re-election be on another public office or on an election year that is not immediately succeeding the last, as long as the electorate that re-elected the public official be the same. In this case, the respondent was re-elected as mayor by the same electorate that voted for him when the violation was committed. As such, the doctrine of condonation is applied and the CA did not err in so ruling.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Michael Angelo Reyes for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated April 6, 2015 of petitioner Office of the Ombudsman that seeks to reverse and set aside the Decision[1] dated May 28, 2014 of the Court of Appeals (*CA*) in CA-G.R. SP No. 125841 rendering the penalty imposed in the Decision[2] dated February 7, 2006 and Review Order[3] dated June 29, 2012 of petitioner Office of the Ombudsman against respondent Mayor Julius Cesar Vergara (*Mayor Vergara*) for violation of Section 5 (a) of Republic Act (*R.A.*) No. 6713 inapplicable due to the doctrine of condonation.

The facts follow.

A complaint was filed by Bonifacio G. Garcia, on June 21, 2005 before petitioner's Office of the Environmental Ombudsman against respondent Mayor Julius Cesar Vergara and then Vice-Mayor Raul Mendoza (*Vice-Mayor Mendoza*). Respondent Mayor Vergara was then serving as Mayor of Cabanatuan City for his third term (2004-2007).

According to the complainant, respondent Vergara and then Vice-Mayor Mendoza maintained for quite a long time an open burning dumpsite located at the boundaries of Barangays San Isidro and Valle Cruz in Cabanatuan City, which has long been overdue for closure and rehabilitation. He claimed that the dumpsite is now a four-storey high mountain of mixed garbage exposing the residents of at least eighty-seven (87) *barangays* of Cabanatuan City to all toxic solid wastes. He further alleged

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[1] Penned by Associate Justice Mario V. Lopez, with the concurrence of Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting; *rollo*, pp. 37-43.

[2] *Rollo*, pp. 69-75.

[3] *Id.* at 82-85.

that respondent Mayor Vergara and then Vice-Mayor Mendoza ordered and permitted the littering and dumping of the solid wastes in the said area causing immeasurable havoc to the health of the residents of Cabanatuan and that despite the enactment of R.A. 9003, respondent Mayor Vergara and then Vice-Mayor Mendoza allowed and permitted the collection of non-segregated and unsorted wastes. It was also alleged that respondent Mayor Vergara and then Vice-Mayor Mendoza ignored the complaints from local residents and the letters from the authorities of the Department of Environment and Natural Resources (*DENR*) and from the Commissioner of the National Solid Waste Management ordering them to comply with the provisions of the said law.

In their Joint Counter-Affidavit,[4] both respondent Mayor Vergara and then Vice-Mayor Mendoza denied that they wilfully and grossly neglected the performance of their duties pursuant to R.A. 9003. They claimed that since 1999, they were already aware about the growing problem of garbage collection in Cabanatuan City. They also contended that even before the enactment of RA 9003, they have already prepared a master plan for the transfer of the city dumpsite in *Barangay* Valle into an agreement with Lacto Asia Pacific Corporation for the establishment of Materials Recovery Facility at the motorpool compound of Cabanatuan City as a permanent solution to the garbage problem.

Respondent Mayor Vergara was found guilty by Graft Investigation and Prosecution Officer II Ismaela B. Boco for violation of Section 5 (a) of R.A. No. 6713, or the *Code of Conduct and Ethical Standards for Public Officials and Employees* which provides that:

> Section 5. *Duties of Public Officials and Employees*. – In the performance of their duties, all public officials and employees are under obligation to:

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[4] *Id*. at 62-68.

(a) Act promptly on letter and requests – All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

As such, petitioner imposed a penalty on respondent which reads as follows:

x x x Accordingly, he is meted the penalty of Suspension for six (6) months from the government service pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.

It is further recommended that both respondents, JULIUS CESAR VERGARA and RAUL P. MENDOZA be administratively liable for NEGLECT OF DUTY for failing to implement RA 9003. Accordingly, each of them is meted the penalty of Suspension for six (6) months from the government service pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.[5]

Respondent filed a motion for reconsideration contending that the assailed decision that meted him the penalty of suspension for six (6) months from government service cannot be implemented or enforced as the same runs counter to the established doctrine of condonation, since he was re-elected as Mayor of Cabanatuan City on May 10, 2010.

The petitioner, in its Review Order dated June 29, 2012, affirmed the Decision dated February 7, 2006 but modified the penalty imposed, thus:

PREMISES CONSIDERED, the Decision dated 7 February 2006 is hereby **AFFIRMED** with modification. The penalty imposed on respondent-movant Julius Cesar V. Vergara for failure to act promptly on letters and requests is reduced from six-month suspension to reprimand in light of the foregoing disquisition.

SO ORDERED.[6]

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[5] *Id*. at 74.

[6] *Id*. at 85.

Aggrieved, respondent filed a petition for review with the CA.

Respondent then filed a Motion and Manifestation dated May 16, 2013, which the CA noted, alleging that his re-election as Mayor of Cabanatuan City in the May 2010 elections eliminated the break from his service as Mayor and, thus, qualified his case for the application of the doctrine of condonation.

The CA, on May 28, 2014, granted respondent's petition. The CA ruled that there is no reason for it to reverse the findings of the Office of the Ombudsman, however, the appellate court held that respondent may no longer be held administratively liable for misconduct committed during his previous term based on the doctrine of condonation, thus:

x x x x x x x x x

Contrary to the ratiocination of the Office of the Ombudsman, the application of the doctrine does not require that the official must be reelected to the same position in the immediately succeeding election. The Supreme Court's rulings on the matter do not distinguish the precise timing or period when the misconduct was committed, reckoned from the date of the official's reelection, except that it must be prior to said date. Thus, when the law does not distinguish, the courts must not distinguish.

FOR THESE REASONS, the petition is **GRANTED**.

SO ORDERED.[7]

Petitioner filed a motion for partial reconsideration contending that the re-election referred to in the doctrine of condonation refers to the immediately succeeding election. The CA, in its Resolution dated February 5, 2015, denied the motion for reconsideration.

Hence, the present petition with the following grounds:

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

I.

THE COURT OF APPEALS ERRED WHEN IT HELD THAT RESPONDENT MAY NO LONGER BE HELD ADMINISTRATIVELY LIABLE FOR MISCONDUCT COMMITTED DURING HIS PREVIOUS TERM OF OFFICE BASED ON THE DOCTRINE OF CONDONATION.

II.

ASSUMING *ARGUENDO* THAT THE DOCTRINE OF CONDONATION IS APPLICABLE TO THE CASE AT BAR, PETITIONER RESPECTFULLY BESEECHES THIS HONORABLE COURT TO REEXAMINE SAID DOCTRINE IN LIGHT OF THE 1987 CONSTITUTION'S MANDATE THAT PUBLIC OFFICE IS A PUBLIC TRUST.[8]

According to petitioner, the term re-election, as applied in the doctrine of condonation, is used to refer to an election immediately preceding a term of office and it is not used to refer to a subsequent re-election following the three-term limit break considering that it is an incumbent official serving the three-term limit break who is said to be seeking re-election. It further argues that the factual circumstances of respondent do not warrant the application of the doctrine of condonation considering that the same doctrine is applied only to cases where the subject public officials were elected to the same position in the immediately succeeding election. Petitioner, likewise, contends that assuming that the doctrine of condonation is applicable in this case, such doctrine contradicts the 1987 Constitution and the present public policy.

In his Comment dated September 23, 2015, respondent insists that he did not violate any law and that if he is indeed guilty of violating R.A. 9003, the doctrine of condonation must be applied by virtue of his re-election.

The petition lacks merit.

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[8] *Id*. at 20.

Basically, this Court is presented with the single issue of whether or not respondent is entitled to the doctrine of condonation.

In November 10, 2015, this Court, in *Conchita Carpio Morales v. CA and Jejomar Binay, Jr.,*[9] extensively discussed the doctrine of condonation and ruled that such doctrine has no legal authority in this jurisdiction. As held in the said the decision:

> The foundation of our entire legal system is the Constitution. It is the supreme law of the land;[10] thus, the unbending rule is that every statute should be read in light of the Constitution.[11] Likewise, the Constitution is a framework of a workable government; hence, its interpretation must take into account the complexities, realities, and politics attendant to the operation of the political branches of government.[12]
>
> As earlier intimated, Pascual was a decision promulgated in 1959. Therefore, it was decided within the context of the 1935 Constitution which was silent with respect to public accountability, or of the nature of public office being a public trust. The provision in the 1935 Constitution that comes closest in dealing with public office is Section 2, Article II which states that "[t]he defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service."[13] Perhaps owing to the 1935 Constitution's silence on public accountability, and considering the dearth of jurisprudential rulings on the matter, as well as the variance in the policy considerations, there was no glaring objection confronting the Pascual Court in adopting the condonation doctrine that originated from select US cases existing at that time.

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[9] G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431, 540-542.

[10] *Chavez v. Judicial and Bar Council,* 691 Phil. 173, 208 (2012).

[11] *Teehankee v. Rovira,* 75 Phil. 634, 646 (1945), citing 11 Am. Jur., Constitutional Law, Section 96.

[12] *Philippine Constitution Association v. Enriquez*, 305 Phil. 546, 566 (1994).

[13] See Silos, Miguel U., *A Re-examination of the Doctrine of Condonation of Public Officers,* 84, Phil. LJ 22, 69 (2009), pp. 26-27.

With the advent of the 1973 Constitution, the approach in dealing with public officers underwent a significant change. The new charter introduced an entire article on accountability of public officers, found in Article XIII. Section 1 thereof positively recognized, acknowledged, and declared that "[p]ublic office is a public trust." Accordingly, "[p]ublic officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."

After the turbulent decades of Martial Law rule, the Filipino People have framed and adopted the 1987 Constitution, which sets forth in the Declaration of Principles and State Policies in Article II that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."[14] Learning how unbridled power could corrupt public servants under the regime of a dictator, the Framers put primacy on the integrity of the public service by declaring it as a constitutional principle and a State policy. More significantly, the 1987 Constitution strengthened and solidified what has been first proclaimed in the 1973 Constitution by commanding public officers to be accountable to the people at all times:

> Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives.

In Belgica, it was explained that:

> [t]he aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that "public office is a public trust," is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people's trust. The notion of a public trust connotes accountability x x x.[15]

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[14] Section 27, Article II.

[15] *Belgica v. Ochoa,* 721 Phil. 416, 556 (2013), citing Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Ed., p. 1108.

The same mandate is found in the Revised Administrative Code under the section of the Civil Service Commission,[16] and also, in the Code of Conduct and Ethical Standards for Public Officials and Employees.[17]

For local elective officials like Binay, Jr., the grounds to discipline, suspend or remove an elective local official from office are stated in Section 60 of Republic Act No. 7160,[18] otherwise known as the "Local Government Code of 1991" (LGC), which was approved on October 10 1991, and took effect on January 1, 1992:

> Section 60. Grounds for Disciplinary Action. – An elective local official may be disciplined, suspended, or removed from office on any of the r following grounds:
>
> (a) Disloyalty to the Republic of the Philippines;
> (b) Culpable violation of the Constitution;
> (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;

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[16] Section 1. Declaration of Policy. – The State shall insure and promote the Constitutional mandate that appointments in the Civil Service shall be made only according to merit and fitness; that the Civil Service Commission, as the central personnel agency of the Government shall establish a career service, adopt measures to promote morale, efficiency, integrity, responsiveness, and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability; **that public office is a public trust and public officers and employees must at all times be accountable to the people**; and that personnel functions shall be decentralized, delegating the corresponding authority to the departments, offices and agencies where such functions can be effectively performed. (Section 1, Book V, Title I, subtitle A of the Administrative Code of 1987). (Emphasis supplied)

[17] Section 2. Declaration of Policies. – It is the policy of the State to promote a high standard of ethics in public service. **Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest**. See Section 2, RA 6713 (approved on February 20, 1989). (Emphasis supplied)

[18] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (approved on October 10 1991).

(d) Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor;

(e) Abuse of authority;

(f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlunsod, sanggunian bayan, and sangguniang barangay;

(g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and

(h) Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

Related to this provision is Section 40 (b) of the LGC which states that those removed from office as a result of an administrative case shall be disqualified from running for any elective local position:

Section 40. Disqualifications. – The following persons are disqualified from running for any elective local position:

x x x x x x x x x

(b) Those removed from office as a result of an administrative case;

x x x x x x x x x

In the same sense, Section 52 (a) of the RRACCS provides that the penalty of dismissal from service carries the accessory penalty of perpetual disqualification from holding public office:

Section 52. – Administrative Disabilities Inherent in Certain Penalties. –

The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking the civil service examinations.

In contrast, Section 66 (b) of the LGC states that the penalty of suspension shall not exceed the unexpired term of the elective local official nor constitute a bar to his candidacy for as long as he meets the qualifications required for the office. Note, however, that the

provision only pertains to the duration of the penalty and its effect on the official's candidacy. Nothing therein states that the administrative liability therefor is extinguished by the fact of re-election:

> Section 66. Form and Notice of Decision. – x x x.
>
> x x x x x x x x x
>
> (b) The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications required for the office.

Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

To begin with, the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, liability arising from administrative offenses may be condoned by the President in light of Section 19, Article VII of the 1987 Constitution which was interpreted in *Llamas v. Orbos*[19] to apply to administrative offenses:

> x x x The Constitution does not distinguish between which cases executive clemency may be exercised by the President, with the sole exclusion of impeachment cases. By the same token, if executive clemency may be exercised only in criminal cases, it would indeed be unnecessary to provide for the exclusion of impeachment cases from the coverage of Article VII, Section

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[19] 279 Phil. 920, 937 (1991)

> 19 of the Constitution. Following petitioner's proposed interpretation, cases of impeachment are automatically excluded inasmuch as the same do not necessarily involve criminal offenses.
>
> In the same vein, We do not clearly see any valid and convincing, reason why the President cannot grant executive clemency in administrative cases. It is Our considered view that if the President can grant reprieves, commutations and pardons, and remit fines and forfeitures in criminal cases, with much more reason can she grant executive clemency in administrative cases, which are clearly less serious than criminal offenses.

Also, it cannot be inferred from Section 60 of the LGC that the grounds for discipline enumerated therein cannot anymore be invoked against an elective local official to hold him administratively liable once he is re-elected to office. In fact, Section 40 (b) of the LGC precludes condonation since in the first place, an elective local official who is meted with the penalty of removal could not be re-elected to an elective local position due to a direct disqualification from running for such post. In similar regard, Section 52 (a) of the RRACCS imposes a penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service.

To compare, some of the cases adopted in Pascual were decided by US State jurisdictions wherein the doctrine of condonation of administrative liability was supported by either a constitutional or statutory provision stating, in effect, that an officer cannot be removed by a misconduct committed during a previous term,[20] or that the

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[20] In *Fudula's Petition* (297 Pa. 364; 147 A. 67 [1929]), the Supreme Court of Pennsylvania cited (a) 29 Cyc. 1410 which states: "Where removal may be made for cause only, the cause must have occurred during the present term of the officer. Misconduct prior to the present term even during a preceding term will not justify a removal" : and (b) "x x x Penal Code [Cal.], paragraph 772, providing for the removal of officers for violation of duty, which states "a sheriff cannot be removed from office, while serving his second term, for offenses committed during his first term."

ln *Board of Commissioners of Kingfisher County v. Shutler* (139 Okla. 52; 281 P. 222 [1929]), the Supreme Court of Oklahoma held that "[u]nder Section 2405, C. O. S. 1921, the only judgment a court can render on an officer being convicted of malfeasance or misfeasance in office is removal

disqualification to hold the office does not extend beyond the term in which the official's delinquency occurred.[21] In one case,[22] the absence of a provision against the re-election of an officer removed — unlike Section 40 (b) of the LGC-was the justification behind condonation. In another case,[23] it was deemed that condonation through re-election was a policy under their constitution — which adoption in this jurisdiction runs counter to our present Constitution's requirements on public accountability. There was even one case where the doctrine of condonation was not adjudicated upon but only invoked by a party as a ground;[24] while in another case, which was not reported

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from office and an officer cannot be removed from office under said section for acts committed by him while holding the same office in a previous term."

[21] In *State v. Blake* (138 Okla. 241; 280 P. 833 [1929]), the Supreme Court of Oklahoma cited *State ex rel. Hill, County Attorney, v. Henschel,* 175 P. 393, wherein it was said: "Under the Ouster Law (Section 7603 of the General Statutes of 1915-Code Civ. Proc. 686a-), a public officer who is guilty of willful misconduct in office forfeits his right to hold the office for the term of his election or appointment; but the disqualification to hold the office does not extend beyond the term in which his official delinquency occurred."

[22] In *Rice v. State* (204 Ark. 236; 161 S.W.2d 401 [1942]), the Supreme Court of Arkansas cited (a) *Jacobs v. Parham,* 175 Ark. 86,298 S.W. 483, which quoted a headnote, that "Under Crawford Moses' Dig., [(*i.e.*, a digest of statutes in the jurisdiction of Arkansas)] 10335, 10336, a public officer is not subject to removal from office because of acts done prior to his present term of office in view of Const., Art. 7, 27, containing no provision against re-election of officer removed for any of the reasons named therein."

[23] In *State ex rel. Brlckell v. Hasty* (184 Ala. 121; 63 So. 559 [1913]), the Supreme Court of Alabama held: "x x x If an officer is impeached and removed, there is nothing to prevent his being elected to the identical office from which he was removed for a subsequent term, and, this being true, a re- election to the office would operate as a condonation under the Constitution of the officer's conduct during the previous term, to the extent of cutting off the right to remove him from subsequent term for said conduct during the previous term. It seems to be the policy of our Constitution to make each term independent of the other, and to disassociate the conduct under one term from the qualification or right to fill another term, at least, so far as the same may apply to impeachment proceedings, and as distinguished from the right to indict and convict an offending official."

[24] In *State Ex Rel. V. Ward* (163 Tenn. 265; 43 S.W.2d. 217 [1931]), decided by the Supreme Court of Tennessee, Knoxville, it appears to be

in full in the official series, the crux of the disposition was that the evidence of a prior irregularity in no way pertained to the charge at issue and therefore, was deemed to be incompetent.[25] Hence, owing to either their variance or inapplicability, none of these cases can be used as basis for the continued adoption of the condonation doctrine under our existing laws.

At best, Section 66 (b) of the LGC prohibits the enforcement of the penalty of suspension beyond the unexpired portion of the elective local official's prior term, and likewise allows said official to still run for re-election. This treatment is similar to *People ex rel Bagshaw v. Thompson*[26] and *Montgomery v. Novell*[27] both cited in Pascual,

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erroneously relied upon in *Pascual,* since the proposition "[t]hat the Acts alleged in paragraph 4 of the petition involved contracts made by defendant prior to his present term for which he cannot now be removed from office" was not a court ruling but an argument raised by the defendant in his demurrer.

[25] In *Conant v. Grosan* (6 N.Y.S.R. 322 [1887]), which was cited in *Newman v. Strobel* (236 A.D. 371; 259 N.Y.S. 402 [1932]; decided by the Supreme Court of New York, Appellate Division) reads: "Our attention is called to *Conant v. Grogan* (6 N.Y. St. Repr. 322; 43 Hun, 637) and *Matter of King* (25 N.Y. St. Repr. 792; 53 Hun, 631), both of which decisions are of the late General Term, and neither of which is reported in full in the official series. While there are expressions in each opinion which at first blush might seem to uphold respondent's theory, an examination of the cases discloses the fact that the charge against each official related to acts performed during his then term of office, and evidence of some prior irregularity was offered which in no way pertained to the charge in issue. It was properly held that such evidence was incompetent. The respondent was not called upon to answer such charge, but an entirely separate and different one."

[26] In *People ex rel. Basshaw v. Thompson* (55 Cal. App. 2d 147; 130 P.2d.237 [1942]), the Court of Appeal of California, First Appellate District cited *Thurston v. Clark*, (107 Cal. 285, 40 P. 435), wherein it was ruled: "The Constitution does not authorize the governor to suspend an incumbent of the office of county commissioner for an act of malfeasance or misfeasance in office committed by him prior to the date of the beginning of his current term of office as such county commissioner."

[27] *Montgomery v. Nowell,* (183 Ark. 1116; 40 S.W.2d 418 [1931]; decided by the Supreme Court of Arkansas), the headnote reads as follows: "Crawford & Moses' Dig., 10, 335, providing for suspension of an officer on presentment or indictment for certain causes including malfeasance, in office does not provide for suspension of an officer on being indicted for official misconduct during a prior term of office."

wherein it was ruled that an officer cannot be suspended for a misconduct committed during a prior term. However, as previously stated, nothing in Section 66 (b) states that the elective local official's administrative liability is extinguished by the fact of re-election. Thus, at all events, no legal provision actually supports the theory that the liability is condoned.

Relatedly it should be clarified that there is no truth in Pascual's postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of Pascual or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.

Equally infirm is Pascual's proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule.[28] Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes.[29] At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no

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[28] See Chief Justice Maria Lourdes P. A. Sereno's interpellation, TSN of the Oral Arguments, April 14, 2015, p. 43.

[29] See Ombudsman's Memorandum, *rollo*, Vol. 11, p. 716, citing Silos, Miguel U., *A Re-examination of the Doctrine of Condonation of Public Officers,* 84, Phil. LJ 22, 69 (2009), p. 67.

condonation of an act that is unknown. As observed in *Walsh v. City Council of Trenton*[30] decided by the New Jersey Supreme Court:

> Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes knowledge and in the absence of knowledge there can be no condonation. One cannot forgive something of which one has no knowledge.

That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from - and now rendered obsolete by - the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from Pascual, and affirmed in the cases following the same, such as Aguinaldo, Salalima, Mayor Garcia, and Governor Garcia, Jr. which were all relied upon by the CA.

The above ruling, however, was explicit in its pronouncement that the abandonment of the doctrine of condonation is prospective in application, hence, the same doctrine is still applicable in cases that transpired prior to the ruling of this Court in *Carpio Morales v. CA and Jejomar Binay, Jr.*[31] Thus:

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[32] Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council*.[33]

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[30] 117 N.J.L. 64; 186 A. 818(1936).

[31] *Supra* note 2.

[32] See Article 8 of the Civil Code.

[33] 632 Phil. 657 (2010).

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[34]

Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*,[35] wherein it was ruled:

> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

Later, in *Spouses Benzonan v. CA*,[36] it was further elaborated:

> [Pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim lex prospicit, non respicit, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.[37]

Indeed, the lessons of history teach us that institutions can greatly benefit from hindsight and rectify its ensuing course. Thus, while it is truly perplexing to think that a doctrine which is barren of legal anchorage was able to endure in our jurisprudence for a considerable length of time, this Court, under a new membership, takes up the cudgels and now abandons the condonation doctrine.

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[34] *Id*. at 686.

[35] 154 Phil. 565 (1974).

[36] 282 Phil. 530 (1992).

[37] *Id.* at 544.

Considering that the present case was instituted prior to the above-cited ruling of this Court, the doctrine of condonation may still be applied.

It is the contention of the petitioner that the doctrine of condonation cannot be applied in this case, since there was a gap in the re-election of the respondent. It must be remembered that the complaint against respondent was filed on June 21, 2005, or during the latter's third term as Mayor (2004-2007) and was only re-elected as Mayor in 2010. According to petitioner, for the doctrine to apply, the respondent should have been re-elected in the same position in the immediately succeeding election.

This Court finds petitioner's contention unmeritorious.

The application of the doctrine does not require that the official must be re-elected to the same position in the immediately succeeding election. In *Giron v. Ochoa*,[38] the Court recognized that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is the same. Thus, the Court ruled:

> On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in Carpio-Morales, the basic considerations are the following: first, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; second, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same.

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[38] G.R. No. 218463 March 1, 2017.

From the above ruling of this Court, it is apparent that the most important consideration in the doctrine of condonation is the fact that the misconduct was done on a prior term and that the subject public official was eventually re-elected by the same body politic. It is inconsequential whether the said re-election be on another public office or on an election year that is not immediately succeeding the last, as long as the electorate that re-elected the public official be the same. In this case, the respondent was re-elected as mayor by the same electorate that voted for him when the violation was committed. As such, the doctrine of condonation is applied and the CA did not err in so ruling.

WHEREFORE, Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated April 6, 2015 of the petitioner Office of the Ombudsman is **DENIED**. Consequently, the Decision dated May 28, 2014 of the Court of Appeals in CA-G.R. SP No. 125841 is **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 219370. December 6, 2017]

VERONICO O. TAGUD, *petitioner, vs.* **BSM CREW SERVICE CENTRE PHILS., INC./ NARCISSUS DURAN and/or BERNHARD SCHULTE SHIPMANAGEMENT (CYPRUS),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION

(POEA); POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; TWO ELEMENTS MUST CONCUR FOR DISABILITY TO BE COMPENSABLE; EXPLAINED.— A seafarer employed on overseas vessels is entitled to disability benefits by law and by contract. By law, the provisions of Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, are applicable. By contract, the POEA Standard Employment Contract (POEA-SEC) and the parties' Collective Bargaining Agreement bind the seafarer and the employer to each other. In this case, Tagud executed his employment contract with respondents on 7 March 2008. Accordingly, the 2000 POEA-SEC, as provided under Department Order No. 4, series of 2000, issued by the Department of Labor and Employment (DOLE) on 31 May 2000, applies here. x x x For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract. The 2000 POEA-SEC defines "work-related injury" as injury resulting in disability or death arising out of and in the course of employment and "work-related illness" as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the 2000 POEA-SEC. Thus, the seafarer only has to prove that his illness or injury was acquired during the term of employment to support his claim for sickness allowance and disability benefits. It is stated in Section 20 (B) (3) of the 2000 POEA-SEC that a seafarer, upon signing off from the vessel for medical treatment, is required to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return. The only exception is when the seafarer is physically incapacitated to do so, in which case, the seafarer must give a written notice to the agency within three working days in order to have complied with the requirement. Otherwise, he forfeits his right to claim his sickness allowance and disability benefits.

2. ID.; ID.; ID.; ID.; THE ONE WHO CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD NOT ONLY COMPLY WITH THE PROCEDURAL REQUIREMENTS OF LAW BUT MUST ALSO

ESTABLISH HIS RIGHT TO THE BENEFITS BY SUBSTANTIAL EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— It is true that the POEA standard employment contract is designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels and its provisions should be construed and applied fairly, reasonably, and liberally in favor or for the benefit of the seafarer and his dependents. However, one who claims entitlement to the benefits provided by law should not only comply with the procedural requirements of law but must also establish his right to the benefits by substantial evidence. The burden, therefore, rests on Tagud to show that he suffered or contracted his illness or injury, while still employed as a seafarer, which resulted in his permanent disability. x x x In sum, we agree with the findings and conclusions of the NLRC and the CA. We hold that Tagud is not entitled to permanent disability benefits for his failure to (1) undergo a post-employment medical examination within the three-day mandatory reporting period as required under the law, or to show that such failure was due to a valid reason; (2) establish that his illness or injury was work-related; and (3) show that his illness or injury was contracted during the term of his employment contract.

APPEARANCES OF COUNSEL

Emerson T. Barrientos for petitioner.
Del Rosario and Del Rosario Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

This is a petition for review on certiorari[1] assailing the Decision[2] dated 24 November 2014 and the Resolution[3] dated

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 10-25. Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta concurring.

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

29 June 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 119633. The CA affirmed the Decision[4] dated 12 January 2011 of the National Labor Relations Commission (NLRC) Second Division which dismissed petitioner's claim for disability benefits and other monetary awards.

The Facts

Respondent Bernhard Schulte Shipmanagement (Cyprus) (Bernhard), a foreign shipping company doing business in the Philippines through its local manning agent, respondent BSM Crew Service Centre Philippines, Inc. (BSM) hired petitioner Veronico O. Tagud (Tagud) as Able Bodied Seaman since 2005. BSM is a domestic corporation engaged in the manning and recruitment of Filipino seafarers on board ocean going vessels and respondent Narcissus Duran is the company's President and authorized representative.

On 7 March 2008, Tagud was re-hired by respondents as Able Bodied Seaman for the Kota Pemimpin vessel under a contract approved by the Philippine Overseas Employment Administration (POEA). The terms and conditions of the employment stated:

Duration of contract:	7 months
Position:	Able Bodied Seaman
Basic Monthly Salary:	US$648/month
Hours of Work:	40 hours/week
Leave and Food Allowance:	$317/month
Gtrd Ot:	$561/month
Overtime:	$4.68/hour after 120 hours
Point of Hire:	Manila, Philippines[5]

Tagud passed the required pre-employment medical examination at the American Outpatient Clinic and was declared to be "Fit for Sea Duty (without restriction)."[6] On 24 March

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[4] *Id*. at 124-137. Erroneously dated 12 January 2010.

[5] *Id*. at 96.

[6] *Id*. at 97.

2008, Tagud was deployed and joined the Kota Pemimpin vessel in Hongkong on the same day.

Tagud's job as Able Bodied Seaman required him to (1) stand watch while in port or at sea, and (2) perform routine deck department maintenance tasks, e.g. cleaning, painting, and preserving the ship. Tagud's other responsibilities also include underway replenishment, cargo handling, forklift operation, and helicopter flight deck operations.

On 18 October 2008, while on duty doing a sanding job, Tagud lost his balance due to the sudden tilting of the ship and his right elbow region crashed against a hard object. As a result, he lost sensation and strength on his upper right extremity. After three days, he was brought to a doctor for medical attention when the vessel docked in Wynnum, Queensland.

Tagud underwent an x-ray of his right elbow. The x-ray report dated 21 October 2008 yielded the following result:

> Clinical History: Trauma to the lateral elbow three days ago.
> Findings: There is no fracture. There is a small olecranon spur. No other abnormality.[7]

Twenty-one days later, on 8 November 2008, Tagud disembarked in Singapore and was repatriated to Manila on the same day.

Tagud alleged that when he reported to his manning agency, he was not given any assistance or even referred to a company-designated physician for a follow-up medical examination. After four months, on 9 and 10 March 2009, Tagud sought medical attention at Sta. Isabel Medical Clinic in Caloocan City. Dr. Ruben Chua examined Tagud and prescribed medicines for Tagud's elevated blood pressure and pain in his upper right extremities.

Then sometime in September 2009, Tagud sought another medical consultation for neuritis with loss of strength of the

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[7] *Id*. at 99.

right hand at Peter the Rock Family Medical Polyclinic in Caloocan City and was attended to by Dr. Sisinio Quilicot. Tagud returned on 16 January 2010 to Dr. Quilicot for a follow-up treatment of his neuritis which became chronic. With an illness which limits the flexion of his upper right extremity, Tagud was no longer employed in any gainful occupation.

On 11 December 2009, Tagud filed a complaint[8] with the NLRC, National Capital Region, Quezon City, against respondents for permanent and total disability benefits, sickness wages, reimbursement of medical expenses, damages, and attorney's fees.

On 3 February 2010, Tagud sought for a thorough medical examination at the Veterans Memorial Medical Center in Quezon City. The attending physician, Dr. Liberato Casison, reported his assessment:

Subject has permanent disability neurologic in nature caused by repetitive vibratory trauma and physical trauma during work.

Disability rating: Disability 1.[9]

Tagud claimed that as a result of his work-related illness which he contracted during the term of his employment, he should be entitled to permanent disability benefits in the amount of US$125,000 in accordance with the schedule of rates applied by the foreign principal for crew of its vessels.[10]

Respondents denied any liability to Tagud. They contended that on 8 November 2008 Tagud was repatriated to the Philippines on a "finished contract" as stated in Tagud's disembarkation report. Respondents maintained that after Tagud's disembarkation, Tagud did not (1) complain of any illness or infirmity, (2) mention any accident or incident on board the Kota Pemimpin vessel, and (3) ask for any post-employment medical examination after disembarkation. Respondents also

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[8] Docketed as NLRC-NCR Case No. (M) 12-16885-09.

[9] *Rollo*, p. 81.

[10] *Id*. at 116.

asserted that Tagud failed to report to his manning agency within the three-day mandatory reporting period reckoned from the date of his repatriation.

In a Decision[11] dated 10 September 2010, the Labor Arbiter granted Tagud's complaint. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents BSM Crew Service Centre Inc., and/or Bernhard Schulte Shipmanagement (Cyprus) to pay complainant Veronico O. Tagud jointly and severally, the Philippine Peso equivalent at the time of actual payment of ONE HUNDRED TWENTY-FIVE [THOUSAND] US DOLLARS (US$ 125,000) representing total permanent disability benefits plus ten percent (10%) of the judgment award as and for attorney's fees.
>
> All other claims are dismissed for lack of merit.
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> SO ORDERED.[12]

Respondents filed an appeal[13] with the NLRC. In a Decision[14] dated 12 January 2011, the NLRC reversed the Labor Arbiter's decision. The NLRC stated that Tagud failed to prove that he reported to the manning agency within three days from his arrival in the Philippines on 8 November 2008 in order to be examined or treated for any injury sustained during the period of his employment. The NLRC added that it took Tagud about four months from his discharge from the vessel to seek medical treatment for a claim of "work-related injury." Thus, the NLRC declared that in the absence of a physician's opinion on Tagud's medical status immediately after repatriation, there can be no basis for his claim for disability benefits. The dispositive portion of the NLRC's decision states:

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[11] *Id.* at 113-122.

[12] *Id.* at 121-122.

[13] Docketed as NLRC LAC No. 10-000839-10.

[14] *Rollo*, pp. 124-137.

WHEREFORE, all the foregoing premises considered, the assailed Decision is hereby REVERSED and/or SET ASIDE, and a new one entered DISMISSING the instant complaint for lack of merit.

SO ORDERED.[15]

Tagud filed a motion for reconsideration. The NLRC Second Division, in a Resolution dated 24 March 2011, denied the motion for lack of merit.[16]

On 30 May 2011, Tagud filed a petition for certiorari with the Court of Appeals. In a Decision dated 24 November 2014, the CA dismissed the petition. The CA stated that during petitioner's employment on board M/V Kota Pemimpin, there was no incident or accident report submitted by his captain; and upon his arrival in the Philippines, Tagud did not report to respondents any ailment or injury he allegedly suffered on board said vessel. The CA concluded that petitioner was repatriated on a finished contract and not for any other reason. Thus, he is not entitled to claim any disability benefits absent proof of compliance with the requirements set forth in Section 20(B)(3) of the 2000 POEA Standard Employment Contract.

Tagud then filed a motion for reconsideration which was denied by the CA in a Resolution dated 29 June 2015.[17]

Hence, the instant petition.

The Issue

The issue in this case is whether or not the CA erred in affirming the decision of the NLRC which dismissed petitioner's claim for permanent disability benefits.

The Court's Ruling

The petition lacks merit.

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[15] *Id*. at 137.

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

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

Petitioner contends that his injury was work-related and had existed during the term of his employment. Petitioner states that he submitted medical evidence consisting of an x-ray examination result issued by a medical facility in Wynnum, Queensland. Petitioner adds that even if his repatriation was regarded as a finished contract, this should not change the nature of his work-related injury. Petitioner also insists that his alleged non-compliance with the three-day mandatory reporting requirement should be considered as an exception since his non-compliance was not his fault but the inadvertence or deliberate refusal of respondents.

Respondents, on the other hand, maintain that in order to be entitled to claim disability benefits, a seafarer must submit himself to the company-designated physician for evaluation within three days from repatriation which petitioner did not do. Respondents reiterate that the most important basis to determine if the illness or injury is work-related and compensable is the post-employment medical examination. Without this examination or its equivalent, respondents cannot be made liable for compensation. Also, respondents contend that petitioner disembarked from the vessel due to a finished contract and not for medical reasons. Thus, he cannot claim any disability benefits since his contract had already ended.

At the outset, this Court only entertains question of law under Rule 45 of the Rules of Court. However, the Court admits of exceptions, such as in this case, when the factual findings of the labor arbiter, NLRC or courts below are in conflict with each other. Here, the labor arbiter found that petitioner should be awarded total permanent disability benefits and attorney's fees and the NLRC and the CA, on the other hand, decreed otherwise.

A seafarer employed on overseas vessels is entitled to disability benefits by law and by contract. By law, the provisions of Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, are applicable. By contract, the POEA Standard Employment Contract (POEA-

SEC) and the parties' Collective Bargaining Agreement bind the seafarer and the employer to each other.[18]

In this case, Tagud executed his employment contract with respondents on 7 March 2008. Accordingly, the 2000 POEA-SEC, as provided under Department Order No. 4, series of 2000, issued by the Department of Labor and Employment (DOLE) on 31 May 2000, applies here.

The POEA, pursuant to said order by the DOLE to formulate the guidelines on the implementation of the amended contract for seafarers, issued Memorandum Circular (MC) No. 9, series of 2000, on 14 June 2000. MC No. 9 or the POEA standard agreement, entitled *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, sets the minimum requirements acceptable to the POEA for Filipino seafarers employed on board ocean-going vessels and became effective for all agreements signed starting 25 June 2000.

In a Resolution dated 11 September 2000, this Court issued a temporary restraining order (TRO) on the implementation of certain amendments of the 2000 POEA-SEC. However, this TRO was lifted on 5 June 2002.[19] Thus, the 2000 POEA-SEC governs the relations between the parties in determining if Tagud is entitled to permanent disability benefits.

Section 20(B) of the 2000 POEA-SEC provides the compensation and benefits a seafarer is entitled to in case of illness or injury. The provision states:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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[18] *Magsaysay Maritime Corp. v. National Labor Relations Commission (2nd Div.)*, 630 Phil. 352, 362 (2010).

[19] See POEA Memorandum Circular No. 2 dated 5 June 2002.

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 vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. 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 reporting requirement shall result in his forfeiture of the right to claim the above benefits.**

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

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 33 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. (Emphasis supplied)

For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract.

The 2000 POEA-SEC defines "work-related injury" as injury resulting in disability or death arising out of and in the course of employment and "work-related illness" as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the 2000 POEA-SEC. Thus, the seafarer only has to prove that his illness or injury was acquired during the term of employment to support his claim for sickness allowance and disability benefits.

It is stated in Section 20 (B)(3) of the 2000 POEA-SEC that a seafarer, upon signing off from the vessel for medical treatment, is required to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return. The only exception is when the seafarer is physically incapacitated to do so, in which case, the seafarer must give a written notice to the agency within three working days in order to have complied with the requirement. Otherwise, he forfeits his right to claim his sickness allowance and disability benefits.

In *Heirs of the Late Delfin Dela Cruz v. Philippine Transmarine Carriers, Inc.*,[20] we held that the three-day mandatory reporting requirement must be strictly observed since within three days from repatriation, it would be fairly manageable

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[20] 758 Phil. 382, 394-395 (2015).

for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arose after the employment. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employer would have no protection against unrelated claims. Therefore, it is the company-designated physician who must proclaim that the seafarer suffered a permanent disability, whether total or partial, due to either illness or injury, during the term of the latter's employment.

In the present case, Tagud disembarked in Singapore and was repatriated to Manila on 8 November 2008. He alleged that he reported to his manning agency but was not given any assistance or referred to a company-designated physician. However, Tagud did not present any evidence to prove that he tried to submit himself to a company-designated physician within three working days upon his return. Tagud did not also present any letter that he was physically incapacitated to see the company-designated physician in order to be exempted from the rule. It took him about four months from repatriation or on 9 and 10 March 2009 to seek medical attention for pain in his upper right extremities, not from respondents' company-designated physician, but at a private clinic in Caloocan City. No other documents were submitted to prove that he asserted his rights against the company, or that he immediately took action to seek medical assistance from the company, within three days from his repatriation.

It is true that the POEA standard employment contract is designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-

going vessels and its provisions should be construed and applied fairly, reasonably, and liberally in favor or for the benefit of the seafarer and his dependents.[21] However, one who claims entitlement to the benefits provided by law should not only comply with the procedural requirements of law but must also establish his right to the benefits by substantial evidence.[22] The burden, therefore, rests on Tagud to show that he suffered or contracted his illness or injury, while still employed as a seafarer, which resulted in his permanent disability.

Unfortunately, Tagud failed to discharge this burden. He only presented an x-ray report dated 21 October 2008 taken in Wynnum, Queensland, where the Kota Pemimpin vessel docked three days after he lost his balance due to the tilting of the ship which hurt his right elbow region. But even findings in the x-ray result stated that there was no fracture and no abnormality except for a small olecranon spur. This finding is therefore not conclusive and can lead to many other assumptions. Also, after the x-ray procedure was taken, Tagud could have immediately requested for a follow-up check-up or demonstrated that he was in need of urgent medical attention. But he did not. Thus, the reasonable conclusion is that at the time of his repatriation, Tagud was not suffering from any physical disability requiring immediate medical assistance and that his employment was terminated due to a finished contract. It is also well noted that many other incidents could have occurred in the duration of four months from the time he was repatriated until he consulted a private physician which could have triggered the pain in his upper right extremities and that such illness or injury could not have been work-related at the time he was still employed by respondents.

In sum, we agree with the findings and conclusions of the NLRC and the CA. We hold that Tagud is not entitled to permanent disability benefits for his failure to (1) undergo a

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[21] *Wallem Maritime Services, Inc. v. NLRC*, 376 Phil. 738, 749 (1999).

[22] *Manota v. Avantgarde Shipping Corp.*, 715 Phil. 54, 63 (2013).

post-employment medical examination within the three-day mandatory reporting period as required under the law, or to show that such failure was due to a valid reason; (2) establish that his illness or injury was work-related; and (3) show that his illness or injury was contracted during the term of his employment contract.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 24 November 2014 and the Resolution dated 29 June 2015 of the Court of Appeals in CA-G.R. SP No. 119633.

SO ORDERED.

Perlas-Bernabe, Caguioa, Tijam,[*] and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 220389. December 6, 2017]

TERESITA BUGAYONG-SANTIAGO, EARL EUGENE SANTIAGO, EDWARD SANTIAGO, and EDGARDO SANTIAGO, JR., *petitioners, vs.* **TEOFILO BUGAYONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; TWO FORMS OF EJECTMENT OR *ACCION INTERDICTAL*, DISTINGUISHED.— Ejectment or *accion interdictal* takes on two forms: forcible entry and unlawful detainer. The remedies for forcible entry and unlawful detainer are laid down in Section 1, Rule 70 of the Rules of Court. x x x In *Sarmiento*

[*] Designated additional member per Raffle dated 4 December 2017.

v. Court of Appeals, the distinction between forcible entry and unlawful detainer had been clearly explained: Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession. x x x The Rules are clear that if the entry into the property is illegal, the action which may be filed against the intruder is forcible entry and this action must be brought within one (1) year from the illegal entry. But if the entry is originally legal then became illegal due to the expiration or termination of the right to possess, an unlawful detainer case may be brought within one (1) year from the date of the last demand. This action will only prosper in a case where the plaintiff allows the defendant to use the property by tolerance without any contract, and the defendant is necessarily bound by an implied promise that he will vacate on demand.

2. ID.; ID.; ID.; JURISDICTION IN EJECTMENT CASES IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT TO EMBODY THE JURISDICTIONAL FACTS THAT WILL LEAD TO THE DISMISSAL OF THE CASE; REMEDIES; CASE AT BAR.— We have ruled in *Rosario v. Alba* that jurisdiction in ejectment cases is determined by the allegations of the complaint and the character of the relief sought. The complaint should embody such statement of facts as to bring the case clearly within the class of cases under Section 1, Rule 70 of the Rules of Court, as these proceedings are summary in nature. Thus, since the complaint fell short of the jurisdictional facts to vest the court jurisdiction to effect the ejectment of respondent, the MCTC had no jurisdiction to take cognizance of petitioners' complaint and both the RTC

and the CA correctly dismissed the unlawful detainer case against respondent. However, on a final note, this ruling is limited only to the determination of whether the complaint for unlawful detainer was properly filed and whether the MCTC had jurisdiction over the case. This adjudication is not a final determination of the issue of possession or ownership and thus, will not bar any party from filing a case in the proper RTC for (1) *accion publiciana,* where the owner of the property who was dispossessed failed to bring an action for ejectment within one (1) year from dispossession, or (2) *accion reivindicatoria* alleging ownership of the property and seeking recovery of its full possession.

APPEARANCES OF COUNSEL

Simplicio Sevilleja for petitioners.
Jose Lorica IV for respondent.

D E C I S I O N

CARPIO, *J.*:

This is a petition for review on certiorari[1] assailing the Decision[2] dated 29 September 2014 and the Resolution[3] dated 6 August 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 116322. The CA affirmed the Decision[4] dated 11 December 2009 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45 (RTC), which set aside the decision of the 7th Municipal Circuit Trial Court of Asingan-San Manuel, Asingan, Pangasinan (MCTC) and dismissed petitioners' complaint for unlawful detainer.

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 136-142. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison concurring.

[3] *Id*. at 153-154.

[4] *Id*. at 107-112. Penned by Judge Emma P. Bauzon.

The Facts

On 24 November 1993, petitioner Teresita Bugayong-Santiago (Teresita) and her husband Edgardo Santiago (Edgardo), through a Deed of Absolute Sale, bought a 169 square meter commercial land with a building structure located in Poblacion, Asingan, Pangasinan. The land was originally owned by Teresita's parents, the late spouses Francisco Bugayong and Segundina Ventura-Bugayong, and covered by Transfer Certificate of Title (TCT) No. 37637, which was issued to the late spouses on 9 November 1961.

On 23 May 2007, Edgardo died. He was survived by Teresita and their children, petitioners Earl Eugene, Edward, and Edgardo, Jr. The children inherited one-half of the land.

In 2008, petitioners sent a letter dated 15 February 2008 to respondent Teofilo Bugayong (Teofilo), Teresita's brother, demanding him to vacate the subject property within 15 days from receipt of the letter and to pay the amount of ₱3,000 monthly. Respondent received the letter on 20 February 2008 but refused to vacate the property.

Thus, petitioners filed a Complaint[5] for Unlawful Detainer dated 15 March 2008 with the MCTC. Petitioners alleged that since 2002, they have been tolerating the stay and occupation of Teofilo over the two-third (2/3) eastern portion of the land and a part of the commercial building without paying any lease rental. Petitioners added that Teofilo had been harassing Teresita whenever she went to Asingan, Pangasinan and that on 3 June 2006, Teofilo slapped and pulled her hair which caused some injuries. Thus, she filed a criminal case for physical injuries against him. Also, before they executed the complaint, petitioners exerted serious efforts to settle the case amicably but to no avail.

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[5] Docketed as Civil Case No. A-1138. Captioned "Complaint for Illegal Detainer."

In his Answer with Counterclaim, Teofilo alleged that his parents, Francisco Bugayong and Segundina Ventura-Bugayong, were the absolute and registered owners of the subject parcel of land covered by TCT No. 37637 where a commercial building had been erected. Prior to their death, the late spouses executed a Deed of Quitclaim dated 21 December 1995 in favor of all their six children, namely: Antonio, Teofilo, Erlinda, Teresita, Francisco, Jr., and Estrellita Bugayong-Cachola (Cachola). Teofilo stated that when he was about to register the quitclaim with the Register of Deeds after paying the necessary taxes, petitioners caused the annotation on the title of the Deed of Absolute Sale by way of Adverse Claim on 4 March 2004. Teofilo also claimed that during the lifetime of his parents, they reported the Owner's Duplicate Copy of TCT No. 37637 as lost and they executed an Affidavit of Loss on 16 November 1995 and had it annotated at the back of the title. Consequently, a Second Owner's Duplicate Copy was granted by the RTC in lieu of the lost title. Teofilo maintained that while the petitioners claimed that they purchased the subject property in 1993, he had been paying the realty taxes of the subject property for the benefit of the estate of his deceased parents and all the heirs, including the northwestern portion of the building occupied by Cachola, the sister of both Teofilo and Teresita. Further, Teofilo contended that he had been in actual possession and enjoyment of the subject property long before the execution of the assailed Deed of Absolute Sale between his parents and Teresita and Edgardo.

In a Decision[6] dated 29 September 2008, the MCTC ordered Teofilo to vacate the property. The MCTC resolved the question of ownership in order to resolve the issue of possession. The MCTC reasoned that the Deed of Absolute Sale dated 24 November 1993 should be given effect and validity since it was executed before the Deed of Quitclaim was executed on 21 December 1995 and had been annotated at the back of TCT No. 37637. Also, the MCTC considered Teofilo's occupation over the subject property as mere tolerance and demanded that

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[6] *Rollo*, pp. 76-80.

Teofilo vacate the property. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Ordering defendant or anyone acting in his behalf to vacate the two third (2/3) eastern portion of the subject premises;
> 2. Ordering defendant to surrender possession of the subject premises to the plaintiff[s];
> 3. Ordering the dismissal of the counter-claim;
> 4. Ordering defendant to pay reasonable lease rental of the subject premises the amount of ₱3,000 monthly starting from February 20, 2008 until he vacates and surrender[s] possession to the plaintiffs and to pay ₱15,000.00 as attorney's fees and to pay the costs of this suit.
>
> SO ORDERED.[7]

Teofilo filed an appeal[8] with the RTC. Teofilo averred that petitioners had failed to establish a cause of action for unlawful detainer against him such that the MCTC had no jurisdiction over the complaint.

In a Decision[9] dated 11 December 2009, the RTC reversed the decision of the MCTC. The RTC stated that tolerance must be present right from the start of possession to bring the action within the ambit of unlawful detainer. In this case, there was forcible entry at the beginning and tolerance thereafter; thus, there can be no basis for the action for unlawful detainer. The RTC declared that the remedy of the petitioners was either *accion publiciana* or *accion reivindicatoria*. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, the decision appealed from is set aside. Accordingly, the complaint is dismissed.
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> SO ORDERED.[10]

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[7] *Id*. at 80.

[8] Docketed as Civil Case No. U-9254.

[9] *Rollo*, pp. 107-112.

[10] *Id*. at 112.

Petitioners filed a motion for reconsideration. The RTC, in an Order dated 7 September 2010, denied the motion.

On 29 October 2010, petitioners filed a petition for review[11] with the CA. In a Decision dated 29 September 2014, the CA denied the petition for lack of merit.

Petitioners then filed a motion for reconsideration dated 24 October 2014 which the CA denied in a Resolution[12] dated 6 August 2015.

Hence, the instant petition.

The Issue

Whether or not the CA erred in affirming the decision of the RTC which dismissed the unlawful detainer case against respondent.

The Court's Ruling

The petition lacks merit.

Petitioners contend that from the start, they have tolerated and have been tolerating the stay and occupation of respondent over two-third (2/3) portion of the commercial lot and the building situated thereon. Petitioners explain that when they bought the land, it has been agreed upon between Teresita and her husband Edgardo, that Teresita's parents would stay on the land until their death. Teresita's mother passed away on 11 February 1997 and her father on 26 November 1999. Afterwards, Teresita allowed her sister, Cachola, to occupy the subject property located in Asingan, Pangasinan since petitioners have been residing in San Fernando, Pampanga since 1974. Petitioners allege that sometime in 2002, Teofilo, in the presence of Cachola, just entered the property without their knowledge and consent and had been occupying two-third (2/3) portion of the property without paying any lease rental. Since petitioners wanted to

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[11] Docketed as CA-G.R. SP No. 116322.

[12] *Rollo*, pp. 153-154.

take possession of the subject property, they sent a demand letter for Teofilo to vacate the premises.

Respondent, on the other hand, maintains that he had been in actual possession and enjoyment of the subject property, being one of the forced heirs of the registered owners, his parents. Respondent contends that the MCTC did not acquire jurisdiction over the complaint since the complaint failed to aver facts constitutive of forcible entry or unlawful detainer – how entry was affected or how and when dispossession started. Thus, the complaint or case filed should not have been for unlawful detainer with the MCTC but one for *accion publiciana* or *accion reivindicatoria* in the proper RTC.

Ejectment or *accion interdictal* takes on two forms: forcible entry and unlawful detainer. The remedies for forcible entry and unlawful detainer are laid down in Section 1, Rule 70 of the Rules of Court, which states:

> Section 1. *Who may institute proceedings, and when.*—Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

In *Sarmiento v. Court of Appeals*,[13] the distinction between forcible entry and unlawful detainer had been clearly explained:

> Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. In forcible entry,

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[13] 320 Phil. 146, 153-154 (1995).

one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within one (1) year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one (1) year from the date of the last demand. (Emphasis supplied)

In the present case, petitioners filed an unlawful detainer case against respondent before the MCTC. Petitioner Teresita alleges that she and her husband Edgardo bought the subject property from her parents on 24 November 1993. Since her family stays in San Fernando, Pampanga she allowed her sister Cachola to live in the property. However, sometime in 2002, without Teresita's knowledge and consent, respondent Teofilo entered the property and occupied the two-third (2/3) eastern portion of the same. Teresita maintains that she had been merely tolerating Teofilo's stay and occupation in that part of the property. In 2008, when petitioners were ready to make use of the property, they demanded that Teofilo vacate the premises but he refused.

In *Manila Electric Company v. Heirs of Spouses Deloy*,[14] we held that the only issue to be resolved in an unlawful detainer case is physical or material possession of the property, independent of any claim of ownership by any of the parties

[14] 710 Phil. 427, 436 (2013).

involved. However, as emphasized in the *Sarmiento*[15] case above, what determines the cause of action in ejectment cases is the nature of defendant's entry into the land.

Petitioners insist that Teofilo entered the property without their knowledge and consent. Meaning, Teofilo's entry into the property had been illegal from the beginning. Later on, when they found out that he occupied the subject property, petitioners merely tolerated his stay there.

The Rules are clear that if the entry into the property is illegal, the action which may be filed against the intruder is forcible entry and this action must be brought within one (1) year from the illegal entry. But if the entry is originally legal then became illegal due to the expiration or termination of the right to possess, an unlawful detainer case may be brought within one (1) year from the date of the last demand. This action will only prosper in a case where the plaintiff allows the defendant to use the property by tolerance without any contract, and the defendant is necessarily bound by an implied promise that he will vacate on demand.

However, based on the records, petitioners claimed that respondent entered the property "without their knowledge and consent"[16] on one hand, and by mere "tolerance"[17] on the other. It can be concluded then that respondent occupied the subject property without petitioners' knowledge and consent and thereafter petitioners tolerated respondent's stay in the property

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[15] *Supra* note 13.

[16] See CA Decision dated 29 September 2014 stating that the records, petitioners' motion for reconsideration before the RTC and petition for review with the CA all indicated that petitioners made allegations that respondent entered the subject property without their knowledge and consent. *Rollo*, p. 140.

[17] In the Complaint for Unlawful Detainer filed by petitioners, it states that "since 2002, plaintiff Teresita B. Santiago and her late husband have been tolerating the stay and occupation of the defendant, brother of plaintiff Teresita B. Santiago, over the two-third (2/3) eastern portion of the lot and portion of the commercial house thereon, without paying [any] lease rental." (*Id*. at 26-27)

for many years. Thus, there was illegal entry into the property at the start.

As correctly observed by the RTC, since there was forcible entry at the beginning and tolerance thereafter, an action for unlawful detainer cannot prosper since a requisite for an action for unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. In *Spouses Valdez v. Court of Appeals*,[18] we held that to justify an action for unlawful detainer, it is essential that the plaintiff's supposed act of tolerance must have been present right from the start of the possession which is later sought to be recovered. Otherwise, if the possession was unlawful at the start, an action for unlawful detainer would be an improper remedy.

The complaint was not clear on how entry into the subject property was effected and how or when dispossession started. The complaint merely states that "since 2002, plaintiff Teresita B. Santiago and her late husband have been tolerating the stay and occupation of the defendant, brother of plaintiff Teresita B. Santiago, over the two-third (2/3) eastern portion of the lot and portion of the commercial house thereon, without paying [any] lease rental."[19] However, in succeeding pleadings, petitioners insisted that respondent entered the property without their knowledge and consent. Also, no contract, whether express or implied, existed between the parties and there were no other details submitted or evidence presented by petitioners to show how respondent exactly entered the property and when petitioners were dispossessed of such. As similarly held in the case of *Zacarias v. Anacay:*[20]

> In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by

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[18] 523 Phil. 39, 47 (2006).

[19] *Rollo,* pp. 26-27.

[20] 744 Phil. 201 (2014).

respondents. The complaint contains only bare allegations that "respondents without any color of title whatsoever occupie[d] the land in question by building their house [o]n the said land thereby depriving petitioners the possession thereof." Nothing has been said on how respondents' entry was effected or how and when dispossession started. Admittedly, no express contract existed between the parties. This failure of petitioners to allege the key jurisdictional facts constitutive of unlawful detainer is fatal. Since the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the municipal trial court had no jurisdiction over the case. It is in this light that this Court finds that the Court of Appeals correctly found that the municipal trial court had no jurisdiction over the complaint.[21]

We have ruled in *Rosario v. Alba*[22] that jurisdiction in ejectment cases is determined by the allegations of the complaint and the character of the relief sought. The complaint should embody such statement of facts as to bring the case clearly within the class of cases under Section 1, Rule 70 of the Rules of Court, as these proceedings are summary in nature. Thus, since the complaint fell short of the jurisdictional facts to vest the court jurisdiction to effect the ejectment of respondent, the MCTC had no jurisdiction to take cognizance of petitioners' complaint and both the RTC and the CA correctly dismissed the unlawful detainer case against respondent.

However, on a final note, this ruling is limited only to the determination of whether the complaint for unlawful detainer was properly filed and whether the MCTC had jurisdiction over the case. This adjudication is not a final determination of the issue of possession or ownership and thus, will not bar any party from filing a case in the proper RTC for (1) *accion publiciana,* where the owner of the property who was dispossessed failed to bring an action for ejectment within one (1) year from dispossession, or (2) *accion reivindicatoria* alleging ownership of the property and seeking recovery of its full possession.

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[21] *Id*. at 213.

[22] G.R. No. 199464, 18 April 2016, 789 SCRA 630, 637.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 29 September 2014 and the Resolution dated 6 August 2015 of the Court of Appeals in CA-G.R. SP No. 116322.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 222965. December 6, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **USTADZ IBRAHIM ALI *y* KALIM, ABDUL HASSAN AND TWO OTHER COMPANIONS IDENTIFED ONLY AS "JUL" AND "AMAT,"** *accused,*

USTADZ IBRAHIM ALI *y* KALIM, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; SERIOUS ILLEGAL DETENTION; ELEMENTS.— In order for the accused to be guilty of serious illegal detention, the following elements must concur: (a) the offender is a private individual; (b) he or she kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present; (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill the victim are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.

In other words, deprivation of liberty is qualified to serious illegal detention if **at least one** of the following circumstances exists: (a) detention lasts for more than three (3) days; (b) accused simulated public authority; (c) victim suffers serious physical injuries or is threatened to be killed; or (d) the victim is a minor, female or public officer. x x x The essence of serious illegal detention is the actual deprivation of the victim's liberty, coupled with the indubitable proof of intent of the accused to effect such deprivation – it is enough that the victim is restrained from going home. It contemplates situations where the victim is restricted or impeded in one's liberty to move.

2. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; POSITIVE IDENTIFICATION OF THE ACCUSED; IN ORDER THAT THE IDENTIFICATION BE DEEMED WITH CERTAINTY ENOUGH TO OVERCOME THE PRESUMPTION OF INNOCENCE, IT MUST BE IMPERVIOUS TO SKEPTICISM ON ACCOUNT OF ITS DISTINCTIVENESS; CASE AT BAR.— Positive identification pertains essentially to proof of identity. In order that identification be deemed with moral certainty enough to overcome the presumption of innocence, it must be impervious to skepticism on account of its distinctiveness. Such distinctiveness is achieved through identification evidence which encompass unique physical features or characteristics like the face, voice or any other physical facts that set the individual apart from the rest of humanity. In the case at bar, it is unquestionable that Ali was identified with moral certainty. Oliz was able to distinguish and identify accused considering their proximity inside the vehicle and the duration of the captivity. Thus, she was intimately familiar with Ali's facial features and voice — enough to lend credibility to her identification of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 30 April 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 00473-MIN, which affirmed the 30 July 1999 Decision[2] of the Regional Trial Court, Branch 16, Zamboanga City *(RTC)*, in Criminal Case No. 15599, finding accused Ustadz Ibrahim Ali *y* Kalim *(Ali)* guilty beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention, defined and penalized under Article 267 of the Revised Penal Code *(RPC)*.

THE FACTS

In an Information dated 17 December 1998, Ali, together with Abdul Hassan *(Hassan)*, and individuals identified as "Jul" and Amat," were charged with the crime of kidnapping and serious illegal detention under Article 267 of the RPC. Only Ali was the subject of the criminal proceedings because his co-accused Hassan, Jul, and Amat remain at large. The accusatory portion of the information reads:

> That on or about December 14, 1998, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then armed with high powered firearm, conspiring and confederating together, mutually aiding and assisting with one another, by means of force and intimidation did then and there willfully, unlawfully and feloniously, KIDNAP the person of CHRISTIA OLIZ y EUCOGCO, a young woman, 19 years old, particularly on the occasion when she was together with her employer named Antonio Yu Lim Bo and the latter's wife and daughter, on board a Blue Nissan Vehicle then driven by one Rene Igno who was ordered by the herein accused to stop said vehicle somewhere at the vicinity of EAAB at Sta. Maria Road, this City, and thereafter through

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[1] *Rollo*, pp. 5-27; penned by Associate Justice Rafael Antonio M. Santos, and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras.

[2] Records, pp. 56-86; penned by Judge Jesus C. Carbon, Jr.

intimidation, commandeered and drove said vehicle with all its occupants aboard towards San Roque and finally to the area of Pitogo beach with the clear intention on the part of the accused to extort ransom money from said victim or other person; however, when victim Christia Oliz alighted from the vehicle and was walking towards the direction of Pitogo beach she was able to run away and with the timely assistance of some residents thereat as well as the arrival of the police authorities, prompted all the accused to escape except accused Ustadz Ibrahim Ali y Kalim who was arrested thus briefly depriving the liberty of said victim against her will; furthermore, the commission of said crime has been attended by the aggravating circumstance of NIGHT TIME AND USE OF MOTOR VEHICLE.[3]

During his arraignment, Ali, duly assisted by counsel, pleaded "Not Guilty."[4]

Evidence for the Prosecution

The prosecution presented six (6) witnesses, namely: Senior Police Officer 2 Salvador F. Arcillas, Police Inspector Jesus Belarga, private complainant Christia Oliz *(Oliz)*, Police Inspector Jose Bayani Gucela, Mario C. Agarte, Police Officer 3 Bernardino Bayot. Their combined testimonies tended to establish the following:

On 14 December 1998, at around 7:30 P.M., Antonio Lim *(Antonio),* Mary Lim *(Mary)*, and Cherry Lim *(Cherry)* left their family-owned grocery and were on their way to their house in Pasonanca, Zamboanga City, on board a Nissan vehicle. With them were their driver Rene Igno *(Igno)* and Oliz, their helper.[5]

When they were near Edwin Andrews Airbase *(EAAB)* along Sta. Maria Road, Igno stopped the car to avoid bumping into a motorcycle with three persons on board. The three men, later identified as Ali, Hassan, and Amat, approached the Nissan vehicle and told the passengers that they were policemen.[6] They

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[3] *Id*. at 1.

[4] *Id*. at 16.

[5] TSN, 6 May 1999, pp. 6-7; testimony of Oliz.

[6] *Id*. at 9-10 and 33.

ordered Antonio and Igno to transfer to the back of the vehicle and sit with Oliz, Mary, and Cherry. The passengers were told that they would be brought to the police station on a tip that they were transporting contraband goods. Thereafter, the three armed men boarded the Nissan vehicle with Amat in the driver's seat, Ali beside him, and Hassan at the back with the other passengers. Once inside, Ali instructed Hassan to handcuff Igno and Antonio.[7]

Amat did not stop when they reached the Sta. Maria police station but kept on driving. Due to the buildup of traffic at the intersection after the Sta. Maria police station, Mary was able to escape her captors by jumping out of the vehicle.[8]

Amat continued to drive towards Pitogo and then veered towards the beach. There, the occupants were ordered to alight from the vehicle. Oliz was able to escape when she saw a woman walking nearby because only Antonio, Cherry, and Igno were guarded. She then told the woman that her employer was being kidnapped. [9]

Oliz was then accompanied to a nearby house where they contacted the authorities. Before the police arrived, Oliz heard a commotion outside and saw bystanders mauling Ali. Oliz told the people around that he was their abductor. When the police arrived, Ali was turned over to the authorities who brought him to the police station together with Oliz.[10]

Evidence for the Defense

The defense presented four (4) witnesses, namely: Ali's sister Nauda Ali *(Nauda)*, Ali's wife Rahima Saulan *(Rahima)*, Ali's cousin Siddik Alfad Abubakar *(Siddik)*, and the accused himself. Their testimonies sought to prove the following:

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[7] *Id*. at 8-15.

[8] *Id*. at 16-17; TSN, 17 May 1999, pp. 18-19; testimony of Mario C. Agarte.

[9] TSN, 6 May 1999, pp. 18-20; testimony of Oliz.

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

On 14 December 1998, Ali, Rahima, and Nauda left Manalipa to proceed to Sinunuc and stay in Siddik's house before going home to Pagadian City. On their way to Sinunuc, they parted ways in Zamboanga City because Ali wanted to pray at the Sta. Barbara Mosque; Rahima and Nauda went ahead to Siddik's place.[11]

At around 7:00 P.M., while Ali was waiting outside the Mosque for a ride to Sinunuc, he met Hassan, who was riding a motorcycle with Amat. Hassan told him to ride with them as they would be going somewhere in Recodo. When they were near the EAAB, Hassan overtook a motor vehicle and almost collided with it. Amat approached the driver of the motor vehicle while Hassan went to the other side. Amat and Hassan eventually boarded the vehicle with the latter forcing Ali to do the same. Hassan pushed Ali inside while he was holding a gun and told him to follow or he would be in trouble. Meanwhile, Hassan ordered a certain Jun[12] to ride the motorcycle and follow them.[13]

As Amat was driving, Ali asked what they were doing but was told to stop talking and just follow. Upon reaching Sinunuc, Ali asked Amat to stop the vehicle so he could get off but he was ignored. Eventually, they stopped at the seashore of Pitogo.[14]

There, all the occupants alighted with Hassan and Amat escorting and guarding Antonio, Cherry, Igno, and Oliz further down the seashore. Ali remained by the vehicle. Later, Jun arrived on Hassan's motorcycle. After sensing something suspicious with his companions, Ali decided to walk away and proceed to the main road to catch a ride to Sinunuc. While he was waiting for transportation, several persons suddenly held him and beat him up, accusing him of being a thief. Ali was eventually brought to a house where the beatings continued.[15]

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[11] TSN, 13 May 1999, pp. 7-8; cross-examination of Ali; TSN, 12 May 1999, pp. 14-16; direct-examination of Ali.

[12] Identified as "Jul" in the Information.

[13] TSN, 12 May 1999, pp. 20-22, 25-28 and 31-32.

[14] *Id.* at 35-37.

[15] *Id.* at 39-43.

After a few minutes, policemen arrived at the house where Ali was held. He was made to board the police vehicle where he was blindfolded and beaten again. Ali was detained at the police station where he was forced to admit to the kidnapping.[16]

The RTC Ruling

In its 30 July 1999 decision, the RTC found Ali guilty of violating Article 267 of the RPC, the dispositive portion of which reads:

> **WHEREFORE**, the Court finds the accused **IBRAHIM ALI y KALIM GUILTY BEYOND REASONABLE DOUBT** as principal of the crime of Kidnapping and Serious Illegal Detention defined and penalized under Article 267, paragraphs 2 and of the Revised Penal Code as amended by Section 8 of Republic Act No. 7659, and **SENTENCES** said accused to suffer the penalty of **RECLUSION PERPETUA** with the accessory penalties provided by law and to pay the costs.[17]

Aggrieved, Ali appealed before the CA.

The CA Ruling

In its assailed 30 April 2015 decision, the CA affirmed the RTC decision, the dispositive portion of which reads:

> WHEREFORE, the instant Appeal is hereby DENIED for lack of merit. The assailed Decision dated 30 July 1999 of the trial court is AFFIRMED in toto.[18]

Hence, this appeal, anchored on the following:

ISSUES

I

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF SERIOUS ILLEGAL DETENTION; AND

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[16] *Id.* at 46-51.

[17] Records, p. 86.

[18] *Rollo*, p. 27.

II

WHETHER THE ACCUSED WAS IDENTIFIED WITH MORAL CERTAINTY.

THE COURT'S RULING

The appeal has no merit.

Period of detention immaterial if victim is a female

Ali argues that he could not be guilty of the crime of Serious Illegal Detention because the alleged deprivation of liberty did not last for more than three (3) days as the incident only lasted for about an hour or two. In order for the accused to be guilty of serious illegal detention, the following elements must concur: (a) the offender is a private individual; (b) he or she kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill the victim are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.[19]

In other words, deprivation of liberty is qualified to serious illegal detention if **at least one** of the following circumstances exists: (a) detention lasts for more than three (3) days; (b) accused simulated public authority; (c) victim suffers serious physical injuries or is threatened to be killed; or (d) the victim is a minor, female or public officer.

In the case at bar, the elements of serious illegal detention were duly proven by the prosecution. *First*, Ali and his cohorts were clearly private individuals. *Second*, they deprived Oliz of her liberty. This was manifested by the fact that they forcibly

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[19] *People v. Niegas*, 722 Phil. 301, 310 (2013).

boarded the vehicle and placed Igno and Antonio in handcuffs evincing their intent to detain the occupants of the motor vehicle. *Third*, Oliz was a female victim. The CA was correct in ruling that the period of detention became immaterial in view of the victim's circumstances. If, during the deprivation of liberty, any of the circumstances under Article 267(4) of the RPC occurs, i.e, the victim was a female, the crime of serious illegal detention is consummated.[20]

Intent to detain or restrain the victim's movement is tantamount to illegal detention.

Ali likewise assails that there was insufficient evidence to hold that he forcefully transported, locked up or restrained Oliz and her companions especially considering that the alleged handcuffs were never presented in court. The essence of serious illegal detention is the actual deprivation of the victim's liberty, coupled with the indubitable proof of intent of the accused to effect such deprivation—it is enough that the victim is restrained from going home.[21] It contemplates situations where the victim is restricted or impeded in one's liberty to move.[22] Oliz's testimony clearly demonstrates the intent of the accused to deprive her and her companions of their liberty, to wit:

FISCAL NUVAL:

Q: Aside from asking the license of the driver, what else did they tell you?
A: They told us there was a tip that we were bringing contraband goods.

Q: Did they identify themselves?
A: Yes.

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[20] *People v. De Guzman*, 773 Phil. 662, 671 (2015).

[21] *People v. Pepino*, G.R. No. 174471, 12 January 2016, 779 SCRA 170, 671.

[22] *People v. Baluya*, 664 Phil. 141, 150 (2011).

Q: What did they tell you?
A: They said that they are policemen.

Q: Then, what happen (sic) after that?
A: They went inside our vehicle and they asked the driver and this Boa to transfer at the back seat, together with us.

x x x x x x x x x

Q: You said three persons approached your vehicle two of them went inside the front seat, one on the behind the steering wheel (sic) and other one sitting beside him and the other one went at the back of that vehicle, now, tell us where did this accused sat (sic)?
A: At the front seat also.

Q: Was he behind the steering wheel?
A: No, he was sitting at the side of the driver.

Q: And after he sat beside the driver's seat, what did this person do?
A: He instructed that Rene will be handcuffed.

Q: To whom did he instruct to handcuffed (sic) this Rene?
A: His companion, the one sitted (sic) at the back.

Q: What did this person at the back do, after this accused instructed him to handcuffed (sic) Rene Egno?

A: Then his companion handcuffed Egno.

x x x x x x x x x

COURT:

Then after Sta. Maria, road, where did you proceed?

A: Then they said we will brought (sic) to the police station.

[FISCAL NUVAL:]

Q: Were you able to go the police station?
A: None, (sic) we just passed by.[23]

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[23] TSN, 6 May 1999, pp. 10-16.

Oliz's testimony clearly shows the intent of Ali and his cohorts to deprive the liberty and restrain the movement of the occupants of the motor vehicle. They misrepresented themselves as policemen and claimed they would bring Oliz and her companions to the police station; but they never got there and were let go only when they arrived at Pitogo. Further, Oliz categorically stated that Ali ordered his companions to handcuff Antonio and Igno. As pointed out by the CA, Oliz's testimony demonstrates that her freedom of movement was effectively restrained by the abductors who exercised complete control and dominion over the person of the victims.

Oliz identified Ali as the accused in a categorical and straightforward manner.

Ali also challenges Oliz's identification of him claiming that her testimony was marred with inconsistencies and that she was only able to identify him after reading the newspapers two days after the incident. We have held that inconsistencies on immaterial details do not negate the probative value of the testimony of a witness regarding the very act of the accused.[24] In fact, minor inconsistencies tend to strengthen the credibility of the witness because it shows that the testimony was not rehearsed.[25]

In the case at bar, the inconsistencies, e.g., the position of the occupants inside the vehicle, assailed by Ali, pertain to trivial matters. On the contrary, Oliz remained consistent in identifying Ali as one of those involved in the kidnapping, *viz*:

FISCAL NUVAL:

x x x x x x x x x

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[24] *Avelino v. People*, 714 Phil. 323, 334 (2013).

[25] *People v. Alipio*, 618 Phil. 38, 48 (2009).

Q: Now, madam witness, can you recognize those three persons who approached you and identified themselves as policemen and that person who went inside that car, can you identify those three persons?
A: Yes.

Q: Are they inside this courtroom, will you please look around and tell us if they are inside this courtroom?
A: There is one here.

COURT:

Go down and touch him

A: (Witness went down from the witness stand and approached the accused and at the same time holding his hand, and when the accused was asked, identified himself as Ibrahim Ali).

x x x x x x x x x

[Cross-Examination]

ATTY. PAKAM: x x x

Q: Madam witness, how far were you sitted (sic) to the rear of the car from accused Ibrahim Ali? From where you were sitted (sic) to the rear of the car, how far were you to Ibrahim Ali?
A: Ten inches in distance.

Q: You were sitted (sic) ten inches according to you, from Ibrahim Ali, correct?
A: Yes.

Q: Is there a bar that separates you from Ibrahim Ali?
A: Yes.

Q: What is this?
A: Just after the seat from the driver there is a sort of bar, a wall or bar, it is an iron bar.

x x x x x x x x x

Q: You said accused Ibrahim Ali instructed that Rene be handcuffed, who did he give the instruction?
A: He instructed his companion to handcuffed (sic) Rene.[26]

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[26] TSN, 6 May 1999, pp. 11-12 and 44-45.

Positive identification pertains essentially to proof of identity.[27] In order that identification be deemed with moral certainty enough to overcome the presumption of innocence, it must be impervious to skepticism on account of its distinctiveness.[28] Such distinctiveness is achieved through identification evidence which encompass unique physical features or characteristics like the face, voice or any other physical facts that set the individual apart from the rest of humanity.[29] In the case at bar, it is unquestionable that Ali was identified with moral certainty. Oliz was able to distinguish and identify accused considering their proximity inside the vehicle and the duration of the captivity. Thus, she was intimately familiar with Ali's facial features and voice—enough to lend credibility to her identification of the accused.

Ali's contention that Oliz was only able to identify him after reading the newspaper is erroneous. During cross-examination, she merely stated that she became aware of Ali's name after reading the dailies. To wit:

ATTY. PAKAM:

Q: Now, specifically you mentioned the name Ali Ibrahim, by the way, do you know Ali Ibrahim before?
A: No.

Q: When did you come to know the name Ali Ibrahim?
A: At the police station and in the newspaper.

Q: You come to know the name Ali Ibrahim thru newspaper and police station, where?
A: Southcom.

Q: So, not at the police station?
A: At Southcom.

Q: Who told you that his person's name is Ali Ibrahim?
A: When I read the newspaper.

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[27] *People v. Gallarde*, 382 Phil. 718, 736 (2000).

[28] *People v. Caliso*, 675 Phil. 742, 756 (2011).

[29] *Id*.

Q: When did you read the newspaper?
A: Last December 16.[30]

Clearly, the only information Oliz derived from newspapers or third-party sources is the name of the accused. It was reasonably expected that she would be oblivious of Ali's name because the latter was a stranger to her prior to the abduction. Nevertheless, Oliz was able to sufficiently and consistently identify Ali as her abductor even if she did not know his name.

Further, Ali challenging his identification is absurd considering that he himself admits his presence during the abduction. In his cross-examination, he narrated:

PROSECUTOR NUVAL:

x x x x x x x x x

Q: Now, you said you overtook a jeep. What kind of a jeep was this, will you please describe?
A: Well, I do not know what kind of a jeep is this.

Q: Is that the color blue?
A: Yes.

Q: Is it a pick up type?
A: Well, I do not know. I did not examine.

COURT:

Q: Is it not a fact that you were following this jeep while it was travelling in front of you before you overtook it?
A: Yes, Your Honor, but, I do not know, I was not thinking that it will happen like that Your Honor.

Q: Since when did you notice that you were following this blue jeep?
A: When we were already near the gate of that Air Base Your Honor.

Q: But, before you overtook this jeep you already noticed that this jeep was travelling ahead of you?
A: I do not know, Your Honor. I was not thinking about that jeep Your Honor.

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[30] TSN, 6 May 1999, pp. 46-47.

x x x x x x x x x

PROSECUTOR NUVAL:

Q: And this Hassan, when you overtook this jeep almost bumped this jeep?
A: Yes.

Q: And he purposely stopped this motorcycle?
A: Yes.

Q: And, he also make the motorcycle fell on the ground (sic), correct?
A: No. Well, it was not the motorcycle, he was just about to fall down.

Q: Were you able to fall down?
A: No.

Q: So, what did he do with his motorcycle?
A: It was on a stop, standing.

Q: And then, what happened next?
A: All of us alighted.

Q: What about the motorcycle?
A: It was just in front of the jeep.

COURT:

Q: You blocked the jeep?
A: Yes, Your Honor.

Q: So, the jeep had no choice but to stop otherwise, it will run over your motorcycle?
A: Yes.

Q: Did the driver of the jeep apply the break so as to avoid running over the motorcycle which stopped in front?
A: Yes, Your Honor.

x x x x x x x x x

PROSECUTOR NUVAL:

Q: And then, you said the three of you approached the driver?
A: No.

Q: So, when you stopped, was it parked purposely in front of the jeep, this motorcycle?
A: Yes.

Q: With its stand?
A: Yes.

Q: And, you alighted from the motorcycle?
A: Yes.

Q: Who alighted first from the motorcycle?
A: It was Ahmad, the one driving.

Q: And followed by you?
A: Then we were together with Hassan who alighted from the motorcycle.

Q: And then, when you alighted from that motorcycle, what did you do?
A: I was just there at the side of the motorcycle.

Q: And, what did this Ahmad do?
A: I approached the driver.

Q: What about Abduhassan, what did he do?
A: Abduhassan, went to the right side of the jeep and I was called by him.

Q: How did he call you?
A: You (sic) said, "you come with me".

Q: Did you approach him?
A: Well, I was following him from behind.

Q: And what happened Mr. Witness?
A: Then, he instructed me to go up immediately in that jeep so that we will not be in trouble.

Q: You went immediately? Okey (sic). Who was the driver of that jeep at that time?
A: When I boarded already the jeep, I saw Ahmad was already in the place of the driver.

x x x x x x x x x

Q: Okey (sic), from the Air Base, you said, this Abduhassan called you. And voluntarily, you approached him?
A: I was just behind.

Q: And, he asked you to go inside the vehicle?
A: Yes, I was instructed to go up in fact, he was pushing me.

Q: He just pushed you, no more no less?
A: Yes, I was being pushed.

Q: Did he not poke his gun to you and threatened you to go inside?
A: No. I was just pushed.

Q: He did not also utter any words which threatened you if you will not go with them, Mr. Witness?
A: No, but what he said was just to hurry up in going up that vehicle so that there will be no trouble.

Q: So you just followed his command, you also hurriedly went up inside that jeep?
A: Well, I did not hurry but, I just went up the jeep. And according to him, to avoid trouble.[31]

Instead of refuting the version of Oliz, Ali's testimony in fact corroborates its material points. He admitted that he was with Hassan and Amat when their motorcycle stopped in front of the Nissan vehicle; and that the three decided to board the vehicle and take control. Ali merely denied his participation feigning that Hassan coerced him.

This, however, is refuted by the categorical and straightforward testimony of Oliz that it was Ali who was giving commands to his companions. Thus, he could not have been an unwilling participant as he was in fact the one calling the shots. Further, even if Ali were to be believed, nothing in his testimony shows that Hassan exerted such force or coercion or uttered threats that would have deprived Ali with the free exercise of his will. Absent any showing that Oliz was motivated by ill will to falsely testify against Ali, her testimony should be granted credence[32] especially since it was candid, straightforward, and devoid of any material inconsistencies.

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[31] TSN, 13 May 1999, pp. 15-22.

[32] *People v. Jalbonian*, 713 Phil. 93, 104 (2013).

WHEREFORE, the appeal is **DENIED**. The 30 April 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00473-MIN is **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*) and *Leonen, JJ.,* concur.

Bersamin, J., on official leave.

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 223526. December 6, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIEL CALVELO *y* CONSADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Continuing accretions of jurisprudence restate the requirements to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

2. ID.; ID.; ID.; BUY-BUST OPERATION; THE "OBJECTIVE TEST" IN BUY-BUST OPERATIONS DEMANDS THAT

THE DETAILS OF THE PURPORTED TRANSACTION MUST BE CLEARLY AND ADEQUATELY SHOWN; ESTABLISHED IN CASE AT BAR.— Case law imparts the "objective test" in a buy-bust operation as follows: We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. x x x Evaluation of the records applying the "objective test" will prove that the prosecution was able to establish beyond moral certainty the details of the transaction that took place between Villanueva and Ariel from the offer to purchase shabu until the consummation of the sale. Consequently, the claim of Ariel that the poseur – buyer failed to present evidence on how the illegal drugs were recovered – raising doubts about a buy-bust having been actually conducted and warranting a suspicion that the prohibited drugs were planted – miserably weakened in the light of the convincing and credible testimony of the prosecution witnesses.

3. ID.; ID.; ID.; ID.; THE *CORPUS DELICTI* IS THE DRUG ITSELF; THE *CORPUS DELICTI* IS ESTABLISHED BY PROOF THAT THE IDENTITY AND INTEGRITY OF THE SUBJECT MATTER OF THE SALE OF PROHIBITED OR REGULATED DRUG HAS BEEN PRESERVED.— In all prosecutions for violations of R.A No. 9165, the *corpus delicti* is the dangerous drug itself. The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale, i.e., the prohibited or regulated drug, has been preserved; hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an

unbroken chain of custody over the seized item. The prosecution 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.* In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. x x x Sec. 21 in R.A. No. 9165 provides the specific manner on the custody and disposition of seized drugs and paraphernalia, which is further elaborated in its Implementing Rules and Regulations (*IRR*). It is understandable that the legislature had taken great pains in providing for Sec. 21 in R.A. No. 9165 as to the manner by which the seized items shall be kept and disposed of as this will be the safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.

4. ID.; ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION, ENUMERATED.— It must be considered that narcotic substances are not readily identifiable and are highly susceptible to alteration, tampering or contamination. Thus, there are links that must be established in the chain of custody in a buy-bust situation, viz: *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 from the forensic chemist to the court.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT INCLUDING ITS ASSESSMENT OF THE CREDIBILITY OF THE WITNESSES AND THE PROBATIVE WEIGHT THEREOF ARE ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT, ESPECIALLY IF AFFIRMED BY THE COURT OF APPEALS.— It is underscored that factual findings of the trial court, including its assessment of the credibility of the witnesses

and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect, if not conclusive effect, especially if affirmed by the CA, except when facts or circumstances of weight and influence were overlooked or the significance of which was misappreciated or misinterpreted by the lower courts. The record is bereft of any showing that Ariel was able to persuasively bring his case within the jurisprudentially established exception to the rule; hence, we defer to the factual findings of the RTC in the absence of any compelling cause or impetus to disturb the same.

6. ID.; ID.; ID.; CREDENCE SHOULD BE GIVEN TO THE NARRATION OF THE INCIDENT BY THE PROSECUTION WITNESSES ESPECIALLY WHEN THEY ARE POLICE OFFICERS WHO ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER; RATIONALE.— It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. The presumption, rebuttable by affirmative evidence of irregularity or of any failure to perform a duty, is based on three fundamental reasons, namely: *first*, innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. x x x Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld.

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

MARTIRES, *J.:*

This resolves the appeal of Ariel Calvelo y Consada (*Ariel*) from the 9 March 2015 Decision[1] of the Court of Appeals (*CA*), First Division, in CA-G.R. CR-HC No. 06190 which affirmed the 26 April 2013 judgment[2] of the Regional Trial Court (*RTC*), Branch 28, Santa Cruz, Laguna, in Criminal Case No. SC-11953 finding him guilty beyond reasonable doubt of Violation of Section (*Sec.*) 5, Article (*Art.*) II, of Republic Act (*R.A.*) No. 9165.[3]

THE FACTS

Ariel was charged before the RTC of Santa Cruz, Laguna, with violation of Sec. 5, Art. II of R.A. No. 9165 committed as follows:

> That on November 26, 2005 at about 11:00 o'clock in the evening at Traveller's Inn, Barangay Pagsawitan, Municipality of Santa Cruz, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized and/or permitted by law, did then and there wilfully, unlawfully, and feloniously sell and deliver to a poseur buyer three (3) heat sealed transparent plastic sachets containing a total weight of 14.07 grams of METHAMPHETAMINE HYDROCHLORIDE (shabu), a dangerous drug, in consideration of two (2) Five Hundred Peso bills marked money with Serial Numbers SU132935 and FK512868, in violation of the aforementioned law.
>
> CONTRARY TO LAW.[4]

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[1] *Rollo,* pp. 2-12, penned by Associate Justice Ricardo R. Rosario and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Edwin D. Sorongon.

[2] Records, pp. 169-173. Penned by Presiding Judge Iluminado M. Dela Pea.

[3] 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*" dated 7 June 2002.

[4] Records, p. 1.

When arraigned, Ariel pleaded not guilty to the charge against him, thus, trial on the merits ensued.

The Version of the Prosecution

To prove its case, the prosecution presented Police Officer 2 (PO2) Marites T. Villanueva (*Villanueva*) and SPO2 Gerry Abalos (*Abalos*). The testimony of the forensic chemist, Police Senior Inspector Donna Villa P. Huelgas (*Huelgas*), was dispensed with upon the defense's admission that the prosecution's purpose in presenting her was to identify Chemistry Report No. D-1246-05 (*report*) and the shabu subject of her report.[5]

On 25 November 2005, at about 9:00 a.m., a confidential informant (*informant*) came to the Philippine Drug Enforcement Agency (*PDEA*) at Camp Vicente Lim, Canlubang, Laguna, to inform them that he was able to make a drug deal for fifteen (15) grams of shabu worth ₱60,000.00 with a certain Ariel and Diosa.[6] Regional Director Abe Lemos (*Lemos*) referred the matter to team leader Police Chief Inspector Julius Ceasar Ablang (*Ablang*) who held a briefing on the role of each team member and on the conduct of the surveillance on Ariel at the Travelers' Inn located at Barangay Pagsawitan, Sta. Cruz, Laguna, to determine whether the place is fit for the proposed buy-bust operation. Present during the briefing were Police Chief Inspector Raul Bergamento, Ablang, Villanueva, SPO2 Marcelino Male, Abalos (*Abalos*), SPO1 Jesus P. Platon, SPO1 Miguel Lapitan, Jr., PO3 Andres Ilagan, and PO3 Sherwin G. Bulan. Villanueva, who would act as poseur-buyer, was given two (2) five-hundred-peso bills[7] and the boodle money which she all marked "MTV"[8] representing her initials, while Abalos was assigned as the back-up arresting officer. On that same day, Villanueva, Abalos, and the informant proceeded to the Travellers' Inn to survey the

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[5] Records, pp. 67-68.

[6] Variably referred to as Dosia and Dosiang in the TSNs.

[7] Exhs. "F-1" and "G-1".

[8] Exhs. "F-2" and "G-2".

place. After the survey, Villanueva and Abalos reported to their office that the place would be suitable for a buy bust operation. Thereafter, the pre-operation report[9] was prepared.[10]

The following day, at about 5:00 p.m., the informant called Ariel to tell him he already had a buyer of the shabu; Ariel replied that he was already preparing the items. The team, consisting of those who attended the earlier briefing, and PO1 Carla Mayo, proceeded to Barangay Pagsawitan and arrived thereat at about 8:00 p.m. Villanueva and the informant parked their vehicle in front of the Travelers' Inn while the other vehicle carrying the rest of the team was strategically parked fifteen (15) meters away from them.[11]

Immediately, the informant called Ariel to inform that he and the would-be buyer of the shabu were already at the vicinity of the Travelers' Inn. Ariel replied that they were already preparing the shabu. At about 9:00 p.m., Ariel arrived on his red tricycle with plate number WJ 7610. The informant told Ariel to board the vehicle that he and Villanueva rode in and introduced Ariel to Villanueva who, in turn, introduced herself as the buyer and was interested in buying 15 grams of shabu for ₱60,000.00. When Ariel asked Villanueva if she had the money, she showed him a maroon pouch supposedly containing the payment but which were actually only two marked ₱500.00 bills and the boodle money. When asked about the shabu, Ariel said he did not bring it as he needed to confirm whether they had the money, as instructed by Diosa. Thereafter, Ariel got off the vehicle.[12]

After an hour, Ariel returned to the Travelers' Inn on board the same tricycle. He got on the same vehicle that Villanueva and the informant were in. Once inside, Ariel took from the right front pocket of his short pants three (3) transparent plastic

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[9] Records p. 16; Exh. "1".

[10] TSN, 28 November 2006, pp. 2-8, 11-12; 9 March 2011, pp. 5-8.

[11] TSN, 9 March 2011, pp. 8-10.

[12] TSN, 9 March 2011, pp. 10-12; Exh. "A".

sachets filled with white crystalline substance which he handed to Villanueva. When Ariel demanded the payment, Villanueva handed the boodle money; but before Ariel could realize it was boodle money, Villanueva turned on the hazard lights of the vehicle, the pre-arranged signal that the transaction had been consummated. Abalos and the rest of the team rushed to the vehicle and assisted Villanueva in arresting Ariel. Abalos recovered the buy-bust money from Ariel and informed him of his constitutional rights. On the way to the PDEA office, Villanueva personally placed the markings Exh. "A" MTV 26/11/05, Exh. "B" MTV 26/11/05, and Exh. "C" MTV 26/11/05 on each of the three transparent plastic sachets.[13]

Ariel was brought to the PDEA office for proper disposition and was photographed with the confiscated drugs. The booking sheet and arrest report[14] were likewise prepared. His true name was later identified as Ariel Calvelo y Consada.[15] Villanueva, as the poseur-buyer, and Abalos, as the arresting officer, executed their respective affidavits.[16]

On 27 November 2005, at 1:40 a.m., the three marked heated transparent sachets containing the substance suspected as shabu, with the signature of Villanueva, were submitted by her and Abalos to the Chief, PNP Regional Crime Laboratory Office 4 (*laboratory*) for examination.[17]

On the same day, the laboratory, through Huelgas, released the report[18] on the confiscated items. The pertinent portion of the report reads:

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[13] TSN, 18 February 2010, pp. 20, 23; 1 December 2010, p. 6; Exh. "A".

[14] Records, p. 10; Exh. "C".

[15] TSN, 7 March 2007, pp. 13-14; Exh. "A".

[16] Records, pp. 6-9; Exhs. "A" and "B".

[17] Records, p. 12.

[18] Recods, p. 12; Exh. "D".

SPECIMEN SUBMITTED

Three (3) heat-sealed transparent plastic sachets, each containing moist/white crystalline substance of the following markings (with signature) and net weights:

A (EXH A MTV 26/11/06) – 4.71 grams
B (EXH B MTV 26/11/06) – 4.72 grams
C (EXH C MTV 26/11/06) – 4.64 grams
x – x – x x – x – x

PURPOSE OF LABORATORY EXAMINATION

To determine the presence of ***dangerous drugs*** in the above-mentioned specimen.

x – x – x x – x – x

FINDINGS

Qualitative examination conducted on specimen A through C gave POSITIVE result to the tests for the presence of **Methamphetamine hydrochloride,** a dangerous drug.

The Version of the Defense

Ariel tried to prove his defense through his testimony and that of his elder brother, Jimmy Calvelo (*Jimmy*).

Ariel testified that on 26 November 2005, at around 11:00 p.m., he was about to close the billiard hall located at Barangay Biñan, Pagsanjan, Laguna, where he works as a spotter, when Jimmy arrived requesting that he buy him noodles from the Travelers' Inn. He complied and rode a pedicab to the Travelers' Inn. While waiting for his order, he got bored and went to the back portion of the establishment when, suddenly, five armed men came shouting at him "dapa, dapa, dapa." While lying down with his face on the floor, somebody stepped on his back while another was saying "handcuff, handcuff." Because there were no handcuffs, somebody tied him up using a belt and then he was carried to a tinted vehicle. He was told "nahuli ka na din namin"; but when he asked why he was being held, they asked for his name instead. When he told them that his name was Ariel, they got mad at him and asked him again for his

name. He told them that his name was Ariel Calvelo. When the vehicle arrived at the Santa Cruz municipal building, he was transferred to another vehicle together with Abalos, who pulled his hair and later got a key from his (*Abalos*) pocket and scratched this on Ariel's head.[19]

The vehicle he was made to board together with five other persons proceeded to the PDEA office in Canlubang, Laguna. While inside the vehicle, he was punched and hit on the head. His hands were untied and later handcuffed. He was brought inside the PDEA office where they asked his name and told him to cooperate. When he told them that he did not know anything, his handcuffs were removed and he was incarcerated. It was only at the Fiscal's office that he knew he was being charged with violation of Sec. 5, R.A. No. 9165. He saw Villanueva only at the PDEA office.[20]

He came to know of Diosa when the latter was detained at the Laguna provincial jail. When he asked Diosa why he (Ariel) was being implicated in the case, Diosa informed him that the place his (Ariel's) brother was renting was very near the place where he (Diosa) was staying. He also learned that Diosa's house was located on the same street as the billiard hall where he worked. He was incarcerated in 2005; Diosa in 2009.[21]

Jimmy testified that on 26 November 2005, at around 11:00 a.m., he was at his house located at Barangay Biñan, Pagsanjan, Laguna, doing overtime work when he got hungry. He went to the billiard hall where Ariel was working and asked its owner, Melissa Maceda (*Maceda*) to allow Ariel to buy noodles for him at the Travelers' Inn. Maceda allowed Ariel to buy the noodles after he closed down the billiard hall. Ariel took a pedicab to the Travelers' Inn.[22]

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[19] TSN, 4 August 2011, pp. 1-7, 10.

[20] *Id.* at 7-10.

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

[22] TSN, 24 November 2011, pp. 3-5.

When Ariel failed to return after an hour, Jimmy went to the Travelers' Inn and asked the people around whether they had seen Ariel. He was told by Junior, a tricycle driver, that Ariel was picked up by police officers. He went to the Santa Cruz precinct but did not find Ariel there. After three days, upon being informed that Ariel had been apprehended by PDEA members, he went to the PDEA office.[23]

The Ruling of the RTC

WHEREFORE, premises considered, this court finds the accused **ARIEL CALVELO y CONSADA GUILTY BEYOND REASONABLE DOUBT** of Violation of Section 5, Article II, R.A. 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of One Million Pesos (₱1,000,000.00)

The specimens of shabu subjects of this case with a total weight of 14.07 grams are ordered confiscated in favour of the government and the Branch Clerk of Court is hereby ordered to transmit the same to the appropriate government agency for proper disposition.

SO ORDERED.

The Ruling of the CA

The CA ruled that the prosecution was able to establish the identity of Ariel as the drug dealer and the manner by which the illegal sale of the dangerous drug took place. It held that regardless of whether Villanueva acted as a mere bystander during the transaction, she still had the obligation to apprehend Ariel because she was a police officer in whose presence a crime was being committed. Granting that she was a bystander, Villanueva could testify as to the transaction since she was an eyewitness. On the claim of Ariel that the informant was not presented, the CA held that this was not fatal to the case of the prosecution since the informant's testimony was only corroborative, thus, it may be dispensed with.[24]

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

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

The CA found that the chain of custody over the seized drugs was maintained by the apprehending officers, viz: Villanueva marked and affixed her signature on the three heat-sealed transparent sachets handed to her by Ariel. After the inventory of the seized items, Villanueva and Abalos brought the items to the laboratory for examination; a report from the laboratory confirmed that the moist/white crystalline substance on the three sachets tested positive for shabu.[25] The dispositive portion of the CA decision reads:

> ***WHEREFORE,*** premises considered, the appeal filed by Ariel Calvelo y Consada is **DISMISSED.** The Judgment of the Regional Trial Court of Santa Cruz, Laguna, Branch 28 in Criminal Case No. SC-11953 is **AFFIRMED.**
>
> ***SO ORDERED.***

ISSUES

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE CORPUS DELICTI OF THE CRIME

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

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

OUR RULING

The appeal is without merit.

The elements of violation of Sec. 5, Art. II of R.A. No. 9165 had been proven beyond reasonable doubt.

Continuing accretions of jurisprudence restate the requirements to secure a conviction for illegal sale of dangerous drugs under Sec. 5,[26] Art. II of R.A. No. 9165, viz: (1) the

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[26] **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.
The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.
If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.
For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.
If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.
The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor.[27] What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[28]

Ariel was positively identified by Villanueva and Abalos during the hearing as the drug seller. According to Villanueva, she had the opportunity to personally talk with Ariel when, on 26 November 2005, he boarded twice the vehicle she was riding in, viz: the first was at about 9:00 p.m. when she was introduced to him as the buyer of 15 grams of shabu priced at ₱60,000.00 and she showed him the maroon pouch containing the alleged payment for such; and the second was when he returned after an hour to deliver the shabu and to receive the payment.

Abalos, assigned as the arresting officer, was inside another vehicle that was strategically parked away from Villanueva's vehicle which he saw Ariel boarding twice. When Villanueva turned on the hazard lights, the pre-arranged signal that the transaction was already consummated, Abalos and his companions rushed to the vehicle and arrested Ariel. Abalos then recovered the buy-bust money from him.

Ariel posits that it was the informer, and not Villanueva, who had personal knowledge of the alleged drug transaction and was the poseur-buyer. He maintained that Villanueva was a mere bystander whose sole and hearsay testimony could not be made the basis of his conviction. To prove his point, Ariel cited the case of *People v. Rojo*,[29] where the Court found a

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The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

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

[28] *People v. Ismael,* G.R. No. 208093, 20 February 2017.

[29] 256 Phil. 571, 581 (1989).

fatal flaw in the prosecution's evidence, among others, on how the alleged entrapment proceedings took place; and in its failure to present the informant who would have been its best witness.[30]

We do not subscribe to Ariel's position.

Records show that it was Villanueva who was the buyer in the subject transaction for the sale of shabu. The informant merely acted as the middleman between Villanueva, as buyer, and Ariel, as seller. As testified to by Villanueva and Abalos, on 26 November 2005, at about 5:00 p.m. at the PDEA office, the informant called up Ariel to inform him that he (informant) already had a buyer, to which Ariel replied that he was already preparing the shabu. The following day, the informant called up Ariel again, this time to say that he and the would-be buyer were already at the Travelers' Inn. When they met, Villanueva introduced herself as the buyer of the shabu. When Ariel had made sure that Villanueva had with her the money to pay for the items, he handed her the three transparent plastic sachets containing the shabu and she, in turn, handed him the marked and boodle money.

Contrary to Ariel's claim, the factual milieu in *Rojo* is completely different from the case at bar. In *Rojo,* it was the informant who acted as the poseur-buyer of marijuana during the buy-bust operation. A member of the buy-bust team was positioned 5 to 7 meters away from the informant while the transaction was taking place, while two other members of the team were inside their vehicle parked one hundred meters away from the scene.

During the hearing in *Rojo,* the informant who acted as buyer was not put on the witness stand by the prosecution. His identity was not revealed for being confidential information. Significantly, the evidence of the prosecution as to the informant's participation as buyer during the entrapment proceeding was contradictory, viz: a patrolman testified that it was another patrolman who acted as poseur-buyer; while another

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[30] CA *rollo*, pp. 52-54.

patrolman testified that it was the informant who acted as such. The Court held that the fatal flaw in the prosecution's evidence was its failure to establish how the alleged entrapment proceedings took place, and to prove beyond reasonable doubt the actual participation of the informant during the buy-bust operation, thus, casting doubt on whether the entrapment proceedings even took place.

Compared with this case, Villanueva had first-hand knowledge of what transpired during the transaction with Ariel. She actually dealt with Ariel, i.e., from receiving the shabu from him to her actual payment for the delivered item. Indeed, the prosecution was correct in presenting Villanueva to fortify its case against Ariel as she personally knew the details of the transaction that took place on the night of 27 November 2005.

Case law imparts the "objective test" in a buy-bust operation as follows:

> We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all costs. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[31]

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[31] *People v. Doria,* 361 Phil. 595, 621 (1999).

Evaluation of the records applying the "objective test" will prove that the prosecution was able to establish beyond moral certainty the details of the transaction that took place between Villanueva and Ariel from the offer to purchase shabu until the consummation of the sale. Consequently, the claim of Ariel that the poseur – buyer failed to present evidence on how the illegal drugs were recovered – raising doubts about a buy-bust having been actually conducted and warranting a suspicion that the prohibited drugs were planted[32]– miserably weakened in the light of the convincing and credible testimony of the prosecution witnesses.

There was apparently no need for the prosecution to present the informant if only to determine whether there was a prior drug deal between him and Ariel. The informant's testimony would only corroborate that of Villanueva and Abalos who both testified that the informant contacted Ariel on 26 and 27 November 2005 on the drug deal, and which transaction indeed took place when Ariel actually delivered the shabu to Villanueva on 27 November 2005. The sale, to stress, was between Ariel and Villanueva. We quote our ruling in *People v. Bartolome*,[33] viz:

> Similarly, the presentation of an informant as a witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded.

It is underscored that factual findings of the trial court, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect,

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[32] CA *rollo,* p. 54.

[33] 703 Phil. 148, 164 (2013).

if not conclusive effect, especially if affirmed by the CA, except when facts or circumstances of weight and influence were overlooked or the significance of which was misappreciated or misinterpreted by the lower courts.[34] The record is bereft of any showing that Ariel was able to persuasively bring his case within the jurisprudentially established exception to the rule; hence, we defer to the factual findings of the RTC in the absence of any compelling cause or impetus to disturb the same.

There was an unbroken chain of custody of the seized drugs.

In all prosecutions for violations of R.A No. 9165, the *corpus delicti* is the dangerous drug itself.[35] The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale, i.e., the prohibited or regulated drug, has been preserved;[36] hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item. The prosecution 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.*[37] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[38]

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[34] *People v. Dela Peña,* 754 Phil. 323, 338 (2015).

[35] *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

[36] *People v. Ameril*, G.R. No. 203293, 14 November 2016.

[37] *Santos v. People*, G.R. No. 220333, 14 November 2016.

[38] *People v. Tamaño,* G.R. No. 208643, 16 December 2016.

In Sec. 1(b) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002,[39] the DDB – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control and tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[40] – has defined chain of custody involving the dangerous drugs and other substances in these following terms:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[41]

Sec. 21[42] in R.A. No. 9165 provides the specific manner on the custody and disposition of seized drugs and paraphernalia,

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[39] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.

[40] Sec. 77, R.A. No. 9165.

[41] *People v. Gonzales,* 708 Phil. 121, 132 (2013).

[42] 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

which is further elaborated in its Implementing Rules and Regulations[43] (*IRR*). It is understandable that the legislature had taken great pains in providing for Sec. 21 in R.A. No. 9165 as to the manner by which the seized items shall be kept and disposed of as this will be the safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.[44]

In consonance with DDB's definition of chain of custody, judicial pronouncement[45] dictated its meaning as follows:

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

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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;

[43] The apprehending office/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 requirement" 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.

[44] *Rontos v. People,* 710 Phil. 328, 335 (2013).

[45] *People v. Ameril*, *Supra* note 36.

It must be considered that narcotic substances are not readily identifiable and are highly susceptible to alteration, tampering or contamination.[46] Thus, there are links that must be established in the chain of custody in a buy-bust situation, viz: *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 from the forensic chemist to the court.[47]

The legal teaching on the *first link* is as follows:

> The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value**.[48]

Villanueva testified that immediately after the buy-bust operation and on board the vehicle on the way to the PDEA office, she placed on each of the three sachets handed to her by Ariel the markings Exh. "A" MTV 26/11/05, Exh. "B" MTV 26/11/05, and Exh. "C" MTV 26/11/05 and affixed her signature

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[46] *People v. Jaafar, Supra* note 35.

[47] *People v. Villar*, G.R. No. 215937, 9 November 2016.

[48] *Id*.

thereon. The markings were made by Villanueva in the presence of Ariel since they were on board the same vehicle. Records likewise show a certificate of inventory[49] signed by Ablang as team leader, and with elected public official A. Pangilinan and media representative Bell Desolo, as witnesses to the inventory. The certificate of inventory denoted the following seized items during the buy-bust operation, to wit:

THREE (3) PIECES OF HEAT-SEALED TRANSPARENT PLASTIC SACHET CONTAINING WHITE SUBSTANCE OF SUSPECTED SHABU MARKED EXH. "A", "B", AND "C" "MTV" 26/11/05 WITH THE SIGNATURE OF THE POSEUR-BUYER

ONE (1) KAWASAKI 125 c.c. (COLORED RED) WTH SIDECAR (COLORED BLUE) PLATE NO. WJ 7610

TWO (2) PIECES OF FIVE HUNDRED PESO BILL (₱500.00) W/ SERIAL NOS. SU132935 AND FK512868 USED AS MARKED MONEY TOGETHER WITH SEVERAL PIECES OF BOODLE MONEY IN THE CONDUCT OF BUY-BUST OPERATION.

On the second link, as the poseur-buyer and as a member of the buy-bust team, Villanueva was in possession of the drugs seized from Ariel. Villanueva marked and affixed her signature on the seized items. The seized items did not change hands, thus, there was no break in the second link.

On the third link, Villanueva and Abalos testified that they were the ones who turned over to the laboratory for examination the "three (3) heat-sealed transparent plastic sachets containing white crystalline substance suspected to be shabu with marking EXH 'A' to 'C' 'MTV' 26/11/05 and signature of the poseur-buyer." The memorandum[50] of Lemos containing the request for examination showed that this, together with the seized drugs, was received by the laboratory on 1:40 a.m. on 27 November 2005, or about two hours from the actual buy-bust operation. The person from the laboratory who received the memorandum and the confiscated drugs affixed his signature on the

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[49] Records, p. 15; Exh. "E".

[50] *Id*. at 9.

memorandum and even assigned a control number for the request. On the same day, Huelgas released her report on the qualitative examination on the specimens.

On the fourth link, Huelgas was no longer put on the witness stand with the admission by the defense that her testimony would be on the identification of her report and the seized drugs.[51]

Irrefragably, the prosecution was able to convincingly establish an unbroken chain in the custody of the seized drugs in compliance with Sec. 21, Art. II, R.A. No. 9165 and its IRR; hence, the integrity and evidentiary value of the confiscated drugs had not been compromised.

On the one hand, there is an enlightened precedent[52] to serve as guide relevant to the persistent allegations of the accused-appellant on the alleged failure of the police officers to strictly comply with Sec. 21, Art. II, R.A. No. 9165, and consequently render the seized drugs as inadmissible, viz:

> From the point of view of jurisprudence, we are not beating any new path by holding that the failure to undertake the required photography and immediate marking of seized items may be excused by the unique circumstances of a case. In *People v. Resurreccion,* we already stated that "marking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team. In the cases of *People v. Rusiana, People v. Hernandez,* and *People v. Gum-Oyen,* the apprehending team marked the confiscated items at the police station and not at the place of seizure. Nevertheless, we sustained the conviction because the evidence showed that the integrity and evidentiary value of the items seized had been preserved. To reiterate what we have held in past cases, **we are not always looking for the strict step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused**. We succinctly explained this in *People v. Del Monte* when we held:

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[51] *Id.* at 67-68.

[52] *People v. Alcala,* 739 Phil. 189, 202 (2014).

> **We would like to add that noncompliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence**. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts. x x x
>
> **We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to noncompliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is noncompliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence.** The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case. (citations omitted)

The evidence on record heavily weighs in favour of the presumption of regularity in the performance of official duty.

Ariel asserted that the presumption of regularity in the performance of official duty by itself cannot overcome the presumption of innocence or constitute proof beyond reasonable doubt.[53]

It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[54] The presumption, rebuttable by affirmative evidence of irregularity or of any failure to perform a duty, is based on three fundamental reasons, namely:

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[53] CA *rollo*, p. 58.

[54] *People v. Alcala*, *supra* note 52.

first, innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption.[55]

Ariel failed to show any convincing evidence to warrant a finding that the police officers had not performed their official duties in the manner prescribed by law. Indeed, there was no shred of evidence that would even remotely indicate that the police officers had ill motive to ascribe to Ariel the commission of a grave crime. Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld.[56]

In stark contrast to this presumption, the self-serving denial of Ariel failed to put a dent on the prosecution's evidence. Ariel, to stress, was caught *in flagrante delicto* in a legitimate buy-bust operation. His defense of denial or frame-up has been invariably viewed with disfavor for it can easily be concocted and is a common defense ploy in prosecutions for violation of R.A. No. 9165.[57]

WHEREFORE, all premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 06190 is hereby AFFIRMED.

SO ORDERED.

Velasco, Jr. (*Chairperson*) and *Leonen, JJ.,* concur.

Bersamin, J., on official leave.

Gesmundo, J., on leave.

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[55] *People v. Reyes*, G.R. No. 199271, 19 October 2016, citing *People v. Mendoza,* 736 Phil. 749, 769 (2014).

[56] *People v. Fundales, Jr.*, 694 Phil. 322, 337 (2012).

[57] *People v. Tapugay,* 753 Phil. 570, 577-578 (2015).

THIRD DIVISION

[G.R. No. 225794. December 6, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRESENCIO CAMPIT *y* CRISTO and EMILIO MACAWILI,** *accused.*

CRESENCIO CAMPIT *y* CRISTO, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY SUBSTANTIAL REASON TO JUSTIFY THE REVERSAL OF THE TRIAL COURT'S ASSESSMENT AND CONCLUSION, THE REVIEWING COURT IS GENERALLY BOUND BY THE FORMER'S FINDINGS.— Findings of fact by the trial court, when affirmed by the appellate court, are given great weight and credence on review. Equally settled is the rule that the assessments made by the trial court on the credibility of witnesses are accorded great weight and respect. As explained in a plethora of cases, the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, particularly when no significant fact or circumstance is shown to have been overlooked or disregarded which, if considered, would have affected the outcome of the case.

2. ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE TO SHOW ANY DUBIOUS REASON OR IMPROPER MOTIVE ON WHY THE PROSECUTION WITNESS WOULD TESTIFY FALSELY AGAINST AN ACCUSED OR FALSELY IMPLICATE HIM IN A HEINOUS CRIME, THE TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT.— Time and again, the Court has held that the testimony of even a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge of murder.

Moreover, considering that Cresencio assailed the credibility of the witnesses against him, it is incumbent upon him to show that Kristine and Leonisa were impelled by ill motives in falsely accusing him of the crime charged. Unfortunately for Cresencio, there was no showing of any ill motive on the part of any of the eyewitnesses. Where there is no evidence to show any dubious reason or improper motive on why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.

3. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; FOR QUALIFYING CIRCUMSTANCE TO BE APPRECIATED IT MUST BE SHOWN THAT THE AGGRESSORS COMBINED FORCES IN ORDER TO SECURE AN ADVANTAGE FROM THEIR SUPERIORITY IN STRENGTH.—** The circumstance of abuse of superior strength is present whenever there is inequality of force between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime. Nevertheless, it must be stressed that superiority in number does not necessarily amount to abuse of superior strength. For the qualifying circumstance to be appreciated, it must be shown that the aggressors combined forces in order to secure advantage from their superiority in strength. Differently stated, it must be proven that the accused simultaneously assaulted the deceased. Furthermore, the evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. After all, to take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. Thus, it had been held that when the victim was attacked by the assailants alternatively, the claim that the accused abused their superior strength could not be appreciated.

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

MARTIRES, *J.*:

On appeal is the 16 July 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 06800, which affirmed the 20 March 2014 Decision[2] of the Regional Trial Court of Calauag, Quezon, Branch 63, in Criminal Case No. 5323-C finding herein accused-appellant Cresencio Campit y Cristo (*Cresencio*) guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (*RPC*).

THE FACTS

In an Information,[3] dated 16 September 2008, Campit and accused Emilio Macawili (*Emilio*) were charged for the murder of Leon Capanzana, Jr. (*Leon*) committed as follows:

> That on or about the 27th day of July 2008, at Barangay Silang, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who were both armed with deadly weapons, conspiring and confederating together and mutually helping each other, with intent to kill, and with evident premeditation and treachery, and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with their weapons one Leon Capanzana, Jr., inflicting upon the latter fatal wound on his body, causing his untimely death.
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> Contrary to law.[4]

On 17 April 2011, Cresencio was arrested in Camarines Norte,[5] while Emilio remains at-large.

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Ramon R. Garcia, with Justice Leoncia R. Dimagiba and Justice Pedro B. Corales, concurring.

[2] Records, pp. 171-183; penned by Presiding Judge Manuel G. Salumbides.

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

[4] *Id*. at 2.

[5] *Id*. at 32.

On 11 May 2011, Cresencio, with the assistance of his counsel *de officio*, was arraigned and pleaded not guilty to the charge.[6] Trial on the merits ensued thereafter.

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: eyewitnesses Ma. Kristine Capanzana Hernandez (*Kristine*) and Leonisa Capanzana Hernandez (*Leonisa*), the granddaughter and daughter of the victim, respectively; Dr. Jose M. Mercado (*Dr. Mercado*), the Municipal Health Officer of Lopez, Quezon, who conducted the post mortem examination on Leon's cadaver; and Carlos Dacanay Capanzana (*Carlos*), the son of the deceased. Their combined testimonies tended to establish the following:

On 27 July 2008, at about 2:30 p.m., at Barangay Silang, Lopez, Province of Quezon, Leonisa and Kristine were tending to their store when Leon arrived and told them that Cresencio was asking to borrow money.[7] Leon was engaged in the business of buying copra and owned a bodega adjacent to Leonisa's store. After a while, Cresencio and Emilio, who were apparently drunk because they reeked of alcohol, passed by the store.[8] Emilio stayed on the other side of the road, while Cresencio approached Leon, who was then in his bodega arranging documents and was about to leave. Cresencio pressed Leon to lend him money but the latter did not heed his request.[9] Suddenly, Cresencio pulled out a knife from his waist and repeatedly stabbed Leon five (5) times, more or less. Leon tried to parry the thrusts with his hand but he was eventually stabbed on his stomach.[10] Leon turned away from Cresencio and attempted to escape, but he was met by Emilio who grabbed his left shoulder and stabbed him on his chest.[11] Leon fell on

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[6] *Id*. at 48.

[7] TSN, 1 September 2011, p. 5; TSN, 8 November 2011, p. 5.

[8] *Id*. at 6; *id*. at 6.

[9] *Id*. at 4-5; *id*. at 4-8.

[10] *Id*. at 6-8; *id*. at 9.

[11] *Id*. at 8 and 14; *id*. at 10.

his back in front of the bodega,[12] while Cresencio and Emilio ran away and fled.[13]

Meanwhile, Leonisa and Kristine came out of their store and rushed towards the bodega when they heard that Cresencio was pestering Leon for a loan.[14] They stood just about three (3)-arms' length away from Leon and his assailants. They were shouting "*Tama na*" when Leon was being stabbed by his assailants.[15] They were, however, unable to help Leon for fear of being harmed as well. After Cresencio and Emilio fled, Leonisa rushed her father to the Holy Rosary Hospital in Lopez, Quezon, where he was pronounced dead on arrival.[16]

The post-mortem examination conducted by Dr. Mercado revealed that Leon sustained four (4) stab wounds on his body and an incised wound on his right hand small finger.[17] Dr. Mercado further testified that the proximate cause of Leon's death is the multiple stab wounds he sustained.[18]

Evidence for the Defense

The defense presented Cresencio as its lone witness. In his testimony, Cresencio interposed the defense of denial, as follows:

On 27 July 2008, at around 3:00 p.m., Cresencio was buying rice at the store of one Myrna Argamosa (*Argamosa*) in Barangay Silang, Lopez, Quezon, when he saw Leon handing ₱1,000.00 to Argamosa. Cresencio then uttered "*daming pera po ah*" and asked ₱200.00 from Leon as part of the payment for the charcoal

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[12] *Id*. at 9 and 15; *id*. at 11.

[13] *Id*. at 15; *id*. at 12.

[14] TSN, 8 November 2011, p. 7.

[15] TSN, 1 September 2011, pp. 15-16 and 27; TSN, 8 November 2011, p. 11.

[16] *Id*. at 16; *id*. at 12-13.

[17] Exhibit "C".

[18] TSN, 1 December 2011, p. 7.

he delivered to the latter.[19] Leon, who apparently did not appreciate the remark, got mad at Cresencio, grabbed his shirt, and punched him on the face. Cresencio did not fight back and simply told Leon "*huwag po, hindi ako lalaban*." Leon then left and proceeded towards his bodega located about 60 meters from Argamosa's store.[20] After about 15 minutes, Cresencio left for home.[21] On his way, he saw Leon in his bodega weighing copra. Leon approached Cresencio after noticing the latter. However, Cresencio backed away after sensing Leon's hostile behavior.[22] At this moment, Emilio suddenly appeared and stabbed Leon. Cresencio pleaded with Emilio to stop, but the latter merely told him "*wala kang pakialam*."[23] After the incident, Emilio fled while Cresencio went home.[24] After learning that he was implicated in Leon's killing, Cresencio left and stayed with his brother-in-law in Camarines Norte to hide for fear of being arrested for a crime he did not commit.[25]

The RTC Ruling

In its decision, the RTC found Cresencio guilty beyond reasonable doubt of the crime of murder. The trial court gave credence to the testimonies of the prosecution witnesses Leonisa and Kristine who vividly described how Cresencio and Emilio attacked and killed the victim. It observed that the testimonies of the eyewitnesses were clear and categorical, and were given in a straightforward manner. It further opined that the positive identification of Cresencio by the eyewitnesses prevails over the former's defense of denial.

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[19] TSN, 28 November 2012, pp. 3-4 and 10.

[20] *Id*. at 5.

[21] *Id*. at 15.

[22] *Id*. at 6.

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

[24] *Id*. at 8.

[25] *Id*. at 21-22.

The trial court likewise appreciated the attendant qualifying circumstance of taking advantage of superior strength in the commission of the felony, finding that there was notorious inequality of force between the victim who was old and unarmed and the two aggressors who were both armed with knives. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the court hereby renders judgment finding CRESENCIO CAMPIT y Cristo @ Jun GUILTY of MURDER for the killing of Leon Capanzana, Jr. upon proof beyond reasonable doubt. He is hereby sentenced to Reclusion Perpetua without eligibility for parole in line with the provisions of R.A. No. 9346. He is likewise ordered to pay the family of the deceased the following amounts: ₱75,000.00 for death indemnity; ₱75,000.00 for and as moral damages; ₱30,000.00 for exemplary damages; ₱48,000.00 to reimburse the cost of full memorial service; and ₱25,000.00 for and as temperate damages.
>
> SO ORDERED.[26]

Aggrieved, Cresencio appealed before the CA.[27]

The CA Ruling

In its assailed decision, the CA affirmed the RTC decision. The appellate court held that the trial court correctly gave full credence to the testimonies of Leonisa and Kristine noting that their respective narrations of the incident were candid and unwavering. It agreed that the qualifying circumstance of taking advantage of superior strength attended the killing of Leon. The dispositive portion of the assailed decision provides:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated March 20, 2014 of the Regional Trial Court, Branch 63, Calauag, Quezon is AFFIRMED.
>
> SO ORDERED.[28]

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[26] Records, p. 183.

[27] CA *rollo*, p. 37.

[28] *Rollo*, p. 17.

Hence, this appeal.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN CONVICTING THE ACCUSED-APPELLANT.

THE COURT'S RULING

The Court finds no reason to reverse the conviction of the accused-appellant.

No reason to disturb factual findings by the trial court; Prosecution witnesses are credible.

Cresencio insists that the trial and appellate courts erred in giving full credence to the testimonies of Kristine and Leonisa as they were tainted with inconsistencies and contradictions. He averred that Kristine and Leonisa's testimonies that they witnessed the stabbing of Leon but failed to help him are incredible and do not deserve any consideration. He claimed that such actions or lack thereof belie common experience as held in *People v. Benjamin Reyes (Benjamin Reyes)*.[29]

The Court is not persuaded.

Findings of fact by the trial court, when affirmed by the appellate court, are given great weight and credence on review.[30] Equally settled is the rule that the assessments made by the trial court on the credibility of witnesses are accorded great weight and respect.[31]

As explained in a plethora of cases, the issue of credibility of witnesses is a question best addressed to the province of the

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[29] 354 Phil. 667 (1998).

[30] *People v. Feliciano, Jr.*, 734 Phil. 499, 521 (2014).

[31] *People v. Quijada*, 328 Phil. 505, 530 (1996).

trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, particularly when no significant fact or circumstance is shown to have been overlooked or disregarded which, if considered, would have affected the outcome of the case.[32]

The Court finds no reason to depart from the factual findings by the trial court, especially considering that the same were affirmed by the appellate court.

As aptly found by the trial court, the testimonies of prosecution witnesses Kristine and Leonisa were clear, candid, straightforward, and credible. They positively identified Cresencio as among the two perpetrators of the crime. Their respective narrations of the incident were consistent in all respects material to the case. Moreover, their accounts relating to the number and location of the stab wounds were substantially corroborated by the post-mortem examination conducted on the deceased.

Time and again, the Court has held that the testimony of even a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge of murder.[33] Moreover, considering that Cresencio assailed the credibility of the witnesses against him, it is incumbent upon him to show that Kristine and Leonisa were impelled by ill motives in falsely accusing him of the crime charged.[34] Unfortunately for Cresencio, there was no showing of any ill motive on the part of any of the eyewitnesses. Where there is no evidence to show any dubious reason or improper motive on why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[35]

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[32] *People v. Dominguez, Jr.*, 650 Phil. 492, 520 (2010).

[33] *People v. Delfin*, 738 Phil. 811, 821-822 (2014).

[34] *People v. Garcia*, 722 Phil. 60, 70 (2013).

[35] *People v. Ferrer*, 356 Phil. 497, 508 (1998).

Similarly, Cresencio's reliance in *Benjamin Reyes* is misplaced. In said case, the mother of the victim testified that she saw her husband stab her daughter but, instead of helping her, she went home. While sustaining the conviction of the accused, the Court agreed with the defense's submission that the testimony of the victim's mother was not credible.

A reading of the said case, however, would reveal that the witness' account was regarded by the Court to be against common experience not because of her failure to help her daughter during the stabbing incident, but because of the peculiarity of her behavior immediately after the incident which included, among others, the fact that she did not shout and ask her neighbors for help; that when she arrived home, she casually brushed her teeth and slept with her husband, who was also her daughter's killer; and that she remained silent when the police came to their house despite the fact that her husband was not present; and was, thus, not under threat at that time. More importantly, the Court declared therein that her testimony regarding the stabbing incident did not deserve any credit because she categorically stated that she did not witness the killing of her daughter.

None of the circumstances in *Benjamin Reyes* which justified the finding of the witness's lack of integrity is present in this case. To recall, Leonisa and Kristine did not remain silent during the felonious deed. They were shouting and begging for Leon's assailants to stop. Clearly, while they were crushed by the spectacle of Leon being stabbed to death, fear prevailed upon them preventing them from doing anything to aid their loved one. Likewise, after Cresencio and Emilio fled, Leonisa immediately rushed her father to the hospital in the hope that he would survive. Leonisa's behavior is directly opposed to that of the witness in *Benjamin Reyes* who did not even bother to check on her daughter after allegedly witnessing her being stabbed.

Furthermore, and as held in *People v. Romeo Fernandez*,[36] it would be unfair to gauge the actions of the eyewitnesses as incredible for there is no prescribed behavior when one is

[36] 434 Phil. 224 (2002).

suddenly confronted with a startling or frightening event. Different people react differently to a given stimulus or situation, and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience. Thus, Kristine and Leonisa's inability to help and defend Leon due to their fear of reprisal is understandable and not at all contrary to common experience.

Thus, the Court finds no reason to disturb the trial court's full faith in Kristine and Leonisa's testimonies given that they were clear, credible, categorical, and positive. Needless to state, their testimonies prevail over Cresencio's defense of denial which has been repeatedly considered as a weak defense.[37]

The crime committed is only homicide; abuse of superior strength not established

The circumstance of abuse of superior strength is present whenever there is inequality of force between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.[38]

Nevertheless, it must be stressed that superiority in number does not necessarily amount to abuse of superior strength.[39] For the qualifying circumstance to be appreciated, it must be shown that the aggressors combined forces in order to secure advantage from their superiority in strength. Differently stated, it must be proven that the accused simultaneously assaulted the deceased.[40] Furthermore, the evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. After all, to take advantage of superior strength means to purposely use excessive

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[37] *People v. Gani*, 710 Phil. 466, 474 (2013).

[38] *Espineli v. People*, 735 Phil. 530, 544-545 (2014); *People v. Gatarin*, 731 Phil. 577, 596 (2014).

[39] *People v. Aliben*, 446 Phil. 349, 385 (2003).

[40] *People v. Cañaveras*, 722 Phil. 259, 271 (2013).

force out of proportion to the means of defense available to the person attacked.[41] Thus, it had been held that when the victim was attacked by the assailants alternatively, the claim that the accused abused their superior strength could not be appreciated.[42]

In this case, the evidence adduced by the prosecution established that only Cresencio approached Leon while the latter was in his bodega. Thereafter, Cresencio, following an argument, stabbed Leon multiple times. It was only when Leon escaped from Cresencio that Emilio appeared and stabbed the victim on his chest. Considering that the perpetrators attacked the victim alternatively and did not combine their superior strength to overwhelm the victim, they could not be said to have taken advantage of their superior strength.

Furthermore, the events leading to the stabbing negate the attendance of the qualifying circumstance of abuse of superior strength. From the testimonies of the prosecution witnesses, as well as, to some extent, from the accounts of Cresencio, it could be gathered that the quarrel started when Cresencio felt offended after Leon repeatedly rejected his request for a loan. Clearly, the incident was unplanned and unpremeditated. When the quarrel between the victim and his assailants arose unexpectedly, the aggravating circumstance of abuse of superior strength could not be appreciated[43] as the same requires some degree of prior deliberation or meditation.[44]

From the foregoing, it is clear that abuse of superior strength did not attend the commission of the felony. The prosecution failed to prove that the numerical superiority was purposely sought by the assailants to perpetrate the crime with impunity; and that there was blatant disparity in strength between Leon and his assailants.

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[41] *People v. Beduya*, 641 Phil. 399, 410 (2010).

[42] *People v. Baltar, Jr.*, 401 Phil. 1, 16 (2000); *People v. Narciso*, 132 Phil. 314, 336-337 (1968).

[43] *U.S. v. Badines*, 4 Phil. 594, 595 (1905).

[44] *People v. Bigcas*, 286 Phil. 780, 795 (1992).

Penalties

In the absence of any qualifying aggravating circumstance, the crime committed by Cresencio is homicide and the penalty should be *reclusion temporal* as provided in Article 249 of the RPC. Considering that there is neither aggravating nor mitigating circumstances, the penalty should be imposed in its medium period pursuant to Article 64(l) of the RPC. Applying the Indeterminate Sentence Law, Cresencio should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision mayor* (6 years and 1 day to 12 years); and the maximum of which should be within the range of *reclusion temporal* in its medium period (14 years 8 months and 1 day to 17 years and 4 months). Accordingly, the Court imposes the indeterminate penalty ranging from eight (8) years of *prision mayor*, as minimum, to fourteen (14) years eight (8) months and one (1) day of *reclusion temporal*, as maximum.

WHEREFORE, accused-appellant Cresencio Campit y Cristo is found GUILTY beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code. He is sentenced to suffer the indeterminate penalty of eight (8) years of *prision mayor*, as minimum, to fourteen (14) years eight (8) months and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of the deceased Leon Capanzana, Jr., the following amounts: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱30,000.00 as exemplary damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.[45]

SO ORDERED.

Velasco, Jr. (*Chairperson*) and *Leonen, JJ.,* concur.

Bersamin, J., on official leave.

Gesmundo, J., on leave.

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[45] *People v. Combate*, 653 Phil. 487, 518 (2010).

SECOND DIVISION

[G.R. No. 227124. December 6, 2017]

HEIRS OF VICTOR AMISTOSO, namely: VENEZUELA A. DELA CRUZ, FLORA A. TULIO, WILFREDO D. AMISTOSO, RUFINO D. AMISTOSO, VICENTE D. AMISTOSO, MAXIMO D. AMISTOSO, and ZENAIDA D. AMISTOSO, *petitioners, vs.* **ELMER T. VALLECER, represented by EDGAR VALLECER**, *respondent.*

SYLLABUS

1. POLITICAL LAW; AGRARIAN REFORM; DEPARTMENT OF AGRARIAN REFORM ADJUDICATORY BOARD (DARAB); JURISDICTION; IN ORDER TO CLASSIFY A MATTER AS AN AGRARIAN DISPUTE WHICH FALLS UNDER THE JURISDICTION OF THE DARAB, IT MUST BE FIRST SHOWN THAT A TENANCY RELATIONSHIP EXISTS BETWEEN PARTIES; INDISPENSABLE ELEMENTS OF TENANCY RELATIONSHIP, ENUMERATED.— In order to classify a matter as an agrarian dispute which falls under the jurisdiction of the DARAB, it must be first shown that a tenancy relationship exists between the parties. For such relationship to be proven, it is essential to establish all its indispensable elements, namely: (*a*) that the parties are the landowner and the tenant or agricultural lessee; (*b*) that the subject matter of the relationship is an agricultural land; (*c*) that there is consent between the parties to the relationship; (*d*) that the purpose of the relationship is to bring about agricultural production; (*e*) that there is personal cultivation on the part of the tenant or agricultural lessee; and (*f*) that the harvest is shared between the landowner and the tenant or agricultural lessee.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JUDGMENTS; *RES JUDICATA*, DEFINED; REQUISITES, ENUMERATED.— "*Res judicata* literally means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'" It also refers to the "rule that an existing final judgment or decree rendered on the merits, and

without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit." For *res judicata* to absolutely bar a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (*d*) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action.

3. **ID.; ID.; ID.; *ACCION PUBLICIANA*; THE OBJECTIVE OF THE PLAINTIFFS IN *ACCION PUBLICIANA* IS TO RECOVER POSSESSION ONLY, NOT OWNERSHIP; CASE AT BAR.—** As plaintiff in *Civil Case No. S-606*, respondent never asked that he be declared the owner of the land in question, but only prayed that he be allowed to recover possession thereof from petitioners. As such, *Civil Case No. S-606* should have instead, been properly classified as an *accion publiciana*, or a plenary action to recover the right of possession of land. Hence, while petitioners were acknowledged by the DAR as "deemed owners" of the land in *Civil Case No. S-606*, such declaration was merely provisional as it was only for the purpose of determining possession. In *Gabriel, Jr. v. Crisologo*, the Court thoroughly discussed the nature and purpose of an *accion publiciana*: Also known as *accion plenaria de posesion*, *accion publiciana* is **an ordinary civil proceeding to determine the better right of possession of realty independently of title**. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. **The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership**. x x x **The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership**.

4. **ID.; ID.; ID.; ACTION FOR QUIETING OF TITLE, CONSTRUED; REQUISITES, ENUMERATED; ESTABLISHED IN CASE AT BAR.—** [I]n *Civil Case No.*

L-298, respondent asserted his ownership over the property by virtue of his Torrens title, and alleged that petitioners' tenancy relationship actually pertains to the portion of the adjacent land that belongs to Maria Kho Young with whom petitioners admittedly have the tenancy relationship. Respondent also claimed that petitioners' CLT does not contain the technical description of the property which it purportedly covers and therefore does not show that their alleged tenancy right falls on his property. Thus, the October 17, 2003 CA Decision stemming from *Civil Case No. S-606* and petitioners' unlawful possession and claim of ownership constitute a cloud on his title over the property. Accordingly, respondent prayed for the court to declare him as the absolute owner of the property, and restrain and prohibit petitioners from performing and/or continuing to perform act/s that affect his possession and enjoyment thereof as owner. Clearly, the complaint in *Civil Case No. L-298* is, as indicated herein, one for quieting of title pursuant to Article 476 of the Civil Code. In *Green Acres Holdings, Inc. v. Cabral,* the Court discussed: x x x **In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property**. For an action to quiet title to prosper, two indispensable requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

5. CIVIL LAW; PROPERTY; TORRENS TITLE; A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO A COLLATERAL ATTACK AND THAT THE ISSUE OF THE VALIDITY OF TITLE CAN ONLY BE ASSAILED IN AN ACTION EXPRESSLY INSTITUTED FOR SUCH PURPOSE; CASE AT BAR.— [I]t should be pointed out that petitioners' attack on the validity of respondent's Torrens title

in *Civil Case No. S-606* by claiming that their father Victor became the owner of the subject property by virtue of the CLT issued to him in 1978 constitutes a collateral attack on said title. It is an attack incidental to their quest to defend their possession of the property in an *accion publiciana*, not in a direct action aimed at impugning the validity of the judgment granting the title. Time and again, it has been held that a certificate of title shall not be subject to a collateral attack and that the issue of the validity of title can only be assailed in an action expressly instituted for such purpose. Hence, any declaration the CA may have made in its October 17, 2003 Decision stemming from *Civil Case No. S-606* cannot affect respondent's ownership over the property nor nullify his Torrens title, as the adjudication was only for the purpose of resolving the issue of possession.

APPEARANCES OF COUNSEL

Dario M. Mandantes for petitioners.
Cresencio Palpagan Jr. 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 February 24, 2016 and the Resolution[3] dated August 10, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 06720, which upheld the Resolution[4] dated May 28, 2014 and the Order[5] dated December 3, 2014 of the Regional Trial Court of Liloy, Zamboanga del Norte, Branch 28 (RTC) in *Civil*

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[1] *Rollo*, pp. 10-19.

[2] *Id*. at 134-139. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas concurring.

[3] *Id*. at 153-154.

[4] *Id*. at 126-127. Penned by Judge Oscar D. Tomarong.

[5] *Id*. at 128.

Case No. L-298, denying the Motion to Hear and Resolve Affirmative Defenses filed by petitioners Heirs of Victor Amistoso, namely: Venezuela A. Dela Cruz, Flora A. Tulio, Wilfredo D. Amistoso, Rufino D. Amistoso, Vicente D. Amistoso, Maximo D. Amistoso, and Zenaida D. Amistoso (petitioners) for their failure to substantiate their affirmative defenses of *res judicata*, prescription, and laches.

The Facts

Sometime in March 1996, respondent Elmer T. Vallecer (respondent), through his brother Dr. Jose Benjy T. Vallecer (Benjy), filed a Complaint[6] for recovery of possession and damages against petitioners, docketed as *Civil Case No. S-606*,[7] involving a 2,265-square meter parcel of land, located in Labason, Zamboanga del Norte, described as Lot C-7-A and covered by Transfer Certificate of Title No. T-44214[8] (TCT T-44214) and Tax Declaration No. 93-7329[9] under respondent's name. He claimed that he purchased the property sometime in June 1990 after confirming with the Department of Agrarian Reform (DAR) that the property was not tenanted. When he started making preparations for the construction of a commercial building on the property, petitioners, with the aid of their workers, agents, representatives, and/or employees, stopped or barred him by force, threats, and intimidation. Despite repeated demands[10] and explanations made by the Municipal Agrarian Reform Officer (MARO)[11] of the DAR during a pre-litigation conference that no landlord-tenancy relationship ever existed between them as

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[6] See Complaint (With Prayer for Issuance of Preliminary Prohibitive Injunction and Temporary Restraining Order) dated March 1, 1996; *id*. at 36-42.

[7] The Complaint was filed before the RTC of Sindangan, Zamboanga del Norte, Branch 11. See *id*. at 36.

[8] *Id*. at 43, including dorsal portion.

[9] *Id*. at 44, including dorsal portion.

[10] See *id*. at 49-57.

[11] See DAR MARO Resolution dated October 10, 1995; *id*. at 45-48.

regards the property, petitioners continued to refuse him from entering and enjoying possession of his property.[12] Thus, he prayed for the court to, among others, order petitioners, with their representatives, agents, employees, and assigns, to vacate the property and pay damages.[13]

In their defense,[14] petitioners claimed that they have been in actual, peaceful, and continuous possession of the land as evidenced by Certificate of Land Transfer No. 0-002623[15] (CLT) issued in November 1978 to their predecessor-in-interest Victor Amistoso (Victor) by virtue of Presidential Decree No. 27.[16]

On January 8, 2001, the RTC declared respondent as the absolute owner of the subject property under his name.[17] On appeal, the CA rendered a Decision[18] dated October 17, 2003 in CA-G.R. CV No. 70128 (October 17, 2003 CA Decision) reversing the RTC ruling. It found that Benjy failed to show proof of his capacity to sue on respondent's behalf and that the CLT issued by the DAR acknowledges petitioners as "deemed owner" of the land after full payment of its value. Having proven full compliance for the grant of title, petitioners have a right to the land which must be respected.[19] This CA Decision became

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[12] See *id*. at 37-40 and 95.

[13] See *id*. at 40-41.

[14] See Answer with Affirmative Defenses And Motion to Dismiss dated April 8, 1996; *id*. at 58-61.

[15] *Id*. at 62.

[16] Entitled "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" dated October 21, 1972.

[17] See RTC Decision dated January 8, 2001 in *Civil Case No. S-606* penned by Judge Wilfredo G. Ochotorena; *rollo*, pp. 64-93.

[18] *Id*. at 94-98. Penned by Associate Justice Eubulo G. Verzola with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam concurring.

[19] See *id*. at 96-97.

final and executory on November 4, 2003,[20] and consequently, a Writ of Execution[21] was issued on May 9, 2005.

Thereafter, or on July 18, 2012, respondent filed a Complaint[22] for quieting of title, ownership, possession, and damages with preliminary injunction against petitioners, docketed as *Civil Case No. L-298*, subject of the present case. Asserting ownership over the property under TCT No. T-44214 and tax declarations, and citing petitioners' unlawful possession and occupation thereof despite repeated demands to vacate, respondent claimed that: petitioners' CLT does not contain the technical description of the property which it purportedly covers; the tenancy relationship from which petitioners anchor their possession pertains to the portion of the adjacent land that belongs to Maria Kho Young with whom they admittedly have the tenancy relationship; and the October 17, 2003 CA Decision involving *Civil Case No. S-606*, annotated on his TCT No. T-44214, constitutes a cloud on his title.[23] Thus, respondent prayed for the court to: restrain and prohibit petitioners from continuing to usurp his real rights on the property as owner thereof; prevent or prohibit them from dealing and negotiating the property with any person for any purpose; prohibit or prevent them from obstructing and preventing the free passage, possession, use, and appropriation of the property and its fruits; declare him as the absolute owner of the property; and order petitioners to vacate the property and remove all structures and improvements introduced thereon at their expense.[24]

Petitioners, for their part, filed an Answer with Counterclaim and Affirmative Defenses[25] invoking *res judicata*, prescription

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[20] See Entry of Judgment; *id.* at 99.

[21] *Id*. at 100-101. See also Receipt of Possession dated May 27, 2005; *id*. at 102.

[22] *Id.* at 103-110.

[23] See *id*. at 105-108.

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

[25] Dated August 15, 2012. *Id*. at 111-115.

and laches. In support thereof, they pointed out that the October 17, 2003 CA Decision stemming from *Civil Case No. S-606* had already become immutable. Likewise, they moved to hear and resolve the affirmative defense.[26]

The RTC Ruling

In a Resolution[27] dated May 28, 2014, the RTC denied petitioners' Motion to Hear and Resolve Affirmative Defenses for lack of merit, declaring that the principle of *res judicata* would not apply in view of the lack of identity of causes of action. It held that in contrast to *Civil Case No. S-606*, which involves recovery of possession, *Civil Case No. L-298* is essentially one for declaration of ownership. It also ruled that since the land is covered by a Torrens title, it can no longer be acquired by prescription or be lost by laches.[28]

Aggrieved, petitioners moved for reconsideration[29] which the RTC denied in an Order[30] dated December 3, 2014. Undaunted, they elevated the case before the CA via a petition for *certiorari,*[31] arguing that *Civil Case No. L-298* for quieting of title is barred by *res judicata*, and that respondent lacked cause of action.[32]

The CA Ruling

In a Decision[33] dated February 24, 2016, the CA affirmed the RTC ruling. It held that the RTC did not gravely abuse its

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[26] See Motion to Hear and Resolve Affirmative Defenses dated December 3, 2012; *id*. at 117-121.

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

[28] See *id*. at 126.

[29] See motion for reconsideration dated June 17, 2014; *id*. at 129-131 (pages are misarranged).

[30] *Id*. at 128.

[31] Dated March 18, 2015. *Id*. at 22-33.

[32] See *id*. at 27-32.

[33] *Id*. at 134-139.

discretion in holding that *Civil Case No. L-298* is not barred by *res judicata*, considering that *Civil Case No. S-606* filed by respondent is anchored on his right to possess the real property as the registered owner; while *Civil Case No. L-298* was filed in order to clear his title over the land and remove all adverse claims against it.[34]

Dissatisfied, petitioners moved for reconsideration,[35] additionally arguing that the RTC lacked jurisdiction to cancel their CLT. The CA denied petitioners' motion in a Resolution[36] dated August 10, 2016; hence, this petition.

The Issues Before the Court

The essential issue for the Court's resolution is whether or not *Civil Case No. L-298* is barred by *res judicata*.

The Court's Ruling

The petition lacks merit.

Preliminarily, petitioners insist, albeit belatedly, that the RTC had no jurisdiction over the complaint in *Civil Case No. L-298*, considering that what is sought to be cancelled is their CLT; hence, an agrarian dispute falling within the jurisdiction of the DARAB.[37]

The argument is specious.

In order to classify a matter as an agrarian dispute which falls under the jurisdiction of the DARAB, it must be first shown that a tenancy relationship exists between the parties. For such relationship to be proven, it is essential to establish all its indispensable elements, namely: (*a*) that the parties are the landowner and the tenant or agricultural lessee; (*b*) that the subject matter of the relationship is an agricultural land; (*c*)

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[34] See *id*. at 137-139.

[35] See motion for reconsideration dated March 11, 2016; *id*. at 140-143.

[36] *Id*. at 153-154.

[37] See *id*. at 15-16.

that there is consent between the parties to the relationship; (*d*) that the purpose of the relationship is to bring about agricultural production; (*e*) that there is personal cultivation on the part of the tenant or agricultural lessee; and (*f*) that the harvest is shared between the landowner and the tenant or agricultural lessee.[38]

Moreover, it is well-settled that the jurisdiction of the court over the subject matter of the action is determined by the material allegations of the complaint and the law at the time the action was commenced, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein and regardless of the defenses set up in the court or upon a motion to dismiss by the defendant.[39]

In this case, a reading of the material allegations of respondent's complaint in *Civil Case No. L-298* and even petitioners' admissions readily reveals that there is neither a tenancy relationship between petitioners and respondent, nor had petitioners been the tenant of respondent's predecessors-in-interest. In fact, respondent did not even question the validity of petitioners' CLT nor sought for its cancellation. Rather, what respondent sought was for a declaration that the property covered by his Torrens title is different from the property covered by petitioners' CLT in order to quiet his title and remove all adverse claims against it. Clearly, this is not an agrarian dispute that falls within the DARAB's jurisdiction.

Proceeding to the main issue, petitioners contend that *Civil Case No. S-606* and *Civil Case No. L-298* were founded on the same facts, allegations, and arguments, and sought the same relief, *i.e.,* to cancel their CLT. Considering that the October 17, 2003 CA Decision stemming from *Civil Case No. S-606* had already attained finality, the same constitutes *res judicata* to *Civil Case No. L-298.*[40]

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[38] *Bumagat v. Arribay*, 735 Phil. 595, 607 (2014), citing *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 643 (2003).

[39] See *Laresma v. Abellana,* 484 Phil. 766, 777 (2004).

[40] See *rollo,* pp. 17-18.

The Court disagrees.

"*Res judicata* literally means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'" It also refers to the "rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit."[41]

For *res judicata* to absolutely bar a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (*d*) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action.[42]

In this case, the Court finds that *Civil Case No. S-606* did not bar the filing of *Civil Case No. L-298* on the ground of *res judicata* as the causes of action in the two cases are not the same.

In particular, in *Civil Case No. S-606,* respondent alleged that he purchased the property after confirming with the DAR that it was not tenanted; that petitioners, with their workers and/or representatives, stopped or barred him by force, threats, and intimidation from entering and occupying the property; and that despite repeated demands[43] and explanations made by

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[41] *Republic of the Philippines* [*Civil Aeronautics Administration (CAA)*] *v. Yu*, 519 Phil. 391, 395-396 (2006). See also *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015); *Rivera v. Heirs of Romualdo Villanueva,* 528 Phil. 570, 576 (2006); and *Gutierrez v. CA*, 271 Phil. 463, 465 (1991), citing *Black's Law Dictionary*, p. 1470 (Rev. 4th ed., 1968).

[42] *Dy v. Yu*, 763 Phil. 491, 509 (2015); citation omitted. See also *Republic of the Philippines* [*Civil Aeronautics Administration (CAA)*] *v. Yu*, *id*. at 396; and *Gutierrez v. CA*, *id*. at 467.

[43] See *rollo,* pp. 49-57.

the MARO[44] that no landlord-tenant relationship ever existed between them as regards the property, petitioners continued to prohibit him from entering and enjoying possession of his property. He thus prayed for the court to order petitioners, with their representatives, *et al.,* to vacate the property and pay damages.[45]

At this point, it is apt to clarify that the CA erroneously classified *Civil Case No. S-606* as an *accion reivindicatoria*, or a suit which has for its object the recovery of possession of real property as owner and that it involves recovery of ownership and possession based on the said ownership.[46] As plaintiff in *Civil Case No. S-606*, respondent never asked that he be declared the owner of the land in question, but only prayed that he be allowed to recover possession thereof from petitioners. As such, *Civil Case No. S-606* should have instead, been properly classified as an *accion publiciana*, or a plenary action to recover the right of possession of land.[47] Hence, while petitioners were acknowledged by the DAR as "deemed owners" of the land in *Civil Case No. S-606*, such declaration was merely provisional as it was only for the purpose of determining possession. In *Gabriel, Jr. v. Crisologo*,[48] the Court thoroughly discussed the nature and purpose of an *accion publiciana*:

Also known as *accion plenaria de posesion*, *accion publiciana* is **an ordinary civil proceeding to determine the better right of**

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[44] See DAR MARO Resolution dated October 10, 1995 (*id*. at 45-48), declaring that: "[t]his Office believes that Mr. Victor B. Amistoso expanded his occupation, possession and cultivation as a tenant over the lot of his landlord Maria Kho Yang and by the act of tolerance exceeded and/or intrudes up to the lot owned by Roman Bantilan. Clearly, Amistoso's possessory right over Lot No. B is valid by virtue of an existing tenancy relationship while on the other Lot No. C-7 is mere tolerance and does not affect ownership for there is no valid and binding tenancy relationship thereof. x x x."

[45] See *id*. at 40-41.

[46] See *Hilario v. Salvador*, 497 Phil. 327, 335 (2005).

[47] See *id*.

[48] 735 Phil. 673 (2014).

possession of realty independently of title. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.

The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. When parties, however, raise the issue of ownership, the court may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, nonetheless, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. **The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership**.[49] (Emphases and underscoring supplied)

On the other hand, in *Civil Case No. L-298,* respondent asserted his ownership over the property by virtue of his Torrens title, and alleged that petitioners' tenancy relationship actually pertains to the portion of the adjacent land that belongs to Maria Kho Young with whom petitioners admittedly have the tenancy relationship. Respondent also claimed that petitioners' CLT does not contain the technical description of the property which it purportedly covers and therefore does not show that their alleged tenancy right falls on his property.[50] Thus, the October 17, 2003 CA Decision stemming from *Civil Case No. S-606* and petitioners' unlawful possession and claim of ownership constitute a cloud on his title over the property. Accordingly, respondent prayed for the court to declare him as the absolute owner of the property, and restrain and prohibit petitioners from performing and/or continuing to perform act/s that affect his possession and enjoyment thereof as owner.[51]

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[49] *Id*. at 683, citing *Urieta Vda. De Aguilar v. Spouses Alfaro*, 637 Phil. 131, 141-142 (2010).

[50] See *rollo*, pp. 105-108.

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

Clearly, the complaint in *Civil Case No. L-298* is, as indicated herein, one for quieting of title pursuant to Article 476[52] of the Civil Code. In *Green Acres Holdings, Inc. v. Cabral*,[53] the Court discussed:

> Quieting of title is a common law remedy for the removal of any cloud upon, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. **In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property**.
>
> For an action to quiet title to prosper, two indispensable requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[54] (Emphasis and underscoring supplied)

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[52] Article 476 of the Civil Code reads:

> Article 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[53] 710 Phil. 235 (2013).

[54] *Id.* at 256-257; citations omitted.

Based on the foregoing, it is clear that the causes of action in *Civil Case Nos. S-606* and *L-298* are different from each other. And thus, the ruling in the former would not operate as *res judicata* on the latter.

Moreover, it should be pointed out that petitioners' attack on the validity of respondent's Torrens title in *Civil Case No. S-606* by claiming that their father Victor became the owner of the subject property by virtue of the CLT issued to him in 1978 constitutes a collateral attack on said title. It is an attack incidental to their quest to defend their possession of the property in an *accion publiciana*, not in a direct action aimed at impugning the validity of the judgment granting the title.[55] Time and again, it has been held that a certificate of title shall not be subject to a collateral attack and that the issue of the validity of title can only be assailed in an action expressly instituted for such purpose.[56] Hence, any declaration the CA may have made in its October 17, 2003 Decision stemming from *Civil Case No. S-606* cannot affect respondent's ownership over the property nor nullify his Torrens title, as the adjudication was only for the purpose of resolving the issue of possession.

All told, the October 17, 2003 CA Decision involving *Civil Case No. S-606* did not bar the filing of *Civil Case No. L-298* that seeks to determine the issue of the property's ownership, clear respondent's title over the property, and remove all adverse claims against it.

WHEREFORE, the petition is **DENIED**. The Decision dated February 24, 2016 and the Resolution dated August 10, 2016 of the Court of Appeals in CA-G.R. SP No. 06720 are hereby **AFFIRMED.**

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[55] See *Urieta Vda. De Aguilar v. Spouses Alfaro*, *supra* note 49, at 144.

[56] See *Wee v. Mardo*, 735 Phil. 420, 430-431 (2014); citations omitted. See also Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, which reads:

> Section 48. *Certificate not subject to collateral attack.* – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 228449. December 6, 2017]

GRACE R. ALUAG, *petitioner, vs.* **BIR MULTI-PURPOSE COOPERATIVE, NORMA L. LIPANA, and ESTELITA V. DATU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A PARTY WHO SEEKS TO AVAIL OF THE RIGHT TO APPEAL MUST COMPLY WITH THE REQUIREMENTS OF THE RULES, FAILING WHICH, THE RIGHT TO APPEAL IS INVARIABLY LOST; CASE AT BAR.— Sections 3 and 5 of Rule 45, in relation to Section 5 (d) of Rule 56, of the Rules of Court, and item 2 of Revised Circular No. 1-88 require a proof of service to the lower court concerned to be attached to the petition filed before the Court. x x x In the present case, Aluag failed to serve a copy of the petition to the CA, thereby giving the Court sufficient ground to deny her petition. Her omission even led to the CA's issuance of the resolution declaring the finality of its Decision. Verily, Aluag's procedural mishap is a sufficient ground for the dismissal of her petition, especially since the rules themselves expressly say so. "Time and again, it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost," as in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); IN LABOR CASES, GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NLRC WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE WHICH REFERS TO THAT AMOUNT OF RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."

3. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; A VALID DISMISSAL NECESSITATES COMPLIANCE WITH BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS REQUIREMENTS.— A valid dismissal necessitates compliance with both substantive and procedural due process requirements. Substantive due process mandates that an employee may be dismissed based only on just or authorized causes under the Labor Code. On the other hand, procedural due process requires the employer to comply with the requirements of notice and hearing before effecting the dismissal.

4. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE AS A GROUND; REQUISITES; ESTABLISHED IN CASE AT BAR.— In the present case, BIRMPC alleged that Aluag's employment was terminated on the ground of loss of trust and confidence under Article 297 (c) (formerly Article 282 [c]) of the Labor Code. The requisites for the existence of such ground are as follows: (*a*) the employee concerned holds a position of trust and confidence; and (*b*) he performs an act that would

justify such loss of trust and confidence. Anent the first requisite, case law instructs that "[t]here are two (2) classes of positions of trust: *first*, managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and *second,* fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence." Being a cashier charged with the collection of remittances and payments, Aluag undoubtedly occupied a position of trust and confidence. Notably, in holding a position requiring full trust and confidence, Aluag "gave up some of the rigid guarantees available to ordinary employees." As regards the second requisite, the employee's act causing the loss of confidence must be **directly related to her duties** rendering her woefully unfit to continue working for the employer. "In dismissing a cashier on the ground of loss of confidence, it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making [her] unworthy of the trust and confidence reposed in [her]." If there is sufficient evidence showing that the employer has ample reason to dismiss her, labor tribunals should not deny the employer the authority to dismiss her from employment. In the present case, one of the infractions that BIRMPC cited in justifying Aluag's dismissal is her failure to deposit checks on due dates, pursuant to a member/debtor's request. x x x Verily, her failure to deposit the checks on their due dates means that she failed to deliver on her task to safeguard BIRMPC's finances. It is also well to note that she was not given any discretion to determine whether or not to deposit the checks. Under these circumstances, BIRMPC had ample reason to lose the trust and confidence it reposed upon her and thereby, terminate her employment.

APPEARANCES OF COUNSEL

M.C. Morales & Associates for petitioner.

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 25, 2016 and the Resolution[3] dated November 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 144608, which reversed the Decision[4] dated October 16, 2014 and the Resolution[5] dated December 29, 2015 of the National Labor Relations Commission (NLRC), and accordingly, reinstated the Decision[6] dated May 26, 2014 of the Labor Arbiter (LA) finding petitioner Grace R. Aluag (Aluag) to have been validly dismissed from service by respondent BIR Multi-Purpose Cooperative (BIRMPC).

The Facts

This case arose from a complaint[7] for, *inter alia*, illegal dismissal filed by Aluag against BIRMPC and its officers, respondents Norma L. Lipana and Estelita V. Datu (respondents). Aluag alleged that she was employed as BIRMPC's cashier from November 16, 1994 until her termination on October 31, 2013.[8] Her duties, among others, were to receive remittances

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[1] *Rollo*, pp. 14-32.

[2] *Id*. at 36-51. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring.

[3] *Id*. at 111-112.

[4] *Id*. at 52-62. Penned by Commissioner Nieves E. Vivar-De Castro with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring.

[5] CA *rollo*, Vol. I, pp. 49-61. Penned by Presiding Commissioner Joseph Gerard E. Mabilog with Commissioner Isabel G. Panganiban-Ortiguerra, concurring and Commissioner Nieves E. Vivar-De Castro, dissenting.

[6] *Id*. at 62-73. Penned by Labor Arbiter Elias H. Salinas.

[7] NLRC records, p. 1; including dorsal portion.

[8] See *rollo*, pp. 38-39.

and payments, deposit all collections daily, record fixed deposits, determine cash positions, issue checks for loans, collect cash receipts, and perform such other duties that the general manager may assign to her.[9] She claimed that from the time of her employment, she was tasked to give only verbal weekly reports on BIRMPC's funds until 2010 when she was required to put them into writing. In 2011, BIRMPC's loan processors started accepting post-dated checks with the prior approval of the general manager, who then was Gerardo Flores (Flores).[10] She added that in July 2013, upon Flores' instruction, she submitted a report of bounced checks and deposited the remaining checks in her possession.[11]

On July 16, 2013 or ten (10) days before she gave birth, Aluag received a letter[12] from BIRMPC's Board of Directors temporarily relieving her from her position pending an investigation against her and two (2) loan processors involving several suspicious loans, requiring her to submit an answer within ten (10) days.[13] She complied only after she gave birth or on July 29, 2013, wherein she admitted that she: (*a*) was tasked to have all collections deposited everyday; (*b*) received verified post-dated checks for safekeeping and deposit to the bank when due; and (*c*) opted not to deposit matured checks upon request of the debtors.[14] She then went on a maternity leave from July 30 to September 30, 2013, during which period, she received another letter from BIRMPC preventively suspending her from August 1 to October 31, 2013.[15] Claiming that the suspension was illegal, she filed a complaint for illegal suspension with the NLRC. While the case was pending, Aluag received another

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[9] *Id*. at 38.

[10] See *id*. at 38-39.

[11] See *rollo*, p. 39. See also CA *rollo*, Vol. I, pp. 63-64.

[12] NLRC records, pp. 23-24.

[13] *Rollo*, p. 39.

[14] See undated letter-explanation of Aluag; NLRC records, pp. 25-26.

[15] *Rollo*, p. 39.

letter[16] dated October 31, 2013 terminating her employment; hence, she amended the complaint to one for illegal dismissal.[17]

For their part, respondents averred that Aluag was legally dismissed on the ground of loss of trust and confidence. They narrated that while reviewing loan documents in June 2013, they found rampant violations of BIRMPC's by-laws, rules, and regulations. When they interviewed Aluag, the latter admitted the infractions, but claimed that Flores had full knowledge of them.[18] Thereafter, respondents sent letters to Aluag and other concerned employees to explain why no charges should be filed against them and, later on, placed them under preventive suspension. To validate the extent of the irregularities and financial damage, they engaged the services of an external accountant who, in her report, observed that the cashier failed to regularly report post-dated checks received and did not observe proper monitoring of the checks' due dates to be deposited. The accountant also pointed out that some checks were not deposited at all.[19] In light of the foregoing, BIRMPC terminated Aluag's employment effective November 1, 2013 on the ground of loss of trust and confidence for the following infractions: (*a*) acceptance of accommodation checks; (*b*) failure to deposit checks on due dates, pursuant to a member/debtor's request; (*c*) not reporting to the manager those checks with no sufficient funds or which accounts had already closed; and (*d*) failure to act upon returned checks.[20]

The LA Ruling

In a Decision[21] dated May 26, 2014, the LA dismissed the complaint for illegal dismissal for lack of merit. Nonetheless,

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[16] NLRC records, p. 30.

[17] *Rollo*, p. 39. See also CA *rollo*, Vol. I, pp. 64-65.

[18] See *rollo*, p. 40 and CA *rollo*, Vol. I, p. 66.

[19] See *rollo*, p. 41 and CA *rollo*, Vol. I, p. 67.

[20] *Rollo*, p. 40 and CA *rollo*, Vol. I, p. 66.

[21] CA *rollo*, Vol. I, pp. 62-73.

it ordered BIRMPC to pay Aluag the amounts of ₱15,416.48 and ₱3,557.65, representing her 13th month pay and service incentive leave pay for the year 2013, respectively.[22]

The LA found that as a company cashier, Aluag held a position of trust and confidence. Thus, her commission of various infractions, which substantially contributed damages to BIRMPC's financial position in the amount of ₱35,526,599.77, constituted sufficient basis for loss of trust and confidence.[23] Further, the LA found that BIRMPC accorded Aluag her procedural due process rights, as two (2) notices were accordingly served on her, namely: (*a*) the written notice containing a statement of the cause of her dismissal, in order to afford her an opportunity to be heard and defend herself; and (*b*) the written notice of dismissal dated October 31, 2013, stating clearly the reasons therefor.[24] The foregoing notwithstanding, the LA still ordered BIRMPC to pay Aluag her 13th month pay and service incentive leave pay for 2013, absent any showing that the latter had already paid the same.[25]

Aggrieved, Aluag appealed[26] to the NLRC.

The NLRC Ruling

In a Decision[27] dated October 16, 2014, the NLRC reversed the LA ruling, and found Aluag to have been illegally dismissed. Accordingly, it ordered BIRMPC to pay Aluag the amounts of ₱250,187.18 as backwages, ₱370,000.00 as separation pay, ₱15,416.48 as 13th month pay, ₱3,557.65 as service incentive leave pay, and ten percent (10%) of the total monetary awards as attorney's fees.[28]

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[22] *Id*. at 73.

[23] See *id*. at 70-72.

[24] *Id*. at 72.

[25] *Id*. at 73.

[26] See Memorandum of Appeal dated July 25, 2014; *id*. at 199-219.

[27] *Rollo*, pp. 52-62.

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

Contrary to the LA's findings, the NLRC found that Aluag's perceived infractions were insufficient to dismiss her on the ground of loss of trust and confidence because they were not violations of her ministerial duties as cashier.[29] *First*, she merely received the accommodation checks which were previously verified by the loan processors and approved by the general manager. The NLRC noted that Aluag was neither clothed with the authority to inquire into the validity of the checks nor authorized to exercise discretion in receiving them.[30] *Second*, Aluag's tasks did not include depositing the checks and no evidence was presented to show that the general manager assigned this task to her. The NLRC added that no evidence was presented to prove that the non-deposit of checks was due to debtors' requests.[31] *Third*, Aluag did submit a report on dishonored checks to the general manager upon his request. The NLRC observed that this function is not among the routine duties of a cashier.[32] *Fourth,* the NLRC stated that acting upon returned or dishonored checks is not among Aluag's duties, but is a discretionary function of the general manager.[33] As regards the external accountant's report, the NLRC added that regular submission of reports and monitoring of the checks' status are not part of Aluag's routine responsibilities.[34]

Respondents moved for reconsideration,[35] which was denied in a Resolution[36] dated December 29, 2015.

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

[30] See *id*. at 58.

[31] See *id*. at 59.

[32] *Id*.

[33] See *id*. at 59-60.

[34] *Id*. at 60.

[35] See motion for reconsideration dated October 28, 2014 (CA *rollo*, pp. 230-233) and a supplemental motion for reconsideration dated November 26, 2014 (CA *rollo*, pp. 235-238).

[36] *Rollo*, pp. 49-61. Penned by Presiding Commissioner Joseph Gerard E. Mabilog with Commissioner Isabel G. Panganiban-Ortiguerra, concurring. Notably, the original *ponente* of the case, Commissioner Nieves Vivar-De Castro, dissented from the Assailed Resolution.

Dissatisfied, respondents filed a petition for *certiorari*[37] before the CA.

The CA Ruling

In a Decision[38] dated August 25, 2016, the CA reversed and set aside the NLRC ruling and reinstated that of the LA. It held that Aluag was validly dismissed on the grounds of serious misconduct and loss of trust and confidence, which were applicable because she served as a cashier – a position requiring trust and confidence.[39] The CA rejected Aluag's argument that she was not liable for the charges levelled against her as these were beyond her duties as a cashier. It explained that Aluag could have been more circumspect by refusing to accept accommodation checks which appear to be unfunded based on BIRMPC's records, and denying to issue checks after verifying that the loan applicant still had unpaid loans with BIRMPC. Most importantly, she is tasked to deposit the checks on their due dates, which she failed to do.[40] Thus, the CA concluded that it would already be inimical to BIRMPC's interests should it be compelled to keep Aluag within its employ.[41]

Further, the CA held that BIRMPC complied with the two (2)-notice rule, as the evidence show that Aluag was properly notified of the charges against her to enable her to respond thereto, and of her eventual termination from service.[42]

Aluag moved for reconsideration,[43] but was denied in a Resolution[44] dated November 9, 2016; hence, the instant petition.

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[37] Dated March 8, 2016. *Id*. at 3-37.

[38] *Rollo*, pp. 36-51.

[39] See *id*. at 47.

[40] See *id*. at 45-46.

[41] *Id*. at 48.

[42] *Id*. at 49.

[43] See motion for reconsideration dated September 12, 2016, CA *rollo*, Vol. II, pp. 425-442.

[44] *Rollo*, pp. 111-112.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly reversed and set aside the NLRC ruling, and accordingly held that BIRMPC had just cause to terminate Aluag's employment.

The Court's Ruling

The petition is without merit.

I.

At the outset, the Court notes that, as aptly pointed out by respondents in their Comment,[45] Aluag failed to serve a copy of the instant petition to the CA as required by Section 3, Rule 45 of the Rules of Court.[46] Resultantly, the CA issued a Resolution[47] dated March 24, 2017 stating that its Decision had become final and executory on December 17, 2016, and, consequently, the Entry of Judgment[48] was issued in due course. While Aluag filed a Motion and Manifestation[49] dated June 13, 2017 before the CA explaining that the aforesaid omission was merely due to inadvertence and praying that the Entry of Judgment be set aside, records are bereft of any showing that the CA acted on the same.

Sections 3 and 5 of Rule 45, in relation to Section 5 (d) of Rule 56,[50] of the Rules of Court, and item 2 of Revised Circular

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[45] Dated June 9, 2017; *id*. at 69-97.

[46] See *id*. at 79-81.

[47] *Id*. at 99.

[48] *Id*. at 100.

[49] *Id*. at 102-104.

[50] Section 5 (d), Rule 56 of the Rules of Court states:

Sec. 5. *Grounds for dismissal of appeal.* – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x x x x x x

(d) failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition[.]

No. 1-88[51] require a proof of service to the lower court concerned to be attached to the petition filed before the Court. The first two (2) provisions read:

Sec. 3. *Docket and other lawful fees; proof of service of petition.* – Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition. **Proof of service of a copy thereof on the lower court concerned** and on the adverse party **shall be submitted together with the petition.**

Sec. 5. *Dismissal or denial of petition.* – **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, deposit for costs, **proof of service of the petition**, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof.**

x x x x x x x x x (Emphases supplied)

In the present case, Aluag failed to serve a copy of the petition to the CA, thereby giving the Court sufficient ground to deny her petition. Her omission even led to the CA's issuance of the resolution declaring the finality of its Decision. Verily, Aluag's procedural mishap is a sufficient ground for the dismissal of her petition, especially since the rules themselves expressly say so.[52] "Time and again, it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner

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[51] Supreme Court Resolution dated May 16, 1991 Re: Amendment to Circular No. 1-88, paragraph 2 of which reads thus:

(2) *Form and Service of petition*

A petition filed under Rule 45, or under Rule 65, or a motion for extension **may be denied outright if** it is not clearly legible, or **there is no proof of service on the lower court,** tribunal, or office concerned and on the adverse party in accordance with Sections 3, 5 and 10 of Rule 13, attached to the petition or motion for extension when filed." (Emphases and underscoring supplied)

[52] See *Indoyon, Jr. v. CA*, 706 Phil. 200, 212 (2013).

and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost,"[53] as in this case.

In any event, the Court deems it appropriate to address the issue anent the validity of Aluag's dismissal so as to finally resolve the main controversy at hand.

II.

Preliminarily, "the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.[54]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[55]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported

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[53] *Manila Mining Corporation v. Amor*, G.R. No. 182800, April 20, 2015, 756 SCRA 15, 23-24; citations omitted.

[54] See *University of Santo Tomas* (*UST*) *v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, citing *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016.

[55] See *University of Santo Tomas* (*UST*) *v. Samahang Manggagawa ng UST*, *id*., citing *Gadia v. Sykes Asia, Inc.*, G.R. No. 209499, January 28, 2015, 748 SCRA 633, 641.

by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[56]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC, as the latter tribunal's finding that BIRMPC illegally dismissed Aluag patently deviates from the evidence on record, as well as settled legal principles of labor law.

A valid dismissal necessitates compliance with both substantive and procedural due process requirements. Substantive due process mandates that an employee may be dismissed based only on just or authorized causes under the Labor Code. On the other hand, procedural due process requires the employer to comply with the requirements of notice and hearing before effecting the dismissal.[57]

In the present case, BIRMPC alleged that Aluag's employment was terminated on the ground of loss of trust and confidence under Article 297 (c) (formerly Article 282 [c])[58] of the Labor Code. The requisites for the existence of such ground are as follows: (*a*) the employee concerned holds a position of trust

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[56] See *University of Santo Tomas* (*UST*) *v. Samahang Manggagawa ng UST*, *id.*; citations omitted.

[57] See *Puncia v. Toyota Shaw/Pasig, Inc.*, G.R. No. 214399, June 28, 2016, 795 SCRA 32, 45, citing *Alps Transportation v. Rodriguez*, 711 Phil. 122, 129 (2013).

[58] As amended and renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also DOLE Department Advisory No. 01, Series of 2015, entitled "RENUMBERING THE LABOR CODE OF THE PHILIPPINES, AS AMENDED."

and confidence; and (*b*) he performs an act that would justify such loss of trust and confidence.[59]

Anent the first requisite, case law instructs that "[t]here are two (2) classes of positions of trust: *first*, managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and *second,* fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence."[60] Being a cashier charged with the collection of remittances and payments, Aluag undoubtedly occupied a position of trust and confidence. Notably, in holding a position requiring full trust and confidence, Aluag "gave up some of the rigid guarantees available to ordinary employees."[61]

As regards the second requisite, the employee's act causing the loss of confidence must be **directly related to her duties** rendering her woefully unfit to continue working for the employer.[62] "In dismissing a cashier on the ground of loss of confidence, it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making [her] unworthy of the trust and confidence reposed in [her]."[63]

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[59] See *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016, 782 SCRA 418, 93, citing *Alvarez v. Golden Tri Bloc, Inc.*, 718 Phil. 415, 425 (2013).

[60] See *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr., id.* at 436-437.

[61] *P.J. Lhuillier, Inc. v. Velayo*, 746 Phil. 781, 798 (2014).

[62] See *Philippine National Construction Corporation v. Matias*, 497 Phil. 476, 478 (2005).

[63] *Cañeda v. Philippine Airlines, Inc.*, 545 Phil. 560, 564 (2007).

If there is sufficient evidence showing that the employer has ample reason to dismiss her, labor tribunals should not deny the employer the authority to dismiss her from employment.[64]

In the present case, one of the infractions that BIRMPC cited in justifying Aluag's dismissal is her failure to deposit checks on due dates, pursuant to a member/debtor's request.[65] While the NLRC held that Aluag was not directly responsible for depositing the checks on their due dates and that no evidence was presented showing that her failure to deposit the checks resulted from the request of debtors,[66] a more thorough and circumspect review of the records reveals that the task of depositing checks on due dates definitely falls within Aluag's scope of responsibilities. For one, the list of Aluag's responsibilities as cashier stated that she was tasked to "have all collections deposited everyday."[67] For another, she admitted in her explanation that she received verified post-dated checks for safekeeping and deposit to the bank when due.[68] More relevantly, she likewise admitted in her explanation that she opted not to deposit matured checks upon request of the debtors.[69]

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[64] See *id*.

[65] See *rollo*, p. 40.

[66] See *id*. at 59 where the NLRC held:

> As borne by the Complainant's [(referring to Aluag)] responsibilities, **depositing of checks is not one of the functions which the Complainant is bound to perform.** No evidence was presented below proving that the General Manager assigned the task of depositing checks to the Complainant, which may prove responsibility to the same. **There is likewise no evidence that the non-depositing of checks resulted from requests of the debtors**. (Emphases supplied)

In response, respondents argued that collections in cash should be deposited on the day of receipt, but if the payments were made in post-dated checks, necessarily, these checks should be deposited on their due dates. (See *id*. at 96).

[67] *Rollo,* p. 17.

[68] NLRC records, p. 25.

[69] *Id*. Aluag stated in her explanation, thus:

The external auditor's report[70] also confirmed Aluag's infraction, thus:

> The cashier failed to regularly report Post-Dated Checks (PDC) received and **did not observe proper monitoring of checks due to be deposited.** There are checks which were not deposited at all.[71] (Emphasis supplied)

Verily, her failure to deposit the checks on their due dates means that she failed to deliver on her task to safeguard BIRMPC's finances. It is also well to note that she was not given any discretion to determine whether or not to deposit the checks. Under these circumstances, BIRMPC had ample reason to lose the trust and confidence it reposed upon her and thereby, terminate her employment. Indeed, it would be most unfair to require an employer to continue employing a cashier whom it reasonably believes is no longer capable of giving full and wholehearted trustworthiness in the stewardship of company funds,[72] as in this case. In fine, BIRMPC had just cause for Aluag's dismissal.

On the issue of procedural due process, the Court exhaustively discussed the matter in *Puncia v. Toyota Shaw/Pasig, Inc.*[73] as follows:

> Anent the issue of procedural due process, Section 2 (I), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code

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> *Ang hindi ko pagdeposito ng nagmatured na* checks *ng* member *na nagisyo sa atin ay dahil nakiusap naman sila na huwag muna ipasok kasi wala pa raw pondo yong* check *nila. Wla (sic) naman po akong ibang intensiyon doon para hindi ito ipasok sa* bank. *Ito po ay pinaaalam ko din sa* General Manager *na nakikiusap sila na huwag muna ipasok pero pagdating naman po ng petsa na sinabi nila ipinapasok ko rin naman ito sa bank. Yong iba pinapalitan nila ng* Cash *at binabayaran sa akin tapos isyuhan ko sila ng resibo.*

[70] Dated October 11, 2013. *Id.* at 27-29.

[71] *Id.* at 28.

[72] *P.J. Lhuillier, Inc. v. Velayo, supra* note 61, at 799, citing *Metro Drug Corporation v. NLRC,* 227 Phil. 121, 127 (1986).

[73] *Supra* note 57.

provides for the required standard of procedural due process accorded to employees who stand to be terminated from work, to wit:

> Section 2. *Standard of due process; requirements of notice.* – In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 [now Article 297] of the Labor Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The foregoing standards were then further refined in *Unilever Philippines*, *Inc. v. Rivera*[74] as follows:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1) **The first written notice to be served on the employees should contain the specific causes or grounds for termination against them**, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence,

[74] 710 Phil. 124, 136-137 (2013).

and decide on the defenses they will raise against the complaint. **Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice.** Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) **After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment**."[75] (Emphases and underscoring in the original)

Proceeding from the foregoing parameters, the Court finds that BIRMPC sufficiently observed the standards of procedural due process in effecting Aluag's dismissal, considering that it: (*a*) issued a written notice specifying her infractions; (*b*) granted her ample opportunity to be heard or explain her side when she was required to submit an explanation; and (*c*) served a written notice of termination after verifying the infraction committed. Notably, the Court held in *Perez v. Philippine*

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[75] *Puncia v. Toyota Shaw/Pasig, Inc.*, *supra* note 57, at 47-49.

Telegraph and Telephone Company[76] that procedural due process is met even without an actual hearing as long as the employee is accorded a chance to explain her side of the controversy, as what happened here.

All told, the CA correctly held that the NLRC gravely abused its discretion, and hence, reinstated the LA ruling, considering that BIRMPC observed Aluag's procedural and substantive due process rights in dismissing her from employment.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated August 25, 2016 and the Resolution dated November 9, 2016 of the Court of Appeals in CA-G.R. SP No. 144608 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 230357. December 6, 2017]

ALMARIO F. LEONCIO, *petitioner, vs.* **MST MARINE SERVICES (PHILS.), INC./ARTEMIO V. SERAFICO and/or THOME SHIP MANAGEMENT PTE., LTD.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED IN AND RESOLVED BY THE COURT ON PETITIONS BROUGHT UNDER RULE 45 OF THE RULES

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[76] See 602 Phil. 522 (2009).

OF CIVIL PROCEDURE; EXCEPTIONS.— The rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to re-examine and calibrate the evidence on record. Exceptions abound, however. This Court may delve into and resolve factual issues when the lower fora come up with conflicting positions or where the CA manifestly overlooked undisputed relevant facts, which, if properly considered, would support a different conclusion, as in this case.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFIT AND COMPENSATION; FAILURE TO REVEAL A MEDICAL PROCEDURE THAT WAS INTENDED TO IMPROVE THE EMPLOYEE'S HEALTH CONDITION DOES NOT AMOUNT TO A CONCEALMENT OF A PRE-EXISTING "ILLNESS OR CONDITION" THAT CAN BAR THE EMPLOYEE'S CLAIM FOR DISABILITY BENEFIT AND COMPENSATION; CASE AT BAR.— The resolution of this case pivots on the construction of the phrase "illness or condition" in Section 20 (E) of the 2010 POEA-SEC, x x x The rule is that where the law speaks in clear and categorical language, there is no room for interpretation; there is only room for application. Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Even then, Article 4 of the Labor Code is explicit that "all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor." This liberal interpretation of labor laws and rules have been applied to employment contracts by Article 1702 of the New Civil Code which mandates that "all labor contracts" shall likewise be construed in favor of the laborer. In this case, nothing can be plainer than the meaning of the word "illness" as referring to a disease or injury afflicting a person's body. By the doctrine of *noscitor a sociis,* "condition" likewise refers to the state of one's health. Neither of these words refers to a medical procedure undergone by a seafarer in connection with an "illness or condition" **already known** to the employer as far back as 2001. For this, the Court extends its full concurrence to the conclusion reached by the

Labor Arbiter that the employer cannot validly decry his supposed concealment and fraudulent misrepresentation of Leoncio's illness on account of the non-disclosure of the stenting procedure. x x x As the Court sees it, the so-called misrepresentation ascribed to the petitioner is more imaginary than real. As it is, the stenting procedure undergone by Leoncio on his LAD and LCX arteries is nothing more than **an attempt to discontinue the steady progression of his illness or condition—his CAD/HCVD, which was already known by his employers.** Simply, a stenting procedure is the "placement of a small wire mesh tube called a stent to help prop the artery open and decrease its chance of narrowing again." As it is, the procedure was intended to *improve* his health condition. Surely, the non-disclosure thereof does not diminish MST Marine's knowledge of the "illness or condition" he had already been diagnosed with since 2001. Undeniably then, Leoncio's failure to reveal the said procedure does not amount to a concealment of a pre-existing "illness or condition" that can bar his claim for disability benefit and compensation,

3. ID.; ID.; ID.; ID.; CARDIOVASCULAR DISEASE AS A COMPENSABLE WORK-RELATED CONDITION; THE POEA-SEC PROVIDES AS A CONDITION FOR A KNOWN CORONARY ARTERY DISEASE (CAD) TO BE COMPENSABLE THAT THERE IS PROOF THAT AN ACUTE EXACERBATION WAS PRECIPITATED BY THE UNUSUAL STRAIN OF THE SEAFARER'S WORK; ESTABLISHED IN CASE AT BAR.— Section 32-A of the POEA-SEC lists cardiovascular disease as a compensable work-related condition. Further, in several cases, cardiovascular disease, coronary artery disease, as well as other heart ailments, were held to be compensable. x x x The POEA-SEC provides as a condition for a known CAD to be compensable that there is proof that an acute exacerbation was precipitated by the unusual strain of the seafarer's work. Having worked as a seafarer for almost two decades and as a Chief Cook, no less, it can be fairly stated that petitioner was a "walking time bomb ready to explode towards the end of his employment days." In this instance, on May 25, 2014, petitioner already felt the onset of an attack, experiencing heavy chest pains, shortness of breath, numbness of the left portion of his face, and hypertensive reaction. He again experienced these in June 2014, and so was forced to disembark for an operation on June 8, 2014. To be

sure, it is more than reasonable to conclude that the risks present in his work environment precipitated the onset of the acute exacerbation of his heart condition. It is likewise a matter of judicial notice that seafarers are exposed to varying temperatures and harsh weather conditions as the ship crossed ocean boundaries. Worse, they are constantly plagued by homesickness and worry for being physically separated from their families for the entire duration of their contracts. Undoubtedly, this bears a great degree of emotional strain while making an effort to perform their jobs well. All told, the Court finds that petitioner proved, by substantial evidence, his right to be paid the disability benefits he claims.

APPEARANCES OF COUNSEL

Concepcion Concepcion Asinas & Associates for petitioner.
Retoriano & Olalia-Retoriano for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

By this petition for review under Rule 45 of the Rules of Court, petitioner Almario F. Leoncio (Leoncio) seeks the reversal of the Decision dated November 9, 2016 of the Court of Appeals (CA)[1] in CA-G.R. SP No. 142956, as reiterated in its Resolution of March 2, 2017, denying the petitioner's motion for reconsideration. The assailed CA Decision sustained an earlier decision of the National Labor Relations Commission (NLRC), which overturned that of the Labor Arbiter and denied the petitioner's claim for permanent total disability benefits.

Factual Antecedents

From the assailed Decision of the appellate court, the undisputed factual background of the case may be stated as follows:

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[1] Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Henri Jean Paul B. Inting.

Private respondent MST Marine Services (Phils.), Inc. (MST Marine) is a domestic manning agency, with private respondent Thome Ship Management Pte. Ltd (Thome) as one of its principals.[2]

Starting May 5, 1996 and for a period of more than eighteen (18) years thereafter, MST Marine repeatedly hired Leoncio to work for its principals, including Thome.[3]

On August 23, 2001, petitioner disembarked from M/V *Golden Stream*, owned by one of respondent's principals, and was repatriated to be treated for his Coronary Artery Disease/ Hypertensive Cardio-Vascular Disease (CAD/HCVD) by the company-designated physician. For two months, he received sickness allowance and was in the care and management of the company-designated physician. Thereafter, he was declared "fit to work" and redeployed by respondents on board M/V *Frontier Express*, albeit with a demotion in rank.[4]

After several more deployments from 2005, petitioner Leoncio was employed by respondents on January 27, 2014 as Chief Cook on board M/V *Knossos* for a period of nine (9) months under a POEA Standard Employment Contract (POEA-SEC). Prior to his embarkation, he underwent a pre-employment medical examination (PEME) and was declared "fit for sea duty."[5] Petitioner eventually boarded the vessel on February 5, 2014.[6]

While performing his duties on board M/V *Knossos* on May 25, 2014, Leoncio suddenly felt heavy chest pains, shortness of breath, numbness of the left portion of his face, and hypertensive reaction. The Master of the Vessel allowed him to rest and take medicine when Leoncio reported his condition.

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[2] *Rollo*, p. 63.

[3] *Id*.

[4] *Id*. at 7.

[5] *Id*. at 64.

[6] *Id.*

However, on June 2014, Leoncio again experienced the same symptoms. Hence, the Master of the Vessel asked respondent MST Marine to refer Leoncio for a medical check-up.[7]

On June 8, 2014, Leoncio was admitted to the Geelong Hospital in Australia where he was diagnosed with "unstable angina"[8] and subsequently, underwent "PCI (Percutaneous Coronary Intervention) to severe distal RCA (Right Coronary Artery)."[9]

In due course, Leoncio was medically repatriated to the Philippines on July 12, 2014.[10] Two days later, he was referred to the company-designated physician for post-employment medical examination and treatment of his coronary artery disease and hypertensive cardiovascular disease. He was then confined at the St. Luke's Medical Center for four days under the care of Dr. Elpidio Nolasco.[11]

While undergoing treatment, respondent MST Marine inquired from Dr. Nolasco regarding Leoncio's condition. In particular, MST Marine asked the doctor to check or confirm whether Leoncio had previously undergone stenting procedures.[12] On October 4, 2014, Dr. Nolasco confirmed that, indeed, Leoncio had previously undergone stenting procedure sometime in 2008 and that "there are stents found on the LAD [Left Anterior Descending] and LCS [Left Circumflex] arteries in the heart or in the coronary arteries."[13]

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[7] *Id*.

[8] *Id*., citing Medical Discharge Summary, Annex "J" of the Petition for *Certiorari* filed before the CA.

[9] *Id*.

[10] *Id.* at 65.

[11] *Id*., citing Certificate of Confinement dated August 28, 2014, Annex "K" of the Petition for *Certiorari* filed before the CA.

[12] *Id*.

[13] *Id*. at 65-66, citing Annex "M" of the Petition for *Certiorari* filed before the CA.

Based on this information, MST Marine cut off the medical and sickness allowances provided to Leoncio on the ground of his failure to declare during the PEME that he underwent a stenting procedure in 2009.[14] Petitioner then promptly consulted Dr. Ramon Reyes.[15] The latter issued a medical certificate dated October 24, 2014 declaring Leoncio unfit for work, viz:

> This is to certify that the said patient underwent emergency angioplasty last August 26, 2014. Based on his PEME he was declared as FIT FOR SEA DUTY because of NORMAL STRESS ECHO indicative that he has no stress induced ischemia or in layman's term CORONARY ARTERY DISEASE. Therefore, **upon evaluation of his cardiovascular history he is labelled as UNFIT for further sea duty and therefore compensable with Grade 1 impediment, the basis for which is IT IS WORK-RELATED** and he was declared as FIT from his PEME based on his NORMAL STRESS ECHO and that the lesions that underwent angioplasty are new and not of the previous PCI.[16]

Dr. Fernandez Alzate, an internal medicine-cardiologist at the St. Luke's Medical Center, echoed Dr. Reyes' findings in a medical certification dated October 28, 2014.[17]

On account of the doctors' findings that the lesions found in 2014 were new and not connected with the previous stents, Leoncio filed a complaint for permanent and total disability benefits against the private respondents.

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[14] *Id*. On this score, the CA's Decision states that the procedure was done in 2008.

[15] *Id*. at 66.

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

[17] *Id*. at 67, citing Medical Certificate dated October 28, 2014, Annex "O" of the Petition for *Certiorari* filed before the CA. It read:

> This is to certify that I have seen and examined Mr. Leoncio in my clinic. Patient has previous acute myocardial infarct on July 9, 2014 in Australia involving the Right Coronary Artery. 1 month after patient developed onset of chest heaviness. I was able to review his CD which showed severe lesion at the proximal LAD before the previously implanted stent last 2009. It could have been a case of disease progression. Advised risk factors and lifestyle modification.
>
> UNFIT FOR WORK

Ruling of the Labor Arbiter

In a Decision dated April 20, 2015, the Labor Arbiter rendered a decision finding for the petitioner. The dispositive portion of the Labor Arbiter decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents MST Marine Services (Phils.) and/or Thome Ship Management Pte. Ltd., jointly and severally to pay complainant the following:
>
> 1) Permanent and total disability benefits under the IBP-AMOSUP IMEC/TCCC CBA in the amount of UNITED STATED DOLLARS: ONE HUNDRED TWENTY-SEVEN THOUSAND NINE HUNDRED THIRTY-TWO (US$127,932.00) [or] on its peso equivalent at the time of payment;
>
> 2) Sickness allowance for two (2) months in the amount of US$1,440.00 at their Philippine peso equivalent at the time of payment.
>
> 3) Moral damages in the amount of US$1,000.00; and exemplary damages in the amount of US$1,000.00 at the time of actual payment.
>
> 4) Attorney's fees equivalent to ten percent (10%) of the total judgment award, or at their Philippine peso equivalent at the time of actual payment.
>
> All other claims are ordered dismissed.

The Labor Arbiter noted, as petitioner has insisted, that the respondents were already aware of the existence of Leoncio's coronary artery disease (CAD/HCVD) since 2001 but nonetheless reemployed and redeployed him to work for several more years. Thus, for the Labor Arbiter, petitioner's failure to disclose the stenting procedure in 2009 cannot bar his claim for permanent and total disability benefits. Further, the Labor Arbiter noted that the subject of the stenting procedure in 2009 were the Left Anterior Descending (LAD) and the Left Circumflex (LCX) arteries, which are distinct and different from the cause and subject of his angioplasty, and later repatriation, in 2014—the Right Coronary Artery (RCA).

Ruling of the NLRC

Respondents filed an appeal with the NLRC, which was granted in the tribunal's Decision of July 28, 2015. The *fallo* of the NLRC Decision reads:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The assailed Decision dated April 20, 2015 of the Labor Arbiter is REVERSED and SET ASIDE, and the Complaint is DISMISSED for lack of merit.[18]

Relying on this Court's ruling in *Status Maritime v. Spouses Delalamon*,[19] the NLRC held that Leoncio's concealment of the stenting procedure during the PEME is a misrepresentation that bars his right to any disability compensation or illness benefit under the POEA-SEC.[20] The NLRC paid no heed to Leoncio's argument that the respondent already knew of his coronary artery disease since 2001 when he was first medically repatriated on account thereof. The NLRC took the opinion that "a previous illness which occurred seven years prior to the 200[9] medical procedure should not be used as proof of [petitioner's] illness."[21]

The NLRC denied petitioner's motion for reconsideration in a Resolution dated September 24, 2014. Therefrom, respondent went on a Certiorari to the CA, in CA-G.R. SP No. 142956.

Ruling of the Court of Appeals

In the assailed Decision dated November 9, 2016, the appellate court ruled against Leoncio's entitlement to the benefits he claimed, and accordingly sustained the NLRC. The decretal portion reads:

> WHEREFORE, the foregoing considered, the Petition for Certiorari is DENIED. The Decision dated 28 July 2015 and Resolution dated

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[18] *Id.* at 28.

[19] G.R. No. 198097, July 30, 2014, 731 SCRA 390.

[20] *Rollo*, pp. 25-28.

[21] *Id.* at 28.

24 September 2015 of the NLRC in NLRC LAC No. 06-000498-15 (NLRC NCR-OFW-M-11-13791-14) are SUSTAINED.

Adopting the NLRC's recitation of facts and likewise citing *Status Maritime v. Spouses Delalamon*,[22] the legal conclusions reached by the NLRC were likewise adhered to by the CA in holding that Leoncio's concealment of the stenting procedure during the PEME bars his right to disability benefit under the POEA-SEC.[23] Besides a brief statement of Leoncio's argument that the respondents' knew of his condition given his medical repatriation in 2001, this fact was lost in the appellate court's discussion.

With his motion for reconsideration having been denied by the CA in its equally challenged Resolution of March 2, 2017, Leoncio is now with this Court via the present recourse, submitting the following issues for our consideration:

1. Whether the "stenting procedure done in 2009…" in [Petitioner's] left Coronary Arteries constitutes willful concealment and/or fraudulent misrepresentation under Section 20(E) of the POEA-SEC which would disqualify petitioner from claiming permanent total disability benefits under Section 20 (A) (6) of the 2010 POEA-SEC; and

2. Whether the work-relatedness of petitioner's pre-existing illness of Coronary Artery Disease/Hypertensive Cardio-Vascular Disease already known to respondents since 2001 can be set aside by the alleged concealment and/or misrepresentation of the 2009 stenting procedures on his left coronary arteries.

Respondents filed their Comment on the petition on August 7, 2017 contending in the main that petitioner's employment is contractual in nature so that he is required to divulge, during each PEME, "any pre-existing medical condition that he has, including past medical history that can assist the Respondents

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[22] *Supra*

[23] *Rollo*, pp. 71-74.

in arriving at an accurate decision as to whether or not he is fit for employment."[24]

Issue

Simply put, the main and decisive issue for resolution is whether petitioner committed a fraudulent misrepresentation that bars his recovery of total disability benefits.

Our Ruling

The Court resolves to grant the petition.

The rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. Exceptions abound, however.[25] This Court may delve into and resolve factual issues when the lower fora come up with conflicting positions or where the CA manifestly overlooked undisputed relevant facts, which, if properly considered, would support a different conclusion,[26] as in this case.

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[24] Comment, p. 15.

[25] (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (g) where the [CA] manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (h) where the findings of fact of the [CA] are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the [CA] are premised on absence of evidence but are contradicted by the evidence on record. *Republic of the Philippines v. Hon. Mangotara, et al.*, 638 Phil. 353, 421-422 (2010).

[26] *Id*.

No fraudulent misrepresentation

The resolution of this case pivots on the construction of the phrase "illness or condition" in Section 20(E) of the 2010 POEA-SEC, which states:

SECTION. 20 COMPENSATION AND BENEFITS

x x x x x x x x x

E. A seafarer who knowingly conceals a pre-existing **illness or condition** in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions. (emphasis supplied)

For the petitioner, the phrase refers to his "coronary artery disease." Thus, given his medical repatriation on account thereof in 2001, for which he was compensated and even demoted by MST Marine, he cannot be considered to have concealed the same during his PEME in 2014. Respondents, on the other hand, maintain that the phrase includes and requires the disclosure of the stenting procedure on his LAD and LCX arteries undergone by the petitioner in 2009. Thus, for the respondents, Leoncio's failure to reveal the same is a fraudulent misrepresentation that bars his entitlement to any compensation or benefit under the POEA-SEC and/or their CBA.

The rule is that where the law speaks in clear and categorical language, there is no room for interpretation; there is only room for application.[27] Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.[28] Even then, Article 4 of the Labor Code is explicit that "all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and

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[27] *Guy v. Guy*, G.R. No. 184068, April 19, 2016, citing *United Paracale Mining Co., Inc. v. Dela Rosa*, G.R. Nos. 63786-87, 70423, 73931, April 7, 1993, 221 SCRA 1080.

[28] *Id*.

regulations, shall be resolved in favor of labor." This liberal interpretation of labor laws and rules have been applied to employment contracts[29] by Article 1702 of the New Civil Code[30] which mandates that "all labor contracts" shall likewise be construed in favor of the laborer.

In this case, nothing can be plainer than the meaning of the word "illness" as referring to a disease or injury afflicting a person's body. By the doctrine of *noscitor a sociis*, "condition" likewise refers to the state of one's health. Neither of these words refers to a medical procedure undergone by a seafarer in connection with an "illness or condition" **already known** to the employer as far back as 2001. For this, the Court extends its full concurrence to the conclusion reached by the Labor Arbiter that the employer cannot validly decry his supposed concealment and fraudulent misrepresentation of Leoncio's illness on account of the non-disclosure of the stenting procedure. The Labor Arbiter observed:

> In arguing that complainant is not entitled to the claimed disability compensation, respondents in the main point to the fraudulent misrepresentation for non-disclosure of previous LAD and LCX stents patent undergone in 2009 to PEME doctors in all his PEMEs with respondents.
>
> However, a closer review of the alleged concealment of previous LAD and LCX stents patent undergone in 2009 is actually not a concealment nor a fact relevant to the cause of complainant's repatriation on July 12, 2014 due to an entirely different illness, i.e., Percutaneous Coronary Intervention (PCI) to severe distal Right Coronary Artery (RCA) with one drug-eluting stent, First, the lesions of the previous LAD and LCX stents patent undergone in 2009 [are] different from the lesions that underwent angioplasty in Australia before his second medical repatriation on July 12, 2014. Second, after the LAD and LCX stents (Angioplasty) done in 2009, complainant was re-deployed on respondents' various vessels for five years without

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[29] *Marcopper Mining Corporation v. National Labor Relations Commission*, G.R. No. 103525, March 29, 1996, 255 SCRA 322.

[30] Article 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

medical issues relating to the angioplasty done in 2009. Most importantly, **the record is undisputed that complainant was first medically repatriated in 2001 due to Hypertension and Angina Pectoris where he was declared "Fit for Sea Duty" after undergoing treatment by the company-designated physician. He was initially demoted for one contract after said medical repatriation but reverted to his old position as Chief Cook on subsequent deployments. Respondents cannot claim there was misrepresentation by the complainant on account of his medical repatriation in 2001 which contradicts their alleged lack of knowledge of said pre-existing illnesses of the complainant. These circumstances indubitably establish respondents' awareness of complainant's impaired medical condition despite being considered fit to work**. Hence, the allegations of fraudulent misrepresentation by the respondents cannot be given credence.[31] (emphasis supplied)

This Court's pronouncement in *Status Maritime v. Spouses Delalamon*[32] relied upon by both the NLRC and the CA scarcely anchors their ruling. In that case, the seafarer was disqualified from receiving benefits for knowingly concealing his diabetes—a pre-existing *disease*; not a prior procedure or surgery.

Even this Court's ruling in *Vetyard Terminals & Shipping Services, Inc. v. Suarez*,[33] cited by the appellate court in its assailed Resolution, is not decisive in the present controversy. In *Vetyard*, the seafarer knowingly misrepresented during his PEME that "he was merely wearing corrective lens" when in fact he had a previous cataract operation that could have caused the condition he was diagnosed with. As the Court noted in that case: "*pseudophakia* indicates presence of artificial intraocular lens (IOL) replacing normal human lens and *posterior capsule opacification* is the most frequent complication of cataract surgery. By their nature, these ailments are more the result of eye disease than of one's kind of work." Clearly, in *Vetyard*, the materiality of the active misrepresentation by the seafarer to the disability he complained of, which was not

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[31] *Rollo*, pp. 19-20.

[32] *Supra* note 19.

[33] G.R. No. 199344, March 5, 2014.

heretofore known to the employer, cannot be more pronounced. What is more, there is nothing in *Vetyard* to indicate that the seafarer's employers knew that he had suffered from cataract. This spells the substantial disparity between the case at bar and *Vetyard*.

As the Court sees it, the so-called misrepresentation ascribed to the petitioner is more imaginary than real. As it is, the stenting procedure undergone by Leoncio on his LAD and LCX arteries is nothing more than **an attempt to discontinue the steady progression of his illness or condition—his CAD/HCVD, which was already known by his employers**. Simply, a stenting procedure is the "placement of a small wire mesh tube called a stent to help prop the artery open and decrease its chance of narrowing again."[34] As it is, the procedure was intended to *improve* his health condition. Surely, the non-disclosure thereof does not diminish MST Marine's knowledge of the "illness or condition" he had already been diagnosed with since 2001. Undeniably then, Leoncio's failure to reveal the said procedure does not amount to a concealment of a pre-existing "illness or condition" that can bar his claim for disability benefit and compensation.

That the nature of petitioner's employment is contractual is immaterial to the issue in this case. For surely, the knowledge acquired by MST Marine regarding the medical condition of a seafarer is not automatically wiped out and obliterated upon the expiration of a contract and the execution of another. Instead, the knowledge and information previously acquired by MST Marine, as agent, is imputed to its principals.[35] The latter cannot, therefore, deny knowledge of petitioner's medical condition and so refuse to pay his benefits.

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[34] *See* <https://www.mayoclinic.org/tests-procedures/coronary-angioplasty/home/ovc-20241582> last accessed October 30, 2017.

[35] See *Rovels Enterprises, Inc. v. Ocampo*, G.R. No. 136821, October 17, 2002, 391 SCRA 176; *Air France v. Court of Appeals, et al.*, 211 Phil. 601 (1983), cited in *Sunace International Management Services, Inc. v. National Labor Relations Commission*, 515 Phil. 779, 788 (2006).

Presumption of Work Relation

With the foregoing disquisition, what is left for this Court is to determine whether his illness or condition is work-related.

Section 32-A of the POEA-SEC lists cardiovascular disease as a compensable work-related condition. Further, in several cases, cardiovascular disease, coronary artery disease, as well as other heart ailments, were held to be compensable.[36] A few of these rulings were summarized in *Magsaysay Mitsui OSK Marine, Inc. v. Bengson*,[37] as follows:

> In many cases decided in the past, this Court has held that cardiovascular disease, coronary artery disease, and other heart ailments are compensable. Thus, in *Fil-Pride Shipping Company, Inc. v. Balasta*, severe 3-vessel coronary artery disease which the seaman contracted while serving as Able Seaman was considered an occupational disease. In *Villanueva, Sr. v. Baliwag Navigation, Inc.*, it was held that the 2000 POEA-SEC considers heart disease as an occupational disease. In *Jebsens Maritime, Inc. v. Undag*, the Court held that hypertensive cardiovascular disease may be a compensable illness, upon proof. *In Oriental Shipmanagement Co., Inc. v. Bastol* and *Heirs of the late Aniban v. National Labor Relations Commission*, it was held that myocardial infarction as a disease or cause of death is compensable, such being occupational. *Iloreta v. Philippine Transmarine Carriers, Inc.* held that hypertensive cardiovascular disease/coronary artery disease and chronic stable angina are compensable. *Micronesia*

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[36] *Fil-Pride Shipping Co., Inc. v. Balasta*, G.R. No. 193047, March 3, 2014, 717 SCRA 624, citing *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670; *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010, 622 SCRA 352; *Iloreta v. Philippine Transmarine Carriers, Inc.*, G.R. No. 183908, December 4, 2009, 607 SCRA 796; *Micronesia Resources v. Cantomayor*, 552 Phil. 130 (2007); *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 347 (2006); and *Heirs of the late Aniban v. National Labor Relations Commission*, 347 Phil. 46 (1997), citing *Tibulan v. Hon. Inciong*, 257 Phil. 324 (1989); *Cortes v. Employees' Compensation Commission*, 175 Phil. 331 (1978); and *Sepulveda v. Employees' Compensation Commission*, 174 Phil. 242 (1978). See also *Magsaysay Mitsui OSK Marine, Inc. v. Bengson*, 745 Phil. 313, 330 (2014).

[37] *Supra* note 36.

Resources v. Cantomayor stated that a finding of coronary artery disease entitles the claimant — a seaman Third Officer — to disability compensation. In *Remigio v. National Labor Relations Commission*, the Court held that the claimant — a musician on board an ocean-going vessel — was entitled to recover for suffering from coronary artery disease. In *Sepulveda v. Employees' Compensation Commission*, it was declared that the employee's illness, myocardial infarction, was directly brought about by his employment as schoolteacher or was a result of the nature of such employment.

The POEA-SEC provides as a condition for a known CAD to be compensable that there is proof that an acute exacerbation was precipitated by the unusual strain of the seafarer's work. Having worked as a seafarer for almost two decades and as a Chief Cook, no less, it can be fairly stated that petitioner was a "walking time bomb ready to explode towards the end of his employment days."[38] In this instance, on May 25, 2014, petitioner already felt the onset of an attack, experiencing heavy chest pains, shortness of breath, numbness of the left portion of his face, and hypertensive reaction.[39] He again experienced these in June 2014, and so was forced to disembark for an operation on June 8, 2014. To be sure, it is more than reasonable to conclude that the risks present in his work environment precipitated the onset of the acute exacerbation of his heart condition. It is likewise a matter of judicial notice that seafarers are exposed to varying temperatures and harsh weather conditions as the ship crossed ocean boundaries. Worse, they are constantly plagued by homesickness and worry for being physically separated from their families for the entire duration of their contracts. Undoubtedly, this bears a great degree of emotional strain while making an effort to perform their jobs well.[40]

All told, the Court finds that petitioner proved, by substantial evidence, his right to be paid the disability benefits he claims.

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[38] *Government Service Insurance System v. Alcaraz*, 703 Phil. 91, 100 (2013).

[39] *Id*.

[40] See *Fil-Pride Shipping*, *supra* note 36.

Thus, the NLRC, under the present circumstances, committed grave abuse of discretion in reversing the ruling of the Labor Arbiter. Accordingly, in affirming the NLRC's decision, the CA committed a reversible error in not finding that the NLRC committed an error of jurisdiction.

WHEREFORE, in the light of these considerations, We **GRANT** the petition for review on certiorari filed by the petitioner. Accordingly, We **REVERSE** and **SET ASIDE** the November 9, 2016 Decision and March 2, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 142956, and hereby **REINSTATE** the Labor Arbiter's Decision dated April 20, 2015.

SO ORDERED.

Leonen and *Martires, JJ.,* concur.

Bersamin and *Gesmundo, JJ.,* on leave.

SECOND DIVISION

[G.R. No. 223833. December 11, 2017]

JOSHUA CASANAS *y* CABANTAC a.k.a. JOSHUA GERONIMO *y* LOPEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; LACK OF JURISDICTION MAY BE QUESTIONED AT ANY STAGE OF THE PROCEEDINGS.— Time and again, it has been held that "the

jurisdiction of a court may be questioned at any stage of the proceedings. Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. So that, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."

2. ID.; ID.; PROSECUTION OF OFFENSES; IN CRIMINAL CASES, VENUE AND JURISDICTION SHALL BE PLACED EITHER WHERE THE OFFENSE WAS COMMITTED OR WHERE ANY OF ITS ESSENTIAL INGREDIENTS TOOK PLACE; CASE AT BAR.— In criminal cases, venue is jurisdictional in that a court cannot exercise jurisdiction over a person charged with an offense committed outside its limited territory. As such, when it becomes apparent that the crime was committed outside the territorial jurisdiction of the court, the case must be dismissed for want of jurisdiction. x x x The venue and jurisdiction over criminal cases shall be placed either where the offense was committed or where any of its essential ingredients took place. x x x [I]t is evident that the crime of Carnapping, including all the elements thereof – namely, that: (*a*) there is an actual taking of the vehicle; (*b*) the vehicle belongs to a person other than the offender himself; (*c*) the taking is without the consent of the owner thereof, or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and (*d*) the offender intends to gain from the taking of the vehicle – did not occur in Valenzuela City, but in Marilao, Bulacan. While the Court notes that Casanas was indeed arrested in Valenzuela City while in the possession of the subject motorcycle, the same is of no moment, not only because such is not an element of the crime, but more importantly, at that point in time, the crime had long been consummated. Case law provides that "'unlawful taking' or *apoderamiento* is the taking of the motor vehicle without the consent of the owner, or by means of violence against

or intimidation of persons, or by using force upon things. **It is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same**."

3. ID.; ID.; JUDGMENTS; A VOID JUDGMENT IS NOT A DECISION IN CONTEMPLATION OF LAW, HENCE NOT EXECUTORY AND CANNOT CONSTITUTE A BAR TO ANOTHER CASE BY REASON OF *RES JUDICATA*; CASE AT BAR.— In this case, the Information alleges that Casanas committed the crime of Carnapping within the territorial jurisdiction of the RTC-Valenzuela. However, such allegation in the Information was belied by the evidence presented by the prosecution, particularly, Calderon's own statements in the *Sinumpaang Salaysay* dated August 21, 2012 he executed before the Valenzuela City Police Station as well as his testimony during trial. x x x [I]t is clear that the RTC-Valenzuela had no authority to take cognizance of the instant case as the crime was committed outside its territorial jurisdiction. Consequently, the RTC-Valenzuela ruling convicting Casanas of the crime charged, as well as the CA ruling upholding the same, is null and void for lack of jurisdiction. It is well-settled that "where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*," as in this case. In fine, Criminal Case No. 874-V-12 is hereby dismissed on the ground of lack of jurisdiction. The dismissal of this case, however, shall not preclude the re-filing of the same criminal case against Casanas before the proper tribunal which has territorial jurisdiction over the same, *i.e.*, the courts in Marilao, Bulacan.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of 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 July 28, 2015 and the Resolution[3] dated January 11, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 35835, which affirmed the Decision[4] dated May 15, 2013 of the Regional Trial Court of Valenzuela City, Branch 269 (RTC-Valenzuela) in Criminal Case No. 874-V-12 finding petitioner Joshua Casanas *y* Cabantac, a.k.a. Joshua Geronimo *y* Lopez (Casanas) guilty beyond reasonable doubt of the crime of Carnapping, defined and penalized under Section 2 of Republic Act No. (RA) 6539, otherwise known as the "Anti-Carnapping Act of 1972," as amended.

The Facts

On August 22, 2012, an Information[5] was filed before the RTC-Valenzuela charging Casanas of the crime of Carnapping, the accusatory portion of which reads:

> That on or about August 12, 2012, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously take and carry away with him one (1) Racal motorcycle with plate number 7539IJ without the consent of its owner CHRISTOPHER CALDERON y DORIGON, to the damage and prejudice of the said complainant.
>
> CONTRARY TO LAW.[6]

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[1] *Rollo*, pp. 10-29.

[2] *Id.* at 30-38. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda concurring.

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

[4] *Id*. at 53-57. Penned by Presiding Judge Emma C. Matammu.

[5] *Id*. at 79.

[6] *Id*.

The prosecution alleged that at around 9 o'clock in the evening of August 14, 2012, private complainant Christopher Calderon (Calderon) was about to go inside the public market in Marilao, Bulacan when a passenger arrived and wanted to ride his tricycle, made up of a Racal motorcycle with plate number 7539IJ (subject motorcycle) and a sidecar.[7] Casanas volunteered to drive Calderon's tricycle for the passenger, to which Calderon obliged. However, Casanas no longer returned the tricycle to Calderon, prompting the latter to report the incident to police authorities in the afternoon of the next day.[8]

A few days later, or on August 19, 2012, the Valenzuela Police Station received a report that a suspected stolen motorcycle was being sold in Karuhatan, Valenzuela City.[9] When Police Officer 2 Harvy Arañas (PO2 Arañas) and Police Officer 1 Elbern Chad De Leon (PO1 De Leon) responded to the report, they saw a man, later on identified as Casanas, standing beside what turned out to be the subject motorcycle.[10] The police officers introduced themselves to Casanas and asked for proof of ownership of the motorcycle, but Casanas could not provide any. PO1 De Leon then frisked Casanas and found a knife in the latter's possession.[11] Thereafter, they brought Casanas, the subject motorcycle, and the knife to the police station. Upon further investigation, the police officers discovered that the subject motorcycle was registered under Calderon's name. The next day, Calderon went to the police station and recovered the subject motorcycle.[12]

For his part, while Casanas admitted that Calderon owned the subject motorcycle, he denied stealing the same. He averred that he only borrowed the subject motorcycle on August 18,

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[7] See *id*. at 31.

[8] *Id*. at 31-32.

[9] *Id*. at 54.

[10] *Id*. See also pp. 31-32.

[11] *Id*. at 32.

[12] *Id*.

2012, but he was unable to return it on that date as he had a drinking session with his friends.[13] The next day, he was on his way home onboard the subject motorcycle when policemen blocked his way and forcibly took him to the police station. Thereat, a police officer purportedly took a knife from his drawer, which led petitioner to believe that he was being investigated and detained because of the said knife.[14]

The RTC-Valenzuela Ruling

In a Decision[15] dated May 15, 2013, the RTC-Valenzuela found Casanas guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for the indeterminate period of fourteen (14) years and eight (8) months, as minimum, to fifteen (15) years, as maximum.[16]

The RTC-Valenzuela held that the prosecution had established all the elements of the crime charged, considering that: (*a*) Calderon allowed petitioner to drive the subject motorcycle, which was then attached to a sidecar; (*b*) Casanas did not return the subject motorcycle within the agreed period; and (*c*) Casanas continued to use the same for his personal use, thereby exhibiting his intent to gain. In this regard, the RTC-Valenzuela ruled that while Casanas's possession of the subject motorcycle was lawful in the beginning, such possession became unlawful when he failed to return the same to Calderon in accordance with their agreement.[17]

Aggrieved, Casanas appealed[18] to the CA.

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[13] *Id*. at 54.

[14] *Id*. at 54-55. See also p. 32.

[15] *Id*. at 53-57.

[16] *Id*. at 57.

[17] See *id*. at 55-56.

[18] See Brief for the Appellee dated May 29, 2014; *id*. at 60-71.

The CA Ruling

In a Decision[19] dated July 28, 2015, the CA affirmed the RTC-Valenzuela ruling *in toto*. Aside from upholding the RTC-Valenzuela's findings, the CA likewise pointed out that initially, Casanas borrowed a tricycle from Calderon; but when he was apprehended, only the subject motorcycle without the sidecar was recovered from him.[20] In this regard, the CA ruled that such removal of the sidecar from the subject motorcycle bolsters the conclusion that Casanas indeed intended to appropriate for himself the subject motorcycle. Further, the CA disregarded Casanas's excuses for failing to return the subject motorcycle on time, as he did not bother to get in touch with Calderon either to ask permission for an extended possession of the subject motorcycle, or for assistance when the police officer apprehended him for being unable to present the motorcycle's registration papers.[21]

Undaunted, Casanas moved for reconsideration[22] but the same was denied in a Resolution[23] dated January 11, 2016; hence, this petition.[24]

The Issues Before the Court

The issues for the Court's resolution are whether or not: (*a*) the RTC-Valenzuela had jurisdiction over the case; and (*b*) the CA correctly upheld Casanas's conviction for the crime of Carnapping.

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[19] *Id*. at 30-38.

[20] See *id*. at 36.

[21] *Id*.

[22] See Motion for Reconsideration dated September 7, 2015; *id*. at 72-76.

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

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

The Court's Ruling

In the petition, Casanas primarily argues that the RTC-Valenzuela had no jurisdiction over the case, as the alleged carnapping happened in Marilao, Bulacan, and not in Valenzuela City, Metro Manila where he was arrested, charged, and tried.[25] On the other hand, the Office of the Solicitor General maintains that Casanas is already estopped from questioning the jurisdiction of the RTC-Valenzuela as he not only failed to move for the quashal of the Information based on such ground, he also voluntarily submitted himself to the jurisdiction of the RTC-Valenzuela by freely participating in the trial of the instant case.[26]

The petition is meritorious.

Time and again, it has been held that "the jurisdiction of a court may be questioned at any stage of the proceedings. Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. So that, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."[27]

In criminal cases, venue is jurisdictional in that a court cannot exercise jurisdiction over a person charged with an offense committed outside its limited territory.[28] As such, when it

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[25] See *id*. at 16-21.

[26] See *id*. at 101-102.

[27] *Heirs of Fernando v. De Belen*, 713 Phil. 364, 371 (2013); citations omitted.

[28] *Treñas v. People*, 680 Phil. 368, 380 (2012).

becomes apparent that the crime was committed outside the territorial jurisdiction of the court, the case must be dismissed for want of jurisdiction.[29] In *Navaja v. De Castro*,[30] the Court held:

> It is a fundamental rule that **for jurisdiction to be acquired by courts in criminal cases the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court**. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. **And once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.**[31] (Emphases and underscoring supplied)

In this relation, Sections 10 and 15 (a), Rule 110 of the 2000 Revised Rules of Criminal Procedure, also state that:

> Section 10. *Place of commission of the offense.* – The complaint or information is sufficient if it can be understood from its allegations that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court, unless the particular place where it was committed constitutes an essential element of the offense charged or is necessary for its identification.
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> x x x x x x x x x
>
> Section 15. *Place where action is to be instituted.* –
>
> (a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.

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[29] *Id.*, citing *Isip v. People*, 552 Phil. 786, 801-802 (2007).

[30] 761 Phil. 142 (2015).

[31] *Id.* at 150, citing *Foz, Jr. v. People*, 618 Phil. 120, 129-130 (2009).

The venue and jurisdiction over criminal cases shall be placed either where the offense was committed or where any of its essential ingredients took place. Otherwise stated, the venue of action and of jurisdiction are deemed sufficiently alleged where the Information states that the offense was committed or some of its essential ingredients occurred at a place within the territorial jurisdiction of the court.[32]

In this case, the Information[33] alleges that Casanas committed the crime of Carnapping within the territorial jurisdiction of the RTC-Valenzuela. However, such allegation in the Information was belied by the evidence presented by the prosecution, particularly, Calderon's own statements in the *Sinumpaang Salaysay*[34] dated August 21, 2012 he executed before the Valenzuela City Police Station as well as his testimony during trial. Pertinent portions of the *Sinumpaang Salaysay* read:

> TANONG: Bago ang lahat ay maari mo bang sabihin sa akin ang iyong tunay na pangalan at iba pang mapapagkakilanlan sa iyong tunay na pagkatao?
> SAGOT: Ako po si Christopher Calderon y Doligon, 25 taong gulang, may-asawa, tricycle driver, nakatira sa B3 L5 Northville 4B Lamabakin, **Marilao, Bulacan**.
>
> T: Bakit ka naririto ngayon sa aming tanggapan at nagbibigay ng salaysay?
> S: Para po magsampa ng demanda.
>
> T: Sino naman ang idedemanda mo?
> S: Siya po. (At this juncture, affiant is pointing to [a] male person who when asked replied as Joshua Casanas y Cabantac, 21 years old, tricycle driver, of Manzano Subdivision, Ibayo, **Marilao, Bulacan**)

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[32] *Id*. at 151, citing *Union Bank of the Philippines v. People*, 683 Phil. 108, 116 (2012).

[33] *Rollo*, p. 79.

[34] Records, pp. 12-13.

T: Kailan at saan naman ninakaw nitong si Joshua ang tricycle mo?
S: Noon pong ika 14 ng Agosto 2012 sa ganap ng ika 9:00 ng gabi sa palengke ng Marilao, Bulacan.

T: Sa ikaliliwanag ng pagsisiyasat na ito, maari mo bang isalaysay ang tunay na pangyayari?
S: Bale ganito po kasi iyon, sa oras, lugar at petsa na nabanggit ko sa itaas ay bumili ako ng ulam sa loob ng palengke, nakaparada ang tricycle ko sa labas ng palengke. Nilapitan ako ni Joshua at hiniram sa akin ang susi ng aking tricycle at sinabi na mayroon daw sasakay kaya ang ginawa ko ay ipinahiram ko sa kanya at umalis na siya at magmula noon ay hindi na siya muling bumalik dala ang aking tricycle.

T: Ano ang ginawa mo pagkatapos kung meron man?
S: Hinanap ko po siya at nang hindi ko na siya makita sa lugar namin ay nagreport ako sa himpilan ng pulisya sa **Marilao, Bulacan** kung saan naiblotter ang pangyayari.[35] (Emphases and underscoring supplied)

During his direct examination, Calderon similarly stated:

Q: Do you still remember where you were on August 14, 2012 at around 9:00 in the evening?
A: In a market.

Q: In what market where (*sic*) you then?
A: Marilao, sir.

Q: What happened when you were in Marilao?
A: I was about to go to the market to buy something.

Q: What happened next when you were at the market to buy something?
A: There is a passenger.

Q: Who is that passenger?
A: About to board the tricycle.

Q: What happened next when the passenger was about to board the tricycle?
A: I lend the key of my motorcycle.

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[35] *Id*. at 12.

Q: To whom did you lend the key of your motorcycle?
A: To Joshua, sir.

Q: Could you tell us the full name of this Joshua?
A: Joshua Casanas.

Q: If this Joshua Casanas to whom you lend the key of your motorcycle would be shown to you, would you be able to identify Joshua?
A: Yes, sir.

Q: Could you please point to this Joshua?
A: Him, sir.

x x x x x x x x x

Q: What happened next after you lend the key to Joshua Casanas?
A: I waited for him, sir.

Q: Where did you wait?
A: In the market, sir.

Q: What happened next when you were waiting for Joshua Casanas in the same market?
A: He did not return, sir.

Q: How long did you wait?
A: The whole night, sir.

Q: When Joshua did not return anymore, what did you do next?
A: The following day in the afternoon I went to the city hall.

Q: Of what town or city did you go to?
A: Marilao, sir.

Q: What happened when you went to the City Hall of Marilao?
A: I gave a statement, sir.[36] (Emphases and underscoring supplied)

From the foregoing, it is evident that the crime of Carnapping, including all the elements thereof – namely, that: (*a*) there is an actual taking of the vehicle; (*b*) the vehicle belongs to a person other than the offender himself; (*c*) the taking is without the consent of the owner thereof, or that the taking was committed

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[36] TSN dated October 1, 2012; *id*. at 60-62.

by means of violence against or intimidation of persons, or by using force upon things; and (*d*) the offender intends to gain from the taking of the vehicle[37] – did not occur in Valenzuela City, but in Marilao, Bulacan. While the Court notes that Casanas was indeed arrested in Valenzuela City while in the possession of the subject motorcycle, the same is of no moment, not only because such is not an element of the crime, but more importantly, at that point in time, the crime had long been consummated. Case law provides that "'unlawful taking' or *apoderamiento* is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. **It is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same**."[38]

In view of the foregoing, it is clear that the RTC-Valenzuela had no authority to take cognizance of the instant case as the crime was committed outside its territorial jurisdiction. Consequently, the RTC-Valenzuela ruling convicting Casanas of the crime charged, as well as the CA ruling upholding the same, is null and void for lack of jurisdiction. It is well-settled that "where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*,"[39] as in this case.

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[37] See *People v. Donio*, G.R. No. 212815, March 1, 2017, citing *People v. Bernabe*, 448 Phil. 269, 280 (2003).

[38] See *id*., citing *People v. Lagat*, 673 Phil. 351, 367 (2011). See also *People v. Bustinera*, 475 Phil. 190, 206 (2004), citing *People v. Obillo*, 411 Phil. 139, 150 (2001).

[39] See *Sebastian v. Spouses Cruz*, G.R. No. 220940, March 20, 2017, citing *Spouses Paulino v. CA*, 735 Phil. 448, 459 (2014).

In fine, Criminal Case No. 874-V-12 is hereby dismissed on the ground of lack of jurisdiction. The dismissal of this case, however, shall not preclude the re-filing of the same criminal case against Casanas before the proper tribunal which has territorial jurisdiction over the same, *i.e.*, the courts in Marilao, Bulacan.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 28, 2015 and the Resolution dated January 11, 2016 of the Court of Appeals in CA-G.R. CR No. 35835 are hereby **SET ASIDE**. Accordingly, Criminal Case No. 874-V-12 filed in the Regional Trial Court of Valenzuela City, Branch 269 is hereby **DISMISSED** for lack of jurisdiction, without prejudice to its re-filing in the proper court having territorial jurisdiction over the case.

SO ORDERED.

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

Reyes, Jr., J., on official leave.

FIRST DIVISION

[A.M. No. RTJ-16-2479. December 13, 2017]
(Formerly OCA IPI No. 10-3567-RTJ)

DANIEL G. FAJARDO, *complainant, vs.* **JUDGE ANTONIO M. NATINO, REGIONAL TRIAL COURT, BRANCH 26, ILOILO CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE CONSTITUTION MANDATES

THAT ALL CASES OR MATTERS BROUGHT BEFORE THE LOWER COURTS MUST BE DECIDED OR RESOLVED WITHIN THREE (3) MONTHS FROM DATE OF SUBMISSION; VIOLATED IN THE CASE AT BAR.— The pronouncement of this Court in *Re: Cases Submitted for Decision Before Hon. Baluma*, is relevant, thus: Article VIII, Section 15(1) of the 1987 Constitution provides that lower courts have three months within which to decide cases or resolve matters submitted to them for resolution. Moreover, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and decide cases within the required period. In addition, this Court laid down guidelines in SC Administrative Circular No. 13 which provides, *inter alia*, that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so." x x x This Court has constantly emphasized that the office of a judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties. It is undisputed in this case that Judge Natino failed to decide Civil Case No. 20225 within the 90-day period provided in the Constitution. Records show that the said case was filed on January 30, 1992, submitted for decision on January 23, 2007, and decided only in August 2010 or after more than three years from the time it was submitted for decision.

2. LEGAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER IS A LESS SERIOUS CHARGE; PENALTY.— We have previously ruled that the 90-day period within which to decide cases is mandatory. Consequently, failure of a judge to decide a case within the prescribed period is inexcusable and constitutes gross inefficiency warranting a disciplinary sanction. Certainly, We have considered the justifications and explanations on such delay, proffered by Judge Natino, which, while may be recognized as true and reasonable, are not sufficient to exonerate him from liability. To be sure, the mandatory nature of the period to decide cases provided under the Constitution cannot be considered as beyond the limits of acceptability or

fairness. We are also aware of the heavy case load of trial courts, as well as the different circumstances or situations that judges may encounter during trial such as those averred by Judge Natino in this case. Thus, the Court has allowed reasonable extensions of time needed to decide cases, but such extensions must first be requested from the Court. Whenever a judge cannot decide a case promptly, all he has to do is to ask the Court for a reasonable extension of time to resolve it. Unfortunately for Judge Natino, he did not avail of such remedy. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law. Under Section 9(1), Rule 140, as amended by Administrative Matter No. 01-8-10-SC, undue delay in rendering a decision or order is a less serious charge, which is penalized with suspension from office without salary and other benefits for not less than one nor more than three months or a fine of more than ₱10,000 but not more than ₱20,000.

APPEARANCES OF COUNSEL

Edgar L. Praile for respondent.

D E C I S I O N

TIJAM, *J.*:

For Our resolution is an Amended Letter Complaint[1] dated November 27, 2010, filed by Daniel G. Fajardo (Fajardo) of Panay News, Inc. against Judge Antonio M. Natino (Judge Natino), Presiding Judge, Regional Trial Court (RTC) of Iloilo City, Branch 26.

Fajardo charged Judge Natino with the violation of the Constitution and the Rules of Court relative to the latter's dispositions in Civil Case No. 20225[2] entitled *Letecia Jaroda Vda. De Lacson, et al. v. Leonardo E. Jiz, et al.*, a case for annulment of title and declaration of nullity of documents of

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[1] *Rollo*, pp. 2-8.

[2] *Id*. at 3.

sale with damages, and in Civil Case No. 07-29298[3] entitled *Panay News, Inc. v. Renato Magbutay and Rosendo Mejica*, an action for damages and injunction.

Specifically, as summarized by Investigating Justice Pamela Ann Abella Maxino (Justice Maxino) in her Report and Recommendation[4] dated June 4, 2015, Judge Natino was charged of the following, to wit:

1. Violation of the 90-day period within which a case is to be resolved, counted from the date it is submitted for decision, in relation to Civil Case No. 20225 x x x. Fajardo said that the case was submitted for decision on January 23, 2007, but a decision thereon was only issued on April 21, 2010. In effect, the decision was only rendered more than three years after the case was submitted for decision.

2. Delay in the release of the Decision. The decision in x x x Civil Case No. 20225 was dated April 21, 2010 but according to Fajardo, the decision was released only four months after, or on August 17, 2010.

3. Falsification of Certificate of Service, in that, notwithstanding the fact that Judge Natino failed to resolve the aforementioned case within 90 days, he continued to receive his salary.

4. Failure to resolve the matters covered in the Motion to Show Cause (Contempt), in relation to Civil Case No. 07-29298, x x x.

Fajardo stressed that in said case, Panay News filed on January 6, 2010, a motion to show cause for contempt against Mejica, for the latter's failure to comply with the Order dated October 23, 2009, ordering him to deposit ₱572,000.00.

The motion to show cause for contempt, according to Fajardo, was never acted upon by the RTC.

5. Entertaining a second motion for reconsideration, in relation to x x x Civil Case No. 07-29298. Fajardo said that while the Order dated October 23, 2009 was already final, Judge Natino entertained a second motion for reconsideration of said Order filed by Mejica, for him to deposit a lesser amount than ₱572,000.00, or only

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[3] *Id*. at 5.

[4] *Id*. at 923-936.

₱428,000.00. Judge Natino supposedly entertained a second motion for reconsideration so as to gain leverage in his request for a certain amount.[5]

Essentially, it is Fajardo's theory that the delay in the resolution and release of the decision in Civil Case No. 20225, and the order giving due course to a second motion for reconsideration in Civil Case No. 07-29298, were all due to Judge Natino's maneuver to obtain a part of the amount to be deposited in Civil Case No. 07-29298 from Panay News, Inc., whose counsel was Atty. Leonardo Jiz, a defendant in Civil Case No. 20225.

In his Comment[6] to the complaint, Judge Natino explained that the delay in the resolution of Civil Case No. 20225 was caused by circumstances beyond his control. He averred that he started drafting the decision in the said case sometime in April 2007 but the stenographer to whom he started dictating the same and who was to transcribe the stenographic notes of the case resigned and left for Manila. Then, his assumption as Acting Executive Judge in the same year and as a full-fledged Executive Judge in 2008 up to 2010, hampered his case disposal during the period as his tasks included hearing and deciding, not only regular cases, but also urgent administrative cases referred by the court administrator. Judge Natino also cited the renovation of the Iloilo City Hall from April 2010 to May 2010 and some bomb threats that the city hall experienced which led to the suspensions of work causing his case backlog. In addition, according to Judge Natino, power outages which frequented the city caused the loss of some changes made in the draft decision of Civil Case No. 20225 in that, while the same was finalized sometime in August 2010, the date appearing in the draft (April 21, 2010) remained unchanged.[7]

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[5] *Id*. at 923-925.

[6] *Id*. at 40-61.

[7] *Id*. at 42-43 and 925-926.

Judge Natino further justified the extended period of deciding Civil Case No. 20225 by averring that he was just being judicious in his actions, hence, he leaned more towards "quality of administration of justice" than mere "speedy disposition of cases."[8] Hence, it was Judge Natino's submission that the 90-day rule in deciding cases may be considered as directory and shall be considered mandatory only when the delay was attended by vexations, capricious, and oppressive delay.[9]

Judge Natino also denied the allegation on falsification of certificates of service, arguing that the circumstantial delay in rendering the decision in Civil Case No. 20225 did not necessarily mean that he falsified his certificates of service.[10]

As to the charges relating to Civil Case No. 07-29298, *i.e.*, failure to resolve matter on the Motion to Show Cause (for contempt) and giving due course to a second motion for reconsideration to gain leverage in his request for a certain amount from a party in that case, Judge Natino refuted the same by citing in full his Order dated October 18, 2010 in the said case. The said order stated the circumstances which led to the postponements of the subject motions' hearings, as well as the court's actions thereafter.[11]

In Our Resolution dated April 3, 2013, the complaint was then referred to the Executive Justice of the Court of Appeals, Cebu to be raffled to the Associate Justices therein for investigation, report, and recommendation.[12]

The case was eventually raffled to Justice Maxino. In the scheduled hearing during the investigation, only Judge Natino and his counsel appeared. Fajardo failed to attend hearings

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[8] *Id*. at 44.

[9] *Id*. at 45.

[10] *Id*. at 926.

[11] *Id*. at 45-54.

[12] *Id*. at 66.

despite notice. Thus, Judge Natino was allowed to testify and present documentary evidence in his defense during the hearings, which comprised of: (1) his medical records to show that he had health problems since 1990 and a medical certificate to show that he was admitted in the hospital from December 6 to 8, 2010; (2) evidence of his appointment as Executive Judge from 2008 to 2010 with indorsements and reports on the administrative cases that he heard as Executive Judge in addition to his regular case loads; (3) certification that the Iloilo City Hall was renovated from August 2009 to July 2010; (4) certification from the Panay Electric Company, stating that the area where Iloilo Hall of Justice was situated experienced a total of 201 power outages from January 2007 to August 2010; (5) his approved leave applications from 2007 to 2010 to prove that he followed all the civil service rules insofar as his attendance is concerned; (6) certification from the Office of the Court Administrator (OCA) dated January 30, 2015, stating that he had been filing his certificates of service since 2006; and (7) a copy of the Order dated October 18, 2010 in Civil Case No. 07-29298 to refute the charge that he did not act on Panay News, Inc.'s Motion to Show Cause, as well as the charge that he entertained a second motion for reconsideration.[13]

In her Report and Recommendation, Justice Maxino noted Fajardo's failure to appear in the hearings and to present evidence to support his allegations against Judge Natino. With that, the Investigating Justice found no merit in all charges against Judge Natino, except as regards the long overdue action in the resolution of Civil Case No. 20225, for want of evidence.[14]

As regards the charge that Judge Natino delayed the release of the decision in Civil Case No. 20225, the Investigating Justice found no proof to support the same and noted that there was no pattern in Judge Natino's actuation that says that he has been known and shown to have adhered to a practice of delaying release of decisions. What was clear, as shown in the subject

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[13] *Id.* at 928-929.

[14] *Id.* at 931.

decision, was that Judge Natino finished drafting the same on April 21, 2010. The Investigating Justice was convinced that the power outages which frequented the area had caused the confusion in the date of the subject decision and ruled that such inadvertence did not necessarily militate punishment or sanction but reminded judges to exercise prudence in writing every aspect of their decision.[15]

There was also no proof as to the alleged falsification of certificates of service as the questioned certificates were not presented in evidence.[16]

The allegation on the failure to act upon the Motion to Show Cause, as well as the imputation of corruption in entertaining a second motion for reconsideration in Civil Case No. 07-29298 were also unsubstantiated. According to the Investigating Justice, Judge Natino's October 18, 2010 Order in the said case showed the downright falsity of such charges.[17]

The Investigating Justice, however, found Judge Natino guilty of undue delay in rendering the decision in Civil Case No. 20225 despite consideration of Judge Natino's justifications and/or explanations on such delay. Hence, Justice Maxino recommended the imposition of a fine amounting to ₱20,000, with a stern warning that a repetition of the same or similar act in the future would be dealt with more severely.[18]

In its Memorandum dated July 12, 2016, the OCA adopted the Investigating Justice's findings and recommendations.[19]

The Issue

This Court is now burdened for its final action to resolve the matter, the only issue being: whether or not Judge Natino is guilty of the charges against him.

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[15] *Id*. at 931-932.

[16] *Id*. at 932.

[17] *Id*.

[18] *Id*. at 935.

[19] *Id*. at 954-959.

The Court's Ruling

The Court agrees with the findings and recommendations of the Investigating Justice, as adopted by the OCA except for the penalty charged.

Indeed, aside from Fajardo's uncorroborated allegations, the records are bereft of any proof to support the allegation on the intentional delay on the release of the Civil Case No. 20225, much less the charge of corruption against Judge Natino.

Likewise, the alleged falsification of certificates of service was never proven. There is no clear evidence that Judge Natino intentionally, if at all, falsified his monthly certificate of service. Admittedly, there may have been a delay in the rendition of a decision in this case but, as it appears, this is an isolated case, which cannot be the basis to sweepingly conclude that Judge Natino has been falsifying his certificates of service to continuously receive his salary.[20]

As to the charges on the alleged failure to act upon Panay News, Inc.'s motion, as well as, again, the imputation of corruption against Judge Natino in Civil Case No. 07-29298, the October 18, 2010 Order indeed comprehensively refuted said charges as it states in details the court's actions on the said motion.

On the undue delay in the resolution of Civil Case No. 20225, however, We agree with the finding of guilt against Judge Natino.

The pronouncement of this Court in *Re: Cases Submitted for Decision Before Hon. Baluma*,[21] is relevant, thus:

> Article VIII, Section 15(1) of the 1987 Constitution provides that lower courts have three months within which to decide cases or resolve matters submitted to them for resolution. Moreover, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and decide cases within the

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[20] *Esguerra v. Judge Loja*, 392 Phil. 532, 535 (2000).

[21] 717 Phil. 11 (2013).

required period. In addition, this Court laid down guidelines in SC Administrative Circular No. 13 which provides, *inter alia*, that "[j]udges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so." The Court has reiterated this admonition in SC Administrative Circular No. 3-99 which requires all judges to scrupulously observe the periods prescribed in the Constitution for deciding cases and the failure to comply therewith is considered a serious violation of the constitutional right of the parties to speedy disposition of their cases.

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[22]

This Court has constantly emphasized that the office of a judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties.[23]

It is undisputed in this case that Judge Natino failed to decide Civil Case No. 20225 within the 90-day period provided in the Constitution. Records show that the said case was filed on January 30, 1992, submitted for decision on January 23, 2007, and decided only in August 2010 or after more than three years from the time it was submitted for decision.

We have previously ruled that the 90-day period within which to decide cases is mandatory.[24] Consequently, failure of a judge

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

[23] *Duque v. Judge Garrido*, 599 Phil. 482, 487 (2009).

[24] *Id.*

to decide a case within the prescribed period is inexcusable and constitutes gross inefficiency warranting a disciplinary sanction.[25]

Certainly, We have considered the justifications and explanations on such delay, proffered by Judge Natino, which, while may be recognized as true and reasonable, are not sufficient to exonerate him from liability. To be sure, the mandatory nature of the period to decide cases provided under the Constitution cannot be considered as beyond the limits of acceptability or fairness. We are also aware of the heavy case load of trial courts,[26] as well as the different circumstances or situations that judges may encounter during trial such as those averred by Judge Natino in this case. Thus, the Court has allowed reasonable extensions of time needed to decide cases, but such extensions must first be requested from the Court.[27] Whenever a judge cannot decide a case promptly, all he has to do is to ask the Court for a reasonable extension of time to resolve it.[28] Unfortunately for Judge Natino, he did not avail of such remedy. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law.[29]

Under Section 9(1),[30] Rule 140, as amended by Administrative Matter No. 01-8-10-SC,[31] undue delay in rendering a decision

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[25] *Id*. at 489.

[26] *Re: Cases Submitted for Decision Before Hon. Baluma, supra* note 21, at 17.

[27] *Id*.

[28] *Duque v. Judge Garrido, supra* note 23, at 488.

[29] *Re: Cases Submitted for Decision Before Hon. Baluma*, *supra* note 21, at 17.

[30] "SEC. 9. *Less Serious Charges.* – Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

x x x x x x x x x."

[31] Re: Proposed Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges effective October 1, 2001.

or order is a less serious charge, which is penalized with suspension from office without salary and other benefits for not less than one nor more than three months or a fine of more than ₱10,000 but not more than ₱20,000.

However, depending on the circumstances of each case, the fine to be imposed may vary.[32] In one case, We imposed a fine of ₱10,000 against a judge who rendered a decision beyond the 90-day period, considering that it was his first offense.[33] In another case, the Court imposed a fine of only ₱2,000 on the same offense, considering the good record of the respondent-judge therein as regards case disposal, his length of service, and that it was his first infraction.[34] Hence, for this case, taking into account that this is Judge Natino's first infraction and that he already retired last June 30, 2016 after serving the Judiciary for more than 33 years, We find that the imposition of a fine amounting to ₱10,000 is commensurate to the offense that he committed.

WHEREFORE, premises considered, the Court finds Judge Antonio M. Natino, former judge of the Regional Trial Court of Iloilo City, Branch 26, **GUILTY** of undue delay in rendering a decision, for which he is **FINED** in the amount of Ten Thousand Pesos (₱10,000), to be deducted from his retirement benefits withheld by the Financial Management Office, Office of the Court Administrator. Thereafter, the balance of his retirement benefits shall be released without unnecessary delay.

SO ORDERED.

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

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[32] *Re: Cases Submitted for Decision Before Hon. Baluma, supra* note 21, at 18.

[33] *Duque v. Judge Garrido*, *supra* note 23, at 490-491.

[34] *Esguerra v. Judge Loja*, *supra* note 20, at 536.

THIRD DIVISION

[G.R. No. 186502. December 13, 2017]

CARLOS R. SAUNAR, *petitioner, vs.* **EXECUTIVE SECRETARY EDUARDO R. ERMITA and CONSTANCIA P. DE GUZMAN, CHAIRPERSON OF THE PRESIDENTIAL ANTI-GRAFT COMMISSION,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE DUE PROCESS; SATISFIED IF A PARTY IS GIVEN A REASONABLE OPPORTUNITY TO BE HEARD WHICH IS NOT CONFINED TO MERE SUBMISSION OF POSITION PAPERS AND/OR AFFIDAVITS; RIGHT TO A HEARING MAY BE INVOKED BY THE PARTIES TO THRESH OUT SUBSTANTIAL FACTUAL ISSUES; CASE AT BAR.— [D]ue process is a malleable concept anchored on fairness and equity. The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heard. Nevertheless, such "reasonable opportunity" should not be confined to the mere submission of position papers and/or affidavits and the parties must be given the opportunity to examine the witnesses against them. The right to a hearing is a right which may be invoked by the parties to thresh out substantial factual issues. It becomes even more imperative when the rules itself of the administrative body provides for one. While the absence of a formal hearing does not necessarily result in the deprivation of due process, it should be acceptable only when the party does not invoke the said right or waives the same. The Court finds that Saunar was not treated fairly in the proceedings before the PAGC. He was deprived of the opportunity to appear in all clarificatory hearings since he was not notified of the clarificatory hearing attended by an NBI official. Saunar was thus denied the chance to propound questions through the PAGC against the opposing parties, when the rules of the PAGC itself granted Saunar the

right to be present during clarificatory hearings and the chance to ask questions against the opposing party.

2. ID.; ID.; ID.; GROSS NEGLECT OF DUTY; REFERS TO NEGLIGENCE CHARACTERIZED BY ACTING OR OMITTING TO ACT IN A SITUATION WHERE THERE IS A DUTY TO ACT, NOT INADVERTENTLY, BUT WILLFULLY AND INTENTIONALLY; CHARGE OF GROSS NEGLECT OF DUTY NEGATED BY THE INTENT OF THE GOVERNMENT EMPLOYEE CONCERNED IN CASE AT BAR.— Gross Neglect of Duty, as an administrative offense, has been jurisprudentially defined. It refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, **but willfully and intentionally**; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. When Saunar was relieved as regional director of Western Mindanao and was ordered to report to the DDROS, he was obligated to report to the said office. He, however, was not assigned any specific task or duty and was merely advised to make himself readily available. Saunar often stayed in establishments near the NBI because he was also not provided a specific station or office. The same, nonetheless, does not establish that he willfully and intentionally neglected his duties especially since every time he was required to attend court hearings through special orders issued by the NBI, he would do so. Clearly, Saunar never manifested any intention to neglect or abandon his duties as an NBI official as he remained compliant with the lawful orders given to him. In addition, when he received the order reassigning him as the regional director for the NBI Bicol Office, he also obeyed the same. Saunar's continued compliance with the special orders given to him by his superiors to attend court hearings negate the charge of gross neglect of duty as it evinces a desire to fulfil the duties and responsibilities specifically assigned to him.

3. ID.; ID.; ID.; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E) THEREOF; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— Saunar's conduct neither constitutes a violation of Section 3(e) of R.A. No. 3019. In order to be liable for violating the said provision, the following elements must concur: (a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) that his

action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. As discussed above, Saunar's action was not tantamount to inexcusable or gross negligence considering that there was no intention to abandon his duty as an NBI officer.

4. ID.; ID.; ID.; ILLEGAL DISMISSAL; AN ILLEGALLY DISMISSED GOVERNMENT EMPLOYEE IS ENTITLED TO FULL BACKWAGES AND REINSTATEMENT, OR RETIREMENT BENEFITS, IN CASE OF RETIREMENT; CASE AT BAR.— On 11 August 2014, Saunar reached the compulsory age of retirement from government service. In view of Saunar's retirement, reinstatement to his previous position had become impossible. Thus, the only recourse left is to grant monetary benefits to which illegally dismissed government employees are entitled. x x x [I]n *Civil Service Commission v. Gentallan,* we categorically declared —This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement. x x x As it stands, Saunar should have been entitled to full back wages from the time he was illegally dismissed until his reinstatement. In view of his retirement, however, reinstatement is no longer feasible. As such, the back wages should be computed from the time of his illegal dismissal up to his compulsory retirement. In addition, Saunar is entitled to receive the retirement benefits he should have received if he were not illegally dismissed.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondents.

D E C I S I O N

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 20 October 2008 Decision[1] and the 17 February

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[1] *Rollo*, pp. 8-19.

2009 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 100157 which affirmed the 19 January 2007 decision[3] of the Office of the President *(OP)* dismissing petitioner Carlos R. Saunar *(Saunar)* from government service.

THE FACTS

Saunar was a former Regional Director of the National Bureau of Investigation *(NBI)*, which he joined as an agent in 1988. Through the years, he rose from the ranks and eventually became the Chief of the Anti-Graft Division. During his time as chief of the said division, Saunar conducted an official investigation regarding the alleged corruption relative to the tobacco excise taxes and involving then Governor Luis "Chavit" Singson, former President Joseph E. Estrada *(President Estrada)*, and former Senator Jinggoy Estrada. President Estrada's assailed involvement in the tobacco excise tax issue became one of the predicate crimes included in his indictment for plunder.[4]

In Special Order No. 4003[5] dated 27 August 2004, Saunar was reassigned as regional director for Western Mindanao based in Zamboanga City. During his stint as such, he received a subpoena *ad testificandum* from the Sandiganbayan requiring him to testify in the plunder case against President Estrada. After securing approval from his immediate supervisor Filomeno Bautista *(Bautista)*, Deputy Director for Regional Operation Services *(DDROS)*, Saunar appeared before the Sandiganbayan on several hearing dates, the last being on 27 October 2004.[6]

On 29 October 2004, then NBI Director Reynaldo Wycoco *(Wycoco)* issued Special Order No. 005033[7] informing Saunar

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[2] *Id*. at 21-22.

[3] *Id*. at 168-172; issued by Executive Secretary Eduardo R. Ermita.

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

[5] *Id*. at 226.

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

[7] *Id*. at 225.

that he was relieved from his duties as regional director for Western Mindanao and was ordered to report to the DDROS for further instructions. Pursuant thereto, he reported to Bautista on the first week of November 2004. Bautista informed Saunar that an investigation was being conducted over his testimony before the Sandiganbayan and that he should just wait for the developments in the investigation. In the meantime, Bautista did not assign him any duty and told him to be available at any time whenever he would be needed. He made himself accessible by staying in establishments near the NBI. In addition, he also attended court hearings whenever required.[8]

On 6 October 2006, Saunar received an order from the Presidential Anti-Graft Commission *(PAGC)* requiring him to answer the allegations against him in the PAGC Formal Charge dated 3 October 2006. The charge was based on a letter, dated 19 August 2005, from Wycoco recommending an immediate appropriate action against Saunar for his failure to report for work since 24 March 2005, without approved leave of absence for four (4) months.[9]

On 23 October 2006, Saunar was reassigned as regional director of the Bicol Regional Office. On 29 January 2007, he received a copy of the OP decision dismissing him from service.

The OP Decision

In its 19 January 2007 decision, the OP found Saunar guilty of Gross Neglect of Duty and of violating Section 3(e) of Republic Act *(R.A.)* No. 3019, and dismissed him from service. It pointed out that Saunar failed to report for work for more than a year which he himself admitted when he explained that he did not report for work because he had not been assigned any specific duty or responsibility. The OP highlighted that he was clearly instructed to report to the DDROS but he did not do so. It added that it would have been more prudent for Saunar to have reported

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[8] *Id*. at 41-44.

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

for work even if no duty was specifically assigned to him, for the precise reason that he may at any time be tasked with responsibilities. The OP, however, absolved Saunar from allegedly keeping government property during the time he did not report for work, noting that he was able to account for all the items attributed to him. The dispositive portion reads:

> **WHEREFORE**, premises considered, and as recommended by PAGC, Atty. Carlos R. Saunar, Regional Director, NBI, for Gross Neglect of Duty under Section 22(b), Rule XIV of the Omnibus Rules Implementing Book V of EO 292 in relation to Section 4(A) of RA 6713 and for violation of Section 3(e) of RA 3019, is hereby **DISMISSED** from government service with cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.[10]

Saunar moved for reconsideration but it was denied by the OP in its 12 June 2007 resolution.[11] Undeterred, he appealed before the CA.

The CA Ruling

In its assailed 20 October 2008 decision, the CA affirmed *in toto* the OP decision. The appellate court ruled that Saunar was not deprived of due process because he was informed of the charges against him and was given the opportunity to defend himself. It expounded that the absence of formal hearings in administrative proceedings is not anathema to due process.

On the other hand, the CA agreed that Saunar was guilty of Gross Neglect of Duty as manifested by his being on Absence Without Leave *(AWOL)* for a long period of time. The appellate court disregarded Saunar's explanation that he stayed in establishments nearby and that he had attended court hearings from time to time. In addition, the CA found that Saunar violated Section 3(e) of R.A. No. 3019 because public interest was prejudiced when he continued to receive his salary in spite of his unjustified absences. Thus, it ruled:

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[10] *Id*. at 172.

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

WHEREFORE, in view of the foregoing premises, the petition for review filed in this case is hereby **DENIED** and, consequently, DISMISSED for lack of merit, and the assailed Decision of the Executive Secretary Eduardo R. Ermita dated January 19, 2007 is hereby **AFFIRMED in toto**.[12]

Saunar moved for reconsideration but it was denied by the CA in its assailed 17 February 2009 resolution.

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER WAS NOT DENIED DUE PROCESS AND THAT RESPONDENTS DID NOT VIOLATE PETITIONER'S RIGHT TO SECURITY OF TENURE AS GUARANTEED IN THE CONSTITUTION; AND

II

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF RESPONDENTS THAT PETITIONER COMMITTED GROSS NEGLECT OF DUTY, HAD ABANDONED HIS POST AND WENT ON AWOL FOR HIS ALLEGED FAILURE TO REPORT FOR WORK FROM MARCH 24, 2005 TO MAY 2006.[13]

THE COURT'S RULING

The petition is meritorious.

Administrative due process revisited

Saunar bewails that he was deprived of due process, pointing out that no real hearing was ever conducted considering that the clarificatory conference conducted by the PAGC was a sham.

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[12] *Id*. at. 18.

[13] *Id*. at 66.

In addition, he asserts that he was not notified of the charges against him because he was only made aware of the allegations after the PAGC had formally charged him. Further, Saunar highlights the delay between the time PAGC received Wycoco's letter-complaint and when he received the formal charge from the PAGC.

Section 1, Article III of the Constitution is similar with the Fifth and Fourteenth Amendment of the American Constitution in that it guarantees that no one shall be deprived of life, liberty or property without due process of law. While the words used in our Constitution slightly differ from the American Constitution, the guarantee of due process is used in the same sense and has the same force and effect.[14] Thus, while decisions on due process of American courts are not controlling in our jurisdiction, they may serve as guideposts in the analysis of due process as applied in our legal system.

In American jurisprudence, the due process requirement entails the opportunity to be heard at a meaningful time and in a meaningful manner.[15] Likewise, it was characterized with fluidity in that it negates any concept of inflexible procedures universally applicable to every imaginable situation.[16]

In *Goldberg v. Kelly (Goldberg)*, [17] the United States *(U.S.)* Supreme Court ruled that due process requires the opportunity for welfare recipients to confront the witnesses against them at a pre-termination hearing before welfare benefits are terminated, to wit:

> The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. It is not enough that a welfare recipient may present his position to the decision maker in writing or second hand through his caseworker. x x x Moreover,

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[14] *Smith, Bell and Co v. Natividad*, 40 Phil. 136, 144-145 (1919).

[15] *Goldberg v. Kelly*, 397 U.S. 267 (1970).

[16] *Arnett v. Kennedy*, 416 U.S. 155 (1974).

[17] *Goldberg v. Kelly*, *supra* note 15 at 269.

written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are wholly unsatisfactory basis for decision.

In *Goldberg*, the U.S. Supreme Court went on to highlight the importance of confronting the witnesses presented against the claimant, *viz:*

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. x x x What we said in Greene v McElroy, 360 US 474, 496-497, 3 L ed 2d 1377, 1390, 1391, 79 S Ct 1400 (1959), is particularly pertinent here:
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> > Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment … This Court has be zealous to protect these rights from erosion. It has spoken out not only in criminal cases, but also in all types of cases where administrative actions were under scrutiny.
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> Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.[18]

In subsequent decisions, the U.S. Supreme Court clarified that a lack of formal hearing in the administrative level does

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[18] *Id*.

not violate procedural due process. In *Arnett v. Kennedy (Arnett)*,[19] a case involving the dismissal of a non-probationary federal employee, the US Supreme Court ruled that a trial-type hearing before an impartial hearing officer was not necessary before the employee could be removed from office because the hearing afforded by administrative appeal procedures after the actual dismissal is a sufficient requirement of the Due Process Clause.

In *Mathews v. Eldridge (Mathews)*,[20] the U.S. Supreme Court explained that an evidentiary hearing prior to termination of disability benefits is not indispensable, to wit:

> Only in Goldberg has the Court held that due process requires an evidentiary hearing prior to a temporary deprivation. It was emphasized there that welfare assistance is given to persons on the very margin of subsistence:
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> > The crucial factor in this context x x x is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits.
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> Eligibility for disability benefits, in contrast, is not based upon financial need. x x x
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> x x x x x x x x x
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> All that is necessary is that the procedures be tailored, in light of the decision to be made, to the "capacities and circumstances of those who are to be heard to insure that they are given a meaningful opportunity to present their case. In assessing what process is due in this case, substantial weight must be given to the good-faith judgments of the individuals charged by Congress with the administration of social welfare programs that the procedures they have provided assure fair consideration of the entitlement claims of individuals. This is especially so where, as here, the prescribed procedures not only provide the claimant with an effective process for asserting his claim prior to any administrative action, but also

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[19] *Arnett v. Kennedy*, *supra* note 16 at 164.

[20] 424 U.S. 341-342, 349 (1976).

assure a right to an evidentiary hearing, as well as to subsequent judicial review, before the denial of his claim becomes final.[21]

It is true that in both *Arnett and Mathews*, the U.S. Supreme Court ruled that due process was not violated due to the lack of a formal hearing before the employee was dismissed and welfare benefits were cancelled in the respective cases. Nevertheless, in both cases it was recognized that the aggrieved party had the opportunity for a hearing to settle factual or evidentiary disputes in subsequent procedures. In our legal system, however, the opportunity for a hearing after the administrative level may not arise as the reception of evidence or the conduct of hearings are discretionary on the part of the appellate courts.

In our jurisdiction, the constitutional guarantee of due process is also not limited to an exact definition.[22] It is flexible in that it depends on the circumstances and varies with the subject matter and the necessities of the situation.[23]

In the landmark case of *Ang Tibay v. The Court of Industrial Relations*,[24] the Court eruditely expounded on the concept of due process in administrative proceedings, to wit:

> The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character:
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> (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief

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[21] Citations omitted.

[22] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009).

[23] Bernas, *The 1987 Constitution of the Republic of the Philippines*: *A Commentary (2003)*, p. 114.

[24] 69 Phil. 635 (1940).

Justice Hughes, in Morgan v. U. S., 304 U. S. 1, 58 S. Ct. 773, 999, 82 Law. ed 1129, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (Chief Justice Hughes in Morgan v. U. S. 298 U. S. 468, 56 S. Ct. 906, 80 Law. ed. 1288.) In the language of this Court in Edwards vs. McCoy, 22 Phil., 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." (Edwards vs. McCoy, *supra*.) This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion (City of Manila vs. Agustin, G. R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), but the evidence must be "substantial." (Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 147, 57 S. Ct. 648, 650, 81 Law ed 965.) "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) . . . **The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order**. (Interstate Commerce Commission v. Baird, 194 U. S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 93, 33 S. Ct. 185, 187, 57 Law. ed. 431; United

States v. Abilene & Southern Ry. Co., 265 U. S. 274, 288, 44 S. Ct. 565, 569, 68 Law. ed. lola; Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 442, 50 S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)"

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Interstate Commence Commission vs. L. & N. R. Co., 227 U. S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. **It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.** Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute of any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers (Section 10, *ibid*.)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally impossible for the titular heads of the Court of Industrial Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.[25] (emphases supplied)

From the pronouncements of the Court in *Ang Tibay*, the fluid concept of administrative due process continued to progress. In *In Re: De Borja and Flores*,[26] the Court ruled that there was no denial of due process when the Public Service Commission cancelled the certificate of Jose de Borja to operate an ice plant without prior notice or hearing because a hearing was conducted after the applicant filed a motion for reconsideration. In *Manila Trading Supply Co. v. Philippine Labor Union*,[27] the Court ruled that due process was observed even if the report of the investigating officer was not set for hearing before the Court of Industrial Relations because during the investigation stage, the parties were given the opportunity to cross-examine and present their side to the case. It is noteworthy that in both cases due process was observed because the parties were given the chance for a hearing where they could confront the witnesses against them.

In *Gas Corporation of the Phils. v. Minister Inciong*,[28] the Court explained that there is no denial of due process when a party is afforded the right to cross-examine the witnesses but fails to exercise the same, to wit:

1. The vigor with which counsel for petitioner pressed the claim that there was a denial of procedural due process is inversely proportional to the merit of this certiorari and prohibition suit as is quite evident from the Comment of the office of the Solicitor General. **It is undoubted that the due process mandate must be satisfied by an administrative tribunal or agency. So it was announced**

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[25] *Id.* at 641-644.

[26] 62 Phil. 106 (1935).

[27] 70 Phil. 539 (1940).

[28] 182 Phil. 215 (1979).

by Justice Laurel in the landmark case of *Ang Tibay v. Court of Industrial Relations*. That is still good law. It follows, therefore, that if procedural due process were in fact denied, then this petition must prosper. **It is equally well-settled, however, that the standard of due process that must be met in proceedings before administrative tribunals allows a certain latitude as long as the element of fairness is not ignored**. So the following recent cases have uniformly held: *Maglasang v. Ople, Nation Multi Service Labor Union v. Agcaoili, Jacqueline Industries v. National Labor Relations Commission, Philippine Association of Free Labor Unions v. Bureau of Labor Relations, Philippine Labor Alliance Council v. Bureau of Labor Relations, and Montemayor v. Araneta University Foundation*. From the Comment of the office of the Solicitor General, it is quite clear that no imputation of arbitrariness can be justified. **The opportunity to present its side of the case was given both parties to the controversy. If, for reasons best known to itself, petitioner did not avail of its right to do so, then it has only itself to blame. No constitutional infirmity could then be imputed to the proceeding before the labor arbiter**.[29] (emphasis supplied)

Again, there was no denial of due process in the above-mentioned case because the parties were ultimately given the chance to confront the witnesses against them. It just so happened that therein petitioner failed to promptly avail of the same.

In *Arboleda v. National Labor Relations Commission (Arboleda)*,[30] the Court expounded that administrative due process does not necessarily connote full adversarial proceedings, to wit:

The requirement of notice and hearing in termination cases does not connote full adversarial proceedings as elucidated in numerous cases decided by this Court. Actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. **This is a procedural right which the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon.**[31] (emphasis supplied)

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[29] *Id*. at 220-221.

[30] 362 Phil. 383 (1999).

[31] *Id*. at 389.

Thus, while the Court in *Arboleda* recognized that the lack of a formal hearing does not necessarily transgress the due process guarantee, it did not however regard the formal hearing as a mere superfluity. It continued that it is a procedural right that may be invoked by the party. It is true that in subsequent cases,[32] the Court reiterated that a formal hearing is not obligatory in administrative proceedings because the due process requirement is satisfied if the parties are given the opportunity to explain their respective sides through position papers or pleadings. Nonetheless, the idea that a formal hearing is not indispensable should not be hastily thrown around by administrative bodies.

A closer perusal of past jurisprudence shows that the Court did not intend to trivialize the conduct of a formal hearing but merely afforded latitude to administrative bodies especially in cases where a party fails to invoke the right to hearing or is given the opportunity but opts not to avail of it. In the landmark case of *Ang Tibay*, the Court explained that administrative bodies are free from a strict application of technical rules of procedure and are given sufficient leeway. In the said case, however, nothing was said that the freedom included the setting aside of a hearing but merely to allow matters which would ordinarily be incompetent or inadmissible in the usual judicial proceedings.

In fact, the seminal words of *Ang Tibay* manifest a desire for administrative bodies to exhaust all possible means to ensure that the decision rendered be based on the accurate appreciation of facts. The Court reminded that administrative bodies have the active **duty to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy**. As such, it would be more in keeping with administrative due process that the conduct of a hearing be the general rule rather than the exception.

The observance of a formal hearing in administrative tribunal or bodies other than judicial is not novel. In *Perez v. Philippine*

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[32] *Mateo v. Romulo*, 799 Phil. 569 (2016); *Samalio v. Court of Appeals*, 494 Phil. 456 (2005); *Artezuela v. Maderazo*, 431 Phil. 15 (2002), citing *Arboleda v. National Labor Relations Commission*, *id.* at 141, and *Padilla v. Sto. Tomas*, 243 SCRA 155.

Telegraph and Telephone Company,[33] the Court opined that in illegal dismissal cases, a formal hearing or conference becomes mandatory when requested by the employee in writing, or substantial evidentiary disputes exists, or a company rule or practice requires it, or when similar circumstances justify it.

In *Joson v. Executive Secretary Torres (Joson)*,[34] the Court ruled that the respondent was denied due process after he was deprived of the right to a formal investigation with the opportunity to face the witnesses against him, to wit:

> The rejection of petitioner's right to a formal investigation denied him procedural due process. Section 5 of A.O. No. 23 provides that at the preliminary conference, the Investigating Authority shall summon the parties to consider whether they desire a formal investigation. **This provision does not give the Investigating Authority the discretion to determine whether a formal investigation would be conducted**. The records show that petitioner filed a motion for formal investigation. As respondent, he is accorded several rights under the law, to wit:
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> x x x x x x x x x
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> **Petitioner's right to a formal investigation was not satisfied when the complaint against him was decided on the basis of position papers.** There is nothing in the Local Government Code and its Implementing Rules and Regulations nor in A.O. No. 23 that provide that administrative cases against elective local officials can be decided on the basis of position papers. A.O. No. 23 states that the Investigating Authority may require the parties to submit their respective memoranda but this is only after formal investigation and hearing. **A.O. No. 23 does not authorize the Investigating Authority to dispense with a hearing especially in cases involving allegations of fact which are not only in contrast but contradictory to each other**. These contradictions are best settled by allowing the examination and cross-examination of witnesses. **Position papers are often-times prepared with the assistance of lawyers and their artful preparation can make the discovery of truth difficult**. The jurisprudence cited by the DILG in its order denying petitioner's motion for a formal

[33] 602 Phil. 522, 542 (2009).

[34] 352 Phil. 888 (1998).

investigation applies to *appointive* officials and employees. Administrative disciplinary proceedings against elective government officials are not exactly similar to those against appointive officials. In fact, the provisions that apply to elective local officials are separate and distinct from appointive government officers and employees. This can be gleaned from the Local Government Code itself.[35] (emphases and underlining supplied)

Thus, administrative bodies should not simply brush aside the conduct of formal hearings and claim that due process was observed by merely relying on position papers and/or affidavits. Besides, the Court in *Joson* recognized the inherent limitations of relying on position papers alone as the veracity of its contents cannot be readily ascertained. Through the examination and cross-examination of witnesses, administrative bodies would be in a better position to ferret out the truth and in turn, render a more accurate decision.

In any case, the PAGC violated Saunar's right to due process because it failed to observe fairness in handling the case against him. Its unfairness and unreasonableness is readily apparent with its disregard of its own rules of procedure.

The procedure to be observed in cases of clarificatory hearings is set forth under the PAGC rules of procedure. Rule III, Section 3 of its 2002 New Rules of Procedure states:

SECTION 3. *Action After Respondent's Response*.— If, upon evaluation of the documents submitted by both parties, it should appear either that the charge or charges have been satisfactorily traversed by the respondent in his Counter-Affidavit/verified Answer, or that the Counter-Affidavit/verified Answer does not tender a genuine issue, the Commissioner assigned shall forthwith, or after a clarificatory hearing to ascertain the authenticity and/or significance of the relevant documents, submit for adoption by the Commission the appropriate recommendation to the President.

The Commissioner assigned may, at his sole discretion, set a hearing to propound clarificatory questions to the parties or their witnesses if he or she believes that there are matters which need to be inquired

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[35] *Id.* at 923-925.

into personally by him or her. **In said hearing, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine**. **If they so desire, they may submit written questions to the Commissioner assigned who may propound such questions to the parties or witnesses concerned**. Thereafter, the parties be required, to file with the Commission, within an inextendible period of five (5) days,and serve on the adverse party his verified Position Paper. (emphasis and underlining supplied)

On the other hand, the 2008 Rules of Procedure amended the said provision to read as follows:

SECTION 7. *Clarificatory Hearings and Position Papers*. – After the filing of the Answer, the Commission may, at its discretion, conduct Clarificatory Hearings, in which case, subpoenas may be issued for the purpose. Should a Clarificatory Hearing be conducted, all parties relevant to the case shall be notified at least five (5) days before the date thereof. Failure of a party to appear at the hearing is not necessarily a cause for the dismissal of the complaint. A party who appears may be allowed to present evidence, even in the absence of the adverse party who was duly notified of the hearing.

During a Clarificatory Hearing, the Commission or the Hearing Officer, as the case may be, shall ask clarificatory questions to further elicit facts or information. **The parties shall be afforded the opportunity to be present and shall be allowed the assistance of counsel, but without the right to examine or cross-examine the party/witness being questioned**. **The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coursed through the Commission or the Hearing Officer, as the case may be, for determination of whether or not the proposed questions are necessary and relevant**. In such cases, the Commission or the Hearing Officer, as the case may be, shall ask the question in such manner and phrasing as may be deemed appropriate. (emphasis and underlining supplied)

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Under the PAGC rules of procedure, it is crystal clear that the conduct of clarificatory hearings is discretionary. Nevertheless, in the event that it finds the necessity to conduct one, there are rules to be followed. *One*, the parties are to be notified of the clarificatory hearings. *Two*, the parties shall be

afforded the opportunity to be present in the hearings without the right to examine witnesses. They, however, may ask questions and elicit answers from the opposing party coursed through the PAGC.

To reiterate, due process is a malleable concept anchored on fairness and equity. The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heard. Nevertheless, such "reasonable opportunity" should not be confined to the mere submission of position papers and/or affidavits and the parties must be given the opportunity to examine the witnesses against them. The right to a hearing is a right which may be invoked by the parties to thresh out substantial factual issues. It becomes even more imperative when the rules itself of the administrative body provides for one. While the absence of a formal hearing does not necessarily result in the deprivation of due process, it should be acceptable only when the party does not invoke the said right or waives the same.

The Court finds that Saunar was not treated fairly in the proceedings before the PAGC. He was deprived of the opportunity to appear in all clarificatory hearings since he was not notified of the clarificatory hearing attended by an NBI official. Saunar was thus denied the chance to propound questions through the PAGC against the opposing parties, when the rules of the PAGC itself granted Saunar the right to be present during clarificatory hearings and the chance to ask questions against the opposing party.

Even assuming that Saunar was not deprived of due process, we still find merit in reversing his dismissal from the government service.

Gross neglect of duty negated by intent of the government employee concerned

It is true that the dropping from the rolls as a result of AWOL is not disciplinary in nature and does not result in the forfeiture

of benefits or disqualification from re-employment in the government.[36] Nevertheless, being on AWOL may constitute other administrative offenses, which may result in the dismissal of the erring employees and a forfeiture of retirement benefits.[37] In the case at bar, Saunar was charged with the administrative offense of gross neglect of duty in view of his prolonged absence from work.

The OP found Saunar guilty of Gross Neglect of Duty and of violating Section 3(e) of R.A. No. 3019 because he was on AWOL from March 2005 to May 2006. He, however, bewails that from the time we was directed to report to the DDROS, he was never assigned a particular duty or responsibility. As such, Saunar argues that he cannot be guilty of gross neglect of duty because there was no "duty" to speak of. In addition, he assails that he had made himself readily available because he stayed in establishments near the NBI.

Gross Neglect of Duty, as an administrative offense, has been jurisprudentially defined. It refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, **but willfully and intentionally**; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[38]

When Saunar was relieved as regional director of Western Mindanao and was ordered to report to the DDROS, he was obligated to report to the said office. He, however, was not assigned any specific task or duty and was merely advised to make himself readily available. Saunar often stayed in establishments near the NBI because he was also not provided

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[36] *Municipality of Butig, Lanao del Sur v. Court of Appeals*, 513 Phil. 217, 235 (2005).

[37] *Masadao, Jr. v. Glorioso*, 345 Phil. 859, 864 (1997); *Loyao v. Manatad*, 387 Phil. 337, 344 (2000); *Leave Division-O.A.S, Office of the Court Administrator v. Sarceno*, 754 Phil. 1, 11 (2015).

[38] *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014).

a specific station or office. The same, nonetheless, does not establish that he willfully and intentionally neglected his duties especially since every time he was required to attend court hearings through special orders issued by the NBI, he would do so. Clearly, Saunar never manifested any intention to neglect or abandon his duties as an NBI official as he remained compliant with the lawful orders given to him. In addition, when he received the order reassigning him as the regional director for the NBI Bicol Office, he also obeyed the same. Saunar's continued compliance with the special orders given to him by his superiors to attend court hearings negate the charge of gross neglect of duty as it evinces a desire to fulfil the duties and responsibilities specifically assigned to him.

The Office of the Solicitor General *(OSG*), however, argues that Saunar's attendance at several court hearings pursuant to special orders does not exculpate him from the charge of gross neglect of duty. As highlighted by the OSG, the certificate of appearances Saunar presented account only for fourteen (14) days.[39]

Notwithstanding, Saunar's conduct neither constitutes a violation of Section 3(e) of R.A. No. 3019. In order to be liable for violating the said provision, the following elements must concur: (a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[40] As discussed above, Saunar's action was not tantamount to inexcusable or gross negligence considering that there was no intention to abandon his duty as an NBI officer.

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[39] *Rollo,* p. 484.

[40] *Consigna v. People*, 731 Phil. 108, 123-124 (2014).

Illegally dismissed government employees entitled to full back wages and retirement benefits

On 11 August 2014, Saunar reached the compulsory age of retirement from government service.[41] In view of Saunar's retirement, reinstatement to his previous position had become impossible. Thus, the only recourse left is to grant monetary benefits to which illegally dismissed government employees are entitled.

In *Campol v. Balao-as*,[42] the Court extensively expounded the rationale behind the grant of full back wages to illegally dismissed employees, to wit:

> **An employee of the civil service who is invalidly dismissed is entitled to the payment of backwages**. While this right is not disputed, there have been variations in our jurisprudence as to the proper fixing of the amount of backwages that should be awarded in these cases. We take this opportunity to clarify the doctrine on this matter.
>
> *Ginson* and *Regis* also involved the question of the proper fixing of backwages. Both cases awarded backwages but limited it to a period of five years. *Ginson* does not provide for an exhaustive explanation for this five-year cap. *Regis*, on the other hand, cites *Cristobal v. Melchor*, *Balquidra v. CFI of Capiz, Branch II,* 32 *Laganapan v. Asedillo*, *Antiporda v. Ticao*, and *San Luis v. Court of Appeals*, in support of its ruling. We note that these cases also do not clearly explain why there must be a cap for the award of backwages, with the exception of *Cristobal*. In *Cristobal,* a 1977 case, we held that the award of backwages should be for a fixed period of five years, applying by analogy the then prevailing doctrine in labor law involving employees who suffered unfair labor practice. We highlight that this rule has been rendered obsolete by virtue of Republic Act No. 6175 which amended the Labor Code. Under the Labor Code, employees illegally dismissed are entitled to the payment of backwages from the time his or her compensation was withheld up to the time of his or her actual reinstatement.

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[41] *Rollo*, p. 637.

[42] G.R. No. 197634, 28 November 2016.

In 2005, our jurisprudence on backwages for illegally dismissed employees of the civil service veered away from the ruling in *Cristobal.*

Thus, in *Civil Service Commission v. Gentallan,* we categorically declared —

> An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of her illegal dismissal up to her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement.

We repeated this ruling in the 2005 case *Batangas State University v. Bonifacio*, in the 2007 case *Romagos v. Metro Cebu Water District,* and in the 2010 case *Civil Service Commission v. Magnaye, Jr.*

Thus, the Decision, in refusing to award backwages from Campol's dismissal until his actual reinstatement, must be reversed. There is no legal nor jurisprudential basis for this ruling. **An employee of the civil service who is ordered reinstated is also entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits**. This is necessarily so because, in the eyes of the law, the employee never truly left the office. **Fixing the backwages to five years or to the period of time until the employee found a new employment is not a full recompense for the damage done by the illegal dismissal of an employee. Worse, it effectively** punishes an employee for being dismissed without his or her fault. In cases like this, the twin award of reinstatement and payment of full backwages are dictated by the constitutional mandate to protect civil service employees' right to security of tenure. Anything less than this falls short of the justice due to government employees unfairly removed from office. This is the prevailing doctrine and should be applied in Campol's case.

This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this — that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. **Any income he may have obtained during the litigation of the case shall not be deducted from this amount. This is consistent with our ruling that an employee illegally**

dismissed has the right to live and to find employment elsewhere during the pendency of the case. At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her what he or she should have received had the illegal act not be done. It is an employer's price or penalty for illegally dismissing an employee.

x x x x x x x x x

We rule that employees in the civil service should be accorded this same right. It is only by imposing this rule that we will be able to uphold the constitutional right to security of tenure with full force and effect. **Through this, those who possess the power to dismiss employees in the civil service will be reminded to be more circumspect in exercising their authority as a breach of an employee's right to security of tenure will lead to the full application of law and jurisprudence to ensure that the employee is reinstated and paid complete backwages.** (emphasis supplied)

As it stands, Saunar should have been entitled to full back wages from the time he was illegally dismissed until his reinstatement. In view of his retirement, however, reinstatement is no longer feasible. As such, the back wages should be computed from the time of his illegal dismissal up to his compulsory retirement.[43] In addition, Saunar is entitled to receive the retirement benefits he should have received if he were not illegally dismissed.

WHEREFORE, the petition is **GRANTED.** The 20 October 2008 Decision of the Court of Appeals in CA-G.R. SP No. 100157 is **REVERSED and SET ASIDE**. Petitioner Carlos R. Saunar is entitled to full back wages from the time of his illegal dismissal until his retirement and to receive his retirement benefits.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen,* and *Gesmundo, JJ.,* concur.

Bersamin, J., on official leave.

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[43] *Paz v. Northern Tobacco Redrying Co, Inc.*, 754 Phil. 251 (2015).

THIRD DIVISION

[G.R. No. 188493. December 13, 2017]

VIVIAN B. TORREON and FELOMINA F. ABELLANA, *petitioners, vs.* **GENEROSO APARRA, JR., FELIX CABALLES, and CARMELO SIMOLDE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; WHERE PETITIONER DID NOT RESERVE HER RIGHT TO INSTITUTE A SEPARATE CIVIL ACTION, HER CAUSE OF ACTION FOR DAMAGES WAS DEEMED IMPLIEDLY INSTITUTED WITH THE CRIMINAL CASE.— The Court of Appeals in CA-G.R. SP No. 28859 correctly reinstated the present case only with regard to Vivian. When Abellana did not reserve her right to institute a separate civil action, her cause of action for damages was deemed impliedly instituted with the criminal case. Rule 111, Section 3 of the Rules of Court prohibits offended parties from recovering damages twice for the act being prosecuted in the criminal action. Thus, Abellana is now barred from instituting this case.

2. CIVIL LAW; CIVIL CODE; QUASI-DELICT; SINCE RESPONDENT EMPLOYEES WERE GROSSLY NEGLIGENT IN TRANSPORTING THE PASSENGERS, THEY ARE LIABLE TO PAY DAMAGES UNDER ARTICLE 2176 OF THE CIVIL CODE; EMPLOYER IS VICARIOUSLY LIABLE WITH HIS EMPLOYEES PURSUANT TO ARTICLE 2180 OF THE SAME CODE.— Article 2176 of the Civil Code provides that those who commit acts constituting a quasi-delict are liable to pay damages[.] x x x This Court affirms the finding of the Court of Appeals that Caballes and Aparra were grossly negligent in transporting the passengers. x x x Caballes was grossly negligent in allowing Aparra to drive the truck despite being an inexperienced driver. Aparra's inexperience caused the accident that led to the deaths of Rodolfo and Monalisa. It is undisputed that the deaths of Vivian's husband and daughter caused damage to her. Clearly, the requisites for a quasi-delict are present in this case. In addition

to Caballes and Aparra, the law also holds their employer, Simolde, liable. Article 2180 of the Civil Code provides that an employer is vicariously liable with his employees for any damage they cause while performing their duties.

3. **ID.; ID.; ID.; DAMAGES; CIVIL OR DEATH INDEMNITY IS MANDATORY.—** Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00. Thus, respondents are liable to pay Rodolfo's heirs ₱50,000.00. They are liable to pay another ₱50,000.00 to answer for the death of Monalisa.

4. **ID.; ID.; ID.; ID.; ACTUAL DAMAGES IN THE FORM OF LOST INCOME MAY BE ESTABLISHED BY TESTIMONIAL EVIDENCE; EMPLOYER OF THE DECEASED IS COMPETENT TO TESTIFY ON THE COMPENSATION OF THE DECEASED EMPLOYEE.—** In civil cases, Vivian is only required to establish her claim by a preponderance of evidence. Allowing testimonial evidence to prove loss of earning capacity is consistent with the nature of civil actions. x x x In determining if this quantum of proof is met, this Court is not required to exclusively consider documentary evidence[.] x x x This Court has previously accepted a competent witness' testimony to determine the deceased's income. In *Pleyto v. Lomboy*, this Court used the testimony of the deceased's widow as basis to estimate his earning capacity[.] x x x In a torts case, this Court also accepted testimony from co-workers of the deceased to establish his income before his death. x x x If co-workers were deemed competent to testify on the compensation that the deceased was receiving, all the more should an employer be allowed to testify on the amount she was paying her deceased employee.

5. **ID.; ID.; ID.; ID.; ID.; SIMPLIFIED FORMULA TO COMPUTE LOSS OF EARNING CAPACITY, APPLIED.—** At the time of his death, Rolando was 48 years old and was earning ₱15,000.00 monthly. To determine his annual gross income, this Court multiplied his gross monthly income by 12 to get the result of ₱180,000.00. Computing for life expectancy, or steps 1 and 2, results: Life Expectancy = 2/3 x (80-48) Life Expectancy = 2/3 x (32) Life Expectancy = **21.33 years** Applying his life expectancy and annual gross income to the general

formula, or step 3: Loss of Earning Capacity = Life Expectancy x ½ annual gross income Loss of Earning Capacity = 21.33 x (₱180,000.00/2) Loss of Earning Capacity = 21.33 x ₱90,000.00 **Loss of Earning Capacity = ₱1,919,700.00** Respondents are liable to pay **₱1,919,700.00** to compensate for the income Rodolfo's heirs would have received had he lived.

6. **ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES, AWARDED.—** The Court of Appeals correctly granted ₱50,000.00 as moral damages to the heirs of Rodolfo. An award of ₱50,000.00 is also awarded to the heirs of Monalisa. In addition, this Court affirms the award for exemplary damages. Exemplary damages are imposed by way of example or to correct a wrongful conduct. It is imposed as a punishment for highly reprehensible conduct, meant to deter serious wrongdoing. Specifically, in cases of quasi-delicts, it is granted if the respondent acted with gross negligence. x x x The Court of Appeals correctly imposed exemplary damages against respondents. Each respondent clearly acted with gross negligence. Aparra drove without a license and jeopardized the life of the cargo truck passengers. Caballes not only allowed Aparra to drive on a perilous road but he also permitted passengers to board the cargo truck despite knowing that the vehicle was not designed to transport people. Simolde was also grossly negligent for tolerating his employees' negligent behaviors. Had Simolde been more diligent in supervising his employees, his driver would not have allowed passengers to board the truck and his mechanic would not have attempted to drive a vehicle he was not equipped to handle. Thus, to ensure that such behavior will not be repeated, respondents are directed to pay ₱10,000.00 as exemplary damage to the heirs of Rodolfo and Monalisa.

7. **ID.; ID.; ID.; LITIGATION EXPENSES AND ATTORNEY'S FEES ALSO AWARDED.—** With respect to the award of litigation expenses and attorney's fees the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed. Considering the protracted litigation of this dispute, an award of ₱100,000.00 as attorney's fees and ₱50,000.00 for litigation expenses are awarded to Vivian.

8. **ID.: ID.; ID.; INTEREST BY WAY OF DAMAGES, CONCEPT OF; THERE IS NO NEED TO IMPOSE MORATORY INTEREST IN CASE AT BAR.—** Interest by way of damages,

also known as moratory interest, is allowed in actions for breach of contract or tort. Since the obligation in this case stems from a quasi-delict and not from a loan or forbearance of money, the interest awarded falls under the second paragraph illustrated in *Eastern Shipping*. This is in line with Article 2211 of the Civil Code which states that this Court may impose "interest as a part of the damages" in quasi-delict cases. Awarding this interest is discretionary upon the courts. This is different from interest on interest imposed under Article 2212 of the Civil Code. Interest on interest is mandatory and is imposed as penalty for the delay in the payment of a sum of money. x x x In this case, there is no need to impose a moratory interest. Actual damages to compensate for the deceased's lost earnings are already granted. Payment for Rodolfo's lost earning capacity should be enough to cover the actual damages suffered by his heirs.

9. ID.; ID.; ID.; INTEREST ON THE JUDGMENT AWARD IS NOW 6% RECKONED FROM THE FINALITY OF THE JUDGMENT UNTIL FULLY PAID.— [P]ursuant to *Eastern Shipping*, the Court of Appeals correctly imposed an interest on the judgment award. However, the 12% interest should be modified. Following Bangko Sentral ng Pilipinas-Monetary Board Circular No. 796 dated May 16, 2013, the rate of legal interest is now 6%. x x x The interest on the judgment award discussed in *Eastern Shipping* is reckoned from finality of the judgment until full payment. It is designed to penalize non-payment of the judgment award. Thus, if the liable party immediately pays, no interest will be imposed.

APPEARANCES OF COUNSEL

Libra Law for petitioners.
Rodolfo Ato for respondents.

D E C I S I O N

LEONEN, *J.*:

Lack of documentary evidence is not fatal to a claim for the deceased's lost earning capacity. Testimony from a competent

witness familiar with his salary is a sufficient basis to determine the deceased's income before his death.

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Court, praying that the April 3, 2008 Decision[2] and the May 28, 2009 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 71090 be partially modified. Petitioner Vivian B. Torreon (Vivian) prays that: (1) an award of actual or compensatory damages for loss of earning capacity worth ₱2,079,675.00 be granted; (2) the award of moral damages be increased to ₱1,000,000.00; (3) the award of exemplary damages be increased to ₱1,000,000.00; and (4) the awarded attorney's fees and litigation expenses be increased to ₱100,000.00 and ₱50,000.00, respectively.[4]

On November 1, 1989, Vivian's husband, Rodolfo Torreon (Rodolfo), and daughters, Monalisa Torreon (Monalisa) and Johanna Ava Torreon (Johanna), arrived with Felomina Abellana (Abellana) at the municipal wharf of Jetafe, Bohol. They came from Cebu City aboard M/B Island Traders, a motor boat owned and operated by Carmelo Simolde (Simolde).[5]

After they disembarked from the motor boat, they looked for a vehicle that would transport them from the wharf to the poblacion of Jetafe. A cargo truck entered the wharf and their fellow passengers boarded it. Abellana, Rodolfo, and his daughters chose not to board the already-overcrowded truck. Instead, they waited for a different vehicle to bring them to the

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[1] *Rollo,* pp. 10-40.

[2] *Id*. at 42-64. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo A. Camello and Edgardo T. Lloren of the Twenty-Second Division of the Court of Appeals, Cagayan de Oro City.

[3] *Id*. at 80-82. The Resolution was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo A. Camello and Edgardo T. Lloren of the Former Twenty-Second Division of the Court of Appeals, Cagayan de Oro City.

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

[5] *Id*. at 43.

poblacion. However, they were informed that only the cargo truck, which was also owned and operated by Simolde, would enter the wharf.[6]

Approximately 10 minutes later, the same cargo truck returned to the wharf. Again, fellow passengers from M/B Island Traders started embarking it. This time, Rodolfo, Monalisa, Johanna, and Abellana also boarded it. Abellana was seated in front, while Rodolfo and his daughters were with the rest of the passengers at the back of the truck. Because there were no proper seats at the back of the truck, the 30 or more passengers were either standing or sitting on their bags.[7]

While passengers were getting on the truck, Simolde called Felix Caballes (Caballes), the official truck driver. Caballes approached Simolde but left the engine running. While Simolde and Caballes were talking, Generoso Aparra, Jr. (Aparra), Simolde's chief diesel mechanic, started driving the truck. Upon seeing the truck move, Caballes rushed to the truck and sat beside Aparra. However, instead of taking control of the vehicle, Caballes allowed Aparra to drive.[8]

Shortly thereafter, Aparra maneuvered the truck to the right side of the road to avoid hitting a parked bicycle. But as he turned, Aparra had to swerve to the left to avoid hitting Marcelo Subiano, who was allegedly standing on the side of the road. Because the road was only four (4) meters and 24 inches wide, rough, and full of potholes, Aparra lost control of the truck and they fell off the wharf.[9]

Consequently, Rodolfo and Monalisa died while Johanna and Abellana were injured.[10]

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

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

[8] *Id*. at 44.

[9] *Id*.

[10] *Id*.

On April 3, 1990, Vivian and Abellana filed a criminal complaint for Reckless Imprudence resulting to Double Homicide, Multiple Serious Physical Injuries and Damage to Property against Aparra and Caballes,[11] docketed as Criminal Case No. 6555 before the Regional Trial Court, Tagbilaran City, Bohol.[12]

On January 4, 1991, Vivian and Abellana filed a separate complaint for damages against Simolde, Caballes, and Aparra[13] docketed as Civil Case No. 3593 before Branch 3, Regional Trial Court, Butuan City.[14]

Simolde, Caballes, and Aparra filed a Motion to Dismiss and to Suspend Proceedings (Motion to Dismiss) in Civil Case No. 3593. They argued that when Abellana instituted Criminal Case No. 6555 before the Regional Trial Court of Bohol, she failed to make a reservation to file an independent civil action for damages. Thus, Abellana was barred from instituting the civil action. [15]

On January 22, 1992, the Regional Trial Court of Butuan City denied the Motion to Dismiss. However, upon reconsideration, the Regional Trial Court dismissed the case, ruling that the civil action was impliedly instituted with Criminal Case No. 6555.[16]

Abellana and Vivian filed a Petition for Certiorari before the Court of Appeals, assailing the dismissal of the case. On June 18, 1993, the Court of Appeals reinstated Civil Case No. 3593 but only with respect to Vivian.[17]

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[11] *Id*. at 90-91.

[12] *Id*. at 16.

[13] *Id*. at 65.

[14] *Id*. at 16.

[15] *Id*.

[16] *Id*. at 17.

[17] *Id*. at 45.

During the trial for the civil case, SPO2 Federico T. Torniado (SPO2 Torniado) testified that he was the "acting traffic investigator of the PNP" assigned to the case.[18] According to SPO2 Torniado, he had previously seen the pick-up truck transport passengers from the wharf to the poblacion.[19] The road, which was four (4) meters wide, could only accommodate one (1) vehicle. Other than the truck, there were no other vehicles that came in and out of the wharf.[20] He further testified that on the day of the accident, he asked to see Aparra's license but Aparra only presented a student driver's permit.[21]

Abellana testified that Rodolfo was the General Manager of her businesses in Butuan City. As manager, Rodolfo was in charge of three (3) drugstores, an apartment, and rice fields. He was earning a basic salary of ₱10,000.00 and received a 20% commission on the profit of the businesses, thus, earning more or less ₱15,000.00. Abellana claimed that she could not present her accounting books to the court because she had already disposed of them.[22]

On November 17, 2000, the Regional Trial Court ruled that Caballes and Aparra committed acts constituting a quasi-delict.[23] Since these acts were the proximate cause of the deaths of Rodolfo and Monalisa and the injuries sustained by Abellana and Johanna, Simolde, Caballes, and Aparra were held liable for damages. The dispositive portion of the trial court Decision stated:

> Wherefore, on the basis therefore of the foregoing evidence, both [t]estimonial and documentary[,] [t]his Court does hereby render judgment in favor of the plaintiffs and against defendants and hereby ordering the defendants as follows:

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[18] *Id*. at 70.

[19] *Id*. at 69.

[20] *Id*. at 72.

[21] *Id*. at 70.

[22] *Id*. at 73-75.

[23] *Id*. at 77.

1. To pay jointly and severally to plaintiffs the amount of ₱300,000.00 as actual damages;
2. To pay jointly and severally to plaintiffs the sum of ₱50,000.00 as moral damages; and to pay in solidum to plaintiffs by way of litigation expenses in the sum of ₱10,000.00;
3. To pay in solidum into plaintiffs [Vivian] Torreon and Felomina Abellana the sum of ₱25,000.00 and ₱10,000.00 by way of Attorney's fees; and
4. To pay in solidum into plaintiffs the sum of ₱10,000.00 as exemplary damages.

SO ORDERED.[24]

Simolde, Caballes, and Aparra filed a Notice of Appeal on November 27, 2000.[25]

On April 3, 2008, the Court of Appeals promulgated a Decision[26] holding Simolde solidarily liable with Caballes and Aparra. According to the Court of Appeals, Caballes and Aparra were clearly negligent in transporting the passengers. Given that the road was narrow and full of pot holes, it was apparent that an experienced driver was needed to safely navigate the vehicle out of the wharf. In allowing Aparra to drive the truck despite having only a student driver's permit, Caballes risked the lives of the passengers on board the truck. The Court of Appeals also held Simolde solidarily liable with his employees for failing to exercise due diligence in supervising them.[27] However, the Court of Appeals deleted the award of actual damages for Rodolfo's loss of earning capacity. According to the Court of Appeals, documentary evidence should be presented to substantiate a claim for loss of earning capacity. The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, in view of the foregoing, the decision of the Court *a quo* in Civil Case No. 3593 is SET ASIDE and another one is

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

[25] *Id*. at 84 and 101.

[26] *Id*. at 42-64.

[27] *Id*. at 54.

RENDERED ordering appellants Carmelo T. Simolde, Felix Caballes and Generoso Aparra, Jr., to pay, solidarily, appellee Vivian Torreon the amount of Fifty Thousand (₱50,000.00) Pesos as civil indemnity for the death of Rod[o]lfo Torreon; another Fifty Thousand (₱50,000.00) Pesos as civil indemnity for the death of Monalisa Torreon; Twenty-five Thousand (₱25,000.00) Pesos as temperate or moderate damages for pecuniary loss sustained due to the death of Rod[o]lfo Torreon and another Twenty-five Thousand (₱25,000.00) Pesos as temperate or moderate damages for pecuniary loss sustained due to the death of Monalisa Torreon; Fifty Thousand (₱50,000.00) Pesos as moral damages; Ten Thousand (₱10,000.00) Pesos as exemplary damages; Ten Thousand . . . (₱10,000.00) Pesos as attorney's fees and Twenty[-]Five Thousand (₱25,000.00) Pesos as litigation expenses, with legal interest at the rate of SIX PERCENT(6%) per annum starting from the date of the promulgation of the court *a quo's Decision* or from 17 November 2000. A TWELVE PERCENT (12%) interest, in lieu of SIX PERCENT (6%), shall be imposed on such amount upon finality of this decision until actual payment thereof.

SO ORDERED.[28]

Vivian and Abellana filed a Motion for Partial Reconsideration,[29] asking the Court of Appeals to modify its April 3, 2008 Decision by increasing the award of the damages to the following amounts:

(a) Php2,079,675.00, as compensatory damages for loss or impairment of earning capacity (lucro cesant); instead of Php25,000.00.

(b) Php300,000.00 as actual damages for funeral and burial expenses; or in the alternative, a reasonable or just amount as temperate damages.

(c) Php1,000,000.00 as moral damages; instead of Php50,000.00.

(d) Php1,000,000.00 as exemplary damages; instead of Php10,000.00.

(e) Php100,000.00 and Php50,000.00 as attorney's fees and litigation expenses; instead of Php10,000.00 and Php25,000.00, respectively[.][30]

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

[29] *Id.* at 204-218.

[30] *Id.* at 216.

In its May 28, 2009 Resolution,[31] the Court of Appeals denied the motion.

Hence, this Petition was filed before this Court.

Petitioner Vivian argues that the Court of Appeals gravely erred in deleting the compensatory damages awarded for Rodolfo's loss of earning capacity.[32] She posits that Abellana's testimony is enough to prove Rodolfo's income. As Rodolfo's employer, Abellana had direct and personal knowledge of the compensation that he was receiving prior to his death; thus, she is qualified to testify on his income.[33] Petitioner Vivian cites *Philippine Airlines, Inc. v. Court of Appeals*[34] to point out that the Court of Appeals gravely erred in concluding that Abellana's testimony, without any documentary evidence, did not suffice to claim damages for lack of earning capacity.[35] Based on Abellana's testimony, Rodolfo had an estimated gross monthly income of 15,000.00 or an annual gross income of ₱195,000.00.[36] Using the formula[37] laid down in *Negros Navigation Co., Inc. v. Court of Appeals,*[38] Rodolfo's lost earnings would amount to ₱2,079,675.00.[39]

Petitioner Vivian cites four (4) reasons why the damages awarded to her should be increased. First, she points to the gravity of the loss she suffered. The difficulties she has gone

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[31] *Id.* at 80-82.

[32] *Id.* at 21-29.

[33] *Id.* at 24-26.

[34] 263 Phil. 806 (1990) [Per *J.* Griño-Aquino, First Division].

[35] *Rollo,* pp. 22-25.

[36] *Id.* at 25.

[37] Net Earning Capacity = life expectancy x [gross annual income – reasonable and necessary living expenses (50%)].

[38] 346 Phil. 551 (1997) [Per *J.* Mendoza, Second Division].

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

through, following the death of her husband and her young daughter, are immeasurable and deserve a higher compensation. Second, the degree of the negligence committed by respondents, as affirmed by the Court of Appeals, is gross and inexcusable, thereby warranting harsher penalties.[40] Third, Simolde has an undisputable substantial financial capacity to pay more. Allegedly, Simolde has a "virtual monopoly of the business at Jetafe wharf."[41] He has the capacity to pay the increased amounts petitioner Vivian is praying for. Lastly, the length of the litigation, which spanned almost two (2) decades at the time this petition was filed to this Court, has whittled down the real value of the monetary award.[42]

On the other hand, respondents argue that the Court of Appeals committed no reversible error in the assailed Decision. They claim that there is no sufficient proof to sustain the award of damages.[43] Respondents also contend that the inclusion of Abellana as a petitioner is baseless. The Court of Appeals in CA-G.R. SP No. 28859 already ruled that the present case is reinstated only with respect to Vivian.[44]

In its February 17, 2010 Resolution, this Court required petitioners to file a Reply to respondents' Comment.[45]

On April 28, 2010, petitioners filed their Reply and claimed that Abellana's inclusion as a petitioner is "a non-issue."[46] Abellana was only joined as a petitioner because she was already a co-petitioner in the lower courts. However, as seen "in the prayer of the Petition for Review, Felomina Abellana is not

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[40] *Id*. at 33.

[41] *Id*. at 34.

[42] *Id*.

[43] *Id*. at 231-233.

[44] *Id*. at 233-236.

[45] *Id*. at 240.

[46] *Id*. at 248.

mentioned as being entitled [to] payment for damages from respondents."[47]

The issues for this Court's resolution are as follows:

First, whether or not actual damages for loss of earning capacity should be awarded to petitioner Vivian B. Torreon; and

Second, whether or not the value of the other awarded damages should be increased.

Before proceeding with the discussion regarding civil damages, this Court will briefly discuss Abellana's standing in this case. Notably, the Court of Appeals already ruled on this matter. However, since respondents raised it in their Comment,[48] it is best to address this concern.

I

On April 3, 1990, petitioners instituted a criminal case against respondents. However, petitioner Abellana did not reserve her right to file a separate civil action for damages arising from the crime.[49] Rule 111, Section 1(a) of the Rules of Court provides:

> Section 1. Institution of criminal and civil actions. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.
>
> The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.
>
> When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary

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[47] *Id*.

[48] *Id*. at 233-237.

[49] *Id*. at 16.

damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

The Court of Appeals in CA-G.R. SP No. 28859 correctly reinstated the present case only with regard to Vivian. When Abellana did not reserve her right to institute a separate civil action, her cause of action for damages was deemed impliedly instituted with the criminal case. Rule 111, Section 3 of the Rules of Court prohibits offended parties from recovering damages twice for the act being prosecuted in the criminal action.[50] Thus, Abellana is now barred from instituting this case.

This Court now moves to the discussion regarding damages.

II

Article 2176 of the Civil Code provides that those who commit acts constituting a quasi-delict are liable to pay damages:

Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage

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[50] RULES OF COURT, Rule 111, Sec. 3 provides:

Section 3. When civil action may proceed independently. — In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

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.

Vergara v. Court of Appeals[51] enumerated the elements necessary to establish a quasi-delict case:

> These requisites are: (1) damages to the plaintiff; (2) negligence, by act or omission, of which defendant, or some person for whose-acts he must respond, was guilty; and (3) the connection of cause and effect between such negligence and the damages.[52]

This Court affirms the finding of the Court of Appeals that Caballes and Aparra were grossly negligent in transporting the passengers. The Court of Appeals ruled:

> Records bore that after appellant Aparra took over the control of the wheel of the cargo truck and drove the same, appellant Caballes merely rushed to get on the truck and only sat beside appellant Aparra. Appellant Caballes, despite the fact that appellant Aparra possessed only a student driver's permit, allowed him to continue driving the truck. Moreover, We cannot glean from the records that appellant Caballes cautioned appellant Aparra while the latter was driving the truck. It must be pointed out that the cargo truck had more than thirty (30) passengers on board at its back, who were either just standing or sitting on their bags, with nothing to hold on for support, while the truck was moving. Furthermore, the road was only four (4) meters wide, rough and with many pot holes. Obviously, these circumstances warrant that the driver be somebody of competence and experience in maneuvering a vehicle under such a precarious condition. Therefore, the acts of appellant Aparra in taking the wheel and of appellant Caballes in allowing the former to take the wheel are plain manifestations of negligence.[53]

Caballes was grossly negligent in allowing Aparra to drive the truck despite being an inexperienced driver. Aparra's inexperience caused the accident that led to the deaths of Rodolfo

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[51] 238 Phil. 565 (1987) [Per *J.* Padilla, Second Division].

[52] *Id*. at 568.

[53] *Rollo*, pp. 50-51.

and Monalisa. It is undisputed that the deaths of Vivian's husband and daughter caused damage to her. Clearly, the requisites for a quasi-delict are present in this case.

In addition to Caballes and Aparra, the law also holds their employer, Simolde, liable. Article 2180 of the Civil Code provides that an employer is vicariously liable with his employees for any damage they cause while performing their duties.

> Article 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.
>
> . . . . . .
>
> **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 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)

Delsan Transport Lines, Inc. v. C & A Construction, Inc.[54] explained that when an employee's negligence causes injury to another, a presumption against the employer arises. To avoid liability, the employer must prove he exercised due diligence in selecting as well as supervising his employees.

> Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris familias* in the selection (*culpa in eligiendo*) or supervision (*culpa in vigilando*) of its employees. To avoid liability or a *quasi-delict* committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.

There is no question that petitioner, who is the owner/operator of M/V Delsan Express, is also the employer of Capt. Jusep who at the

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[54] 459 Phil. 156 (2003) [Per *J.* Ynares-Santiago, First Division].

time of the incident acted within the scope of his duty. The defense raised by petitioner was that it exercised due diligence in the selection of Capt. Jusep because the latter is a licensed and competent Master Mariner. **It should be stressed, however, that the required diligence of a good father of a family pertains not only to the selection, but also to the supervision of employees.** It is not enough that the employees chosen be competent and qualified, inasmuch as the employer is still required to exercise due diligence in supervising its employees.

In *Fabre, Jr. v. Court of Appeals*, it was held that **due diligence in supervision requires the formulation of rules and regulations for the guidance of employees and the issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules**. Corollarily, in *Ramos v. Court of Appeals*, the Court stressed that **once negligence on the part of the employees is shown, the burden of proving that he observed the diligence in the selection and supervision of its employees shifts to the employer**.[55] (Emphasis supplied, citations omitted)

In an effort to decry liability, Simolde insists that the passengers boarded the truck without his knowledge and despite his objections. He testified as follows:

Q: You mentioned that this truck was being used by different passengers to load their cargoes to different destinations, and of course when the passengers would load their cargoes, they would join in the truck?

A: It depends on the condition at their own risk.

Q: Regardless whether at their own risk, you would admit that there was also passengers boarding the truck at the same time that the cargoes are being loaded and transported to their respective destinations?

A: No, only cargoes, that is strictly given and instructed to the driver.

Q: Now, Mr. Simolde, you said it was at their own risk when the passengers boarded the cargo truck when this truck

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

transported the cargoes to their destinations, do you mean to say that no passengers were on board that particular vehicle?

A: You know, you cannot, although you try to impose this, but you know in the provinces like that, especially there are only few jeepney for transportation, even cargo trucks are being boarded by the passengers in spite of the fact that the driver says no passengers, no passengers, you know, those things are pakikisama, but my strict implementation is that the truck is only good for services for the cargoes and the cargo that is being loaded there is already included on the freight-on-board the vessel, so that truck is used for servicing cargo.

. . . . . .

Q: Based on your observations, you mentioned that this cargo truck picture of which has been identified as Exh. "6", was used to transport cargo, now, in one occasion, how many passengers would ride without your notice, can you make an estimate?

A: I cannot tell you any facts about that, because for me, I have not received any information that the truck has been boarded with passengers, because by the nature of the looks of the truck, how could the passenger board the vehicle, and where can they sit down on the side, there is no bench.

Q: Let us clarify this, Mr. Simolde, you earlier admitted that there were occasions, because of the absence of cargo trucks and passenger vehicles in the area, the passengers would board the cargo truck even without your knowledge or your consent?

A: Yes, sir.

Q: In other words, there were occasions, of course you acquired knowledge of this, when the truck was transporting cargoes, passengers would join in the truck?

A: No, only cargoes. I don't know if when the truck is already out of sight, it depends on the driver.[56]

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[56] *Rollo*, pp. 54-55.

Instead of helping his defense, Simolde's testimony proves his failure to supervise his employees. Simolde should have been more diligent in ensuring that his employees acted within the parameters of their jobs. He should have taken steps to ensure that his instructions were followed. His failure to control the behavior of his employees makes him liable for the consequences of their actions. Thus, Simolde is solidarily liable with Caballes and Aparra for the payment of the damages granted by law.

The Civil Code holds Simolde liable for the damages that his actions have caused.[57] Article 2206 specifically applies when a death occurs as a result of a crime or a quasi-delict:

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**:

(1) **The defendant shall be liable for the loss of the earning capacity of the deceased**, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give **support** according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(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. (Emphasis supplied)

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[57] Art. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

The same rules on damages are applicable whether or not the death occurred as a result of a crime or a quasi-delict. To summarize, the heirs are entitled to recover:

1. As **indemnity for the death** of the victim of the offense — ₱12,000.00, without the need of any evidence or proof of damages, and even though there may have been mitigating circumstances attending the commission of the offense [now ₱50,000.00].

2. As **indemnity for loss of earning capacity** of the deceased — an amount to be fixed by the court according to the circumstances of the deceased related to his actual income at the time of death and his probable life expectancy, the said indemnity to be assessed and awarded by the court as a matter of duty, unless the deceased had no earning capacity at said time on account of permanent disability not caused by the accused. If the deceased was obliged to give support, under Art. 291, Civil Code, the recipient who is not an heir, may demand support from the accused for not more than five years, the exact duration to be fixed by the court.

3. As **moral damages** for mental anguish, — an amount to be fixed by the court. This may be recovered even by the illegitimate descendants and ascendants of the deceased.

4. As **exemplary damages**, when the crime is attended by one or more aggravating circumstances, — an amount to be fixed in the discretion of the court, the same to be considered separate from fines.

5. As **attorney's fees and expenses of litigation,** — the actual amount thereof, (but only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded)

6. **Interests** in the proper cases.

7. **It must be emphasized that the indemnities for loss of earning capacity of the deceased and for moral damages are recoverable separately from and in addition to the fixed sum of ₱12,000.00 corresponding to the indemnity for the sole fact of death,** and that these damages may, however, be respectively increased or lessened according to the mitigating or aggravating circumstances, except items 1 and 4 above, for obvious reasons.[58] (Emphasis supplied)

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[58] *Castro v. Bustos,* 136 Phil. 553, 561-562 (1969) [Per *J.* Barredo, *En Banc*].

Civil or death indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[59] Initially fixed by the Civil Code at ₱3,000.00, the amount of the indemnity is currently fixed at ₱50,000.00.[60]

Thus, respondents are liable to pay Rodolfo's heirs ₱50,000.00. They are liable to pay another ₱50,000.00 to answer for the death of Monalisa.

In *Pestaño v. Spouses Sumayang*,[61] this Court applied Article 2206 of the Civil Code and awarded compensation for the deceased's lost earning capacity in addition to the award of civil indemnity. The indemnity for the deceased's lost earning capacity is meant to compensate the heirs for the income they would have received had the deceased continued to live.[62]

Pleyto v. Lomboy[63] provided the formula to compute a deceased's earning capacity:

> It is well-settled in jurisprudence that the factors that should be taken into account in determining the compensable amount of lost earnings are: (1) the number of years for which the victim would otherwise have lived; and (2) the rate of loss sustained by the heirs of the deceased. Jurisprudence provides that the first factor, i.e., life expectancy, is computed by applying the formula (2/3 x [80 – age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. As to the second factor, it is computed by multiplying the life expectancy by the net earnings of the deceased, i.e., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed

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[59] *People v. Buban*, 551 Phil. 120, 135 (2007) [Per *J.* Quisumbing, *En Banc*].

[60] *PhilTranco Service Enterprises, Inc. v. Court of Appeals*, 340 Phil. 98, 109-110 (1997) [Per *J.* Davide, Third Division].

[61] 400 Phil. 740 (2000) [Per *J.* Panganiban, Third Division].

[62] *Id.* at 750-751.

[63] 476 Phil. 373 (2004) [Per *J.* Quisumbing, Second Division].

at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is: **Net Earning Capacity = [2/3 x (80 – age at time of death) x (gross annual income – reasonable and necessary living expenses)]**.[64] (Emphasis supplied, citations omitted)

The reason behind the formula for loss of earning capacity was discussed in *Villa Rey Transit, Inc. v. Court of Appeals*:[65]

> [The award of damages for loss of earning capacity is] concerned with the determination of the losses or damages sustained by the Private respondents, as dependents and intestate heirs of the deceased, and that said damages consist, not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of petitioner's agent. In fixing the amount of that support, We must reckon with the "necessary expenses of his own living", which should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, "less the necessary expense for his own living." Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earning, are to be considered that is, the total of the earnings less expenses necessary in creation of such earnings or income and less living and other incidental expenses.[66] (Citations omitted)

The formula provided in these cases is presumptive, i.e., it should be applied in the absence of proof in terms of statistics and actuarial presented by the plaintiff.

The Court of Appeals deleted the award of actual damages granted to petitioner for Rodolfo's lost earnings. According to the Court of Appeals, documentary evidence should be presented to substantiate a claim for the deceased's lost income.[67]

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[64] *Id*. at 389-390.

[65] 142 Phil. 494 (1970) [Per *J*. Concepcion, Second Division].

[66] *Id*. at 500.

[67] *Rollo*, pp. 60-61.

This Court disagrees.

In civil cases, Vivian is only required to establish her claim by a preponderance of evidence. Allowing testimonial evidence to prove loss of earning capacity is consistent with the nature of civil actions.[68] Rule 133, Section 1 of the Rules of Court provides:

> 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 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.

In determining if this quantum of proof is met, this Court is not required to exclusively consider documentary evidence:

> Nothing in the Rules of Court requires that only documentary evidence is allowed in civil cases. All that is required is the satisfaction of the quantum of evidence, that is, preponderance of evidence. In addition, the Civil Code does not prohibit a claim for loss of earning capacity on the basis that it is not proven by documentary evidence.
>
> Testimonial evidence, if not questioned for credibility, bears the same weight as documentary evidence. Testimonies given by the deceased's spouse, parent, or child should be given weight because these individuals are presumed to know the income of their spouse, child, or parent.
>
> If the amount of income testified to seemed incredible or unrealistic, the defense could always raise their objections and discredit the witness

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[68] *J.* Leonen's Concurring Opinion in *People v. Wahiman y Rayos*, G.R. No. 200942 (2015), [Per *J.* Del Castillo, *En Banc*].

or, better yet, present evidence that would outweigh the evidence of the prosecution. [69]

This Court has previously accepted a competent witness' testimony to determine the deceased's income. In *Pleyto v. Lomboy*,[70] this Court used the testimony of the deceased's widow as basis to estimate his earning capacity:

> Petitioners' claim that no substantial proof was presented to prove Ricardo Lomboy's gross income lacks merit. Failure to present documentary evidence to support a claim for loss of earning capacity of the deceased need not be fatal to its cause. Testimonial evidence suffices to establish a basis for which the court can make a fair and reasonable estimate of the loss of earning capacity. Hence, the testimony of respondent Maria Lomboy, Ricardo's widow, that her husband was earning a monthly income of ₱8,000 is sufficient to establish a basis for an estimate of damages for loss of earning capacity.[71] (Citation omitted)

In a torts case, this Court also accepted testimony from co-workers of the deceased to establish his income before his death.

> The witnesses Mate and Reyes, who were respectively the manager and auditor of Allied Overseas Trading Company and Padilla Shipping Company, were competent to testify on matters within their personal knowledge because of their positions, such as the income and salary of the deceased, Nicanor A. Padilla (Sec. 30, Rule 130, Rules of Court). As observed by the Court of Appeals, since they were cross-examined by petitioner's counsel, any objections to their competence and the admissibility of their testimonies, were deemed waived. The payrolls of the companies and the decedent's income tax returns could, it is true, have constituted the best evidence of his salaries, but **there is no rule disqualifying competent officers of the corporation from testifying on the compensation of the deceased as an officer of**

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[69] Concurring Opinion of *J.* Leonen in *People v. Wahiman*, 760 Phil. 368, 384-385 (2015) [Per *J.* Del Castillo, *En Banc*]

[70] 476 Phil. 373 (2004) [Per *J.* Quisumbing, Second Division].

[71] *Id.* at 389.

the same corporation, and in any event, no timely objection was made to their testimonies.[72]

If co-workers were deemed competent to testify on the compensation that the deceased was receiving, all the more should an employer be allowed to testify on the amount she was paying her deceased employee.

Abellana testified that at the time of his death, deceased Rodolfo was earning ₱15,000.00 per month:

Q: Prior to the death of Rodolfo Torreon, do you know where he was working?
A: He was working under me.

Q: You said he was working under you?
A: Yes, later, he was the general manager in my business in Butuan City.

Q: What were these business[es]?
A: Three drug stores.

Q: Can you identify the drug stores at that time?
A: Yes[,] sir.

Q: What are the names?
A: All Farmacia Buena. Farmacia Bue[n]a located in G. Flores Ave., Farmacia Buena located in A.D. Curato St., and the other one in Langihan.

Q: What happened to these drugstores?
A: At that time, I immediately sold my store in Curato St., a few months after the death of Rod[o]lfo Torreon.

Q: Aside from the drug stores, what other business you have at that time in 1989?
A: I have an apartment.

Q: And Rod[o]lfo Torreon was?
A: He was the one supervising.

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[72] *Philippine Airlines, Inc. v. Court of Appeals*, 263 Phil. 806, 819 (1990) [Per *J.* Griño-Aquino, First Division].

Q: Aside from this apartment, what else?
A: I have my rice fields in Los Angeles.

. . . . . .

Q: Did you keep the payroll of Rod[o]lfo Torreon?
A: At this time, almost five years, I think I have thrown that away already, the records.

Q: From your estimate, how much income was he receiving?
A: His basic salary is ₱10,000.00 a month and he is receiving 20% commission on the net profit.

Q: How about for the other businesses, did he also receive share?
A: Sometimes.

Q: How much do you think was Rod[o]lfo Torreon earning at that time?
A: More or less ₱15,000.00 and I think he was receiving commission from the salesmen.[73]

The simplified formula to compute loss of earning capacity was given in the ponencia of *People v. Wahiman*:[74]

[2/3 x 80 - age] x [gross annual income - necessary expenses equivalent to 50% of the gross annual income][75]

The concurring opinion in *Wahiman* was instructive on how to properly apply this formula:

This is a step-by-step guide to compute an award for loss of earning capacity.

(1) Subtract the age of the deceased from 80.

(2) Multiply the answer in (1) by 2, and divide it by 3 (these operations, are interchangeable).

(3) Multiply 50% to the annual gross income of the deceased.

(4) Multiply the answer in (2) by the answer in (3). This is the loss of earning capacity to be awarded.

When the evidence on record only shows monthly gross income, annual gross income is derived from multiplying the monthly gross

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[73] *Rollo*, pp. 24-25.

[74] *People v. Wahiman*, 760 Phil. 368 (2015) [Per *J.* Del Castillo, *En Banc*].

[75] *Id.* at 377.

income by 12. When the daily wage is the only information provided during trial, such amount may be multiplied by 260, or the number of usual workdays in a year, to arrive at annual gross income.[76]

At the time of his death, Rodolfo was 48 years old and was earning ₱15,000.00 monthly.[77] To determine his annual gross income, this Court multiplied his gross monthly income by 12 to get the result of ₱180,000.00.

Computing for life expectancy, or steps 1 and 2, results:
Life Expectancy = 2/3 x (80 - 48)
Life Expectancy = 2/3 x (32)
Life Expectancy = **21.33 years**

Applying his life expectancy and annual gross income to the general formula, or step 3:

Loss of Earning Capacity = Life Expectancy x 1/2 annual gross income
Loss of Earning Capacity = 21.33 x (₱180,000.00/2)
Loss of Earning Capacity = 21.33 x ₱90,000.00

Loss of Earning Capacity = ₱1,919,700.00

Respondents are liable to pay **₱1,919,700.00** to compensate for the income Rodolfo's heirs would have received had he lived.

On the other hand, Vivian failed to prove the actual damages she suffered for the death of her daughter, Monalisa. Vivian merely testified as to the funeral and burial expenses she incurred without producing any receipt or other evidence to support her claim.[78] Consequently, she cannot be entitled to an award of actual damages on account of Monalisa's loss.

III

With regard to the award of moral damages, this Court affirms the Court of Appeals' ruling to grant it. Article 2206 of the

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[76] *Id*. at 389.

[77] *Rollo*, p. 25.

[78] *Id*. at 61.

Civil Code expressly grants moral damages in addition to the award of civil indemnity.[79]

In her petition, Vivian maintains that the amount of moral damages granted her should be increased. This Court is not convinced. Although the Civil Code[80] grants compensation for the mental anguish suffered by the heirs for the loss of their loved one, this award is not meant to enrich the petitioner at the expense of the respondents.[81]

The Court of Appeals correctly granted ₱50,000.00 as moral damages to the heirs of Rodolfo. An award of ₱50,000.00 is also awarded to the heirs of Monalisa.

In addition, this Court affirms the award for exemplary damages. Exemplary damages are imposed by way of example or to correct a wrongful conduct.[82] It is imposed as a punishment for highly reprehensible conduct, meant to deter serious wrongdoing.[83] Specifically, in cases of quasi-delicts, it is granted if the respondent acted with gross negligence.[84]

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[79] See *Mercado v. Lira*, 113 Phil. 112 (1961) [Per *J.* Paredes, First Division].

[80] CIVIL CODE, Art. 2217 provides:

Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[81] See *Kierulf v. Court of Appeals*, 336 Phil. 414 (1997) [Per *J.* Panganiban, Third Division].

[82] CIVIL CODE, Art. 2229 provides:

Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[83] See *People v. Catubig y Horio*, 416 Phil. 102 (2001) [Per *J.* Vitug, *En Banc*].

[84] CIVIL CODE, Art. 2231 provides:

Article 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

Kierulf v. Court of Appeals[85] summarized the requirements for exemplary damages to be awarded:

> Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and its imposition is required by public policy to suppress the wanton acts of an offender. However, it cannot be recovered as a matter of right. It is based entirely on the discretion of the court. Jurisprudence sets certain requirements before exemplary damages may be awarded, to wit:
>
> > (1) (T)hey may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant;
> >
> > (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and
> >
> > (3) the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[86]
>
> (Citations omitted)

The Court of Appeals correctly imposed exemplary damages against respondents. Each respondent clearly acted with gross negligence. Aparra drove without a license and jeopardized the life of the cargo truck passengers. Caballes not only allowed Aparra to drive on a perilous road but he also permitted passengers to board the cargo truck despite knowing that the vehicle was not designed to transport people. Simolde was also grossly negligent for tolerating his employees' negligent behaviors. Had Simolde been more diligent in supervising his employees, his driver would not have allowed passengers to board the truck and his mechanic would not have attempted to drive a vehicle he was not equipped to handle.

Thus, to ensure that such behavior will not be repeated, respondents are directed to pay ₱10,000.00 as exemplary damage to the heirs of Rodolfo and Monalisa.

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[85] 336 Phil. 414 (1997) [Per *J.* Panganiban, Third Division].

[86] *Id.* at 428-429.

With respect to the award of litigation expenses and attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed.

Considering the protracted litigation of this dispute, an award of ₱100,000.00 as attorney's fees and ₱50,000.00 for litigation expenses are awarded to Vivian.

Finally, there is a need to modify the interest imposed by the Court of Appeals.

In its Decision, the Court of Appeals imposed 6% interest on the award of damages and a 12% interest on the judgment award:

> In addition, We impose the legal interest at the rate of SIX PERCENT (6%) per annum of the total amount of damages awarded by this Court in the amount of Two Hundred Forty Five Thousand (₱245,000.00) Pesos, starting from the date of the promulgation of the court *a quo's Decision* or from 17 November 2000 and the rate of TWELVE PERCENT (12%) interest per annum, in lieu of SIX PERCENT (6%), upon finality of the decision of this Court. This is in line with the ruling of the Supreme Court in *Eastern Shipping Lines, Inc. versus Court of Appeals*[.] [87]

The Court of Appeals used as a guide *Eastern Shipping v. Court of Appeals,*[88] which provided:

> **II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:**
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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[87] *Rollo*, pp. 62-63.

[88] 304 Phil. 236 (1994) [Per *J.* Vitug, *En Banc*].

2. When a[n] obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[89] (Emphasis supplied, citations omitted)

Interest by way of damages, also known as moratory interest, is allowed in actions for breach of contract or tort.[90] Since the obligation in this case stems from a quasi-delict and not from a loan or forbearance of money, the interest awarded falls under the second paragraph illustrated in *Eastern Shipping*. This is in line with Article 2211 of the Civil Code which states that this Court may impose "interest as a part of the damages" in quasi-delict cases.[91] Awarding this interest is discretionary upon the courts.[92]

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[89] *Id.* at 252-254.

[90] *Id.* at 250.

[91] CIVIL CODE, Art. 2211 provides:

Article 2211. In crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.

[92] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994) [Per *J.* Vitug, *En Banc*].

This is different from interest on interest imposed under Article 2212[93] of the Civil Code. Interest on interest is mandatory and is imposed as penalty for the delay in the payment of a sum of money.[94]

Guided by *Eastern Shipping*, the Court of Appeals imposed a 6% interest on the award of damages starting from November 17, 2000, the date of the promulgation of the Regional Trial Court Decision. However, this award is not proper.

Generally, the Civil Code does not allow interest upon unliquidated claims or damages to be recovered unless they can be established with reasonable certainty.[95] The rationale for this is because it would be unfair to require the liable person to pay interest on a sum that is yet to be determined. However, the courts, in the interest of justice, may impose interest on unliquidated claims or damages upon judgment.

In this case, there is no need to impose a moratory interest. Actual damages to compensate for the deceased's lost earnings are already granted. Payment for Rodolfo's lost earning capacity should be enough to cover the actual damages suffered by his heirs.

On the other hand, pursuant to *Eastern Shipping,* the Court of Appeals correctly imposed an interest on the judgment award. However, the 12% interest should be modified. Following Bangko Sentral ng Pilipinas-Monetary Board Circular No. 796 dated May 16, 2013, the rate of legal interest is now 6%. *Nacar v. Gallery Frames*[96] is instructive:

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[93] CIVIL CODE, Art. 2212 provides:

Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[94] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994) [Per *J.* Vitug, *En Banc*].

[95] CIVIL CODE, Art. 2213 provides:

Article 2213. Interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty.

[96] 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
>
> Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
>
> This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) per annum effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable. [97] (Citations omitted)

Consequently, the guidelines laid down in *Eastern Shipping* have been amended as follows:

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[97] *Id*. at 280.

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

> 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> **3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.**[98] (Emphasis supplied)

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[98] *Id.* at 282-283.

Since the judgment of this Court has not yet become final and executory, the interest rate applicable to the judgment award is 6% and not 12% as imposed by the Court of Appeals.

The interest on the judgment award discussed in *Eastern Shipping* is reckoned from finality of the judgment until full payment. It is designed to penalize non-payment of the judgment award. Thus, if the liable party immediately pays, no interest will be imposed.

WHEREFORE, the April 3, 2008 Decision of the Court of Appeals in CA-G.R. CV No. 71090 is **MODIFIED.** Respondents Carmelo T. Simolde, Felix Caballes, and Generoso Aparra, Jr., are **ORDERED** to pay solidarily petitioner Vivian B. Torreon the amounts of:

a. ₱50,000.00 as civil indemnity for the death of Rodolfo Torreon;

b. ₱50,000.00 as civil indemnity for the death of Monalisa Torreon;

c. ₱1,919,700.00 as actual damages for Rodolfo Torreon's lost earning capacity;

d. ₱100,000.00 as moral damages composed of ₱50,000.00 for Rodolfo Torreon's heirs and ₱50,000.00 for Monalisa Torreon's heirs;

e. ₱10,000.00 as exemplary damages;

f. ₱100,000.00 as attorney's fees; and

g. ₱50,000.00 as litigation expenses.

An interest at the legal rate of six percent (6%) per annum shall also be imposed on the total judgment award computed from the finality of this decision until its actual payment.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Martires,* and *Gesmundo, JJ.,* concur.

Bersamin, J., on official leave.

FIRST DIVISION

[G.R. No. 190944. December 13, 2017]

ADVAN MOTOR, INC., *petitioner, vs.* **VICTORIANO G. VENERACION,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; REINSTATEMENT; PROPER IN A SITUATION WHERE AN EMPLOYEE IS UNJUSTLY DISMISSED FROM WORK AND WHOSE POSITION IS NOT VESTED WITH COMPLETE TRUST AND CONFIDENCE; CASE AT BAR.—** We find that the Court of Appeals correctly ruled in favor of reinstatement, and agree with its reasoning that respondent is a mere car sales agent/ sales consultant whose function is precisely to sell cars for the company. Said position is clearly not vested with complete trust and confidence from the employer as compared to, for example, a managerial employee. x x x The Court of Appeals pointed as significant that "strained relationship" is a question of fact. In his pleadings, respondent continually reiterated his plea to be reinstated. Petitioner did not allege in its position paper that it could no longer employ respondent because of "strained relationship." The factual issue of "strained relationship" was not an issue, hence, was not subject of proof before the Labor Arbiter. The Court of Appeals correctly held that every labor dispute almost always results in "strained relations," and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.

2. **ID.; ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; STRAINED RELATIONS MUST BE DEMONSTRATED AS A FACT AND THE DOCTRINE MUST NOT BE APPLIED LOOSELY SO AS NOT TO DEPRIVE AN ILLEGALLY DISMISSED EMPLOYEE OF HIS MEANS OF LIVELIHOOD AND DENY HIM REINSTATEMENT.—** As [the Court has] held, "[s]trained relations must be demonstrated as a fact. The doctrine of strained

relations should not be used recklessly or applied loosely nor be based on impression alone" so as to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.

3. **ID.; ID.; ID.; AWARD OF BACKWAGES; WARRANTED WHERE THERE IS A FINDING OF ILLEGAL DISMISSAL TO ALLOW THE EMPLOYEE TO RECOVER FROM THE EMPLOYER THAT WHICH HE HAD LOST BY WAY OF WAGES AS A RESULT OF HIS DISMISSAL.—** Since there was a conclusive finding that respondent was unjustly dismissed from work, we thus likewise affirm the award of backwages, which are awarded to allow the employee to recover from the employer that which he had lost by way of wages as a result of his dismissal.

4. **ID.; ID.; ID.; REINSTATEMENT AND BACKWAGES ARE SEPARATE AND DISTINCT RELIEFS GIVEN TO AN ILLEGALLY DISMISSED EMPLOYEE.—** The two reliefs of reinstatement and backwages have been discussed in *Reyes v. RP Guardians Security Agency, Inc.* in the following manner: Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.

APPEARANCES OF COUNSEL

The Law Firm of Gappi Gappi and Partners for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court seeking to reverse and set aside the September 30, 2009 **Decision**[1] and the January 13, 2010 **Resolution**[2] of the Court of Appeals in CA-G.R. SP No. 103744, which affirmed and modified the April 30, 2007 **Decision**[3] of the National Labor Relations Commission (NLRC) of Quezon City.

The facts as summarized by the NLRC and quoted by the Court of Appeals are quoted below:

> Records show that [respondent Victor G. Veneracion] started working sometime in September 1999 in [petitioner Advan Motor, Inc.] company's business of selling and repairing cars manufactured by General Motors Automative Phils., as Sales Consultant. In a letter dated May 21, 2001, he was informed of the termination of his services "effective May 2, 2001 for the reason of repeated AWOL violations for more than six consecutive days and management's loss of trust and confidence in you for your repeated abandonment of your office duties and responsibilities." x x x
>
> Aggrieved, [respondent] filed a complaint for constructive dismissal on July 13, 2001. The complaint was subsequently amended by changing [respondent's] causes of action into actual illegal dismissal and including underpayment of salaries.
>
> [Respondent] alleged that sometime in December 2000, he was suspected of planning to organize a union, that henceforth, he was harassed by management by being forced to resign in exchange for a financial package and treated unfairly when his purchase orders and sub-dealership agreement with an interested party were not acted

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[1] *Rollo,* pp. 9-23; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Vicente S.E. Veloso concurring.

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

[3] *Id*. at 148-155.

upon or sabotaged by management; that unlike the others, his salary was not adjusted although he had been regularized and given the run-around with regard to the giving of promo discounts to buyers. [Respondent] also averred that for the month of March 2001, including the succeeding months, [he] was no longer given any duty date, show room, nor phone and was again pressured to resign; that in April 2001 he applied for a leave of absence which was verbally approved but later denied; that his salaries for April 2001 and the months thereafter were withheld; and, that contemplating on filing an action, [petitioner] jumped the gun on him by serving him with the letter terminating his services.

In [its] defense, [petitioner] contended that [respondent] was oftentimes absent or tardy and failed to meet his sales quota of three (3) cars a month; that he went on an unannounced leave from March 28-31, 2001 and, later, by just handing to the security guard his request for vacation leave from April 2-18, 2001; that on April 20, 2001, he informed the Personnel Officer that he would no longer report for work, prompting management to issue a notice of termination on May 21, 2001.

In ruling for the [respondent], the Labor Arbiter observed that:

> "Clearly, [respondent's] termination from his employment was based on AWOL amounting to a violation of company rules and regulation[s] and on attendance for repeated abandonment of office duties and responsibilities and management loss of trust and confidence in him. Specifically, as indicated, management claims that [respondent] x x x "[was on] AWOL since April 10, 2001" x x x.
>
> It appears that [petitioner] predicated as basis of [its] decision to terminate [respondent's] employment when he x x x "just handed to the security guard his request for vacation leave from April 2 to 18, 2001 without informing his immediate superior or even the Personnel Department x x x. This does not persuade. Besides being denied by [respondent], who claimed that he x x x "left it with HRD Manager, who earlier, verbally gave permission to [respondent] to go on leave." x x x, there is no showing on record of any to substantiate this claim. If indeed, it is true, [petitioner] should have notified the [respondent], in the first place. The Sworn Statement of [the] security guard who received the same request for leave alluded to was not presented to [this]

effect. Even his name was not noted. Neither was there any statement to this effect from the Personnel Department concerned presented, at least. Simply [petitioner's] claim remains an allegation. It is a rule well settled [in] this jurisdiction that the employer has the burden of proving the lawful cause sustaining the dismissal of employee. Equipoise is not enough. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause x x x."[4]

Advan Motor, Inc. (petitioner) claimed that on December 10, 1999, Victoriano Veneracion (respondent) received a copy of the manual[5] issued by the former, which provides the company's general personnel policies. Item No. 6 of the said manual provides:

6. Absenteeism

You are expected to notify the office if you are unable to report for work for any reason. Failure to notify the office on the day's absence shall be considered unauthorized and is subject to corresponding sanctions. Unauthorized Leave of Absence (LoA) of five (5) working days will be construed as abandonment of work and is subject to possible termination of service.

Unauthorized Absence (Absence Without Official Leave)

An employee may be considered as Absent Without Official Leave (AWOL) if he/she fails to report for work:

- For whatever reason without personally or thru his/her immediate superior or the Personnel Department the reason for such absence, within twenty-four (24) hours from the occurrence of such absence.
- For unacceptable reasons even if he/she has notified his/her immediate superior before such absence occurs, likewise in the case of absenting from work without prior authorization.
- After the expiration of his/her approved leave of absence.

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[4] *Id*. at 150-151.

[5] *Id*. at 226-243.

Procedure for Filing Authorized Absences:

For purposes of procedure and to ensure that the absence is considered authorized, employees are required to observe the following guidelines:

- Secure the *Request for Leave of Absence Form* from the Personnel Department.
- Fill-in all necessary information as required by the form. As much as possible, the request must be filed not less than three (3) days before the intended leave so as not to disrupt operations and to enable the immediate superior to monitor the absences properly.
- Inform immediate superior of the intended leave and secure his/her endorsement signature; forward request to the Department Head for approval.
- Send all copies of the form to the Personnel Department for filing and endorsement to the Accounting Department.
- If the reason for such absence is sickness or injury, the medical certificate shall be attached to the request form. Approval of the said leave shall be based on the Administrative/ Personnel Department's verification.

Penalties for Unauthorized Absence

FREQUENCY	PENALTY
One (1) day	Written warning & entry in employee's 201 file
Two (2) to four (4) days consecutive days	10 days suspension
Five (5) consecutive days or more	Termination

Habitual Unauthorized Absences

If, within a period of two (2) months, an employee incurs at least three (3) AWOL violations, he/she shall be considered *habitually AWOL* and a consequence thereof, the next higher penalty shall be applicable to the third and succeeding violations within the said two (2) month period.[6]

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[6] *Id*. at 230-231.

Petitioner alleged that respondent was fully aware that this rule was designed by the company to ensure its uninterrupted operation, without being disrupted or hampered by the absence of one employee. This policy was adopted by the company to plan ahead and properly redesign its operation in case an employee intends to take a vacation.[7] Petitioner further alleged that respondent failed to reach his sales quotas and committed gross neglect of duty and wanton violation of company policies. Specifically, petitioner claimed that respondent failed to reach the sales quota of at least three units of motor vehicles a month. On several occasions, petitioner issued notices to respondent reminding him of his poor sales performances, frequent tardiness and absences during his floor duty, and prolonged unauthorized absences, which seriously hampered and impaired the sales operations and business plans of the petitioner. Therefore, petitioner concluded that there was a valid and legal ground to dismiss the respondent.

On January 14, 2002, the respondent filed an amended complaint for actual illegal dismissal, underpayment of salaries/wages with damages, attorney's fees, and a prayer for reinstatement and payment of full backwages.[8] On September 30, 2004, Labor Arbiter Daniel J. Cajilig rendered his Decision,[9] stating as follows:

WHEREFORE, judgment is hereby rendered declaring complainant's dismissal from his employment as illegal.

Accordingly, respondent-firm [petitioner company] is hereby ordered to pay complainant his backwages amounting to ***THREE HUNDRED FORTY-TWO THOUSAND FOUR HUNDRED EIGHTY-NINE PESOS AND SEVENTY-FOUR (Php342,489.74) CENTAVOS*** as above stated, and ***THIRTY-EIGHT THOUSAND AND TWENTY (Php38,020.00) PESOS,*** representing his separation pay in lieu of reinstatement and TEN (10) PERCENT as attorney's fees.

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[7] *Id*. at 143.

[8] *Id*. at 137.

[9] *Id*. at 137-147.

Other claims are DENIED for lack of merit.[10]

Petitioner appealed the Labor Arbiter's decision to the NLRC, while respondent filed his partial appeal. On April 30, 2007, the NLRC affirmed the decision of the Labor Arbiter.

Both parties filed their respective Motions for Reconsideration, but in its Resolution[11] promulgated on February 29, 2008, the NLRC denied both motions for lack of merit.

On May 29, 2008, the respondent, by way of a Petition for *Certiorari*[12] submitted the Resolution of the NLRC to the Court of Appeals for judicial review on the ground that it was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court partially granted the petition of the respondent and ordered the company to reinstate the respondent to his former position and to pay the latter his backwages.

The Court of Appeals affirmed the NLRC decision with modifications, as quoted below:

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED** and the assailed decision dated April 30, 2007 is **AFFIRMED** with **MODIFICATIONS**, thus:

a) Private Respondent-Firm is hereby **ORDERED** to **REINSTATE** petitioner to his former position without loss of seniority rights and other privileges;

b) Private Respondent-Firm is hereby **ORDERED** to **PAY** petitioner his **BACKWAGES**, computed on the basis of minimum wage from 02 May 2001, or from the time that his compensation was withheld from him, until actual reinstatement. The instant case is hereby remanded to the Labor Arbiter for the proper computation of the said backwages;

c) The award of separation pay is hereby **DELETED**; and

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[10] *Id*. at 147.

[11] *Id*. at 156-157.

[12] *Id*. at 118-136.

d) The award of Ten [percent] (10%) Attorney's fees is **AFFIRMED.**[13]

Petitioner filed on October 22, 2009 a Motion for Partial Reconsideration[14] of the September 30, 2009 decision of the Court of Appeals. However, the appellate court was not persuaded and by way of Resolution promulgated on January 13, 2010, denied the said motion.

Aggrieved, petitioner came to this Court seeking the reversal of the questioned decision and resolution of the appellate court. Petitioner raises the following grounds:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT ORDERED THE REINSTATEMENT OF RESPONDENT VENERACION TO HIS FORMER POSITION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT ORDERED THE AWARD OF BACKWAGES.[15]

The two issues for our consideration are the questions of **reinstatement** and **backwages**.

Under the first ground, petitioner argues that the order of reinstatement is not proper when the position occupied is one vested with trust and confidence. Petitioner alleges that it placed a high level of trust and confidence to the respondent as a Sales Consultant. Petitioner points out that respondent disregarded company rules and regulations when he went AWOL for several consecutive days, which is a serious offense. The offense

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[13] *Id*. at 22.

[14] *Id*. at 100-117.

[15] *Id*. at 507.

committed, clearly, is "work-related" and to treat it lightly or let it pass will definitely set a bad precedent for the company and will embolden the other sales agents. Petitioner claims that the business of a car dealership largely rests on the sales agents representing the company in selling the products, who are expected to translate these products into sales for the company, and as such should be considered trustworthy. The petitioner argues that it is sufficient that the employer has reasonable ground to believe that the employee is responsible for the misconduct, rendering him unworthy of the trust and confidence demanded by his position.[16]

We find that the Court of Appeals correctly ruled in favor of reinstatement, and agree with its reasoning that respondent is a mere car sales agent/sales consultant whose function is precisely to sell cars for the company. Said position is clearly not vested with complete trust and confidence from the employer as compared to, for example, a managerial employee. In *Dimabayao v. National Labor Relations Commission*,[17] this Court had occasion to state that:

> **Strained relationship** may be invoked only against employees **whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement.** In the instant case, however, the relationship between petitioner, an ordinary employee, and management was clearly on an impersonal level. Petitioner did not occupy such a sensitive position as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement. (Emphasis supplied.)

The Court of Appeals pointed as significant that "strained relationship" is a question of fact. In his pleadings, respondent continually reiterated his plea to be reinstated. Petitioner did not allege in its position paper that it could no longer employ respondent because of "strained relationship." The factual issue of "strained relationship" was not an issue, hence, was not subject of proof before the Labor Arbiter.

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

[17] 363 Phil. 279, 287 (1999).

The Court of Appeals correctly held that every labor dispute almost always results in "strained relations," and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.[18] As to the finding of the NLRC that the respondent had convinced it that the relations between him and management had become so strained by describing in detail that he was repeatedly being offered a financial package in exchange for his resignation and his being treated unfairly, the Court of Appeals found it absurd that the NLRC would utilize petitioner's own statements to prop up the existence of "strained relationship" when in fact it was respondent who had been pleading and praying that he be reinstated. On the contrary, this showed that despite the perceived animosity between the parties, respondent was still willing to get back to work.

As to the finding that management had declared that it had lost its trust and confidence on complainant who, as a Sales Consultant, was a front line employee in whom respondents had complete trust, we agree with the Court of Appeals that a sales consultant is not a position of complete trust and confidence where personal ill will could foreclose an employee's reinstatement. Moreover, as it is one of the just causes for dismissal under the Labor Code, to affirm the allegation of loss of trust and confidence would lead to an illogical conclusion that respondent was validly dismissed from service.[19]

As we have held, "[s]trained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone"[20]

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[18] *Claudia's Kitchen, Inc. v. Tanguin*, G.R. No. 221096, June 28, 2017.

[19] Art. 282. *Termination by employer.* – An employer may terminate an employment for any of the following causes:

x x x x x x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]

[20] *Claudia's Kitchen, Inc. v. Tanguin*, *supra* note 18.

so as to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.[21]

Thus, reinstatement is proper in this case[22] under Article 294 of the Labor Code, which provides:

ARTICLE 294. *Security of tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement**.[23] (Emphasis ours.)

Since there was a conclusive finding that respondent was unjustly dismissed from work, we thus likewise affirm the award of backwages, which are awarded to allow the employee to recover from the employer that which he had lost by way of wages as a result of his dismissal.[24]

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[21] *Pentagon Steel Corporation v. Court of Appeals*, 608 Phil. 682, 699 (2009).

[22] *Continental Micronesia, Inc. v. Basso*, 770 Phil. 201, 230 (2015).

[23] Labor Code of the Philippines, Presidential Decree No. 442, Amended and Renumbered, July 21, 2015.

[24] *Torillo v. Leogardo, Jr.*, 274 Phil. 758, 767 (1991).

The two reliefs of reinstatement and backwages have been discussed in *Reyes v. RP Guardians Security Agency, Inc.*[25] in the following manner:

> Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.
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> In the case of *Aliling v. Feliciano,* citing *Golden Ace Builders v. Talde*, the Court explained:
>
> > Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.
>
> The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.

Further discussing the normal consequences of illegal dismissal and providing the statutory intent on this matter, in *Tomas Claudio Memorial College, Inc. v. Court of Appeals,*[26] we held as follows:

> The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status*

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[25] 708 Phil. 598, 604-605 (2013).

[26] 467 Phil. 541, 554-555 (2004).

> *quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non availability of the other. . . .
>
> **The payment of backwages is generally granted on the ground of equity. It is a form of relief that restores the income that was lost by reason of the unlawful dismissal; the grant thereof is intended to restore the earnings that would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause. It is not private compensation or damages but is awarded in furtherance and effectuation of the public objective of the Labor Code. Nor is it a redress of a private right but rather in the nature of a command to the employer to make public reparation for dismissing an employee either due to the former's unlawful act or bad faith.**
>
> The award of backwages is not conditioned on the employee's ability or inability to, in the interim, earn any income. x x x. (Emphasis added, citations omitted.)

WHEREFORE, the petition for review is **DENIED.** The Decision of the Court of Appeals dated September 30, 2009 and its **Resolution** dated January 13, 2010 in CA-G.R. SP No. 103744 are **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191525. December 13, 2017]

INTERNATIONAL ACADEMY OF MANAGEMENT AND ECONOMICS (I/AME), *petitioner, vs.* **LITTON AND COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DETERMINATION OF THE EXISTENCE OF ANY OF THE CIRCUMSTANCES THAT WOULD WARRANT THE PIERCING OF THE VEIL OR CORPORATE FICTION IS A QUESTION OF FACT WHICH ORDINARILY CANNOT BE THE SUBJECT OF A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTION, NOT APPLICABLE IN CASE AT BAR.— In a petition for review on certiorari under Rule 45, only questions of law shall be entertained. This Court considers the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction as a question of fact which ordinarily cannot be the subject of a petition for review on *certiorari* under Rule 45. We will only take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts. Once the CA affirms the factual findings of the trial court, such findings are deemed final and conclusive and thus, may not be reviewed on appeal, unless the judgment of the CA depends on a misapprehension of facts, which if properly considered, would justify a different conclusion. Such exception however, is not applicable in this case. The 29 October 2004 MeTC judgment, the RTC judgment, and the CA decision are one in accord on the matters presented before this Court.

2. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; PIERCING OF THE CORPORATE VEIL; PROPER WHEN THE SEPARATE AND DISTINCT PERSONALITY OF THE CORPORATION WAS PURPOSELY EMPLOYED TO EVADE A LEGITIMATE

AND BINDING COMMITMENT AND PERPETUATE A FRAUD OR LIKE WRONGDOINGS; IN PIERCING THE CORPORATE VEIL, DUE PROCESS IS NOT VIOLATED IN CASE AT BAR.— The piercing of the corporate veil is premised on the fact that the corporation concerned must have been properly served with summons or properly subjected to the jurisdiction of the court *a quo*. Corollary thereto, it cannot be subjected to a writ of execution meant for another in violation of its right to due process. There exists, however, an exception to this rule: if it is shown "by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings." The resistance of the Court to offend the right to due process of a corporation that is a nonparty in a main case, may disintegrate not only when its director, officer, shareholder, trustee or member is a party to the main case, but when it finds facts which show that piercing of the corporate veil is merited. Thus, as the Court has already ruled, a party whose corporation is vulnerable to piercing of its corporate veil cannot argue violation of due process. In this case, the Court confirms the lower courts' findings that Santos had an existing obligation based on a court judgment that he owed monthly rentals and unpaid realty taxes under a lease contract he entered into as lessee with the Littons as lessor. He was not able to comply with this particular obligation, and in fact, refused to comply therewith. This Court agrees with the CA that Santos used I/AME as a means to defeat judicial processes and to evade his obligation to Litton. Thus, even while I/AME was not impleaded in the main case and yet was so named in a writ of execution to satisfy a court judgment against Santos, it is vulnerable to the piercing of its corporate veil.

3. **ID.; ID.; ID.; ID.; CORPORATE VEIL OF A NON-STOCK CORPORATION MAY ALSO BE PIERCED; CASE AT BAR.—** x x x [The CA] ruled that since the law does not make a distinction between a stock and non-stock corporation, neither should there be a distinction in case the doctrine of piercing the veil of corporate fiction has to be applied. While I/AME is an educational institution, the CA further ruled, it still is a registered corporation conducting its affairs as such. This

Court agrees with the CA. In determining the propriety of applicability of piercing the veil of corporate fiction, this Court, in a number of cases, did not put in issue whether a corporation is a stock or non-stock corporation. x x x In the United States, from which we have adopted our law on corporations, non-profit corporations are not immune from the doctrine of piercing the corporate veil. Their courts view piercing of the corporation as an equitable remedy, which justifies said courts to scrutinize any organization however organized and in whatever manner it operates. Moreover, control of ownership does not hinge on stock ownership. x x x The concept of equitable ownership, for stock or non-stock corporations, in piercing of the corporate veil scenarios, may also be considered. An equitable owner is an individual who is a non-shareholder defendant, who exercises sufficient control or considerable authority over the corporation to the point of completely disregarding the corporate form and acting as though its assets are his or her alone to manage and distribute. Given the foregoing, this Court sees no reason why a non-stock corporation such as I/AME, may not be scrutinized for purposes of piercing the corporate veil or fiction.

4. ID.; ID.; ID.; ID.; PIERCING OF THE CORPORATE VEIL MAY APPLY TO NATURAL PERSONS WHEN THE CORPORATION IS THE ALTER EGO OF A NATURAL PERSON WHO MISUSES THE CORPORATION FOR WRONGFUL PURPOSES; CASE AT BAR.— As cited in *Sulo ng Bayan, Inc. v. Araneta, Inc.*, "[t]he doctrine of alter ego is based upon the **misuse** of a corporation **by an individual** for wrongful or inequitable purposes, and in such case the court merely disregards the corporate entity and holds the individual responsible for acts knowingly and intentionally done in the name of the corporation." This, Santos has done in this case. Santos formed I/AME, using the non-stock corporation, to evade paying his judgment creditor, Litton. The piercing of the corporate veil may apply to corporations as well as natural persons involved with corporations. This Court has held that the "corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of **a person** or of another corporation." x x x This Court agrees with the CA that I/AME is the alter ego of Santos and Santos — the natural person — is the alter ego of I/AME. Santos falsely

represented himself as President of I/AME in the Deed of Absolute Sale when he bought the Makati real property, at a time when I/AME had not yet existed.

5. ID.; ID.; ID.; ID.; ID.; REVERSE PIERCING OF THE CORPORATE VEIL; OUTSIDER REVERSE VEIL-PIERCING; OCCURS WHEN A PARTY WITH A CLAIM AGAINST AN INDIVIDUAL OR CORPORATION ATTEMPTS TO BE REPAID WITH ASSETS OF A CORPORATION OWNED OR SUBSTANTIALLY CONTROLLED BY THE DEFENDANT; APPLICABLE IN CASE AT BAR.— We borrow from American parlance what is called reverse piercing or **reverse corporate piercing or piercing the corporate veil "in reverse."** As held in the *U.S. Case, C.F. Trust, Inc. v. First Flight Limited Partnership*, "in a traditional veil-piercing action, a court disregards the existence of the corporate entity so a claimant can reach the assets of a corporate insider. In a reverse piercing action, however, the plaintiff seeks to reach the assets of a corporation to satisfy claims against a corporate insider." "Reverse-piercing flows in the opposite direction (of traditional corporate veil-piercing) and makes the corporation liable for the debt of the shareholders." It has two (2) types: outsider reverse piercing and insider reverse piercing. Outsider reverse piercing occurs when a party with a claim against an individual or corporation attempts to be repaid with assets of a corporation owned or substantially controlled by the defendant. In contrast, in insider reverse piercing, the controlling members will attempt to ignore the corporate fiction in order to take advantage of a benefit available to the corporation, such as an interest in a lawsuit or protection of personal assets. Outsider reverse veil-piercing is applicable in the instant case. Litton, as judgment creditor, seeks the Court's intervention to pierce the corporate veil of I/AME in order to make its Makati real property answer for a judgment against Santos, who formerly owned and still substantially controls I/AME.

APPEARANCES OF COUNSEL

Eddie Tamondong for petitioner.
Gerardo A. Villaluz for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. SP No. 107727.

The CA affirmed the Judgment[3] and Order[4] of the Regional Trial Court (RTC) of Manila in Special Civil Action No. 06-115547 reinstating the Order[5] of the Metropolitan Trial Court (MeTC) of Manila in favor of Litton and Company, Inc. (Litton).

THE FACTS

The facts, as culled from the records, are as follows:

Atty. Emmanuel T. Santos (Santos), a lessee to two (2) buildings owned by Litton, owed the latter rental arrears as well as his share of the payment of realty taxes.[6]

Consequently, Litton filed a complaint for unlawful detainer against Santos before the MeTC of Manila. The MeTC ruled in Litton's favor and ordered Santos to vacate A.I.D. Building

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[1] *Rollo*, pp. 44-52; Penned by Associate Justice Isaias Dicdican, with Associate Justices Remedios A. Salazar-Fernando and Romeo F. Barza concurring; dated 30 October 2009.

[2] *Id*. at 53-54; dated 12 March 2010.

[3] *Id*. at 142-144; Penned by Presiding Judge Antonio I. De Castro; dated 29 October 2008.

[4] *Id*. at 147-148; dated 26 January 2009.

[5] *Id*. at 94-106; Penned by Acting Judge Ma. Ruby B. Camarista; dated 29 October 2004.

[6] *Id*. at 78.

and Litton Apartments and to pay various sums of money representing unpaid arrears, realty taxes, penalty, and attorney's fees.[7]

It appears however that the judgment was not executed. Litton subsequently filed an action for revival of judgment, which was granted by the RTC.[8] Santos then appealed the RTC decision to the CA, which nevertheless affirmed the RTC.[9] The said CA decision became final and executory on 22 March 1994.[10]

On 11 November 1996, the sheriff of the MeTC of Manila levied on a piece of real property covered by Transfer Certificate of Title (TCT) No. 187565 and registered in the name of International Academy of Management and Economics Incorporated (I/AME), in order to execute the judgment against Santos.[11] The annotations on TCT No. 187565 indicated that such was "*only up to the extent of the share of Emmanuel T. Santos.*"[12]

I/AME filed with MeTC a "Motion to Lift or Remove Annotations Inscribed in TCT No. 187565 of the Register of Deeds of Makati City."[13] I/AME claimed that it has a separate and distinct personality from Santos; hence, its properties should not be made to answer for the latter's liabilities. The motion was denied in an Order dated 29 October 2004.

Upon motion for reconsideration of I/AME, the MeTC reversed its earlier ruling and ordered the cancellation of the annotations of levy as well as the writ of execution. Litton then elevated the case to the RTC, which in turn reversed the Order granting

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[7] See *id*. at 73-81; MeTC Decision dated 2 March 1983, penned by Judge Jose B. Herrera.

[8] RTC Decision dated 13 September 1989.

[9] CA Decision dated 21 February 1994.

[10] *Id*. at 45 and 100.

[11] *Id*. at 174.

[12] *Id*. at 82-86.

[13] *Id*. at 87-90, 174.

I/AME's motion for reconsideration and reinstated the original Order dated 29 October 2004.

I/AME then filed a petition with the CA to contest the judgment of the RTC, which was eventually denied by the appellate court.

THE CA RULING

The CA upheld the Judgment and Order of the RTC and held that no grave abuse of discretion was committed when the trial court pierced the corporate veil of I/AME.[14]

It took note of how Santos had utilized I/AME to insulate the Makati real property covered by TCT No. 187565 from the execution of the judgment rendered against him, for the following reasons:

First, the Deed of Absolute Sale dated 31 August 1979 indicated that Santos, being the President, was representing I/AME as the vendee.[15] However, records show that it was only in 1985 that I/AME was organized as a juridical entity.[16] Obviously, Santos could not have been President of a non-existent corporation at that time.[17]

Second, the CA noted that the subject real property was transferred to I/AME during the pendency of the appeal for the revival of the judgment in the ejectment case in the CA.[18]

Finally, the CA observed that the Register of Deeds of Makati City issued TCT No. 187565 only on 17 November 1993, fourteen (14) years after the execution of the Deed of Absolute Sale and more than eight (8) years after I/AME was incorporated.[19]

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[14] *Id*. at 49.

[15] *Id*. at 343.

[16] *Id*. at 49.

[17] *Id*. at 50.

[18] *Id*.

[19] *Id*. at 50 and 82.

Thus, the CA concluded that Santos merely used I/AME as a shield to protect his property from the coverage of the writ of execution; therefore, piercing the veil of corporate fiction is proper.[20]

THE ISSUES

The issues boil down to the alleged denial of due process when the court pierced the corporate veil of I/AME and its property was made to answer for the liability of Santos.

OUR RULING

We deny the petition.

There was no violation of due process against I/AME

Petitioner avers that its right to due process was violated when it was dragged into the case and its real property made an object of a writ of execution in a judgment against Santos. It argues that since it was not impleaded in the main case, the court *a quo* never acquired jurisdiction over it. Indeed, compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporation.[21]

In a petition for review on certiorari under Rule 45, only questions of law shall be entertained. This Court considers the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction as a question of fact which ordinarily cannot be the subject of a petition for review on certiorari under Rule 45. We will only take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts.[22] Once the CA affirms the factual

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[20] *Id*. at 50.

[21] *Pacific Rehouse Corporation v. Court of Appeals*, 730 Phil. 25 (2014) citing *Kukan International v. Reyes,* 646 Phil. 210 (2010).

[22] *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477, 486 (2013).

findings of the trial court, such findings are deemed final and conclusive and thus, may not be reviewed on appeal, unless the judgment of the CA depends on a misapprehension of facts, which if properly considered, would justify a different conclusion.[23] Such exception however, is not applicable in this case.

The 29 October 2004 MeTC judgment, the RTC judgment, and the CA decision are one in accord on the matters presented before this Court.

In general, corporations, whether stock or non-stock, are treated as separate and distinct legal entities from the natural persons composing them. The privilege of being considered a distinct and separate entity is confined to legitimate uses, and is subject to equitable limitations to prevent its being exercised for fraudulent, unfair or illegal purposes.[24] However, once equitable limitations are breached using the coverture of the corporate veil, courts may step in to pierce the same.

As we held in *Lanuza, Jr. v. BF Corporation*:[25]

> Piercing the corporate veil is warranted when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues." It is also warranted in alter ego cases "where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation."
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> When [the] corporate veil is pierced, the corporation and persons who are normally treated as distinct from the corporation are treated as one person, such that when the corporation is adjudged liable, these persons, too, become liable as if they were the corporation.

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[23] *Lorenzana v. Lelina*, G.R. No. 187850, 17 August 2016, pp. 5-6.

[24] *Republic of the Philippines v. Mega Pacific eSolutions, Inc., et al.*, G.R. No. 184666, 27 June 2016, p. 35.

[25] 737 Phil. 275, 299 (2014).

The piercing of the corporate veil is premised on the fact that the corporation concerned must have been properly served with summons or properly subjected to the jurisdiction of the court *a quo*. Corollary thereto, it cannot be subjected to a writ of execution meant for another in violation of its right to due process.[26]

There exists, however, an exception to this rule: if it is shown "by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings."[27]

The resistance of the Court to offend the right to due process of a corporation that is a nonparty in a main case, may disintegrate not only when its director, officer, shareholder, trustee or member is a party to the main case, but when it finds facts which show that piercing of the corporate veil is merited.[28]

Thus, as the Court has already ruled, a party whose corporation is vulnerable to piercing of its corporate veil cannot argue violation of due process.[29]

In this case, the Court confirms the lower courts' findings that Santos had an existing obligation based on a court judgment that he owed monthly rentals and unpaid realty taxes under a lease contract he entered into as lessee with the Littons as lessor. He was not able to comply with this particular obligation, and in fact, refused to comply therewith.

This Court agrees with the CA that Santos used I/AME as a means to defeat judicial processes and to evade his obligation

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[26] Cf. *Kukan*.

[27] *Id.* at 237.

[28] See *Arcilla v. Court of Appeals*, G.R. No. 89804, 215 SCRA 120, 23 October 1992; *Violago v. BA Finance Corporation*, 581 Phil. 62 (2008); *Republic of the Philippines v. Mega Pacific eSolutions, Inc., et al.*, G.R. No. 184666, 27 June 2016.

[29] *Republic of the Philippines v. Mega Pacific eSolutions, Inc., et. al.*, G.R. No. 184666, 27 June 2016, p. 29.

to Litton.[30] Thus, even while I/AME was not impleaded in the main case and yet was so named in a writ of execution to satisfy a court judgment against Santos, it is vulnerable to the piercing of its corporate veil. We will further expound on this matter.

Piercing the Corporate Veil may Apply to Non-stock Corporations

Petitioner I/AME argues that the doctrine of piercing the corporate veil applies only to stock corporations, and not to non-stock, nonprofit corporations such as I/AME since there are no stockholders to hold liable in such a situation but instead only members. Hence, they do not have investments or shares of stock or assets to answer for possible liabilities. Thus, no one in a non-stock corporation can be held liable in case the corporate veil is disregarded or pierced.[31]

The CA disagreed. It ruled that since the law does not make a distinction between a stock and non-stock corporation, neither should there be a distinction in case the doctrine of piercing the veil of corporate fiction has to be applied. While I/AME is an educational institution, the CA further ruled, it still is a registered corporation conducting its affairs as such.[32]

This Court agrees with the CA.

In determining the propriety of applicability of piercing the veil of corporate fiction, this Court, in a number of cases, did not put in issue whether a corporation is a stock or non-stock corporation. In *Sulo ng Bayan, Inc. v. Gregorio Araneta, Inc.*,[33] we considered but ultimately refused to pierce the corporate veil of a non-stock non-profit corporation which sought to institute an action for reconveyance of real property on behalf of its members. This Court held that the non-stock corporation

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[30] *Rollo*, p. 51.

[31] *Id.* at 31-32.

[32] *Id.* at 51.

[33] 164 Phil. 349 (1976).

had no personality to institute a class suit on behalf of its members, considering that the non-stock corporation was not an assignee or transferee of the real property in question, and did not have an identity that was one and the same as its members.

In another case, this Court did not put in issue whether the corporation is a non-stock, non-profit, non-governmental corporation in considering the application of the doctrine of piercing of corporate veil. In *Republic of the Philippines v. Institute for Social Concern*,[34] while we did not allow the piercing of the corporate veil, this Court affirmed the finding of the CA that the Chairman of the Institute for Social Concern cannot be held jointly and severally liable with the aforesaid non-governmental organization (NGO) at the time the Memorandum of Agreement was entered into with the Philippine Government. We found no fraud in that case committed by the Chairman that would have justified the piercing of the corporate veil of the NGO.[35]

In the United States, from which we have adopted our law on corporations, non-profit corporations are not immune from the doctrine of piercing the corporate veil. Their courts view piercing of the corporation as an equitable remedy, which justifies said courts to scrutinize any organization however organized and in whatever manner it operates. Moreover, control of ownership does not hinge on stock ownership.

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[34] 490 Phil. 379 (2005).

[35] *Id*. at 390. Citing *Robledo v. National Labor Relations Commission*, 308 Phil. 51, 57 (1994), the Court in this case, explained when the doctrine of piercing the veil of corporate entity is used:

> **The doctrine of piercing the veil of corporate entity is used whenever a court finds that the corporate fiction is being used to** defeat public convenience, justify wrong, **protect fraud**, or defend crime or to confuse legitimate issues, or that a corporation is the mere alter ego or business conduit of a person or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. (Emphasis supplied)

As held in *Barineau v. Barineau*:[36]

> [t]he mere fact that the corporation involved is a nonprofit corporation does not by itself preclude a court from applying the equitable remedy of piercing the corporate veil. The equitable character of the remedy permits a court to look to the substance of the organization, and its decision is not controlled by the statutory framework under which the corporation was formed and operated. While it may appear to be impossible for a person to exercise ownership control over a nonstock, not-for-profit corporation, a person can be held personally liable under the alter ego theory if the evidence shows that the person controlling the corporation did in fact exercise control, even though there was no stock ownership.

In another U.S. case, *Public Interest Bounty Hunters v. Board of Governors of Federal Reserve System*,[37] the U.S. Court allowed the piercing of the corporate veil of the Foundation headed by the plaintiff, in order to avoid inequitable results. Plaintiff was found to be the sole trustee, the sole member of the board, and the sole financial contributor to the Foundation. In the end, the Court found that the plaintiff used the Foundation to avoid paying attorneys' fees.

The concept of equitable ownership, for stock or non-stock corporations, in piercing of the corporate veil scenarios, may also be considered. An equitable owner is an individual who is a non-shareholder defendant, who exercises sufficient control or considerable authority over the corporation to the point of completely disregarding the corporate form and acting as though its assets are his or her alone to manage and distribute.[38]

Given the foregoing, this Court sees no reason why a non-stock corporation such as I/AME, may not be scrutinized for purposes of piercing the corporate veil or fiction.

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[36] 662 So. 2D 1008, 1009; 1995 Fla. App. LEXIS 12191,2; 20 Fla. L. Weekly D 2562 (1995).

[37] 548 F. Supp. 157; 1982 U.S. Dist. LEXIS 9700.

[38] *Freeman v. Complex Computing Company, Inc.*, 119 F. 3d 1044; 1997 U.S. App. LEXIS 21008.

Piercing the Corporate Veil may Apply to Natural Persons

The petitioner also insists that the piercing of the corporate veil cannot be applied to a natural person – in this case, Santos simply because as a human being, he has no corporate veil shrouding or covering his person.[39]

a) When the Corporation is the Alter Ego of a Natural Person

As cited in *Sulo ng Bayan, Inc. v. Araneta, Inc.*,[40] "[t]he doctrine of alter ego is based upon the **misuse** of a corporation **by an individual** for wrongful or inequitable purposes, and in such case the court merely disregards the corporate entity and holds the individual responsible for acts knowingly and intentionally done in the name of the corporation." This, Santos has done in this case. Santos formed I/AME, using the non-stock corporation, to evade paying his judgment creditor, Litton.

The piercing of the corporate veil may apply to corporations as well as natural persons involved with corporations. This Court has held that the "corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of **a person** or of another corporation."[41]

We have considered a deceased natural person as one and the same with his corporation to protect the succession rights of his legal heirs to his estate. In *Cease v. Court of Appeals,*[42]

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[39] *Rollo*, p. 30.

[40] 164 Phil. 349, 359 (1976) citing *Ivy v. Plyler*, (246 Cal. App. 2d. 678: 54 Cal. Reptr. 894 [1966]).

[41] *Concept Builders, Inc. v. NLRC*, 326 Phil. 955 (1996); *Lim v. Court of Appeals*, 380 Phil. 60 (2000); *PNB v. Andrada Electric & Engineering Company,* 430 Phil. 882 (2002); *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, 562 Phil. 688 (2007); *Rivera v. United Laboratories, Inc.*, 604 Phil. 184 (2009); *Kukan International Corp. v. Hon. Judge Reyes, et al.*, 646 Phil. 210 (2010); *Sarona v. National Labor Relations Commission, et al.*, 679 Phil. 394 (2012); *PNB v. Hydro Resources Contractors Corp.*, 706 Phil. 297 (2013).

[42] 182 Phil. 61 (1979).

the predecessor-in-interest organized a close corporation which acquired properties during its existence. When he died intestate, trouble ensued amongst his children on whether or not to consider his company one and the same with his person. The Court agreed with the trial court when it pierced the corporate veil of the decedent's corporation. It found that said corporation was his business conduit and alter ego. Thus, the acquired properties were actually properties of the decedent and as such, should be divided among the decedent's legitimate children in the partition of his estate.[43]

In another instance, this Court allowed the piercing of the corporate veil against another natural person, in *Arcilla v. Court of Appeals.*[44] The case stemmed from a complaint for sum of money against Arcilla for his failure to pay his loan from the private respondent. Arcilla, in his defense, alleged that the loan was in the name of his family corporation, CSAR Marine Resources, Inc. He further argued that the CA erred in holding CSAR Marine Resources liable to the private respondent since the latter was not impleaded as a party in the case. This Court allowed the piercing of the corporate veil and held that Arcilla used "his capacity as President, x x x [as] a sanctuary for a defense x x x to avoid complying with the liability adjudged against him x x x."[45] We held that his liability remained attached even if he was impleaded as a party, and not the corporation, to the collection case and even if he ceased to be corporate president.[46] Indeed, even if Arcilla had ceased to be corporate president, he remained personally liable for the judgment debt to pay his personal loan, for we treated him and the corporation as one and the same. CSAR Marine was deemed his alter ego.

We find similarities with *Arcilla* and the instant case. Like *Arcilla*, Santos: (1) was adjudged liable to pay on a judgment

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[43] *Id.* at 74-76.

[44] G.R. No. 89804, 23 October 1992, 215 SCRA 120.

[45] *Id.* at 128.

[46] *Id.* at 129.

against him; (2) he became President of a corporation; (3) he formed a corporation to conceal assets which were supposed to pay for the judgment against his favor; (4) the corporation which has Santos as its President, is being asked by the court to pay on the judgment; and (5) he may not use as a defense that he is no longer President of I/AME (although a visit to the website of the school shows he is the current President).[47]

This Court agrees with the CA that I/AME is the alter ego of Santos and Santos the natural person is the alter ego of I/AME. Santos falsely represented himself as President of I/AME in the Deed of Absolute Sale when he bought the Makati real property, at a time when I/AME had not yet existed. Uncontroverted facts in this case also reveal the findings of MeTC showing Santos and I/AME as being one and the same person:

(1) Santos is the conceptualizer and implementor of I/AME;

(2) Santos' contribution is ₱1,200,000.00 (One Million Two Hundred Thousand Pesos) out of the ₱1,500,000.00 (One Million Five Hundred Thousand Pesos), making him the majority contributor of I/AME; and,

(3) The building being occupied by I/AME is named after Santos using his known nickname (to date it is called, the "Noli Santos International Tower").[48]

This Court deems I/AME and Santos as alter egos of each other based on the former's own admission in its pleadings before the trial court. In its Answer (to Amended Petition) with the RTC entitled *Litton and Company, Inc. v. Hon. Hernandez-Calledo*, Civil Case No. 06-115547, I/AME admitted the allegations found in paragraphs 2, 4 and 5 of the amended petition of Litton, particularly paragraph number 4 which states:

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[47] <www.iame.edu.ph/about-iame/faculty.html.>, visited 12 October 2016.

[48] *Rollo*, pp. 96-97. Actually, a visit to the website of the school, shows Atty. Emmanuel "Noli" Santos as the founder of the same and its current President as of the December 2013 posting.

4. Respondent, **International Academy of Management and Economics Inc.** (hereinafter referred to as Respondent I/AME), is a corporation organized and existing under Philippine laws with address at 1061 Metropolitan Avenue, San Antonio Village, Makati City, where it may be served with summons and other judicial processes. **It is the corporate entity used by Respondent Santos as his alter ego for the purpose of shielding his assets from the reach of his creditors**, one of which is herein Petitioner.[49] (Emphases ours)

Hence, I/AME is the alter ego of the natural person, Santos, which the latter used to evade the execution on the Makati property, thus frustrating the satisfaction of the judgment won by Litton.

b) Reverse Piercing of the Corporate Veil

This Court in *Arcilla* pierced the corporate veil of CSAR Marine Resources to satisfy a money judgment against its erstwhile President, Arcilla.

We borrow from American parlance what is called **reverse piercing or reverse corporate piercing or piercing the corporate veil "in reverse."**

As held in the U.S. Case, *C.F. Trust, Inc., v. First Flight Limited Partnership,*[50] "in a traditional veil-piercing action, a court disregards the existence of the corporate entity so a claimant can reach the assets of a corporate insider. In a reverse piercing action, however, the plaintiff seeks to reach the assets of a corporation to satisfy claims against a corporate insider."

"Reverse-piercing flows in the opposite direction (of traditional corporate veil-piercing) and makes the corporation liable for the debt of the shareholders."[51]

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[49] *Id*. at 136, referring to p. 116.

[50] 111 F. Supp. 2D 734; 2000 U.S. Dist. LEXIS 13123, 13.

[51] *Sweeney, Cohn, Stahl & Vaccaro v. Kane*, 6 A.D. 3D 72, 75; 773 N.Y.S.2d 420, 423; 2004 N.Y. App. Div. LEXIS 2499, 7.

It has two (2) types: outsider reverse piercing and insider reverse piercing. Outsider reverse piercing occurs when a party with a claim against an individual or corporation attempts to be repaid with assets of a corporation owned or substantially controlled by the defendant.[52] In contrast, in insider reverse piercing, the controlling members will attempt to ignore the corporate fiction in order to take advantage of a benefit available to the corporation, such as an interest in a lawsuit or protection of personal assets.[53]

Outsider reverse veil-piercing is applicable in the instant case. Litton, as judgment creditor, seeks the Court's intervention to pierce the corporate veil of I/AME in order to make its Makati real property answer for a judgment against Santos, who formerly owned and still substantially controls I/AME.

In the U.S. case *Acree v. McMahan,*[54] the American court held that "[o]utsider reverse veil-piercing extends the traditional veil-piercing doctrine to permit a third-party creditor to pierce the veil to satisfy the debts of an individual out of the corporation's assets."

The Court has pierced the corporate veil in a reverse manner in the instances when the scheme was to avoid corporate assets to be included in the estate of a decedent as in the *Cease* case and when the corporation was used to escape a judgment to pay a debt as in the *Arcilla* case.

In a 1962 Philippine case, this Court also employed what we now call reverse-piercing of the corporate veil. In *Palacio v. Fely Transportation Co.,*[55] we found that the president and

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[52] Michael Richardson, *The Helter Skelter Application of the Reverse Piercing Doctrine*, University of Cincinnati Law Review, Volume 79, Issue 4, Article 9, 17 October 2011, p. 1605.

[53] *Id*.

[54] 276 Ga. 880; 585 S.E.2d 873; 2003 Ga. LEXIS 629; 2003 Fulton County D. Rep. 2171, 20 July 2003 citing *C.F. Trust v. First Flight*, 306 F.3d 126, 134 (Ill)(A)(4th Cir. 2002).

[55] 116 Phil. 155 (1962).

general manager of the private respondent company formed the corporation to evade his subsidiary civil liability resulting from the conviction of his driver who ran over the child of the petitioner, causing injuries and medical expenses. The Court agreed with the plaintiffs that the president and general manager, and Fely Transportation, may be regarded as one and the same person. Thus, even if the president and general manager was not a party to the case, we reversed the lower court and declared both him and the private respondent company, jointly and severally liable to the plaintiffs. Thus, this Court allowed the outsider-plaintiffs to pierce the corporate veil of Fely Transportation to run after its corporate assets and pay the subsidiary civil liability of the company's president and general manager.

This notwithstanding, the equitable remedy of reverse corporate piercing or reverse piercing was not meant to encourage a creditor's failure to undertake such remedies that could have otherwise been available, to the detriment of other creditors.[56]

Reverse corporate piercing is an equitable remedy which if utilized cavalierly, may lead to disastrous consequences for both stock and non-stock corporations. We are aware that ordinary judgment collection procedures or other legal remedies are preferred over that which would risk damage to third parties (for instance, innocent stockholders or voluntary creditors) with unprotected interests in the assets of the beleaguered corporation.[57]

Thus, this Court would recommend the application of the current 1997 Rules on Civil Procedure on Enforcement of Judgments. Under the current Rules of Court on Civil Procedure, when it comes to satisfaction by levy, a judgment obligor is given the option to immediately choose which property or part

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[56] Nicholas Allen, *Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice*, New York Business Law Journal, Summer 2012, Volume 16, Number 1, p .29.

[57] *The Helter Skelter Application of the Reverse Piercing Doctrine*, *supra* note 59, at 1616.

thereof may be levied upon to satisfy the judgment. If the judgment obligor does not exercise the option, personal properties, if any, shall be first levied and then on real properties if the personal properties are deemed insufficient to answer for the judgment.[58]

In the instant case, it may be possible for this Court to recommend that Litton run after the other properties of Santos that could satisfy the money judgment first personal, then other real properties other than that of the school. However, if we allow this, we frustrate the decadesold yet valid MeTC judgment which levied on the real property now titled under the name of the school. Moreover, this Court will unwittingly condone the action of Santos in hiding all these years behind the corporate form to evade paying his obligation under the judgment in the court *a quo*. This we cannot countenance without being a party to the injustice.

Thus, the reverse piercing of the corporate veil of I/AME to enforce the levy on execution of the Makati real property where the school now stands is applied.

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[58] Rule 39, Section 9. *Execution of judgments for money, how enforced.*–

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(b) *Satisfaction by levy.* – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the office shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment. x x x.

WHEREFORE, in view of the foregoing, the instant petition is **DENIED.** The CA Decision in CA-G.R. SP No. 107727 dated 30 October 2009 and its Resolution on 12 March 2010 are hereby **AFFIRMED**. The MeTC Order dated 29 October 2004 is hereby **REINSTATED**.

Accordingly, the MeTC of Manila, Branch 2, is hereby **DIRECTED** to execute with dispatch the MeTC Order dated 29 October 2004 against Santos.

SO ORDERED.

Leonardo-de Castro, del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192048. December 13, 2017]

DOUGLAS F. ANAMA, *petitioner, vs.* **CITIBANK, N.A. (formerly FIRST NATIONAL CITY BANK),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; AN ACTION FOR REVIVAL OF JUDGMENT IS A NEW ACTION WHOSE EXCLUSIVE PURPOSE IS TO ENFORCE A JUDGMENT WHICH COULD NO LONGER BE ENFORCED BY MERE MOTION.— Section 6, Rule 39 of the Revised Rules of Court is clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced

to a right of action which must be enforced by the institution of a complaint in a regular court within 10 years from the time the judgment becomes final. Further, a revival suit is a new action, having for its cause of action the judgment sought to be revived. It is different and distinct from the original judgment sought to be revived or enforced. It is a new and independent action, wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered. Revival of judgment is premised on the assumption that the decision to be revived, either by motion or by independent action, is already final and executory.

2. ID.; JURISDICTION; DEFINED; THE NATURE OF THE ACTION PLEADED AS APPEARING FROM THE ALLEGATIONS IN THE COMPLAINT DETERMINES THE JURISDICTION OF THE COURT.— Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments and the character of the relief sought are the ones to be consulted. The principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted. Jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.

3. ID.; ID.; BATAS PAMBANSA BILANG 129 (JUDICIARY REORGANIZATION ACT OF 1980); REGIONAL TRIAL COURTS; HAVE EXCLUSIVE ORIGINAL JURISDICTION IN ALL CIVIL ACTIONS IN WHICH THE SUBJECT OF THE LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION; JURISDICTION OVER PETITION TO REVIVE JUDGMENT IS PROPERLY WITH THE REGIONAL TRIAL COURTS; CASE AT BAR.— *Batas Pambansa Bilang* 129 (BP 129), otherwise known as the Judiciary Reorganization Act of 1980 and its amendments,

is the law which confers jurisdiction to the courts. Section 19 of BP 129, as amended by Republic Act No. 7691, provides: x x x Regional Trial Courts shall exercise exclusive original jurisdiction: (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation; In determining the jurisdiction of an action whose subject is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be ascertained. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation and the jurisdiction of the court depends on the amount of the claim. But, where the primary issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, such are actions whose subjects are incapable of pecuniary estimation, hence cognizable by the RTCs. As an action to revive judgment raises issues of whether the petitioner has a right to have the final and executory judgment revived and to have that judgment enforced and does not involve recovery of a sum of money, we rule that jurisdiction over a petition to revive judgment is properly with the RTCs. Thus, the CA is correct in holding that it does not have jurisdiction to hear and decide Anama's action for revival of judgment.

4. ID.; ID.; JURISDICTION MAY NOT BE CONFERRED BY CONSENT OF WAIVER UPON A COURT WHICH OTHERWISE WOULD HAVE NO JURISDICTION OVER THE SUBJECT MATTER; VENUE BEING PROCEDURAL, MAY BE WAIVED OR CHANGED BY AGREEMENT OF THE PARTIES.— x x x [V]enue and jurisdiction are entirely distinct matters. Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection. In either case, the court may render a valid judgment. Rules as to jurisdiction can never be left to the consent or agreement of the parties, whether or not a prohibition exists against their alteration. Venue is procedural, not jurisdictional, and hence may be waived.

APPEARANCES OF COUNSEL

Edilberto B. Cosca for petitioner.
Agcaoili & Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court seeking to reverse and set aside the Decision[2] dated November 19, 2009 (assailed Decision) and the Resolution[3] dated April 20, 2010 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 107748, denying petitioner's action for revival of judgment.

In consideration for a loan obtained from respondent First National City Bank of New York (now Citibank, N.A.) (Citibank), on November 10, 1972, petitioner Douglas F. Anama (Anama) executed a promissory note in the amount of ₱418,000.00 in favor of Citibank.[4] To secure payment of the obligation, Anama also executed in favor of Citibank a chattel mortgage over various industrial machineries and equipment located on his property at No. 1302, E. de los Santos Avenue, Quezon City.[5] For Anama's failure to pay the monthly installments due on the promissory note starting January 1974, Citibank filed a complaint for sum of money and replevin[6] dated November 13, 1974 (docketed as Civil Case No. 95991) with the Court of First Instance of Manila (now Regional Trial Court),

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[1] *Rollo*, pp. 11-139.

[2] *Id.* at 141-151. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez.

[3] *Id.* at 153-154.

[4] *Id.* at 142, 155, 208-209.

[5] *Id.* at 142, 157 & 209.

[6] *Id.* at 155-160.

Branch 11. Anama filed his answer with counterclaim[7] and his amended answer with counterclaim,[8] alleging, among others, that his failure to pay the monthly installments was due to the fault of Citibank as it refused to receive the checks he issued, and that the chattel mortgage was defective and void.[9]

On December 2, 1974, the Regional Trial Court (RTC), upon proof of default of Anama in the payment of his loan, issued an Order of Replevin over the machineries and equipment covered by the chattel mortgage.[10]

On January 29, 1977, Citibank, alleging that the properties subject of the Order of Replevin which were taken by the Sheriff under his custody were not delivered to it, filed a motion for [issuance of] alias writ of seizure.[11] Citibank prayed that an alias writ of seizure be issued directing the Sheriff to seize the properties and to dispose them in accordance with Section 6, Rule 60 of the Revised Rules of Court. The RTC granted the motion through its Resolution[12] dated February 28, 1977. The *Ex-Officio* Sheriff of Quezon City issued three receipts for the seized properties on March 17, 18, and 19, 1977.[13] Anama filed a motion for reconsideration but this was denied by the RTC in a Resolution[14] dated March 18, 1977.

Anama then filed a petition for *certiorari* and prohibition with writ of preliminary injunction with the CA on March 21, 1977 (docketed as CA- G.R. SP No. 06499) on the ground that the above resolutions of the trial court were issued in excess of jurisdiction and with grave abuse of discretion because of

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[7] *Id.* at 161-166.

[8] *Id.* at 168-174.

[9] *Id.* at 171-173.

[10] *Id.* at 212.

[11] *Id.* at 179-180.

[12] *Id.* at 181-184.

[13] *Id.* at 187-189.

[14] *Id.* at 185-186.

the lack of evidence proving Citibank's right to possession over the properties subject of the chattel mortgage.[15]

On July 30, 1982, the CA rendered a Decision[16] (July 30, 1982 Decision) granting Anama's petition for certiorari and prohibition and nullifying the RTC's orders of seizure, to wit:

> WHEREFORE, the petition is granted. The questioned resolutions issued by the respondent judge in Civil Case No. 95991, dated February 28, 1977, and March 18, 1977, together with the writs and processes emanating or deriving therefrom, are hereby declared null and void ab initio.
>
> The respondent ex-of[f]icio sheriff of Quezon City and the respondent First National City Bank are hereby ordered to return all the machineries and equipments with their accessories seized, dismantled and hauled, to their original and respective places and positions in the shop flooring of the petitioner's premises where these articles were, before they were dismantled, seized and hauled at their own expense. The said respondents are further ordered to cause the repair of the concrete foundations destroyed by them including the repair of the electrical wiring and facilities affected during the seizure, dismantling and hauling.
>
> The writ of preliminary injunction heretofore in effect is hereby made permanent. Costs against the private respondents.
>
> SO ORDERED.[17]

On August 25, 1982, Citibank filed its petition for review on *certiorari* with this Court (docketed as G.R. No. 61508) assailing the July 30, 1982 Decision of the CA.[18] On March 17, 1999, we promulgated a Decision[19] dismissing Citibank's petition for lack of merit and affirming the July 30, 1982 Decision of

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[15] *Id.* at 27, 143-144 & 215.

[16] *Id.* at 198-207.

[17] *Id.* at 207.

[18] *Id.* at 28.

[19] *Id.* at 208-232.

the CA. An Entry of Judgment[20] was subsequently issued on April 12, 1999.

Meanwhile, on November 19, 1981, during the pendency of CA-G.R. SP No. 06499 in the CA, the fourth floor of the Manila City Hall, where Branch 11 of the RTC of Manila and its records, including the records of Civil Case No. 95991 were located, was destroyed by fire.[21]

On February 10, 1982, Anama filed a petition for reconstruction of record[22] in the RTC, which the latter granted in an Order[23] dated May 3, 1982. On December 2, 1982, considering that G.R. No. 61508 was already pending before this Court, the RTC issued an Order[24] directing that all pending incidents in Civil Case No. 95991 be suspended until G.R. No. 61508 has been resolved.

On March 12, 2009, Anama filed a petition for revival of judgment with the CA (docketed as CA-G.R. SP No. 107748).[25] Anama sought to revive the CA's July 30, 1982 Decision in CA-G.R. SP No. 06499 and argued that Citibank's failure to file an action for the reconstitution of the records in the RTC in Civil Case No. 95991 constituted abandonment of its cause of action and complaint against Anama.[26] In addition to the revival of the CA's July 30, 1982 Decision in CA-G.R. SP No. 06499, Anama sought to remand the case to the RTC for further proceedings in Civil Case No. 95991, particularly his counterclaims against Citibank.[27]

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[20] *Id.* at 233.

[21] *Id.* at 32, 144 & 234.

[22] *Id.* at 234-236.

[23] *Id.* at 237-238.

[24] *Id.* at 256.

[25] *Id.* at 144-145.

[26] *Id.* at 33-34 & 145.

[27] *Id.* at 145.

In its comment, Citibank argued that the petition should be dismissed as an action for revival of judgment is within the exclusive original jurisdiction of the RTC. It also argued that laches has set in against Anama for having slept on his rights for almost 10 years. Lastly, Citibank claimed that it did not abandon its money claim against Anama when it did not initiate the reconstitution proceedings in the RTC.[28]

On November 19, 2009, the CA denied the petition for lack of jurisdiction. Pertinent portions of the assailed Decision reads:

> [W]e find that respondent bank correctly question (*sic*) this Court's jurisdiction to entertain the instant petition to revive the July 30, 1982 decision in CA-G.R. SP No. 06499. While concededly filed within 10 years from the April 12, 1999 entry of the decision rendered in G.R. No. 61508, the petition should have been filed with the appropriate Regional Trial Court which has exclusive original jurisdiction over all civil actions in which the subject of the litigation is incapable of pecuniary estimation and/or all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions. x x x[29]

Anama filed his motion for reconsideration which the CA denied through its assailed Resolution[30] dated April 20, 2010.

On June 10, 2010, Anama filed this petition[31] and argued that his petition for revival of judgment should be filed in the court that issued the judgment sought to be revived, the CA in this case.[32]

In its comment,[33] Citibank agrees with the CA that jurisdiction over actions for revival of judgments is with the RTC.[34] Citibank

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[28] *Id.*

[29] *Id.* at 147.

[30] *Id.* at 153-154.

[31] *Id.* at 11-139.

[32] *Id*. at 122.

[33] *Id.* at 280-310.

[34] *Id.* at 295-296.

also argues that Anama's petition to revive judgment is already barred by laches and that it did not waive or abandon its claim against Anama in Civil Case No. 95991.[35]

On December 30, 2010, Anama filed his reply.[36]

On August 25, 2016, Anama filed a manifestation[37] reiterating the arguments on his petition. On February 17, 2017, Citibank filed its comment[38] stressing that the CA did not err in dismissing the petition to revive judgment on the ground of lack of jurisdiction. On March 16, 2017, Anama filed his reply.[39]

We deny the petition.

An action to revive a judgment is an action whose exclusive purpose is to enforce a judgment which could no longer be enforced by mere motion.[40] Section 6, Rule 39 of the Revised Rules of Court provides:

> Sec. 6. *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statue of limitations.

Section 6 is clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said

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[35] *Id.* at 299-302.

[36] *Id.* at 313-382.

[37] *Id.* at 397-432.

[38] *Id.* at 443-461.

[39] *Id.* at 462-525.

[40] *Caiña v. Court of Appeals*, G.R. No. 114393, December 15, 1994, 239 SCRA 252, 261.

judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within 10 years from the time the judgment becomes final.[41]

Further, a revival suit is a new action, having for its cause of action the judgment sought to be revived.[42] It is different and distinct from the original judgment sought to be revived or enforced.[43] It is a new and independent action, wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered. Revival of judgment is premised on the assumption that the decision to be revived, either by motion or by independent action, is already final and executory.[44]

As an action for revival of judgment is a new action with a new cause of action, the rules on instituting and commencing actions apply, including the rules on jurisdiction. Its jurisdictional requirements are not dependent on the previous action and the petition does not necessarily have to be filed in the same court which rendered judgment.[45]

Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments and the character of the relief sought are the ones to be consulted.[46]

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[41] *Rubio v. Alabata*, G.R. No. 203947, February 26, 2014, 717 SCRA 554, 559-560.

[42] *Philippine National Bank v. Nuevas*, G.R. No. L-21255, November 29, 1965, 15 SCRA 434, 436-437, citing *Philippine National Bank v. Bondoc*, G.R. No. L-20236, July 30, 1965, 14 SCRA 770.

[43] *Heirs of Numeriano Miranda, Sr. v. Miranda*, G.R. No. 179638, July 8, 2013, 700 SCRA 746, 756, citing *Juco v. Heirs of Tomas Siy Chung Fu*, G.R. No. 150233, February 16, 2005, 451 SCRA 464, 473-474.

[44] *Saligumba v. Palanog*, G.R. No. 143365, December 4, 2008, 573 SCRA 8, 15-16.

[45] Riano, *Civil Procedure (The Bar Lectures Series),* Vol. 1, 2011, p. 655.

[46] *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013, 694 SCRA 91, 99.

The principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiffs cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted.[47] Jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.[48]

Batas Pambansa Bilang 129 (BP 129), otherwise known as the Judiciary Reorganization Act of 1980 and its amendments, is the law which confers jurisdiction to the courts. Section 19 of BP 129, as amended by Republic Act No. 7691,[49] provides:

> Sec. 19. *Jurisdiction in civil cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

In determining the jurisdiction of an action whose subject is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be ascertained. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation and the jurisdiction of the court depends on the amount of the claim. But, where the primary

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[47] *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, 656 SCRA 102, 119.

[48] *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71, 77, citing *Llamas v. Court of Appeals*, G.R. No. 149588, September 29, 2009, 601 SCRA 228, 233.

[49] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa Blg*. 129, Otherwise Known as the "Judiciary Reorganization Act of 1980" (1994).

issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, such are actions whose subjects are incapable of pecuniary estimation, hence cognizable by the RTCs.[50]

As an action to revive judgment raises issues of whether the petitioner has a right to have the final and executory judgment revived and to have that judgment enforced and does not involve recovery of a sum of money, we rule that jurisdiction over a petition to revive judgment is properly with the RTCs. Thus, the CA is correct in holding that it does not have jurisdiction to hear and decide Anama's action for revival of judgment.

A reading of the CA's jurisdiction also highlights the conclusion that an action for revival of judgment is outside the scope of jurisdiction of the CA. Section 9 of BP 129 provides:

> Sec. 9. *Jurisdiction*. – The Court of Appeals shall exercise:
>
> 1. Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;
>
> 2. Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and
>
> 3. Exclusive appellate jurisdiction over all final judgments, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission, 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.

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[50] *Villena v. Payoyo*, G.R. No. 163021, April 27, 2007, 522 SCRA 592, 596-597.

The CA also has concurrent original jurisdiction over petitions for issuance of writ of *amparo*,[51] writ of *habeas data*,[52] and writ of *kalikasan*.[53]

Not being one of the enumerated cases above, it is clear that the CA is without jurisdiction to hear and decide an action for revival of judgment.

Anama's reliance on *Aldeguer v. Gemelo*[54] to justify his filing with the CA is misplaced. The issue in *Aldeguer* is not jurisdiction but venue. The issue was which between the RTC of Iloilo and RTC of Negros Occidental was the proper court to hear the action.

However, venue and jurisdiction are entirely distinct matters. Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection. In either case, the court may render a valid judgment. Rules as to jurisdiction can never be left to the consent or agreement of the parties, whether or not a prohibition exists against their alteration.[55] Venue is procedural, not jurisdictional, and hence may be waived.[56]

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[51] THE RULE ON THE WRIT OF *AMPARO*, A.M. No. 07-9-12-SC, September 25, 2007, Sec. 3.

[52] THE RULE ON THE WRIT OF *HABEAS DATA*, A.M. No. 08-1-16-SC, January 2008, Sec. 3.

[53] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, April 13, 2010, Rule 7, Sec. 3.

[54] 68 Phil. 421 (1939).

[55] *Heirs of Pedro Lopez v. De Castro*, G.R. No. 112905, February 3, 2000, 324 SCRA 591, 609, citing *Santos III v. Northwest Orient Airlines*, G.R. No. 101538, June 23, 1992, 210 SCRA 256, 265-266.

[56] *Id.*

As we have already ruled on jurisdiction, there is no more reason to discuss whether laches has set in against Anama.

Considering, however, that the proceedings in Civil Case No. 95991 have been suspended and remains pending since 1982, we deem it necessary to lift the order of suspension and instruct the trial court to hear and try the case with deliberate dispatch.

WHEREFORE, the petition is **DENIED**. The Decision dated November 19, 2009 and Resolution dated April 20, 2010 of the Court of Appeals in CA-G.R. SP No. 107748 are **AFFIRMED.**

We direct the trial court to proceed with the hearing and disposition in Civil Case No. 95991 with all deliberate dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 193208. December 13, 2017]

HEIRS OF FERMIN ARANIA, represented by LOIDA A. SORIANO; HEIRS OF ARSENIO OROSCO, represented by PEDRITO OROSCO; HEIRS OF FLORENCIO BARROGA, represented by ENRIQUE BARROGA; HEIRS OF FRANCISCO VILORIA, represented by EXEQUIEL VILORIA; DOMINGO MAGALONG; HEIRS OF ANTONIO ANDRES, represented by PAULINO ANDRES; HEIRS OF GREGORIO GAHIS, represented by FELIX GAHIS; HEIRS OF FLORENTINO CORPUZ, represented by

ERNESTO CORPUZ; GAVINO CORPUZ; and HEIRS OF SIMPLICIO GALAPON, represented by FERNANDO GALAPON, *petitioners, vs.* **INTESTATE ESTATE OF MAGDALENA R. SANGALANG, represented by its ADMINISTRATRIX SOLITA S. JIMENEZ; ANGELO S. JIMENEZ, JR.; JAYSON P. JIMENEZ; SOLITA S. JIMENEZ; JOHN S. HERMOGENES; HEIRS OF MAGDALENA R. SANGALANG, represented by ROMULO SANGALANG JIMENEZ; and ROMULO SANGALANG JIMENEZ,** *private respondents,*

HONORABLE COURT OF APPEALS, FIFTEENTH DIVISION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), REGION III, OFFICE OF THE REGIONAL ADJUDICATOR, and OFFICE OF THE PROVINCIAL ADJUDICATOR, BRANCH 2, TALAVERA, NUEVA ECIJA; and MR. DELFIN GASPAR, IN HIS CAPACITY AS SHERIFF OF THE BOARD, DARAB NORTH NUEVA ECIJA, *public respondents.*

SYLLABUS

1. REMEDIAL LAW; EXTRAORDINARY REMEDY; ANNULMENT OF JUDGMENT; THE COURT INSTITUTED SAFEGUARDS BY LIMITING THE GROUNDS FOR THE ANNULMENT OF JUDGMENT TO LACK OF JURISDICTION AND EXTRINSIC FRAUD; NOT PRESENT IN CASE AT BAR.— *Dare Adventure Farm Corporation v. Court of Appeals* provides an extensive discussion on the extraordinary remedy of annulment of judgment: A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. **The Court has thus instituted safeguards by**

limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper. x x x From the foregoing, it can be easily discerned that the petition for annulment of judgment instituted by the petitioners before the Court cannot prosper. First, an appropriate remedy to question the decision in the petition for certiorari was available. In fact, the petitioners filed a petition for review on certiorari before this Court, docketed as G.R. No. 150695, which, however, was denied on the ground of lack of affidavit of service of copies of the motion for extension. Further, neither extrinsic fraud nor lack of jurisdiction exists in this case. x x x The petitioners were able to properly and fully ventilate their claims before the PARAD and the DARAB. The two administrative tribunals even ruled in their favor. When the respondents filed a petition for review as well as a petition for certiorari before the CA, there is no showing that the petitioners were deprived of any opportunity to answer the petitions. Finally, a petition for certiorari alleging grave abuse of discretion on the part of the DARAB squarely falls within the jurisdiction of the CA. Hence, a petition to annul the judgment of the appellate court in the certiorari action has no leg to stand on.

2. **ID.; ACTIONS; FORUM SHOPPING; FORUM SHOPPING IS COMMITTED BY A PARTY WHO AVAILS OF SEVERAL JUDICIAL REMEDIES BEFORE DIFFERENT COURTS TO ENSURE A FAVORABLE RULING; CASE AT BAR.—** In this jurisdiction, the rule against forum shopping has been ingrained in Section 5, Rule 7 of the Rules of Court: x x x Expounding on the pernicious practice of forum shopping committed by a party who avails of several judicial remedies before different courts to ensure a favorable ruling, the Court, in *Yap v. Chua, x x x* To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity

of parties, rights or causes of action, and reliefs sought. x x x The respondents undoubtedly committed forum shopping when they instituted a petition for certiorari before the CA in the guise of challenging the validity of the writ of execution pending appeal, despite knowledge that a petition to review the DARAB findings was pending in another division of the appellate court.

3. ID.; ID.; ID.; REQUISITES OF *LITIS PENDENTIA*; EXPLAINED; PRESENT IN CASE AT BAR.— The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. x x x It has been consistently held that absolute identity of parties is not required. A substantial identity of parties is enough to qualify under the first requisite. Here, it is clear as daylight that the petitioners in both cases represent the same interest as they are all legal heirs of Magdalena Sangalang. x x x Indeed, the respondents assigned different errors in the two petitions. However, the relief they sought from both petitions is, without any doubt, the setting aside of the PARAD and DARAB decisions in favor of the petitioners. x x x Both petitions in the appellate court are grounded on the same cause of action, i.e., the respondents' claim of ownership over the lands in question and the PARAD and DARAB's violation of their rights as owners when the administrative bodies ruled in favor of the petitioners. x x x Finally, as to the third requisite, the judgment in the petition for review amounted to *res judicata* in the petition for certiorari. There is *res judicata* or bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. As previously discussed, the parties in the two petitions are identical. Further, the petitions involve the same subject matter, i.e., the landholdings covered by the petitioners' respective CLTs. "Identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. x x x If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action."

In this case, the same evidence will be necessary to sustain the causes of action in the two cases which are unequivocally based on the same set of facts. While it may be true that the respondents raised as an additional assignment of error in the petition for certiorari the DARAB's issuance of the writ of execution pending appeal, they nevertheless sought the nullification of the DARAB decision. Hence, in truth and in fact, the two petitions are based on the same cause of action.

4. ID.; ID.; ID.; THREE WAYS OF COMMITTING FORUM SHOPPING, ENUMERATED.— In *Pentacapital Investment Corporation v. Mahinay,* the Court ruled that "forum shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)."

5. ID.; ID.; ID.; CRITERIA TO DETERMINE WHICH CASE TO DISMISS IN CASE ALL THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT, CITED; APPLICATION IN CASE AT BAR.— In *Dotmatrix Trading v. Legaspi,* the Court settled the criteria on which case should be dismissed in case all the elements of *litis pendentia* are present: Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties. The abovementioned criteria find application in the case at bar to determine which of the two petitions filed before the appellate court should have been dismissed. *First,* the petition for review was instituted before the petition for certiorari. *Second,* the petition for review was certainly not meant to preempt the

petition for certiorari as the latter was only filed supposedly to question the issuance of the writ of execution pending appeal. *Third,* the petition for review was the appropriate vehicle to thresh out the issues between the parties as it was precisely instituted to assail the DARAB decision in favor of the petitioners. Consequently, the petition for review prevails. The decision in the petition for certiorari, which should have been dismissed, as well as all orders and issuances emanating therefrom are null and void having no legal force and effect. Considering that the decision in the petition for review is already final and executory after the respondents withdrew their motion for reconsideration, the execution of said decision naturally follows.

6. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; DIRECT CONTEMPT IS COMMITTED WHEN, AS IN CASE AT BAR, THE RESPONDENTS WERE ABLE TO FILE TWO PETITIONS BEFORE THE APPELLATE COURT WHICH CONSEQUENTLY RESULTED IN TWO CONFLICTING DECISIONS, THE HARMFUL EFFECT SOUGHT TO BE AVOIDED BY THE RULE AGAINST FORUM SHOPPING; PENALTY.— After the PARAD and the DARAB ruled in their favor, the petitioners sought the issuance of a writ of execution pending appeal in hopes of finally being able to take possession of and cultivate the lands which were awarded to them by virtue of the agrarian reform laws. The respondents, however, took advantage of the petitioners' eagerness to have the decisions executed. They filed a petition for certiorari to assail the issuance of the writ of execution but they also assigned errors to question the merits of the DARAB decision. Thus, the respondents were able to file two petitions before the appellate court which consequently resulted in two conflicting decisions, the harmful effect sought to be avoided by the rule against forum shopping. It is worthy to note that the respondents withdrew their motion for reconsideration in the petition for review, only when the Resolution of this Court dismissing the petition for review filed by the petitioners to assail the decision in the petition for certiorari, has become final and executory. For decades, they successfully evaded the implementation of agrarian reform laws by violating the rules of procedure and making a mockery of justice. This Court refuses to close its eyes to the detestable strategy employed by the respondents and will not reward such

inexcusable behavior. Under Rule 71, Section 1 of the 1997 Rules of Civil Procedure, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding ₱2,000.00. Accordingly, a fine of ₱2,000.00 is imposed on each of the respondents.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
David Cui-David and Buenaventura Law Offices for private respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for annulment of judgment seeking to set aside the Decision,[1] dated 30 October 2001, of the Court of Appeals *(CA)* in CA-G.R. SP No. 64164 which nullified the Decision,[2] dated 21 December 1998, of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 6576, an action for recovery of possession.

THE FACTS

On 16 May 1996, the petitioners filed an action for recovery of possession of several parcels of agricultural land *(subject landholdings)* before the Provincial Agrarian Reform Adjudication Board *(PARAD).* The subject landholdings form part of the estate of Magdalena Sangalang *(Magdalena)* located at Baloc, Sto. Domingo, Nueva Ecija. They alleged that they are the lawful tenant-tillers of the subject landholdings since time immemorial up to the promulgation of Presidential Decree

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[1] *Rollo*, pp. 29-39; penned by Associate Justice Mercedes Gozo-Dadole with Associate Justice Edgardo P. Cruz and Associate Justice Juan Q. Enriquez, Jr., concurring.

[2] *Id*. at 56-61.

(P.D.) No. 27 and thereafter. As proof of their claim, the petitioners presented their Certificates of Land Transfer *(CLTs)*. In addition, the Barangay Agrarian Reform Committee *(BARC)* Chairman of the locality certified that the petitioners are tillers of their respective landholdings of which they are the CLT holders. The petitioners averred that sometime in 1987, they were harassed by Magdalena and her cohorts and that through coercion, threats, and intimidation, they were forced to leave their respective landholdings. Magdalena subsequently died in 1993. The petitioners further contended that they were paying lease rentals with respect to the subject landholdings as evidenced by receipts issued to them.[3]

On their part, the respondents countered that the petitioners are not the lawful tenants of the subject landholdings, the same having been under the administration of their mother, Magdalena, during her lifetime. They asserted that the certification issued by the BARC was falsified because the said committee was only organized in September 1988 by virtue of Republic Act *(R.A.)* No. 6657.[4]

The PARAD Ruling

In a decision,[5] dated 1 April 1997, the PARAD ruled that the subject landholdings were covered by Operation Land Transfer *(OLT)* and that CLTs were already issued in favor of the petitioners. It added that a certification was issued by the Municipal Agrarian Reform Officer *(MARO)* of Sto. Domingo, Nueva Ecija to the effect that the landholdings of Magdalena are covered by Operation Land Transfer pursuant to P.D. No. 27. The PARAD observed that the issuance of the CLTs in favor of the petitioners was annotated at the back of Transfer Certificate of Title *(TCT)* No. NT-59021 or the mother title and that the receipts issued to the petitioners clearly proved that they were

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[3] *Id*. at 50-51.

[4] *Id*. at 51.

[5] *Id*. at 50-53.

made to pay lease rentals for the subject landholdings. It adjudged that the act of the respondents in forcibly ousting the petitioners from their lawful possession and cultivation of their respective landholdings violated agrarian reform laws. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Ordering the respondents to vacate and relinquish their possession of the landholdings in question; and
>
> 2. Declaring the petitioners to be the lawful and legitimate farmer beneficiaries over the landholdings in question.[6]

Aggrieved, the respondents filed an appeal before the DARAB.

The DARAB Ruling

In a decision, dated 21 December 1998, the DARAB held that the receipts issued by respondent Romulo Jimenez proved that the respondents had acknowledged the petitioners as their tenants who had religiously complied with their obligation to pay rentals, and that the issuance of the CLTs substantiated the petitioners' right to physical possession of the subject landholdings. It opined that agrarian laws require the respondents to first secure a court order before dispossessing the petitioners who were in actual possession and cultivation of the subject landholdings.

The DARAB stated that before a CLT is issued, the tenant-farmer should fully comply with the requirements for a grant of title under P.D. No. 27. Hence, when a CLT is issued, the grantee thereof is presumed to have complied with the requirements of the law and the issuance of the same is presumed to be made with regularity. The DARAB concluded that the presumption that official duty has been regularly performed was substantiated by a certification issued by the MARO of Sto. Domingo, Nueva Ecija that the landholdings of Magdalena, covered by TCT Nos. NT-59021, NT-59022 and NT-59023,

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[6] *Id*. at 53.

were included in Operation Land Transfer pursuant to P.D. No. 27. The DARAB disposed the case in this wise:

> WHEREFORE, premises considered, the assailed decision is hereby AFFIRMED IN TOTO.
>
> SO ORDERED.[7]

Undeterred, the respondents filed a petition for review before the CA Seventh Division, docketed as CA-G.R. SP No. 57360, to challenge the DARAB decision. They question the petitioners' failure to comply with the requisites of procedural due process on three grounds, namely; 1) the alleged absence of any hearing for the presentation of the evidence of the parties; 2) the assailed decision relied on the petitioners' position paper which was inadmissible since a copy thereof was never furnished to the respondents; and 3) the petitioners were allowed to submit their position paper despite the absence of any order from the PARAD.[8]

In the meantime, a writ of execution pending appeal, dated 8 March 2001, was issued by the DARAB.[9] Thereafter, the respondents filed a petition for certiorari before the CA Special Fifteenth Division, docketed as CA-G.R. SP No. 64164, to assail the issuance of the said writ of execution pending appeal. They aver that the action for recovery of possession should have been filed against the estate of Magdalena; that the PARAD and the DARAB had no jurisdiction over the estate or over the persons of the respondents because no summons was served; that the CLTs did not make the petitioners owners of the subject landholdings; that the subject landholdings had ceased to be agricultural lands; that the writ of execution pending appeal was issued without hearing; and that the order for the issuance of the writ did not contain any good reason or impose any condition therefor in violation of Section 2 of DARAB Rule XII.[10]

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[7] *Id*. at 60.

[8] *Id*. at 44-45.

[9] *Id*. at 33.

[10] *Id*. at 34-35.

The CA Seventh Division's Ruling in the Petition for Review

In a decision,[11] dated 5 November 2001, the CA pronounced that as regards the alleged absence of any hearing for the presentation of the evidence of the parties, the minutes of the hearing conducted on 18 July 1996, clearly showed that in lieu of a hearing, the parties agreed to present their documentary evidence within the period prescribed.

With respect to the second issue, the appellate court declared that the petitioners' failure to furnish the respondents with a copy of their position paper did not constitute denial of due process, because records indicated that the respondents were apprised of the existence of the petitioners' position paper when they received the supplemental position paper on 28 February 1997. It added that from 28 February 1997 until the PARAD rendered its decision on 1 April 1997, the respondents had every opportunity to comment on the position paper but they chose to keep silent. Moreover, the respondents were not only heard on a motion to quash before the PARAD but likewise on a memorandum of appeal before the DARAB.

The CA did not sustain the respondents' challenge to the validity of the PARAD's decision insofar as it relied on the petitioners' position paper, a pleading which was allegedly inadmissible since it was filed in the absence of any directive from the PARAD. It reasoned that the decisions of the PARAD and the DARAB relied not so much on the arguments in the position paper but on the documentary evidence.

As to the jurisdiction of the PARAD and the DARAB, the appellate court resolved that the existence of the tenancy relationship and the circumstance that the petitioners were seeking to enforce their respective CLTs, which, in turn, derive validity from P.D. No. 27, the implementation of which is within the jurisdiction of the DARAB, squarely places the case within the jurisdiction of the DARAB and the PARAD. The dispositive portion reads:

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[11] *Id.* at 41-49.

WHEREFORE, premises considered, the petition for review is DISMISSED and the assailed Decision, dated December 21, 1998, issued by the DARAB, is AFFIRMED in toto. Costs against petitioner.

SO ORDERED.[12]

Unconvinced, the respondents moved for reconsideration.

The CA Special Fifteenth Division's Ruling in the Petition for Certiorari

In a decision, dated 30 October 2001, the CA held that the DARAB and the PARAD did not acquire jurisdiction over the persons of the respondents because they were not served with summons. It ruled that the PARAD and the DARAB had no jurisdiction over the subject landholdings considering that they had ceased to be agricultural lands due to the municipal classification thereof as residential or agro-industrial. The CA further adjudged that the writ of execution pending appeal was null and void because it was issued without notice of hearing. The *fallo* reads:

WHEREFORE, FOREGOING PREMISES CONSIDERED, there being lack of jurisdiction and grave abuse of discretion amounting to lack or in excess of jurisdiction, this petition is GRANTED. The Decision dated April 1, 1997 of the public respondent Department of Agrarian Reform Adjudication Board, Branch 11, Region III, (PARAD), in Darab Case No. 5559" NNE' 96, the Decision dated December 21, 1998 of the public respondent Department of Agrarian Reform Adjudication Board (DARAB), the Order dated January 25, 2000 by Department of Agrarian Reform Adjudication Board and the Writ of Execution Pending appeal dated March 9, 2001 all rendered and/or issued in Darab Case No. 6576 are nullified, set aside and/or canceled insofar as they affect herein petitioners. The Writ of Preliminary Injunction dated September 8, 2000 is made permanent.

SO ORDERED.[13]

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[12] *Id*. at 49.

[13] *Id*. at 38.

Aggrieved, the petitioners sought to file a petition for review before this Court to assail the decision of the CA in the certiorari action. Unfortunately, their second motion for extension to file petition for review was denied in a 30 January 2002 Resolution[14] on the ground of lack of affidavit of service of copies of the motion on the respondents and the CA. Thus, on 21 March 2002, the decision of the CA in the certiorari action had become final and executory.[15]

Meanwhile, on 3 October 2002, the CA issued a Resolution[16] to the effect that the decision in the petition for review has become final and executory on account of the respondents' voluntary withdrawal of the petition.

ISSUE

WHETHER THE CA DECISION IN THE PETITION FOR CERTIORARI MAY BE NULLIFIED AND SET ASIDE.

The petitioners argue that possession in favor of the farmer-beneficiaries and confirmation of the award by virtue of the agrarian reform law were unanimously adjudged by all three forums; that they were about to claim their victory and take possession of the subject landholdings utilizing the favorable judgment of the DARAB, pending appeal to the CA; that in an effort to circumvent the wheels of justice, the respondents filed the petition for certiorari to assail the issuance of the writ of execution pending appeal and to attack the decisions of the PARAD and the DARAB; that the CA Special Fifteenth Division committed a palpable error when it took cognizance of the petition for certiorari and, much more, committed a grave error when it rendered a decision therein which collides with the decision of the CA Seventh Division; and that they have a favorable judgment in the PARAD, DARAB, and the CA Seventh Division

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[14] *Id*. at 102.

[15] *Id*.

[16] *Id*. at 101.

but they cannot take possession over the subject landholdings by reason of the CA Special Fifteenth Division's judgment.[17]

In their Comment,[18] the respondents counter that this Court, in a 30 January 2002 Resolution, had previously affirmed the decision of the CA Special Fifteenth Division subject of the present petition for annulment; that the said resolution became final and executory on 21 March 2002; that the present petition violates the rules of procedure meant to put a stop to repeated litigation and forum shopping; and that in a Resolution, dated 8 October 2002, the CA reconciled its two decisions by recognizing the final and executory status of the decision in the certiorari action and by withdrawing its previous decision dated 5 November 2001.

In their Reply,[19] the petitioners aver that the decision rendered by the CA Seventh Division must be sustained because it affirmed the decisions of the DARAB and the PARAD and it was decided on the merits; and that the said decision had already attained finality but could not be executed by reason of the conflicting decision in the certiorari action.

THE COURT'S RULING

Propriety of the remedy of annulment of judgment

The petitioners, in seeking to remedy the perceived injustice brought about by the conflicting decisions of the appellate court, filed before the Court a petition for annulment of judgment, a remedy found in Section 1, Rule 47 of the Rules of Civil Procedure, *viz*:

> Section 1. Coverage. – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies

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[17] *Id*. at 16-18.

[18] *Id*. at 239-249.

[19] *Id*. at 308-312.

of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Dare Adventure Farm Corporation v. Court of Appeals[20] provides an extensive discussion on the extraordinary remedy of annulment of judgment:

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. **The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.** A petition for annulment that ignores or disregards any of the safeguards cannot prosper.
>
> The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant

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[20] 695 Phil. 681 (2012).

must not hang in suspense for an indefinite period of time.[21] (emphasis supplied and citations omitted)

From the foregoing, it can be easily discerned that the petition for annulment of judgment instituted by the petitioners before the Court cannot prosper.

First, an appropriate remedy to question the decision in the petition for certiorari was available. In fact, the petitioners filed a petition for review on certiorari before this Court, docketed as G.R. No. 150695, which, however, was denied on the ground of lack of affidavit of service of copies of the motion for extension.[22]

Further, neither extrinsic fraud nor lack of jurisdiction exists in this case. Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court; by giving him a false promise of a compromise; or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat.[23] The petitioners were able to properly and fully ventilate their claims before the PARAD and the DARAB. The two administrative tribunals even ruled in their favor. When the respondents filed a petition for review as well as a petition for certiorari before the CA, there is no showing that the petitioners were deprived of any opportunity to answer the petitions.

Finally, a petition for certiorari alleging grave abuse of discretion on the part of the DARAB squarely falls within the jurisdiction of the CA. Hence, a petition to annul the judgment of the appellate court in the certiorari action has no leg to stand on.

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[21] *Id.* at 688-689.

[22] *Rollo*, p. 102.

[23] *People v. CA*, 676 Phil. 330, 334-335 (2011).

Notwithstanding the unavailability of the remedy of annulment of judgment, the Court resolves to give due course to this petition in order to cure the grave injustice suffered by the petitioners brought about by the respondents' blatant disrespect of the rules of procedure, which they now invoke to defeat the petitioners' claim.

Respondents are guilty of willful and deliberate forum shopping.

In this jurisdiction, the rule against forum shopping has been ingrained in Section 5, Rule 7 of the Rules of Court:

Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Expounding on the pernicious practice of forum shopping committed by a party who avails of several judicial remedies

before different courts to ensure a favorable ruling, the Court, in *Yap v. Chua,*[24] held:

> Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.
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> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.
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> *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

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[24] 687 Phil. 392 (2012).

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[25]

The respondents undoubtedly committed forum shopping when they instituted a petition for certiorari before the CA in the guise of challenging the validity of the writ of execution pending appeal, despite knowledge that a petition to review the DARAB findings was pending in another division of the appellate court.

As regards the first requisite, in the petition for certiorari, the parties are the Intestate Estate of Magdalena R. Sangalang represented by its administratrix, Solita Jimenez, Angelo Jimenez, Jr., Jayson Jimenez, Solita Jimenez, and John Hermogenes as petitioners, and the petitioners herein as respondents. On the other hand, in the petition for review, Romulo S. Jimenez is the sole petitioner while the petitioners herein are the respondents. It has been consistently held that absolute identity of parties is not required. A substantial identity of parties is enough to qualify under the first requisite.[26] Here, it is clear as daylight that the petitioners in both cases represent the same interest as they are all legal heirs of Magdalena Sangalang.

With respect to the second requisite, the respondents bewailed violation of procedural due process in the petition for review by alleging lack of hearing, inadmissiblity of the petitioners' position paper, and lack of directive from the PARAD to submit position paper; whereas, in the petition for certiorari, they averred that the action for recovery of possession should have been filed against the estate of Magdalena; that the PARAD and the DARAB had no jurisdiction over the estate or over the persons of the respondents because no summons was served; that the CLTs did not make the petitioners owners of the subject

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[25] *Id.* at 399-400.

[26] *Spouses Marasigan v. Chevron Phils. Inc., et al.,* 681 Phil. 503, 516 (2012).

landholdings; that the subject landholdings had ceased to be agricultural lands; that the writ of execution pending appeal was issued without hearing; and that the order for the issuance of the writ did not contain any good reason or impose any condition therefor. Indeed, the respondents assigned different errors in the two petitions. However, the relief they sought from both petitions is, without any doubt, the setting aside of the PARAD and DARAB decisions in favor of the petitioners.

In *Pentacapital Investment Corporation v. Mahinay,*[27] the Court ruled that "forum shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)."[28]

Both petitions in the appellate court are grounded on the same cause of action, i.e., the respondents' claim of ownership over the lands in question and the PARAD and DARAB's violation of their rights as owners when the administrative bodies ruled in favor of the petitioners. Certainly, the respondents may rightfully question the issuance of the writ of execution pending appeal, the same being the principal relief sought in the petition for certiorari. In evident bad faith, however, they assigned other errors that already pertained to the merits of the case. It is worthy to note that the petition for review came first before the petition for certiorari. What the respondents should have done was to file a supplemental petition to assail the issuance of the writ of execution pending appeal.[29] Moreover, it was the CA Seventh

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[27] 637 Phil. 283 (2010).

[28] *Id.* at 309.

[29] Section 6, Rule 10, Rules of Court: *Supplemental pleadings*. — Upon

Division which has authority to rule on the propriety of the execution pending appeal considering that Section 2, Rule 39 of the Rules of Court provides that "after the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court." As a corollary proposition, a challenge to a writ of execution pending appeal issued by the trial court should be brought before the appellate court after the former has lost jurisdiction over the case.

In *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*,[30] petitioner therein filed a petition for certiorari before the CA to question the trial court's orders recalling the taking of depositions. In the meantime, for petitioner's refusal to attend the pre-trial conference, it was declared non-suited and its complaint was dismissed. Thus, petitioner therein filed an appeal before the CA. In denying the petition for certiorari, the CA opined:

> Any decision of ours will not produce any practical legal effect. According to the petitioner, if we annul the questioned Orders, the dismissal of its Complaint by the trial [court] will have to be set aside in its pending appeal. That assumes that the division handling the appeal will agree with Our decision. On the other hand, it may not. Also other issues may be involved therein than the validity of the herein questioned orders.
>
> We cannot pre-empt the decision that might be rendered in such appeal. The division to [which] it has been assigned should be left free to resolve the same. On the other hand, it is better that this Court speak with one voice.[31]

In affirming the appellate court's decision to deny the petition for certiorari, this Court ruled:

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motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading. (6a)

[30] 393 Phil. 633 (2000).

[31] *Id.* at 638-639.

x x x Thus, in arguing that the reversal of the two interlocutory Orders would likely result in the setting aside of the dismissal of petitioner's amended complaint, petitioner effectively contends that its Petition for *Certiorari*, like the appeal, seeks to set aside *the Resolution and the two Orders.*

Such argument unwittingly discloses a recourse to forum shopping, which has been held as the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for *Certiorari* and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

Hence, even assuming that the Petition for *Certiorari* has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.[32]

Meanwhile, in *City of Taguig v. City of Makati,*[33] the City of Makati filed a petition for annulment of judgment and an appeal to assail the decision of the RTC in favor of the City of Taguig in a territorial dispute case. In ruling that "simultaneously pursuing an appeal (or motion for reconsideration) and a petition for annulment of judgment is an act of forum shopping," the Court held:

Ley Construction discredits respondent City of Makati's claim that it could not have engaged in forum shopping as its Rule 47 Petition and its Motion for Reconsideration/Appeal were grounded on different causes of action.

Ley Construction involved two (2) remedies: first, a Petition for Certiorari under Rule 65; and second, an Appeal. Rule 65, Section 1 of the 1997 Rules of Civil Procedure states that a Petition for Certiorari is available "[w]hen any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." Thus, a petition for certiorari raises questions

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[32] *Id.* at 641-642.

[33] G.R. No. 208393, 15 June 2016, 793 SCRA 527.

of jurisdiction. It does not, in the strict sense, delve into the merits or substance of the case or the proceedings, which allegedly occasioned an error in jurisdiction.

In *Ley Construction*, one could have dwelt on the fine distinction between, on one hand, Rule 65 petitions as proceedings grounded on errors in jurisdiction, and, on the other, appeals as proceedings that go into the merits or substance of a case. This is not entirely different from respondent City of Makati's invitation to dwell on the difference between, on one hand, its Rule 47 Petition as assailing the issuance of a judgment without jurisdiction, and, on the other, its Motion for Reconsideration (later, Appeal), as focusing on the substance of its and of petitioner City of Taguig's respective territorial claims.[34]

What can be gleaned from the foregoing cases is that notwithstanding the difference between two pending actions as regards the nature of the case and the assigned errors, if the reliefs sought are identical and would produce the same legal effect, then the party who instituted the actions may be held liable for forum shopping.

Finally, as to the third requisite, the judgment in the petition for review amounted to *res judicata* in the petition for certiorari. There is *res judicata* or bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action.[35] As previously discussed, the parties in the two petitions are identical. Further, the petitions involve the same subject matter, i.e., the landholdings covered by the petitioners' respective CLTs.

"Identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the

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[34] *Id.* at 557-559.

[35] *Abelita III v. Doria*, 612 Phil. 1127, 1137 (2009).

maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action."[36] In this case, the same evidence will be necessary to sustain the causes of action in the two cases which are unequivocally based on the same set of facts. While it may be true that the respondents raised as an additional assignment of error in the petition for certiorari the DARAB's issuance of the writ of execution pending appeal, they nevertheless sought the nullification of the DARAB decision. Hence, in truth and in fact, the two petitions are based on the same cause of action.

In sum, considering that all the elements of *litis pendentia* are present, the Court declares that the respondents are guilty of forum shopping when they filed the petition for certiorari despite the pendency of the petition for review.

Consequences of forum shopping

In *Dotmatrix Trading v. Legaspi,*[37] the Court settled the criteria on which case should be dismissed in case all the elements of *litis pendentia* are present:

> Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.[38]

The abovementioned criteria find application in the case at bar to determine which of the two petitions filed before the appellate court should have been dismissed. *First,* the petition

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[36] *Cruz v. Court of Appeals*, 517 Phil. 572, 585 (2006).

[37] 619 Phil. 421 (2009).

[38] *Id.* at 432.

for review was instituted before the petition for certiorari. *Second,* the petition for review was certainly not meant to preempt the petition for certiorari as the latter was only filed supposedly to question the issuance of the writ of execution pending appeal. *Third,* the petition for review was the appropriate vehicle to thresh out the issues between the parties as it was precisely instituted to assail the DARAB decision in favor of the petitioners. Consequently, the petition for review prevails. The decision in the petition for certiorari, which should have been dismissed, as well as all orders and issuances emanating therefrom are null and void having no legal force and effect. Considering that the decision in the petition for review is already final and executory after the respondents withdrew their motion for reconsideration, the execution of said decision naturally follows.

Finally, as to the liability of the respondents for their commission of forum shopping, Section 5, Rule 8 of the Rules of Court provides:

> SEC. 5. x x x If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

After the PARAD and the DARAB ruled in their favor, the petitioners sought the issuance of a writ of execution pending appeal in hopes of finally being able to take possession of and cultivate the lands which were awarded to them by virtue of the agrarian reform laws. The respondents, however, took advantage of the petitioners' eagerness to have the decisions executed. They filed a petition for certiorari to assail the issuance of the writ of execution but they also assigned errors to question the merits of the DARAB decision. Thus, the respondents were able to file two petitions before the appellate court which consequently resulted in two conflicting decisions, the harmful effect sought to be avoided by the rule against forum shopping. It is worthy to note that the respondents withdrew their motion for reconsideration in the petition for review, only when the Resolution of this Court dismissing the petition for review filed by the petitioners to assail the decision in the petition for

certiorari, has become final and executory. For decades, they successfully evaded the implementation of agrarian reform laws by violating the rules of procedure and making a mockery of justice. This Court refuses to close its eyes to the detestable strategy employed by the respondents and will not reward such inexcusable behavior.

Under Rule 71, Section 1 of the 1997 Rules of Civil Procedure, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding ₱2,000.00. Accordingly, a fine of ₱2,000.00 is imposed on each of the respondents.

WHEREFORE, the petition is **GRANTED**. The Decision, dated 30 October 2001, of the Court of Appeals in CA-G.R. SP No. 64164 and the Resolution of this Court in G.R. No. 150695, as well as all orders and issuances emanating therefrom, are **NULLIFIED** and **SET ASIDE**. The respondents are declared to have engaged in forum shopping in simultaneously pursuing a Petition for Review before the Court of Appeals Seventh Division and a Petition for Certiorari before the Court of Appeals Special Fifteenth Division. The DARAB is hereby ordered to proceed with the execution of the Decision, dated 5 November 2001, of the Court of Appeals in CA-G.R. SP No. 57360, with dispatch.

The Court finds respondents Intestate Estate of Magdalena R. Sangalang, represented by its Administratrix Solita S. Jimenez, Angelo S. Jimenez, Jr., Jayson P. Jimenez, Solita S. Jimenez, John S. Hermogenes, Romulo S. Jimenez, and Heirs of Magdalena R. Sangalang, represented by Romulo S. Jimenez, **GUILTY** of direct contempt, and imposes a **FINE** of ₱2,000.00 for each respondent.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen,* and *Gesmundo, JJ.,* concur.

Bersamin, J., on official leave.

THIRD DIVISION

[G.R. No. 195163. December 13, 2017]

ERGONOMIC SYSTEMS PHILIPPINES, INC., PHILLIP C. NG and MA. LOURMINDA O. NG, *petitioners, vs.* **EMERITO C. ENAJE, BENEDICTO P. ABELLO, ALEX M. MALAYLAY, FRANCISCO Q. ENCABO, JR., RICO SAMSON, ROWENA BETITIO, FELIPE N. CUSTOSA, JAIME A. JUATAN, LEOVINO J. MULINTAPANG, NELSON L. ONTE, EMILIANO P. RONE, ROLIETO LLAMADO, AMORPIO R. ADRIANO, JIMMY ALCANTARA, BERNARDO ANTONI, HERMINITO BEDRIJO, ROMEO BELARMINO, YOLANDA CANOPIN, ALMELITO CUABO, RICARDO DEL PILAR, ELMER DESQUITADO, WINEFREDO DESQUITADO, DEMETRIO DIAZ, ERICK ECRAELA, QUINTERO ENRIQUEZ, CRISANTO FERNANDEZ, ROMMEL FLORES, NELSON FRIAS, PEDRITO GIRON, DOMINADOR C. GUIMALDO, JR., AMBROSIO HENARES, TERENCIO HENARES, ALBERT LACHICA, ALBERTO LORENZO, JOEL MALAYLAY, SUSAN MALBAS, ROLANDO MAMARIL, TEDDY MONTIBLE, FERNANDO OFALDA, RONNIE V. OLIVAY, RAUL PAGOLONG, LORENZO RANIEGO, AMADO V. SAMSON IV, ROEL P. SORIANO, JONATHAN SUALIBIO, ESTEBAN SUMICAO, JOSEPH TABADAY, EPIFANIO TABAREZ, REGIE TOTING, REYNALDO TOTING, NORMAN VALENZUELA, ROLANDO YONSON, DIOSCORO BALAJADIA, NERRY BALINAS, NOEL BALMEO, ARNALDO A. CASTRO, GERONCIO DELA CUEVA, ALBERTO GAPASIN, JULIUS GENOVA, LORETO GRACILLA, JR., ROBERTO S. INGIENTE, ROQUE JOVEN, PATERNO LINOGO, ISAGANI MASANGKA, ANGELITO MONTILLA, PECIFICO NIGPARANON, NOBE SALVADOR, MANUEL OAVENGA, REYNADO ORTIZ, ROMEO QUINTANA, JERNALD REMOTIN, REYNALDO ROBLESA, SAMUEL ROSALES, ROBERTO SANTOS,**

RONALDO M. SANTOS, ROCKY TALOLONG, EMILIO TONGA, BERNARDO VALDEZ, DANTE L. VELASCO, RENE V. VICENTE, JAIME BENTUCO, MARINO CACAO, CARLITO DELA CERNA, CHRISTOPHER MASAGCA, CHRISTOPHER PALOMARES, ROLANDO PATOTOY, ASER PESADO, JR., LEONILO RICAFORT, FELIX SANCHEZ and FRANCIS O. ZANTUA, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY; A FORM OF AGREEMENT WHICH IMPOSES UPON EMPLOYEES THE OBLIGATION TO ACQUIRE OR RETAIN UNION MEMBERSHIP AS A CONDITION AFFECTING EMPLOYMENT; KINDS OF UNION SECURITY.— "Union security is a generic term, which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership,' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part."

2. ID.; ID.; ID.; ID.; ONLY THE LOCAL UNION MAY INVOKE THE UNION SECURITY CLAUSE IN THE CBA IN DEMANDING THE DISMISSAL OF AN EMPLOYEE; CASE AT BAR .— Before an employer terminates an employee pursuant to the union security clause, it needs to determine

and prove that: (1) the union security clause is applicable; (2) the union is requesting the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. In this case, the primordial requisite, i.e., the union is requesting the enforcement of the union security provision in the CBA, is clearly lacking. Under the Labor Code, a chartered local union acquires legal personality through the charter certificate issued by a duly registered federation or national union and reported to the Regional Office. "A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. Mere affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency, where the former acts in representation of the latter. Hence, local unions are considered principals while the federation is deemed to be merely their agent." x x x There is no doubt that the union referred to in the union security clause in the CBA is the Ergonomic Systems Employees Union or the local union as provided in Article I of the CBA. A perusal of the CBA shows that the local union, not the Federation, was recognized as the sole and exclusive collective bargaining agent for all its workers and employees in all matters concerning wages, hours of work, and other terms and conditions of employment. Consequently, only the union may invoke the union security clause in case any of its members commits a violation thereof. Even assuming that the union officers were disloyal to the Federation and committed acts inimical to its interest, such circumstance did not give the Federation the prerogative to demand the union officers' dismissal pursuant to the union security clause which, in the first place, only the union may rightfully invoke.

3. **ID.; ID.; ID.; STRIKES; REQUISITES OF A VALID STRIKE; NOT ESTABLISHED IN CASE AT BAR.—** A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. As such, it either breathes life to or destroys the union and its members. Procedurally, for a strike to be valid, it must comply with Article 278 of the Labor Code, which requires that: (a) a notice of strike be filed with the NCMB 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority

of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the NCMB of the results of the voting at least seven days before the intended strike. These requirements are mandatory, and the union's failure to comply renders the strike illegal. The union filed a notice of strike on 20 February 2002. The strike commenced on 21 February 2002. The strike vote was taken on 2 April 2002 and the report thereon was submitted to the NCMB on 4 April 2002. Indeed, the first requisite or the cooling-off period need not be observed when the ground relied upon for the conduct of strike is union-busting. Nevertheless, the second and third requirements are still mandatory. In this case, it is apparent that the union conducted a strike without seeking a strike vote and without submitting a report thereon to the DOLE. Thus, the strike which commenced on 21 February 2002 was illegal.

4. **ID.; ID.; ID.; ID.; LIABILITIES OF UNION OFFICERS AND MEMBERS IN AN ILLEGAL STRIKE; CASE AT BAR.—** In the determination of the consequences of illegal strikes, the law makes a distinction between union members and union officers. The services of an ordinary union member cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. A union officer, on the other hand, may be dismissed, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike. In the present case, respondents-union officers stand to be dismissed as they conducted a strike despite knowledge that a strike vote had not yet been approved by majority of the union and the corresponding strike vote report had not been submitted to the NCMB. With respect to respondents-union members, the petitioners merely alleged that they committed illegal acts during the strike such as obstruction of ingress to and egress from the premises of ESPI and execution of acts of violence and intimidation. There is, however, a dearth of evidence to prove such claims. Hence, there is no basis to dismiss respondents-union members from employment on the ground that they committed illegal acts during the strike.

5. **ID.; ID.; ID.; ID.; AWARD OF BACKWAGES; NOT WARRANTED WHEN EMPLOYEES PARTICIPATED IN ILLEGAL CONCERTED ACTIVITIES; CASE AT BAR.—** While it is true that the award of back wages is a legal consequence of a finding of illegal dismissal, in *G & S Transport*

Corporation v. Infante, the Court pronounced that the dismissed workers are entitled only to reinstatement considering that they did not render work for the employer during the strike. x x x Thus, in the case at bar, respondents-union members' reinstatement without back wages suffices for the appropriate relief. Fairness and justice dictate that back wages be denied the employees who participated in the illegal concerted activities to the great detriment of the employer.

6. ID.; ID.; ID.; ID.; INSTANCES WHEN SEPARATION PAY IS MADE AN ALTERNATIVE RELIEF IN LIEU OF REINSTATEMENT; CASE AT BAR.— [S]eparation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee. Given the lapse of considerable time from the occurrence of the strike, the Court rules that the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.

APPEARANCES OF COUNSEL

Bernas Law Office for petitioners.
Capoquian & Nueva Law Office for respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari assailing the Decision,[1] dated 21 September 2010, and Resolution,[2] dated

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[1] *Rollo*, pp. 40-55; penned by Associate Justice Antonio L. Villamor with Associate Justice Jose C. Reyes, Jr. and Associate Justice Amy C. Lazaro-Javier, concurring.

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

14 January 2011, of the Court of Appeals *(CA),* in CA-G.R. SP No. 102802, which affirmed with modification the decision,[3] dated 31 October 2007, and resolution,[4] dated 21 December 2007, of the National Labor Relations Commission *(NLRC)* in NLRC NCR No. RAB IV-01-16813-03-L. The NLRC, in turn, affirmed the decision,[5] dated 31 January 2005, of Labor Arbiter Generoso V. Santos *(LA)* in NLRC NCR No. RAB IV-01-16813-03-L, a case for illegal dismissal and unfair labor practice.

THE FACTS

Respondents were union officers and members of Ergonomic System Employees Union–Workers Alliance Trade Unions *(local union).* On 29 October 1999, the local union entered into a Collective Bargaining Agreement *(CBA)*[6] with petitioner Ergonomic Systems Philippines, Inc. *(ESPI)*,[7] which was valid for five (5) years or until October 2004. The local union, which was affiliated with Workers Alliance Trade Unions–Trade Union Congress of the Philippines *(Federation),* was not independently registered. Thus, on 15 November 2001, before the CBA expired, the union officers secured the independent registration of the local union with the Regional Office of the Department of Labor and Employment *(DOLE).* Later on, the union officers were charged before the Federation and investigated for attending and participating in other union's seminars and activities using union leaves without the knowledge and consent of the Federation and ESPI as well as in initiating and conspiring in the disaffiliation before the freedom period.[8]

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[3] *Id*. at 92-100; penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring.

[4] *Id*. at 102-104.

[5] *Id*. at 76-90.

[6] *Id*. at 59-71.

[7] Also referred as "Ergonomics Systems Philippines, Inc." in some parts of the *rollo*.

[8] *Rollo*, p. 77.

On 10 January 2002, the Federation rendered a decision[9] finding respondents-union officers Emerito C. Enaje, Benedicto P. Abello, Alex M. Malaylay, Francisco G. Encabo, Jr., Rico Samson, Rowena Betitio, Felipe N. Custosa, Jaime A. Juatan, Leovino Mulintapang, Nelson L. Onte, Emiliano P. Rone, and Rolieto Llamado guilty of disloyalty. They were penalized with immediate expulsion from the Federation.[10]

On 11 January 2002, the Federation furnished ESPI with a copy of its decision against respondents-union officers and recommended the termination of their employment by invoking Sections 2 and 3, Article 2 of the CBA.[11]

ESPI notified respondents-union officers of the Federation's demand and gave them 48 hours to explain. Except for Nelson Onte, Emiliano Rone, and Rico Samson, the rest of the officers refused to receive the notices. Thereafter, on 20 February 2002, respondents-union officers were issued letters of termination, which they again refused to receive. On 26 February 2002, ESPI submitted to the DOLE a list of the dismissed employees. On the same day, the local union filed a notice of strike with the National Conciliation and Mediation Board *(NCMB).*[12]

From 21 February to 23 February 2002, the local union staged a series of noise barrage and "slow down" activities. Meanwhile, on 22 February 2002, 40 union members identified as: Amorpio Adriano, Jimmy Alcantara, Bernardo Antoni, Herminito Bedrijo, Romeo Belarmino, Yolanda Canopin, Almelito Cuabo, Ricardo Del Pilar, Elmer Desquitado, Winefredo Desquitado, Demetrio Diaz, Erick Ecraela, Quintero Enriquez, Crisanto Fernandez, Rommel Flores, Nelson Frias, Pedrito Geron, Dominador Guimaldo, Ambrosio Henarez, Terencio Henares, Albert Lachica, Alberto Lorenzo, Joel Malaylay, Susan Malbas, Rolando Manaril, Teddy Montible, Fernando Ofaldo, Ronie Olivay, Raul Pagolong,

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[9] *Id*. at 72-A-73.

[10] *Id*. at 77.

[11] *Id*. at 78.

[12] *Id*.

Lorenzo Raniego, Amado Samson-Ty, Roel Soriano, Jonathan Sualibio, Esteban Sumicao, Joseph Tabaday, Epifanio Tabarez, Regie Toting, Reynaldo Toting, Norman Valenzuela and Rolando Yonson ***refused to submit their Daily Production Reports (DPRs)***.

On 26 February 2002, 28 union members namely Dioscoro Balajadia, Nerry Balinas, Noel Balmeo, Arnaldo Castro, Geroncio Dela Cueva, Alberto Gapasin, Julius Genova, Loreto Gracilla, Roberto Ingiente, Jr., Roque Joven, Paterno Linogo, Isagani Masangka, Angelito Montilla, Pecifico Nigparanon, Salvador Nobe, Manuel Oavenga, Reynaldo Ortiz, Romeo Quintana, Jernard Remotin, Reynaldo Roblesa, Samuel Rosales, Roberto Santos, Ronaldo Santos, Rocky Talolong, Emilio Tonga, Bernardo Valdez, Dante Velasco and Rene Vicente ***abandoned their work and held a picket line outside the premises of ESPI***.

Then, from 26 February 2002 to 2 March 2002, 10 union members, namely Jaime Bentuco, Marina Cacao, Carlito Dela Cerna, Christopher Masagca, Christopher Palomares, Rolando Patotoy, Aser Pesado, Jr., Leonilo Ricafort, Felix Sanchez and Francis Santua did not report for work without official leave. The union members were required to submit their explanation why they should not be sanctioned for their refusal to submit DPRs and abandonment of work, but they either refused to receive the notices or received them under protest. Further, they did not submit their explanation as required. Subsequently, for refusal to submit DPRs and for abandonment, respondents-union members were issued letters of termination.[13]

On 27 January 2003, the respondents filed a complaint for illegal dismissal and unfair labor practice against ESPI, Phillip C. Ng, and Ma. Lourminda O. Ng *(petitioners)*.[14]

The Labor Arbiter's Ruling

In a decision, dated 31 January 2005, the LA held that the local union was the real party in interest and the Federation

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

[14] *Id*. at 80.

was merely an agent in the CBA; thus, the union officers and members who caused the implied disaffiliation did not violate the union security clause. Consequently, their dismissal was unwarranted. Nevertheless, the LA ruled that since ESPI effected the dismissal in response to the Federation's demand which appeared to be justified by a reading of the union security clause, it would be unjust to hold ESPI liable for the normal consequences of illegal dismissal.

The LA further opined that there was no ground for the dismissal of the union members because the refusal to submit DPRs and failure to report for work were meant to protest the dismissal of their officers, not to sever employer-employee relationship. He added that neither ESPI nor the respondents were at fault for they were merely protecting their respective interests. In sum, the LA ordered all the respondents to return to work but without back wages. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the complainants to report back to their former jobs within ten (10) days from receipt of this Decision and the respondent company is in turn directed to accept them back but without back wages. In the event however, that this is no longer possible, the respondent company is ordered to pay the complainants their separation pay computed at one-half (1/2) month salary for every year of service, a fraction of at least six (6) months to be considered as one (1) whole year. The respondent is likewise ordered to pay complainants attorney's fees equivalent to ten (10%) percent of the total thereof as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

Unconvinced, petitioners and respondents appealed before the NLRC.

The NLRC Ruling

In a decision, dated 31 October 2007, the NLRC affirmed the ruling of the LA. It adjudged that the dismissal of the union

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[15] *Id.* at 90.

officers was effected only in response to the demand of the Federation and to comply with the union security clause under the CBA. The NLRC concluded that since there was no disloyalty to the union, but only disaffiliation from the Federation which was a mere agent in the CBA, the cause for the respondents' dismissal was non-existent. It disposed the case in this wise:

> WHEREFORE, premises considered, the appeals separately filed by complainants and respondents from the Decision of Labor Arbiter Generoso V. Santos dated January 31, 2005 are both DISMISSED for lack of merit.
>
> The appeal filed by complainants from the Order dated January 4, 2007 is likewise DISMISSED for lack of merit.
>
> The assailed Orders are hereby AFFIRMED.
>
> SO ORDERED.[16]

Undeterred, petitioners and respondents moved for reconsideration. Their motions, however, were denied by the NLRC in a resolution, dated 21 December 2007.

The CA Ruling

In its decision, dated 21 September 2010, the CA affirmed with modification the NLRC ruling. It held that ESPI and the respondents acted in good faith when the former dismissed the latter and when the latter, in turn, staged a strike without complying with the legal requirements. The CA, however, pronounced that the concept of separation pay as an alternative to reinstatement holds true only in cases wherein there is illegal dismissal, a fact which does not exist in this case. The dispositive portion reads:

> WHEREFORE, the instant petition is PARTIALLY GRANTED. The Decision of the Labor Arbiter, as sustained by the National Labor Relations Commission, reverting the employer-employee position of the parties to the status quo ante is AFFIRMED, with MODIFICATION, in that the provision on the award of separation pay in lieu of reinstatement is deleted.

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[16] *Id.* at 99.

SO ORDERED.[17]

Aggrieved, petitioners and respondents moved for reconsideration but the same was denied by the CA in a resolution, dated 14 January 2011.

Hence, this petition.

ISSUES

I. WHETHER THE FEDERATION MAY INVOKE THE UNION SECURITY CLAUSE IN DEMANDING THE RESPONDENTS' DISMISSAL;

II. WHETHER THE STRIKE CONDUCTED BY THE RESPONDENTS COMPLIED WITH THE LEGAL REQUIREMENTS;

III. WHETHER THE RESPONDENTS' DISMISSAL FROM EMPLOYMENT WAS VALID.

The petitioners argue that the respondents failed to comply with two (2) of the procedural requirements for a valid strike, i.e., taking of a strike vote and observance of the seven-day period after submission of the strike vote report; that mere participation of union officers in the illegal strike is a ground for termination of employment; that the union members committed illegal acts during the strike which warranted their dismissal, i.e., obstruction of the free ingress to and egress from ESPI's premises and commission of acts of violence, coercion or intimidation; that the respondents are not entitled to reinstatement or separation pay because they were validly dismissed from employment; that the union members who unjustly refused to submit their DPRs and abandoned their work were rightfully terminated because their acts constituted serious misconduct or willful disobedience of lawful orders; and that reinstatement is no longer possible because the industrial building owned by Ergo Contracts Philippines, Inc. was totally destroyed by fire on 6 February 2005.[18]

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[17] *Id*. at 54.

[18] Petition for Review on *Certiorari*; *id*. at 9-35.

In their comment,[19] the respondents counter that they were not legally terminated because the grounds relied upon by the petitioners were non-existent; that as ruled by the NLRC, they merely disaffiliated from the Federation but they were not disloyal to the local union; that reinstatement is not physically impossible because it was the industrial building owned by Ergo Contracts Philippines, Inc. that was gutted down by fire, not that of ESPI; that even if the manufacturing plant of ESPI was indeed destroyed by fire, the petitioners have other offices around the country where the respondents may be reinstated; and that having failed to comply with the order to reinstate them and having ceased operations, the petitioners must be ordered to pay their separation pay.

In their reply,[20] the petitioners aver that the respondents violated the union security clause under the CBA; that their termination was effected in response to the Federation's demand to dismiss them; that they did not comply with the requisites of a valid strike; that they refused to submit their DPRs and abandoned their work; and that the award of separation pay had no basis because the respondents had been legally dismissed from their employment.

THE COURT'S RULING

Only the local union may invoke the union security clause in the CBA.

The controversy between ESPI and the respondents originated from the Federation's act of expelling the union officers and demanding their dismissal from ESPI. Thus, to arrive at a proper resolution of this case, one question to be answered is whether the Federation may invoke the union security clause in the CBA.

"Union security is a generic term, which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of

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[19] *Id.* at 125-132.

[20] *Id.* at 168-180.

membership,' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part."[21]

Before an employer terminates an employee pursuant to the union security clause, it needs to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union.[22]

In this case, the primordial requisite, i.e., the union is requesting the enforcement of the union security provision in the CBA, is clearly lacking. Under the Labor Code, a chartered local union acquires legal personality through the charter certificate issued by a duly registered federation or national union and reported to the Regional Office.[23] "A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association

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[21] *PICOP Resources, Incorporated (PRI) v. Tañeca*, 641 Phil. 175, 187-188 (2010).

[22] *PICOP Resources, Inc. v. Dequilla,* 678 Phil. 118, 127-128 (2011).

[23] Article 234-A (As renumbered).

owing its creation to the will of its members. Mere affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency, where the former acts in representation of the latter. Hence, local unions are considered principals while the federation is deemed to be merely their agent."[24]

The union security clause in the CBA between ESPI and the local union provides:

> SECTION 1. Union Shop. All regular, permanent employees covered by this Agreement who are members of the UNION as of the date of effectivity of this Agreement as well as any employees who shall subsequently become members of the UNION during the lifetime of this Agreement or any extension, thereof, shall as a condition of continued employment, maintain their membership in the UNION during the term of this Agreement or any extension thereof.
>
> x x x x x x x x x
>
> SECTION 3. The COMPANY shall terminate the services of any concerned employee when so requested by the UNION for any of the following reasons:
>
> a. Voluntary Resignation from the Union during the term of this Agreement or any extension thereof;
>
> b. Non-payment of membership fee, regular monthly dues, mutual aid benefit and other assessments submitted by the UNION to the COMPANY;
>
> c. Violation of the UNION Constitution and Bylaws. The UNION shall furnish the COMPANY a copy of their Constitution and Bylaws and any amendment thereafter.
>
> d. Joining of another Union whose interest is adverse to the UNION, AWATU, during the lifetime of this Agreement.
>
> e. Other acts which are inimical to the interests of the UNION and AWATU.[25]

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[24] *Coastal Subic Bay Terminal, Inc. v. Department of Labor and Employment — Office of the Secretary,* 537 Phil. 459, 471 (2006).

[25] *Rollo*, p. 60.

There is no doubt that the union referred to in the foregoing provisions is the Ergonomic Systems Employees Union or the local union as provided in Article I of the CBA.[26] A perusal of the CBA shows that the local union, not the Federation, was recognized as the sole and exclusive collective bargaining agent for all its workers and employees in all matters concerning wages, hours of work, and other terms and conditions of employment. Consequently, only the union may invoke the union security clause in case any of its members commits a violation thereof. Even assuming that the union officers were disloyal to the Federation and committed acts inimical to its interest, such circumstance did not give the Federation the prerogative to demand the union officers' dismissal pursuant to the union security clause which, in the first place, only the union may rightfully invoke. Certainly, it does not give the Federation the privilege to act independently of the local union. At most, what the Federation could do is to refuse to recognize the local union as its affiliate and revoke the charter certificate it issued to the latter. In fact, even if the local union itself disaffiliated from the Federation, the latter still has no right to demand the dismissal from employment of the union officers and members because concomitant to the union's prerogative to affiliate with a federation is its right to disaffiliate therefrom which the Court explained in *Philippine Skylanders, Inc. v. NLRC*,[27] *viz*:

> The right of a local union to disaffiliate from its mother federation is not a novel thesis unillumined by case law. In the landmark case of *Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.*, we upheld the right of local unions to separate from their mother federation on the ground that as separate and voluntary associations, local unions do not owe their creation and existence to the national federation to which they are affiliated but, instead, to the will of their members. The sole essence of affiliation is to increase, by collective action, the common bargaining power of local unions for the effective enhancement and protection of their interests. Admittedly, there are times when without succor and support local unions may

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[26] *Id*. at 59.

[27] 426 Phil. 35 (2002).

find it hard, unaided by other support groups, to secure justice for themselves.

Yet the local unions remain the basic units of association, free to serve their own interests subject to the restraints imposed by the constitution and bylaws of the national federation, and free also to renounce the affiliation upon the terms laid down in the agreement which brought such affiliation into existence.[28]

In sum, the Federation could not demand the dismissal from employment of the union officers on the basis of the union security clause found in the CBA between ESPI and the local union.

A strike is deemed illegal for failure to take a strike vote and to submit a report thereon to the NCMB.

A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. As such, it either breathes life to or destroys the union and its members.[29]

Procedurally, for a strike to be valid, it must comply with Article 278[30] of the Labor Code, which requires that: (a) a notice of strike be filed with the NCMB 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the NCMB of the results of the voting at least seven days before the intended strike. These requirements are mandatory, and the union's failure to comply renders the strike illegal.[31]

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[28] *Id.* at 44.

[29] *Phimco Industries, Inc. v. Phimco Industries Labor Association*, 642 Phil. 275, 289 (2010).

[30] As renumbered.

[31] *Piñero v. National Labor Relations Commission*, 480 Phil. 534, 542 (2004).

The union filed a notice of strike on 20 February 2002.[32] The strike commenced on 21 February 2002.[33] The strike vote was taken on 2 April 2002[34] and the report thereon was submitted to the NCMB on 4 April 2002.[35] Indeed, the first requisite or the cooling-off period need not be observed when the ground relied upon for the conduct of strike is union-busting.[36] Nevertheless, the second and third requirements are still mandatory. In this case, it is apparent that the union conducted a strike without seeking a strike vote and without submitting a report thereon to the DOLE. Thus, the strike which commenced on 21 February 2002 was illegal.

Liabilities of union officers and members

Article 279(a)[37] of the Labor Code provides:

> Art. 279. *Prohibited activities.* – (a) x x x
>
> x x x x x x x x x
>
> Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

In the determination of the consequences of illegal strikes, the law makes a distinction between union members and union officers. The services of an ordinary union member cannot be terminated for mere participation in an illegal strike; proof must

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[32] *Rollo*, p. 85.

[33] *Id*.

[34] CA *rollo*, pp. 149-154.

[35] *Rollo*, p. 87.

[36] Article 278-C, Labor Code (as renumbered).

[37] As renumbered.

be adduced showing that he or she committed illegal acts during the strike. A union officer, on the other hand, may be dismissed, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike.[38]

In the present case, respondents-union officers stand to be dismissed as they conducted a strike despite knowledge that a strike vote had not yet been approved by majority of the union and the corresponding strike vote report had not been submitted to the NCMB.

With respect to respondents-union members, the petitioners merely alleged that they committed illegal acts during the strike such as obstruction of ingress to and egress from the premises of ESPI and execution of acts of violence and intimidation. There is, however, a dearth of evidence to prove such claims. Hence, there is no basis to dismiss respondents-union members from employment on the ground that they committed illegal acts during the strike.

Dismissed respondents-union members are not entitled to back wages.

While it is true that the award of back wages is a legal consequence of a finding of illegal dismissal, in *G & S Transport Corporation v. Infante*,[39] the Court pronounced that the dismissed workers are entitled only to reinstatement considering that they did not render work for the employer during the strike, viz:

With respect to back wages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back

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[38] *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.,* 470 Phil. 115, 127-128 (2004).

[39] 559 Phil. 701 (2007).

to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that **for this exception to apply, it is required that the strike be legal**, a situation that does not obtain in the case at bar.[40] (emphases supplied)

Thus, in the case at bar, respondents-union members' reinstatement without back wages suffices for the appropriate relief. Fairness and justice dictate that back wages be denied the employees who participated in the illegal concerted activities to the great detriment of the employer.[41]

Nevertheless, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee.[42]

Given the lapse of considerable time from the occurrence of the strike, the Court rules that the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order. This relief strikes a balance between the respondents-union members who may not have known that they were participating in an illegal strike but who, nevertheless, have rendered service to the company for years prior to the illegal strike which caused a rift in their relations, and the employer who definitely suffered losses on account of

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[40] *Id*. at 714.

[41] *Abaria, et al. v. National Labor Relations Commission, et al.,* 678 Phil. 64, 100 (2011).

[42] *Escario v. National Labor Relations Commission*, 645 Phil. 503, 516 (2010).

respondents-union members' failure to report to work during the illegal strike.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The 21 September 2010 Decision and 14 January 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 102802 are **AFFIRMED** with **MODIFICATION** in that petitioners are hereby **ORDERED** to pay each of the above-named individual respondents, except union officers who are hereby declared validly dismissed, separation pay equivalent to one (1) month salary for every year of service. Whatever sums already received from petitioners under any release, waiver or quitclaim shall be deducted from the total separation pay due to each of them.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen,* and *Gesmundo, JJ.,* concur.

Bersamin, J., on official leave.

FIRST DIVISION

[G.R. No. 196679. December 13, 2017]

ROBERTSON S. CHIANG, NIKKI S. CHIANG, MARIA SY BE TY CHIANG,[*] BEN C. JAVELLANA, and CARMELITA TUASON,[**] *petitioners, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondent.*

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[*] Also referred to as "Maria Se Be Chiang" in some parts of the records.

[**] Also referred to as "Carmelita Tuazon" in some parts of the records.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION REFERS NOT MERELY TO PALPABLE ERRORS OF JURISDICTION, OR TO VIOLATIONS OF THE CONSTITUTION, THE LAW AND JURISPRUDENCE BUT ALSO TO CASES IN WHICH THERE HAS BEEN A GROSS MISAPPREHENSION OF FACTS; CASE AT BAR.— A reading of the petition leads to no other conclusion than that the DOJ gravely abused its discretion in affirming the ruling of the OCP Pasig that there was no probable cause to charge petitioners with theft and a violation of PD No. 401. Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. "Capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It also refers to cases in which, for various reasons, there has been a *gross misapprehension of facts*. It is on this score that questions of fact may inevitably be raised. In its petition for *certiorari* with the CA, PLDT alleged that the DOJ gravely abused its discretion in sustaining the dismissal by the OCP Pasig of PLDT's complaint on the ground of insufficiency of evidence. According to PLDT, the OCP Pasig disregarded evidence presented by PLDT, which, at the very least, *prima facie* showed that petitioners committed theft of PLDT's business and violated PD No. 401 when they engaged in illegal toll bypass operations.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DETERMINED BY THE PUBLIC PROSECUTOR AND ULTIMATELY BY THE SECRETARY OF JUSTICE, WHOSE RESOLUTION MAY BE SUBJECT OF JUDICIAL REVIEW WHEN GRAVE ABUSE OF DISCRETION IS ALLEGED.— The

determination of probable cause is a function that belongs to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. However, the resolution of the Secretary of Justice may be subject of judicial review. The review will be allowed only when grave abuse of discretion is alleged. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.

3. ID.; ID.; ID.; ID.; TO ARRIVE AT PROBABLE CAUSE, THE ELEMENTS OF THE CRIME CHARGED SHOULD BE PRESENT.— In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. *A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.* Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction. x x x It is imperative, though, that in order to arrive at probable cause, the elements of the crime charged should be present. For theft to be committed in this case, the following elements must be shown to exist: (1) the taking by Planet Internet (2) of PLDT's personal property (3) with intent to gain (4) without the consent of PLDT (5) accomplished without the use of violence against or intimidation of persons or the use of force upon things. All these elements have been sufficiently averred in PLDT's complaint-affidavit and have sufficiently engendered a well-founded belief that a crime has been committed.

4. ID.; ID.; ID.; COUNTER-ALLEGATIONS CANNOT BE THRESHED OUT CONCLUSIVELY DURING THE PRELIMINARY STAGE OF THE CASE; CASE AT BAR.— [C]ounter-allegations, x x x, delve on evidentiary matters that are best passed upon in a full-blown trial. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's

evidence in support of the charge. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level. By taking into consideration the defenses raised by petitioners, the OCP Pasig already went into the strict merits of the case.

APPEARANCES OF COUNSEL

Oscar F. Martinez for petitioners.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the Decision and Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 115394 dated January 31, 2011[2] and April 19, 2011,[3] respectively. The Decision and Resolution nullified and set aside the Resolutions dated November 5, 2007[4] and June 2, 2010[5] of the Department of Justice (DOJ) in I.S. Nos. PSG-01-11-21226 to PSG-01-11-21227.

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[1] *Rollo*, pp. 15-34.

[2] *Id.* at 35-62. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, concurring.

[3] *Id.* at 64.

[4] *Id.* at 78-81.

[5] *Id.* at 82-84.

In his letter[6] dated September 7, 2001, Rolando A. Alcantara, Division Head, Alternative Calling Pattern Detection Division of respondent Philippine Long Distance Telephone Company (PLDT), requested the assistance of Superintendent Federico E. Laciste, Chief of the Regional Intelligence Special Operation Office R2 (RISOO)-National Capital Region Police Office, in conducting further investigation on illegal toll bypass operations of Worldwide Web Corp. (Worldwide Web), Message One Inc. (Message One), and Planet Internet Mercury One (Planet Internet).

On September 26, 2001, upon application of RISOO, along with PLDT personnel as technical witnesses, Branch 78 of the Regional Trial Court (RTC), Quezon City issued three search warrants against Worldwide Web, Message One, and Planet Internet. In particular, Search Warrant Nos. Q-01-3857[7] and Q-01-3858[8] were issued against Planet Internet and petitioners for violation of Presidential Decree (PD) No. 401[9] and Article 308(1), in relation to Article 309 of the Revised Penal Code (RPC), respectively.

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[6] *Id.* at 299.

[7] *Id.* at 311-A-315.

[8] *Id.* at 317-321.

[9] Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters, and Other Acts (1974), as amended:

Sec. 1. Any person who installs any water, electrical, telephone or piped gas connection without previous authority from the Metropolitan Waterworks and Sewerage System, the Manila Electric Company, the Philippine Long Distance Telephone Company, or the Manila Gas Corporation, as the case may be, tampers and/or uses tampered water, electrical or gas meters, jumpers or other devices whereby water, electricity or piped gas is stolen; steals or pilfers water, electric or piped gas meters, or water, electric and/or telephone wires, or piped gas pipes or conduits; knowingly possesses stolen or pilfered water, electrical or gas meters as well as stolen or pilfered water, electrical and/or telephone wires, or piped gas pipes and conduits, shall, upon conviction, be punished with *prision correccional* in its minimum period or a fine ranging from two thousand to six thousand pesos, or both.

On the same date, RISOO personnel served Search Warrant Nos. Q-01-3857 and Q-01-3858 against petitioners, corporate owners of Planet Internet, at Unit 2103, 21/F Orient Square Building, Emerald Avenue, Barangay San Antonio, Pasig City.[10] There, RISOO seized various equipment and arrested Rene Lacson (Lacson) and Arnold Julio (Julio), who were both employees of Planet Internet. RISOO indorsed the case to the DOJ, recommending that petitioners, Lacson, and Julio be charged with violations of paragraph 1 of Article 308 (theft), in relation to Article 309, of the RPC and PD No. 401.[11] Lacson and Julio were then subjected to inquest proceedings, and corresponding informations were directly filed in Branch 152 of the RTC, Pasig City against them. Subsequently, however, on their motion, the RTC ordered a re-investigation of the charges against Lacson and Julio.[12]

Meanwhile, the cases against petitioners, who were at large at the time of Lacson and Julio's inquest, were subjected to regular preliminary investigation. Upon conclusion of the DOJ's investigation, their cases were submitted for resolution and indorsed to the Office of the City Prosecutor of Pasig City (OCP Pasig) for further investigation. Only Robertson S. Chiang (Robertson) appeared and submitted his counter-affidavit and controverting evidence.[13]

In its Affidavit,[14] PLDT alleged that Planet Internet committed illegal toll bypass operations, a method of routing and completing international long distance calls using lines, cables, antenna and/or air wave or frequency which connects directly to the local or domestic exchange facilities of the country where the calls originated. The calls were made to appear as local calls but were actually international. In the process, these calls

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[10] *Rollo*, pp. 311-A, 338-342.

[11] *Id.* at 360-361.

[12] *Id.* at 79.

[13] *Id.* at 69.

[14] *Id.* at 204-218.

bypassed the International Gateway Facility (IGF) found at the originating country,[15] which meters all international calls for charging and billing.

PLDT claimed that its representatives made several international test calls through Planet Internet using subscribed telephone numbers 689-1135 to 689-1143 from PLDT. The tests revealed that while no records were found in the Call Details Records of PLDT's toll exchanges, the international test calls were shown as completed. This meant that the calls bypassed PLDT's IGF, and consequently, caused financial losses to PLDT in the form of access and hauling charges in an estimated monthly value of ₱764,718.09.[16]

Moreover, PLDT argued that Planet Internet violated PD No. 401 because of the unauthorized installation of telephone connections and the illegal connection of PLDT telephone lines/ numbers to an equipment which routes the international calls.[17]

Robertson countered that Planet Internet is a legitimate and duly registered business operating as a Value-Added Service (VAS) and Internet-Related Service (IRS) provider. It was not involved in any toll bypass operation because it was an authorized reseller of the IGF services of Eastern Telecommunications Philippines Incorporated (Eastern) and Capitol Wireless (Capwire). Robertson explained that Planet Internet connected clients to either Eastern's or Capwire's IGF switching facility, as shown in the reseller agreement[18] between Planet Internet and Eastern and the statement of account[19] from Capwire. Although Robertson admitted that the test calls by PLDT's representatives did not pass PLDT's IGF, he asserts the same

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[15] *Id.* at 206.

[16] *Id*. at 68.

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

[18] *Id*. at 429-434.

[19] *Id*. at 435.

passed through Eastern's or Capwire's IGF, whose toll fees were duly paid by Planet Internet.[20]

Robertson also argued that in any event, the crime of theft does not cover toll bypass operations[21] and that PLDT's alleged lost business revenues and opportunities do not constitute personal property under the crime of theft. Finally, he argued that there is no violation of PD No. 401 because the PLDT lines were installed validly and the corresponding monthly service rentals were paid for. The lines were neither stolen nor tapped into PLDT's facility without the latter's knowledge.[22]

In reply, PLDT claimed that Planet Internet, as a VAS and IRS provider, is not authorized to provide telecommunications services to the public, such as international long distance calls, because it has no legislative franchise or a Certificate of Public Convenience and Necessity from the National Telecommunications Commission (NTC). Its reselling agreement with Eastern and Capwire would not suffice. Besides, reselling of telecommunications service is illegal and violative of NTC Memorandum Circular No. 8-11-85. PLDT likewise cited several cases filed before the DOJ sustaining PLDT's position, including *PLDT v. Federico Tiongson, et al.*, docketed as I.S. No. Psg. (1) 97-0925.[23]

Robertson, in his rejoinder, asserted that as VAS provider, Planet Internet does not need to secure a franchise or a Certificate of Public Convenience and Necessity since it does not lay out its own network. Also, a VAS provider is expressly allowed to competitively offer its services using cable facilities it leases from licensed carriers.[24]

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

[21] *Id*. at 426.

[22] *Id*. at 427.

[23] *Id*. at 69-71.

[24] *Id*. at 71.

In its Resolution[25] dated June 28, 2002, the OCP Pasig dismissed the charges for insufficiency of evidence and filed a motion to withdraw the informations before the RTC.

PLDT filed a motion for reconsideration, which the OCP Pasig also denied.[26] Meanwhile, the RTC allowed the informations to be withdrawn.[27]

PLDT filed a petition for review[28] before the DOJ. In its Resolution[29] dated November 5, 2007, the DOJ denied PLDT's petition and affirmed the findings of the OCP Pasig. PLDT moved for reconsideration, pending which, it manifested[30] to the DOJ that: 1) the CA in *PLDT v. Regional Trial Court, Branch 152, Pasig City, Rene Fernandez Lacson and Arnold Bata Julio*, docketed as CA-G.R. SP No. 86466,[31] had directed the RTC to proceed with the hearing of the criminal cases against Lacson and Julio; and 2) the Supreme Court had denied with finality Lacson and Julio's petition for review on *certiorari*.[32]

On June 2, 2010, the DOJ denied PLDT's motion for reconsideration.[33]

Thereafter, PLDT filed a petition for *certiorari*[34] with the CA, alleging that the DOJ committed grave abuse of discretion in: 1) sustaining OCP Pasig's finding that PLDT's complaints

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[25] *Id.* at 65-75.

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

[27] Order dated August 6, 2002, as cited in *PLDT v. Regional Trial Court, Branch 152, Pasig City, Rene Fernandez Lacson and Arnold Bata Julio*, CA-G.R. SP No. 86466, February 14, 2007. See *rollo*, pp. 910-911.

[28] *Id.* at 463-499.

[29] *Supra* note 4.

[30] *Rollo*, pp. 896-903.

[31] *Id.* at 905-925. Decision dated February 14, 2007.

[32] *Id.* at 927, 929, 931-932.

[33] *Supra* note 5.

[34] *Rollo*, pp. 85-141.

were not sufficiently supported by evidence;[35] and 2) issuing its resolutions despite the CA's prior decision in *PLDT v. Regional Trial Court, Branch 152, Pasig City, Rene Fernandez Lacson and Arnold Bata Julio* which constitutes *res judicata* on the existence of probable cause against petitioners.[36]

The CA granted the petition in its Decision[37] dated January 31, 2011. The CA found probable cause for theft in petitioners' act of depriving PLDT of fees and tolls by routing and completing international long distance calls using lines, cables, antenna and/or air wave or frequency which connects directly to the local or domestic exchange facilities of PLDT and making it appear that the international calls were local calls. The CA held that Planet Internet's arguments that it is not involved in toll bypass operations because it is an authorized reseller of IGF services and that toll bypass does not constitute theft are matters of defense that should be proved during a full-blown trial.[38]

The CA also held that since there is probable cause that petitioners committed theft, there is also probable cause that they violated PD No. 401. PD No. 401 penalizes the illegal act of tampering telephone wires and pilfering the same with the use of devices. The search conducted by RISOO on Planet Internet's premises yielded an assortment of equipment used to attach to PLDT's phone lines to pilfer and manipulate the electrical impulses that constitute a telephone call.[39]

Finally, the CA held that the ruling in CA-G.R. SP No. 86466 does not constitute *res judicata* on the propriety of petitioners' indictment for theft and violation of PD No. 401. The issue in that case was whether the trial court gravely abused its discretion when it allowed the informations to be withdrawn without making its own determination of probable cause. This is different from

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[35] *Id.* at 101-102.

[36] *Id.* at 102.

[37] *Supra* note 2.

[38] *Rollo*, pp. 51-52.

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

the issue in this case, that is, whether there is probable cause to proceed with petitioners' indictment for theft and violation of PD No. 401.[40]

In its Resolution[41] dated April 19, 2011, the CA denied petitioners' motion for reconsideration. Hence, this petition which argues that:

(1) PLDT did not cite why the DOJ resolution was fraught with grave abuse of discretion;[42]
(2) The DOJ resolution was not tainted with grave abuse of discretion as it duly considered the arguments of PLDT;[43] and
(3) The Decision of the CA also did not cite what grave abuse of discretion was committed by the DOJ.[44]

The petition lacks merit.

Petitioners argue that PLDT, in its petition before the CA, merely made general allegations of grave abuse of discretion without citing specific and concrete examples of arbitrariness on the part of the DOJ. Petitioners, in a nutshell, argue that PLDT erroneously raised questions of fact and errors of judgment.

We disagree. A reading of the petition leads to no other conclusion than that the DOJ gravely abused its discretion in affirming the ruling of the OCP Pasig that there was no probable cause to charge petitioners with theft and a violation of PD No. 401.

Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by

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

[41] *Supra* note 3.

[42] *Rollo*, p. 21.

[43] *Id*. at 23.

[44] *Id*. at 25.

reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. "Capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action.[45]

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It also refers to cases in which, for various reasons, there has been a *gross misapprehension of facts*.[46] It is on this score that questions of fact may inevitably be raised.

In its petition for *certiorari* with the CA, PLDT alleged that the DOJ gravely abused its discretion in sustaining the dismissal by the OCP Pasig of PLDT's complaint on the ground of insufficiency of evidence. According to PLDT, the OCP Pasig disregarded evidence presented by PLDT, which, at the very least, *prima facie* showed that petitioners committed theft of PLDT's business and violated PD No. 401 when they engaged in illegal toll bypass operations.[47] PLDT argued that the elements of toll bypass are present in this case: 1) Planet Internet is not a legitimate local exchange service operator; 2) Planet Internet provided international long distance service to the public using the network facilities of PLDT for the origination of the calls; 3) Planet Internet directly accessed the subscriber base of PLDT as the international long distance calls originated from PLDT's local exchange service area or from PLDT lines and numbers; 4) the international long distance calls provided by Planet Internet did not pass through or bypassed the public switch telephone network (PSTN) of PLDT; and 5) because the calls bypassed the PSTN of PLDT and thus, were not metered, PLDT was deprived of the compensation due it for the origination of

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[45] *Olaño v. Lim Eng Co*, G.R. No. 195835, March 14, 2016, 787 SCRA 272, 285. Citations omitted.

[46] *Tan, Jr. v. Matsuura*, G.R. No. 179003, January 9, 2013, 688 SCRA 263, 288. Italics supplied, citation omitted.

[47] *Rollo*, pp. 101-102.

international calls. PLDT emphasized that when international long distance calls are made using PLDT lines and numbers, PLDT's PSTN will route the outgoing international voice calls from source (*i.e.* from a PLDT local dialing number) to the IGF of the applicable operator. By using the facilities of PLDT for the origination of the international long distance calls without paying the required access and hauling charges, Planet Internet deprived PLDT of compensation.[48] PLDT further argued that the DOJ and the OCP Pasig disregarded the fact that Planet Internet and petitioners illegally installed and/or made unauthorized connections of various telecommunications equipment to PLDT's lines to enable the toll bypass activities of Planet Internet. Such unauthorized installation violated PD No. 401 and facilitated the illegal appropriation and use of PLDT's network and facilities.[49]

From the foregoing, we agree with the CA's exercise of judicial review over the findings of the DOJ. We also sustain its reversal of the DOJ ruling.

We hasten to reiterate the deferential attitude we have adopted towards review of the executive's finding of probable cause. This is based not only upon the respect for the investigatory and prosecutorial powers granted by the Constitution to the executive department, but upon practicality as well.[50] The determination of probable cause is a function that belongs to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case.[51] However, the resolution of the Secretary of Justice may be subject of judicial review.

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[48] *Id.* at 109-110.

[49] *Id.* at 111.

[50] *ABS-CBN Corporation v. Gozon*, G.R. No. 195956, March 11, 2015, 753 SCRA 1, 30-31.

[51] *Ty v. De Jemil*, G.R. No. 182147, December 15, 2010, 638 SCRA 671, 684-685.

The review will be allowed only when grave abuse of discretion is alleged.[52]

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. *A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.* Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.[53]

A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.[54]

It is imperative, though, that in order to arrive at probable cause, the elements of the crime charged should be present.[55] For theft to be committed in this case, the following elements must be shown to exist: (1) the taking by Planet Internet (2) of

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[52] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

[53] *Clay & Feather International, Inc. v. Lichaytoo*, G.R. No. 193105, May 30, 2011, 649 SCRA 516, 523. Citation omitted, italics supplied.

[54] *Id.* at 523-524. Citations omitted.

[55] *Hasegawa v. Giron*, G.R. No. 184536, August 14, 2013, 703 SCRA 549, 560.

PLDT's personal property (3) with intent to gain (4) without the consent of PLDT (5) accomplished without the use of violence against or intimidation of persons or the use of force upon things.[56] All these elements have been sufficiently averred in PLDT's complaint-affidavit and have sufficiently engendered a well-founded belief that a crime has been committed.

The test calls made by PLDT revealed that they were able to complete international calls, which were made to appear as local calls and were not recorded in the Call Details Records of PLDT's toll exchanges. This deprived PLDT of the appropriate charges due them. However, Planet Internet and petitioners take issue with categorizing the earnings and business as personal properties of PLDT. In *Laurel v. Abrogar*,[57] we have already held that the use of PLDT's communications facilities without its consent constitutes the crime of theft of its telephone services and business.[58] As we have previously explained in *Worldwide Web Corp. v. People*:[59]

> In *Laurel*, we reviewed the existing laws and jurisprudence on the generally accepted concept of personal property in civil law as "anything susceptible of appropriation." It includes ownership of telephone services, which are protected by the penal provisions on theft. We therein upheld the Amended Information charging the petitioner with the crime of theft against PLDT inasmuch as the allegation was that the former was engaged in international simple resale (ISR) or "the unauthorized routing and completing of international long distance calls using lines, cables, antennae, and/or air wave frequency and connecting these calls directly to the local or domestic exchange facilities of the country where destined." We reasoned that since PLDT encodes, augments, enhances, decodes and transmits telephone calls using its complex communications infrastructure and facilities, the use of these communications facilities

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[56] *Worldwide Web Corp. v. People*, G.R. No. 161106, January 13, 2014, 713 SCRA 18, 42, citing *Avecilla v. People*, G.R. No. L-46370, June 2, 1992, 209 SCRA 466, 472.

[57] G.R. No. 155076, January 13, 2009, 576 SCRA 41.

[58] *Id.* at 57.

[59] *Supra* note 56.

without its consent constitutes theft, which is the unlawful taking of telephone services and business. We then concluded that the business of providing telecommunications and telephone services is personal property under Article 308 of the Revised Penal Code, and that the act of engaging in ISR is an act of "subtraction" penalized under said article.[60] (Citations omitted, italics in the original.)

Here, aside from the allegation that Planet Internet had unauthorized use of PLDT telephone lines which enabled it to bypass PLDT's IGF facility, PLDT also complained of Planet Internet's bypass of its PSTN, unauthorized access of subscribers within the exclusive service area of PLDT, and use of PLDT's network facilities, without consent, in the origination of outgoing international calls.

Moreover, toll bypass operations could not have been accomplished without the installation of telecommunications equipment to the PLDT telephone lines. Thus, petitioners may also be held liable for violation of PD No. 401, which penalizes the unauthorized installation of any telephone connection without previous authority from PLDT.[61] The OCP Pasig, as affirmed by DOJ, found that Planet Internet was legally using PLDT lines legally installed to Planet Internet. However, the charge for violation of PD No. 401 was based on Planet Internet's unauthorized connection of telecommunications equipment to its PLDT telephone lines which enabled it to route outgoing international calls using PLDT lines, numbers, and facilities *without the required fees*. The physical act of making unauthorized or illegal connections to subscribed PLDT telephone lines is precisely the act being complained of.

The OCP Pasig gave credence to Planet Internet's defense that it was authorized by Eastern and Capwire to resell their telecommunication service by connecting clients directly to either Eastern's or Capwire's IGF switching facility. Thus, while the international test calls made through Planet Internet by the

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

[61] *Id.* at 25.

representatives of PLDT did not pass to its IGF, these test calls, however, passed through Eastern and Capwire.

The OCP Pasig also noted PLDT's admission that although it is the biggest IGF operator of the country, there are other companies such as Capwire and Eastern that similarly provide the same services. PLDT also did not question the authority of Capwire and Eastern to resell their services to Planet Internet.

These counter-allegations, however, delve on evidentiary matters that are best passed upon in a full-blown trial. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[62] By taking into consideration the defenses raised by petitioners, the OCP Pasig already went into the strict merits of the case.[63]

WHEREFORE, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 115394 dated January 31, 2011 and April 19, 2011 are **AFFIRMED.**

SO ORDERED.

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

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[62] *Clay & Feather International, Inc. v. Lichaytoo*, *supra* note 53 at 525-526.

[63] *Hasegawa v. Giron*, *supra* note 55 at 562.

FIRST DIVISION

[G.R. No. 202448. December 13, 2017]

JOSEPH O. REGALADO, *petitioner, vs.* **EMMA DE LA RAMA *VDA*. DE LA PENA,[1] JESUSA[2] DE LA PENA, JOHNNY DE LA PENA, JOHANNA DE LA PENA, JOSE DE LA PENA, JESSICA DE LA PENA, and JAIME ANTONIO DE LA PENA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ACTION FOR RECOVERY OF POSSESSION OF REAL PROPERTY; KINDS.— In our jurisdiction, there are three kinds of action for recovery of possession of real property: 1) ejectment (either for unlawful detainer or forcible entry) in case the dispossession has lasted for not more than a year; 2) *accion publiciana* or a plenary action for recovery of real right of possession when dispossession has lasted for more than one year; and, 3) *accion reivindicatoria* or an action for recovery of ownership.

2. ID.; ID.; JURISDICTION; JURISDICTION IN CIVIL CASES; DETERMINED NOT ONLY BY THE TYPE OF ACTION FILED BUT ALSO BY THE ASSESSED VALUE OF THE PROPERTY.— Pursuant to Republic Act No. 7691 (RA 7691), the proper Metropolitan Trial Court (MeTC), MTC, or Municipal Circuit Trial Court (MCTC) has exclusive original jurisdiction over ejectment cases. Moreover, jurisdiction of the MeTC, MTC, and MCTC shall include civil actions involving title to or possession of real property, or any interest therein where the assessed value of the property does not exceed ₱20,000.00 (or ₱50,000.00 in Metro Manila). On the other hand, the RTC has exclusive original jurisdiction over civil actions involving title to or possession of real property, or any interest therein in case the assessed value of the property exceeds ₱20,000.00 (or ₱50,000.00 in Metro Manila). Jurisdiction is thus determined

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[1] Dela Peña in some parts of the records.

[2] Suzette P. Spicer in some parts of the records.

not only by the type of action filed but also by the assessed value of the property. It follows that in *accion publiciana* and *reinvindicatoria*, the assessed value of the real property is a jurisdictional element to determine the court that can take cognizance of the action.

3. ID.; ID.; ID.; ONLY THE FACTS ALLEGED IN THE COMPLAINT CAN BE THE BASIS FOR DETERMINING THE NATURE OF THE ACTION, AND THE COURT THAT CAN TAKE COGNIZANCE OF THE CASE.— [T]o ascertain the proper court that has jurisdiction, reference must be made to the averments in the complaint, and the law in force at the commencement of the action. This is because only the facts alleged in the complaint can be the basis for determining the nature of the action, and the court that can take cognizance of the case.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; SPECIAL JURISDICTIONAL FACTS MUST BE SET FORTH IN THE COMPLAINT.— Under Section 1, Rule 70 of the Rules of Court, there are special jurisdictional facts that must be set forth in the complaint to make a case for ejectment, which, x x x may either be for forcible entry or unlawful detainer. In particular, a complaint for forcible entry must allege the plaintiff's prior physical possession of the property; the fact that plaintiff was deprived of its possession by force, intimidation, threat, strategy, or stealth; and the action must be filed within one year from the time the owner or the legal possessor learned of their dispossession. On the other hand, a complaint for unlawful detainer must state that the defendant is unlawfully withholding possession of the real property after the expiration or termination of his or her right to possess it; and the complaint is filed within a year from the time such possession became unlawful.

5. ID.; ID.; JURISDICTION; CANNOT BE PRESUMED, OR BE VESTED UPON A COURT BY THE AGREEMENT OF THE PARTIES OR BY THE COURT'S ERRONEOUS BELIEF THAT IT HAD JURISDICTION OVER A CASE, FOR IT IS CONFERRED ONLY BY LAW.— Well-settled is the rule that jurisdiction is conferred only by law. It cannot be presumed or implied, and must distinctly appear from the law. It cannot also be vested upon a court by the agreement of the parties; or by the court's erroneous belief that it had

> jurisdiction over a case. x x x [W]hen respondents filed the Complaint in 1998, RA 7691 was already in force as it was approved on March 25, 1994 and took effect on April 15, 1994. As such, it is necessary that the assessed value of the subject properties, or its adjacent lots (if the properties are not declared for taxation purposes) be alleged to ascertain which court has jurisdiction over the case. x x x [T]he Complaint failed to specify the assessed value of the subject properties. Thus, it is unclear if the RTC properly acquired jurisdiction, or the MTC has jurisdiction, over respondents' action. Also worth noting is the fact that the RTC took cognizance of the Complaint only on the presumption that the assessed value of the properties exceeds ₱20,000.00. Aside from affirming such presumption, the CA, in turn, declared that the RTC had jurisdiction because the parties stipulated on it. However, x x x jurisdiction cannot be presumed. It cannot be conferred by the agreement of the parties, or on the erroneous belief of the court that it had jurisdiction over a case. Indeed, in the absence of any allegation in the Complaint of the assessed value of the subject properties, it cannot be determined which court has exclusive original jurisdiction over respondents' Complaint. Courts cannot simply take judicial notice of the assessed value, or even market value of the land. Resultantly, for lack of jurisdiction, all proceedings before the RTC, including its decision, are void x x x.

APPEARANCES OF COUNSEL

The Law Office of Persephone Del Callar Evangelista for petitioner.

Baylin Morana & Tranquillo Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* seeks to reverse and set aside the May 28, 2012 Decision[3] of the Court of Appeals

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[3] CA *rollo*, pp. 79-96; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Executive Justice Pampio A. Abarintos and Associate Justice Victoria Isabel A. Paredes.

(CA) in CA-G.R. CV No. 02994, which affirmed the January 20, 2009 Decision[4] of the Regional Trial Court (RTC) of Bacolod City, Branch 42 in Civil Case No. 98-10187 for "Recovery of Possession and Damages with Injunction."

Factual Antecedents

Emma, Jesusa, Johnny, Johanna, Jose, Jessica, and Jaime Antonio (Jaime), all surnamed de la Pena (respondents), are the registered owners of two parcels of land with a total area of 44 hectares located in Murcia, Negros Occidental. These properties are referred to as Lot Nos. 138-D and 138-S, and are respectively covered by Transfer Certificates of Title No. T-103187 and T-103189[5] (subject properties).

Purportedly, in 1994, without the knowledge and consent of respondents, Joseph Regalado (petitioner) entered, took possession of, and planted sugar cane on the subject properties without paying rent to respondents. In the crop year 1995-1996, respondents discovered such illegal entry, which prompted them to verbally demand from petitioner to vacate the properties but to no avail.[6]

Later, the parties appeared before the *Barangay* Office of Cansilayan, Murcia, Negros Occidental but failed to arrive at any amicable settlement. On September 29, 1997, the *Lupon Tagapamayapa* of said *Barangay* issued a Certificate to File Action;[7] and, on March 9, 1998, respondents filed a Complaint[8] for recovery of possession and damages with injunction against petitioner.

In his Answer,[9] petitioner countered that in 1994, Emma, Jesusa, Johnny, Johanna, and Jessica executed their separate

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[4] Records, pp. 279-288; penned by Judge Fernando R. Elumba.

[5] *Id*. at 173-180.

[6] *Id*. at 1-2.

[7] *Id*. at 10.

[8] *Id*. at 1-5.

[9] *Id*. at 21-30.

Waivers of Undivided Share of Lands renouncing their rights and interests over the subject properties in favor of Jaime. In turn, Jaime subsequently waived his rights and interests on the same properties to petitioner.[10] Petitioner claimed that respondents did not attempt to enter the properties as they already intentionally relinquished their interests thereon.

Thereafter, petitioner filed a Motion to Dismiss[11] on the ground, among others, that the RTC has no jurisdiction over the subject matter of the case. Petitioner posited that based on the allegations in the Complaint, the action involved recovery of physical possession of the properties in dispute; said Complaint was also filed within one year from the date the parties had a confrontation before the *Barangay*; and thus, the case was one for Ejectment and must be filed with the proper Municipal Trial Court (MTC).

In their Reply,[12] respondents alleged that the waiver of rights in favor of Jaime was conditioned on the payment of their ₱6.7 million loan with the Republic Planters Bank (RPB) and Philippine National Bank (PNB); and, in case the subject properties would be sold, its proceeds shall be equally distributed to respondents. They further stated that such waiver bestowed rights over the properties solely upon Jaime. They added that the subsequent waiver executed by Jaime to petitioner should have been with conformity of the banks where the properties were mortgaged; and conditioned on the payment of the ₱6.7 million loan. They pointed out that neither Jaime nor petitioner paid any amount to RPB or PNB; and as a result, the waivers of rights in favor of Jaime, and later to petitioner, were void.

Subsequently, in their Opposition to Motion to Dismiss,[13] respondents contended that the RTC had jurisdiction over the case because their demand for petitioner to vacate the properties

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[10] *Id.* at 31-42.

[11] *Id.* at 46-54.

[12] *Id.* at 60-62.

[13] *Id.* at 66-73.

was made during the crop year 1995-1996, which was earlier than the referral of the matter to *Barangay* Cansilayan.

On July 31, 2000, the RTC denied the Motion to Dismiss. It held that it had jurisdiction over the case because the area of the subject properties was 44 hectares, more or less, and "it is safe to presume that the value of the same is more than ₱20,000.00."[14]

Ruling of the Regional Trial Court

On January 20, 2009, the RTC rendered a Decision ordering petitioner to turn over the subject properties to respondents and to pay them ₱50,000.00 as attorney's fees.

The RTC ratiocinated that the waiver of rights executed by Jaime to petitioner was coupled with a consideration. However, petitioner failed to prove that he paid a consideration for such a waiver; as such, petitioner was not entitled to possess the subject properties.

Both parties appealed to the CA.

On one hand, petitioner reiterated that the RTC had no jurisdiction over the case. He also maintained that respondents already waived their shares and rights over the properties to Jaime, who, in turn, renounced his rights to petitioner.

On the other hand, respondents assailed the RTC Decision in so far as it failed to award them damages as a result of petitioner's purported illegal entry and possession of the subject properties.

Ruling of the Court of Appeals

On May 28, 2012, the CA affirmed the RTC Decision.

The CA dismissed respondents' appeal because they did not establish entitlement to damages. It likewise dismissed the appeal interposed by petitioner for failing to establish that he

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

gave any consideration in relation to Jaime's waiver of rights in his (petitioner) favor.

In addition, the CA ruled that the RTC had jurisdiction over this case considering that the parties stipulated on the jurisdiction of the RTC but also because the assessed value of the subject properties is presumed to have exceeded ₱20,000.00.

Issues

Hence, petitioner filed this Petition raising the issues as follows:

I. DID THE REGIONAL TRIAL COURT HAVE JURISDICTION OVER THE SUBJECT MATTER OF THE CASE?

II. DID THE COURT OF APPEALS ERR IN RULING THAT PETITIONER SHOULD RETURN POSSESSION OF THE PROPERTIES SUBJECT OF THIS CASE TO THE RESPONDENTS?

III. SHOULD THE PETITIONER BE AWARDED DAMAGES?[15]

Petitioner's Arguments

Petitioner insists that respondents filed their Complaint for recovery of physical possession of the subject properties on March 9, 1998 or within one year from the date the parties had their confrontation before the *Barangay* of Cansilayan (September 29, 1997). As such, he maintains that the RTC did not have jurisdiction over the case.

Petitioner also posits that even granting that this action is considered a plenary action to recover right of possession, the RTC still had no jurisdiction because the tax declarations of the properties were not submitted, and consequently, it cannot be determined whether it is the MTC or RTC which has jurisdiction over the case.

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[15] *Rollo*, p. 8.

Moreover, petitioner argues that Jaime's waiver in his (petitioner's) favor was coupled with the following considerations: 1) ₱400,000.00 cash; 2) a car worth ₱350,000.00; and 3) a convenience store worth ₱1,500,000.00. He adds that the delivery of the properties to him confirms that he (petitioner) gave said considerations to Jaime.

Later, in his Manifestation and Motion,[16] petitioner points out that although the body of the assailed CA Decision made reference to the January 20, 2009 RTC Decision, its dispositive portion pertained to a different case, to wit:

> WHEREFORE, premises considered, the August 29, 2008 Decision of the Regional Trial Court, Branch 10 in Civil Case No. CEB-30866 is AFFIRMED.
>
> Costs against both appellants.
>
> SO ORDERED.[17] (Underlining ours)

Consequently, petitioner prays that the dispositive portion of the CA Decision be rectified to refer to the actual case subject of the appeal.

Respondents' Arguments

On the other hand, respondents contend that the CA did not commit any reversible error in rendering the assailed Decision. They insist that petitioner's contentions are unsubstantial to merit consideration.

Our Ruling

The Court grants the Petition.

In our jurisdiction, there are three kinds of action for recovery of possession of real property: 1) ejectment (either for unlawful detainer or forcible entry) in case the dispossession has lasted for not more than a year; 2) *accion publiciana* or a plenary action for recovery of real right of possession when dispossession

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[16] *Id.* at 203-204.

[17] CA *rollo*, p. 96.

has lasted for more than one year; and, 3) *accion reivindicatoria* or an action for recovery of ownership.[18]

Pursuant to Republic Act No. 7691 (RA 7691),[19] the proper Metropolitan Trial Court (MeTC), MTC, or Municipal Circuit Trial Court (MCTC) has exclusive original jurisdiction over ejectment cases. Moreover, jurisdiction of the MeTC, MTC, and MCTC shall include civil actions involving title to or possession of real property, or any interest therein where the assessed value of the property does not exceed ₱20,000.00 (or ₱50,000.00 in Metro Manila).[20] On the other hand, the RTC has exclusive original jurisdiction over civil actions involving title to or possession of real property, or any interest therein in case the assessed value of the property exceeds ₱20,000.00 (or ₱50,000.00 in Metro Manila).[21]

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[18] *Encarnacion v. Amigo,* 533 Phil. 466, 472 (2006).

[19] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129 [BP 129] (Judiciary Reorganization Act of 1980), March 25, 1994.

[20] Section 3. Section 33 of [BP 129] is hereby amended to read as follows:

Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases*. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

[21] Section 1. Section 19 of [BP 129] is hereby amended to read as follows:

Sec. 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction.

Jurisdiction is thus determined not only by the type of action filed but also by the assessed value of the property. It follows that in *accion publiciana* and *reivindicatoria*, the assessed value of the real property is a jurisdictional element to determine the court that can take cognizance of the action.[22]

In this case, petitioner consistently insists that a) the Complaint is one for ejectment; or b) if the same is deemed an *accion publiciana*, the RTC still lacks jurisdiction as the assessed value of the subject properties was not alleged in the Complaint.

As such, to ascertain the proper court that has jurisdiction, reference must be made to the averments in the complaint, and the law in force at the commencement of the action. This is because only the facts alleged in the complaint can be the basis for determining the nature of the action, and the court that can take cognizance of the case.[23]

Here, the pertinent portions of the Complaint read:

2. That plaintiffs [herein respondents] are the owners of two (2) parcels of land known as Lot. No. 138-D with Transfer Certificate of Title No. T-103187 and Lot No. 138-S with Transfer Certificate of Title No. T-103189, with a total land area of 44 hectares, all of Murcia Cadastre x x x;

3. That sometime in 1994, without the knowledge and consent of herein plaintiffs, the defendant [herein petitioner] entered into and took possession of the aforementioned parcels of land and planted sugar cane without paying any rental to herein plaintiffs;

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x x x x x x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000,00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

[22] *Spouses Cruz v. Spouses Cruz,* 616 Phil. 519, 527 (2009).

[23] *Id.* at 523-524.

4. That plaintiffs discovered the illegal entry and occupation by the defendant of the aforementioned property and demand to vacate the property was made orally to the defendant sometime in 1995-96 crop year but defendant refused and still refuses to vacate the premises;

5. A confrontation before the Brgy. Kapitan of Brgy[.] Cansilayan, Murcia, Negros Occidental, and before the Pangkat Tagapag[ka]sundo between herein parties where plaintiffs again demanded orally for the defendant to vacate the premises but defendant refused to vacate the premises and no amicable settlement was reached during the confrontation of the parties, thus a certificate to file action has been issued x x x;

6. That plaintiffs were barred by the defendant from entering the property of the plaintiffs for the latter to take possession of the same and plant sugar cane thereby causing damages to the plaintiffs;

7. That because of the refusal of the defendant to allow the plaintiffs to take possession and control of their own property, plaintiffs were constrained to seek the aid of counsel and consequently thereto this complaint.[24]

Under Section 1,[25] Rule 70 of the Rules of Court, there are special jurisdictional facts that must be set forth in the complaint to make a case for ejectment, which, as mentioned, may either be for forcible entry or unlawful detainer.

In particular, a complaint for forcible entry must allege the plaintiff's prior physical possession of the property; the fact

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[24] Records, pp. 1-2.

[25] Section 1. *Who May Institute Proceedings, and When.*— Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (1a)

that plaintiff was deprived of its possession by force, intimidation, threat, strategy, or stealth; and the action must be filed within one year from the time the owner or the legal possessor learned of their dispossession.[26] On the other hand, a complaint for unlawful detainer must state that the defendant is unlawfully withholding possession of the real property after the expiration or termination of his or her right to possess it; and the complaint is filed within a year from the time such possession became unlawful.[27]

In the instant case, respondents only averred in the Complaint that they are registered owners of the subject properties, and petitioner unlawfully deprived them of its possession. They did not assert therein that they were dispossessed of the subject properties under the circumstances necessary to make a case of either forcible entry or unlawful detainer. Hence, in the absence of the required jurisdictional facts, the instant action is not one for ejectment.[28]

Nonetheless, the Court agrees with petitioner that while this case is an *accion publiciana*, there was no clear showing that the RTC has jurisdiction over it.

Well-settled is the rule that jurisdiction is conferred only by law. It cannot be presumed or implied, and must distinctly appear from the law. It cannot also be vested upon a court by the agreement of the parties; or by the court's erroneous belief that it had jurisdiction over a case.[29]

To emphasize, when respondents filed the Complaint in 1998, RA 7691 was already in force as it was approved on March 25, 1994 and took effect on April 15, 1994.[30] As such, it is necessary that the assessed value of the subject properties, or its adjacent

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[26] *Nuñez v. SLTEAS Phoenix Solutions, Inc.,* 632 Phil. 143, 153 (2010).

[27] *Barbosa v. Hernandez,* 554 Phil. 1, 6 (2007).

[28] *Id.* at 7.

[29] *Salvador v. Patricia, Inc.,* G.R. No. 195834, November 9, 2016.

[30] *Id.*

lots (if the properties are not declared for taxation purposes)[31] be alleged to ascertain which court has jurisdiction over the case.[32]

As argued by petitioner, the Complaint failed to specify the assessed value of the subject properties. Thus, it is unclear if the RTC properly acquired jurisdiction, or the MTC has jurisdiction, over respondents' action.

Also worth noting is the fact that the RTC took cognizance of the Complaint only on the presumption that the assessed value of the properties exceeds ₱20,000.00. Aside from affirming such presumption, the CA, in turn, declared that the RTC had jurisdiction because the parties stipulated on it. However, as discussed, jurisdiction cannot be presumed. It cannot be conferred by the agreement of the parties, or on the erroneous belief of the court that it had jurisdiction over a case.

Indeed, in the absence of any allegation in the Complaint of the assessed value of the subject properties, it cannot be determined which court has exclusive original jurisdiction over respondents' Complaint. Courts cannot simply take judicial notice of the assessed value, or even market value of the land.[33] Resultantly, for lack of jurisdiction, all proceedings before the RTC, including its decision, are void,[34] which makes it unnecessary to discuss the other issues raised by petitioner.

As a final note, while the modification of the clerical error in the dispositive portion of the CA Decision is rendered irrelevant by the dismissal of the Complaint for lack of jurisdiction, the Court, nonetheless, reminds the CA and all other courts to be more circumspect in rendering their decision, including ensuring the correctness of the information in their issuances. After all, courts are duty-bound to render accurate

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[31] *Cabling v. Dangcalan,* G.R. No. 187696, June 15, 2016.

[32] *Spouses Cruz v. Spouses Cruz, supra* note 22 at 527-528.

[33] *Quinagoran v. Court of Appeals*, 557 Phil. 650, 661 (2007).

[34] *Spouses Cruz v. Spouses Cruz, supra* note 22 at 528.

decisions, or that which clearly and distinctly express the facts and the law on which the same is based.[35]

WHEREFORE, the Petition is **GRANTED**. The May 28, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 02994 is **REVERSED and SET ASIDE**. Accordingly, the Complaint in Civil Case No. 98-10187 is **DISMISSED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 209468. December 13, 2017]

UNITED DOCTORS MEDICAL CENTER, *petitioner, vs.* **CESARIO BERNADAS, represented by LEONILA BERNADAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE, AS AMENDED; RETIREMENT; RETIREMENT BENEFITS AND INSURANCE PROCEEDS, DISTINGUISHED; GRANT OF INSURANCE PROCEEDS NOT A BAR TO THE GRANT OF RETIREMENT BENEFITS.— Jurisprudence characterizes retirement as "the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment

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[35] CONSTITUTION, Article VIII, Section 14.

with the former." At the outset, retirement benefits must be differentiated from insurance proceeds. One is in the concept of an indemnity while the other is conditioned on age and length of service. "A 'contract of insurance' is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event." On the other hand, retirement plans, while initially humanitarian in nature, now concomitantly serve to secure loyalty and efficiency on the part of employees, and to increase continuity of service and decrease the labor turnover, by giving to the employees some assurance of security as they approach and reach the age at which earning ability and earnings are materially impaired or at an end. Thus, the grant of insurance proceeds will not necessarily bar the grant of retirement benefits. These are two (2) separate and distinct benefits that an employer may provide to its employees.

2. ID.; ID.; ID.; TYPES OF RETIREMENT PLANS; EXPLAINED.— Within this jurisdiction, there are three (3) types of retirement plans available to employees. The first is compulsory and contributory. This type of plan is embodied in Republic Act No. 8282 for those in the private sector and Republic Act No. 8291 for those in the government. These laws require a mandatory contribution from the employer as well as the employee, which shall become a pension fund for the employee upon retirement. Considering that the mandatory employee contribution is deducted from the employee's monthly income, "retirement packages are usually crafted as 'forced savings' on the part of the employee." Under this type of retirement plan, the pension is not considered as mere gratuity but actually forms part of the employee's compensation. An employee acquires a vested right to the benefits that have become due upon reaching the compulsory age of retirement. Thus, the beneficiaries of the retired employee are entitled to the pension even after the retired employee's death. The second and third types of retirement plans are voluntary. They may not even require the employee to contribute to a pension fund. The second type of retirement plan is by agreement between the employer and the employee, usually embodied in the CBA between them. "The third type is one that is voluntarily given by the employer, expressly as in an announced company policy or impliedly as in a failure to contest the employee's claim for retirement benefits."

3. ID.; ID.; ID.; EMPLOYERS AND EMPLOYEES MAY, BY A COLLECTIVE BARGAINING OR OTHER AGREEMENT, SET UP A RETIREMENT PLAN IN ADDITION TO THAT ESTABLISHED BY THE SOCIAL SECURITY LAW, BUT SUCH CONSENSUAL ADDITIONAL RETIREMENT PLAN CANNOT BE SUBSTITUTED FOR OR REDUCE THE RETIREMENT BENEFITS AVAILABLE UNDER THE COMPULSORY SCHEME ESTABLISHED BY THE SOCIAL SECURITY LAW.— The rules regarding the second and third types of retirement plans are provided for in Article 302 [287] of the Labor Code, as amended x x x. However, these types of retirement plans are not meant to be a replacement to the compulsory retirement scheme under social security laws but must be understood as a retirement plan in addition to that provided by law. *Llora Motors, Inc. v. Drilon*, explained: Article 287 of the Labor Code also recognizes that employers and employees may, by a collective bargaining or other agreement, set up [a] retirement plan in addition to that established by the Social Security law, but prescribes at the same time that such consensual additional retirement plan cannot be substituted for or reduce the retirement benefits available under the compulsory scheme established by the Social Security law. Such is the thrust of the second paragraph of Article 287 which directs that the employee shall be entitled to receive retirement benefits earned "under existing laws and any collective bargaining or other agreement."

4. ID.; ID.; ID.; OPTIONAL RETIREMENT; EMPLOYERS AND EMPLOYEES MAY MUTUALLY ESTABLISH AN EARLY RETIREMENT AGE OPTION; RATIONALE FOR OPTIONAL RETIREMENT. — Unlike the fixed retirement ages in social security laws, Article 302 [287] of the Labor Code allows employers and employees to mutually establish an early retirement age option. The rationale for optional retirement is explained in *Pantranco North Express v. National Labor Relations Commission*: In almost all countries today, early retirement, *i.e.*, before age 60, is considered a reward for services rendered since it enables an employee to reap the fruits of his labor — particularly retirement benefits, whether lump-sum or otherwise — at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy

them better and longer. As a matter of fact, one of the advantages of early retirement is that the corresponding retirement benefits, usually consisting of a substantial cash windfall, can early on be put to productive and profitable uses by way of income-generating investments, thereby affording a more significant measure of financial security and independence for the retiree who, up till then, had to contend with life's vicissitudes within the parameters of his fortnightly or weekly wages. Thus we are now seeing many CBAs with such early retirement provisions.

5. ID.; ID.; ID.; ID.; AN EMPLOYER MAY UNILATERALLY RETIRE AN EMPLOYEE EARLIER THAN THE LEGALLY PERMISSIBLE AGE UNDER THE LABOR CODE, BUT THE ACCEPTANCE BY THE EMPLOYEE OF AN EARLY RETIREMENT AGE OPTION MUST BE EXPLICIT, VOLUNTARY, FREE, AND UNCOMPELLED. — Optional retirement may even be done at the option of the employer for as long as the option was mutually agreed upon by the employer and the employee. Thus: Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.

6. ID.; ID.; ID.; ID.; RETIREMENT LAWS SHOULD BE LIBERALLY CONSTRUED AND ADMINISTERED IN FAVOR OF THE PERSONS INTENDED TO BE BENEFITED AND ALL DOUBTS AS TO THE INTENT OF THE LAW SHOULD BE RESOLVED IN FAVOR OF THE RETIREE TO ACHIEVE ITS HUMANITARIAN PURPOSES.— The terms and conditions of a CBA "constitute the law between the parties." However, this CBA does not provide for the terms and conditions of the "present policy on optional retirement." Leonila merely alleged before the Labor Arbiter that petitioner "grants an employee a retirement or separation equivalent to eleven (11) days per year of service

after serving for at least twenty (20) years," which was not disputed by petitioner. Therefore, doubt arises as to what petitioner's optional retirement package actually entails. It is settled that doubts must be resolved in favor of labor. Moreover, "retirement laws should be liberally construed and administered in favor of the persons intended to be benefited and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes."

7. ID.; ID.; ID.; ID.; RETIREMENT BENEFITS ARE THE PROPERTY INTERESTS OF THE RETIREE AND HIS OR HER BENEFICIARIES; THUS, AN EMPLOYEE WHO WAS ALREADY QUALIFIED FOR OPTIONAL RETIREMENT BUT DIES BEFORE HE/SHE CAN EXERCISE THE OPTION TO RETIRE, IS ENTITLED TO RECEIVE THE OPTIONAL RETIREMENT BENEFITS, WHICH MAY BE CLAIMED BY THE QUALIFIED EMPLOYEE'S BENEFICIARIES ON HIS/HER BEHALF.— Optional, by its ordinary usage, is the opposite of compulsory. It requires the exercise of an option. For this reason, petitioner insists that respondent Cesario would not have been entitled to his optional retirement benefits as he failed to exercise the option before his untimely death. However, retirement encompasses even the concept of death. This Court has considered death as a form of disability retirement as "there is no more permanent or total physical disability than death." Compulsory retirement and death both involve events beyond the employee's control. Petitioner admits that respondent Cesario was already qualified to receive his retirement benefits, having been employed by petitioner for 23 years. While the choice to retire before the compulsory age of retirement was within respondent Cesario's control, his death foreclosed the possibility of him making that choice. Petitioner's optional retirement plan is premised on length of service, not upon reaching a certain age. It rewards loyalty and continued service by granting an employee an earlier age to claim his or her retirement benefits even if the employee has not reached his or her twilight years. It would be the height of inequity to withhold respondent Cesario's retirement benefits despite being qualified to receive it, simply because he died before he could apply for it. In any case, the CBA does not mandate that an application must first be filed by the employee before the right to the optional retirement

benefits may vest. Thus, this ambiguity should be resolved in favor of the retiree. Retirement benefits are the property interests of the retiree and his or her beneficiaries. The CBA does not prohibit the employee's beneficiaries from claiming retirement benefits if the retiree dies before the proceeds could be released. Even compulsory retirement plans provide mechanisms for a retiree's beneficiaries to claim any pension due to the retiree. Thus, Leonila, being the surviving spouse of respondent Cesario, is entitled to claim the optional retirement benefits on his behalf.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Rodolfo M. Capoquian for respondent.

D E C I S I O N

LEONEN, *J.*:

An employee who has already qualified for optional retirement but dies before the option to retire could be exercised is entitled to his or her optional retirement benefits, which may be claimed by the qualified employee's beneficiaries on his or her behalf.

This is a Petition for Review on Certiorari[1] assailing the June 21, 2013 Decision[2] and the October 4, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 126781, sustaining the National Labor Relations Commission's finding that Cesario Bernadas' (Cesario) beneficiaries were entitled to his optional retirement benefits.

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[1] *Rollo*, pp. 3-27.

[2] *Id*. at 29-35. The Decision was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 37-38. The Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

On July 17, 1986, Cesario started working as an orderly in United Doctors Medical Center's housekeeping department. He was eventually promoted as a utility man.[4]

United Doctors Medical Center and its rank-and-file employees had a collective bargaining agreement (CBA), under which rank-and-file employees were entitled to optional retirement benefits.[5] On retirement pay, the CBA provided:

> ARTICLE XI
> RETIREMENT AND SEVERANCE PAY
>
> SECTION 1. RETIREMENT AND SEVERANCE PAY. The CENTER shall grant each employee retirement and severance pay in accordance with law. It shall also continue its present policy on optional retirement.[6]

Under the optional retirement policy, an employee who has rendered at least 20 years of service is entitled to optionally retire. The optional retirement pay is equal to a retiree's salary for 11 days per year of service.[7]

In addition to the retirement plan, employees are also provided insurance, with United Doctors Medical Center paying the premiums. The employees' family members would be the beneficiaries of the insurance.[8]

On October 20, 2009, Cesario died from a "freak accident"[9] while working in a doctor's residence. He was 53 years old.[10]

Leonila Bernadas (Leonila), representing her deceased husband, Cesario, filed a Complaint[11] for payment of retirement

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[4] *Id*. at 30.

[5] *Id*.

[6] *Id*. at 39.

[7] *Id*. at 115-116. NLRC Decision.

[8] *Id*. at 30.

[9] *Id*. at 88.

[10] *Id*. at 30.

[11] *Id*. at 265-266.

benefits, damages, and attorney's fees with the National Labor Relations Commission. Leonila and her son also claimed and were able to receive insurance proceeds of ₱180,000.00 under the CBA.[12]

In a Decision[13] dated August 31, 2011, the Labor Arbiter dismissed Leonila's Complaint. According to the Labor Arbiter, Cesario should have applied for optional retirement benefits during his lifetime, the benefits being optional. Since he did not apply for it, his beneficiaries were not entitled to claim his optional retirement benefits.[14]

Leonila appealed to the National Labor Relations Commission.[15] In its April 30, 2012 Decision,[16] the National Labor Relations Commission reversed the Labor Arbiter's Decision. It found that the optional retirement plan was never presented in this case, casting a doubt on whether or not the plan required an application for optional retirement benefits before an employee could become entitled to them.[17] Considering the "constitutional mandate to afford full protection to labor,"[18] the National Labor Relations Commission resolved the doubt in favor of Cesario. The dispositive portion of its Decision read:

WHEREFORE, premises considered, the Decision dated August 31, 2011 is REVERSED AND SET ASIDE. Judgment is

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[12] *Id*. at 30.

[13] *Id*. at 88-96. The Decision, docketed as NLRC NCR CASE NO. 01-01538-11, was penned by Labor Arbiter Jenneth B. Napiza.

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

[15] *Id*. at 97-103.

[16] *Id*. at 113-118. The Decision was penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.

[17] *Id*. at 116.

[18] *Id*.

hereby rendered finding complainant Cesario M. Bernadas is entitled to optional retirement benefit in the amount of ₱98,252.55 and ordering respondent United Doctors Medical Center to pay the said amount to the complainant.

SO ORDERED.[19]

United Doctors Medical Center's Motion for Reconsideration[20] was denied;[21] hence, it filed a Petition for Certiorari[22] with the Court of Appeals.

On June 21, 2013, the Court of Appeals rendered its Decision[23] sustaining the ruling of the National Labor Relations Commission. According to the Court of Appeals, the retirement plan and the insurance were two (2) "separate and distinct benefits"[24] that were granted to the employees. It held that Leonila's receipt of insurance proceeds did not bar her from being entitled to the retirement benefits under the CBA.[25]

United Doctors Medical Center moved for reconsideration[26] but was denied in the Court of Appeals October 4, 2013 Resolution.[27] Hence, this Petition[28] was filed before this Court.

Petitioner argues that respondent Cesario's beneficiaries do not have legal capacity to apply for Cesario's optional retirement benefits since respondent himself never applied for it in his

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[19] *Id*. at 117.

[20] *Id*. at 119-131.

[21] *Id*. at 132-134.

[22] *Id*. at 135-160.

[23] *Id*. at 29-35.

[24] *Id*. at 33.

[25] *Id*. at 33-34.

[26] *Id*. at 306-324.

[27] *Id*. at 37-38.

[28] *Id*. at 3-27. Comment was filed on March 3, 2015 (*rollo*, pp. 336-342) while Reply was filed on May 28, 2014 (*rollo*, pp. 358-368).

lifetime.[29] It asserts that even assuming respondent Cesario was already qualified to apply for optional retirement three (3) years prior to his death, he never did. Thus, there would have been no basis for respondent Cesario's beneficiaries to be entitled to his optional retirement benefits.[30] Petitioner likewise argues that to grant respondent Cesario's beneficiaries optional retirement benefits on top of the life insurance benefits that they have already received would be equal to "double compensation and unjust enrichment."[31]

On the other hand, Leonila counters that had her husband died "under normal circumstances,"[32] he would have applied for optional retirement benefits. That Cesario was unable to apply before his death "is a procedural technicality"[33] that should be set aside so that "full protection to labor"[34] is afforded and "the ends of social and compassionate justice"[35] are met.

This Court is tasked to resolve the issue of whether or not Leonila Bernadas as her husband's representative, may claim his optional retirement benefits. However, to resolve this issue, this Court must first resolve the issue of whether or not Cesario Bernadas is entitled to receive his optional retirement benefits despite his untimely death.

This Court denies the Petition.

I

Jurisprudence characterizes retirement as "the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching

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

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

[31] *Id*. at 20-23.

[32] *Id*. at 339.

[33] *Id*. at 338.

[34] *Id*.

[35] *Id*.

a certain age, agrees to sever his or her employment with the former."[36]

At the outset, retirement benefits must be differentiated from insurance proceeds. One is in the concept of an indemnity while the other is conditioned on age and length of service. "A 'contract of insurance' is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event."[37] On the other hand, retirement plans,

> while initially humanitarian in nature, now concomitantly serve to secure loyalty and efficiency on the part of employees, and to increase continuity of service and decrease the labor turnover, by giving to the employees some assurance of security as they approach and reach the age at which earning ability and earnings are materially impaired or at an end.[38] (Citation omitted)

Thus, the grant of insurance proceeds will not necessarily bar the grant of retirement benefits. These are two (2) separate and distinct benefits that an employer may provide to its employees.

II

Within this jurisdiction, there are three (3) types of retirement plans available to employees.[39]

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[36] *Cercado v. Uniprom, Inc.*, 647 Phil. 603, 608-609 (2010) [Per *J.* Nachura, Second Division] citing *Magdadaro v. Philippine National Bank*, 610 Phil. 608 (2009) [Per *J.* Carpio, First Division]; *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, 583 Phil. 118 (2008) [Per *J.* Nachura, Third Division]; *Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU)*, 523 Phil. 134 (2006) [Per *J.* Tinga, Third Division]; *Ariola v. Philex Mining Corporation*, 503 Phil. 765, 783 (2005) [Per *J.* Carpio, First Division]; and *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470, 482 (1996) [Per *J.* Panganiban, Third Division].

[37] INS. CODE, Sec. 2(1).

[38] *Brion v. South Philippine Union Mission*, 366 Phil. 967, 974 (1999) [Per *J.* Romero, Third Division].

[39] See *Gerlach v. Reuters Limited, Phils.*, 489 Phil. 501 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

The first is compulsory and contributory. This type of plan is embodied in Republic Act No. 8282[40] for those in the private sector and Republic Act No. 8291[41] for those in the government. These laws require a mandatory contribution from the employer as well as the employee, which shall become a pension fund for the employee upon retirement. Considering that the mandatory employee contribution is deducted from the employee's monthly income,[42] "retirement packages are usually crafted as 'forced savings' on the part of the employee."[43]

Under this type of retirement plan, the pension is not considered as mere gratuity but actually forms part of the employee's compensation.[44] An employee acquires a vested right to the benefits that have become due upon reaching the compulsory age of retirement.[45] Thus, the beneficiaries of the retired employee are entitled to the pension even after the retired employee's death.[46]

The second and third types of retirement plans are voluntary. They may not even require the employee to contribute to a pension fund. The second type of retirement plan is by agreement between the employer and the employee, usually embodied in the CBA between them.[47] "The third type is one that is voluntarily

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[40] Social Security Law (1997).

[41] The Government Service Insurance System Act (1997).

[42] *See* Rep. Act No. 8282, Sec. 9 and Rep. Act No. 8291, Sec. 5 on the mandatory contributions to the Social Security System and the Government Service Insurance System.

[43] *In Re Mrs. Pacita A. Gruba*, 721 Phil. 330, 330 (2013) [Per *J.* Leonen, *En Banc*].

[44] *GSIS v. Montesclaros*, 478 Phil. 573, 584 (2004) [Per *J.* Carpio, *En Banc*].

[45] *Id.*

[46] *See* Rep. Act No. 8282, Sec. 13 on death benefits and Rep. Act No. 8291, Sec. 20 on survivorship benefits.

[47] *Gerlach v. Reuters Limited, Phils.*, 489 Phil. 501, 513 (2005) [Per *J.* Sandoval-Gutierrez, Third Division] citing *Llora Motors, Inc. vs. Drilon*, 258-A Phil. 749 (1989) [Per *J.* Feliciano, Third Division].

given by the employer, expressly as in an announced company policy or impliedly as in a failure to contest the employee's claim for retirement benefits."[48]

The rules regarding the second and third types of retirement plans are provided for in Article 302 [287][49] of the Labor Code, as amended,[50] which read:

> Article 302. [287] Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

However, these types of retirement plans are not meant to be a replacement to the compulsory retirement scheme under social security laws but must be understood as a retirement plan in addition to that provided by law. *Llora Motors, Inc. v. Drilon*[51] explained:

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[48] *Id. citing Allied Investigation Bureau, Inc. vs. Ople*, 180 Phil. 221 (1979) [Per acting *C.J.* Fernando, Second Division].

[49] Article 287 of the Labor Code has since been renumbered to Article 302 in view of Rep. Act No. 10151.

[50] Article 287 was amended by Republic Act No. 7641 (1992).

[51] 258-A Phil. 749 (1989) [Per *J.* Feliciano, Third Division].

Article 287 of the Labor Code also recognizes that employers and employees may, by a collective bargaining or other agreement, set up [a] retirement plan in addition to that established by the Social Security law, but prescribes at the same time that such consensual additional retirement plan cannot be substituted for or reduce the retirement benefits available under the compulsory scheme established by the Social Security law. Such is the thrust of the second paragraph of Article 287 which directs that the employee shall be entitled to receive retirement benefits earned "under existing laws and any collective bargaining or other agreement."[52]

Unlike the fixed retirement ages in social security laws, Article 302 [287] of the Labor Code allows employers and employees to mutually establish an early retirement age option. The rationale for optional retirement is explained in *Pantranco North Express v. National Labor Relations Commission*:[53]

In almost all countries today, early retirement, i.e., before age 60, is considered a reward for services rendered since it enables an employee to reap the fruits of his labor — particularly retirement benefits, whether lump-sum or otherwise — at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy them better and longer. As a matter of fact, one of the advantages of early retirement is that the corresponding retirement benefits, usually consisting of a substantial cash windfall, can early on be put to productive and profitable uses by way of income-generating investments, thereby affording a more significant measure of financial security and independence for the retiree who, up till then, had to contend with life's vicissitudes within the parameters of his fortnightly or weekly wages. Thus we are now seeing many CBAs with such early retirement provisions.[54]

Optional retirement may even be done at the option of the employer[55] for as long as the option was mutually agreed upon by the employer and the employee. Thus:

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[52] *Id*. at 758.

[53] 328 Phil. 470 (1996) [Per *J*. Panganiban, Third Division].

[54] *Id*. at 483.

[55] See *Progressive Development Corporation v. National Labor Relations Commission*, 398 Phil. 433 (2000) [Per *J*. Bellosillo, Second Division].

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.[56]

III

The issue in this case concerns the second type of retirement plan, or that which was provided under the employer and employees' CBA. To wit, the CBA between the parties provides:

ARTICLE XI
RETIREMENT AND SEVERANCE PAY

SECTION 1. RETIREMENT AND SEVERANCE PAY. The CENTER shall grant each employee retirement and severance pay in accordance with law. It shall also continue its present policy on optional retirement.[57]

The terms and conditions of a CBA "constitute the law between the parties."[58] However, this CBA does not provide for the terms and conditions of the "present policy on optional retirement." Leonila merely alleged before the Labor Arbiter that petitioner "grants an employee a retirement or separation equivalent to eleven (11) days per year of service after serving for at least twenty (20) years,"[59] which was not disputed by

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[56] *Cercado v. Uniprom, Inc.*, 647 Phil. 603, 612 (2010) [Per *J.* Nachura, Second Division].

[57] *Rollo*, p. 39.

[58] *Roche (Philippines) v. National Labor Relations Commission*, 258-A Phil. 160, 171 (1989) [Per *J.* Gancayco, First Division].

[59] *Rollo*, p. 95.

petitioner. Therefore, doubt arises as to what petitioner's optional retirement package actually entails.

It is settled that doubts must be resolved in favor of labor.[60] Moreover, "retirement laws should be liberally construed and administered in favor of the persons intended to be benefited and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes."[61]

Optional, by its ordinary usage, is the opposite of compulsory. It requires the exercise of an option. For this reason, petitioner insists that respondent Cesario would not have been entitled to his optional retirement benefits as he failed to exercise the option before his untimely death.

However, retirement encompasses even the concept of death.[62] This Court has considered death as a form of disability retirement as "there is no more permanent or total physical disability than death."[63] Compulsory retirement and death both involve events beyond the employee's control.[64]

Petitioner admits that respondent Cesario was already qualified to receive his retirement benefits, having been employed by petitioner for 23 years.[65] While the choice to retire before the compulsory age of retirement was within respondent Cesario's control, his death foreclosed the possibility of him making that choice.

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[60] See LABOR CODE, Sec. 4.

[61] *In re Monthly Pension of Justices and Judges*, 268 Phil. 312, 317 (1990) [Per *J*. Regalado, *En Banc*] citing *Bautista vs. Auditor General, etc.,* 104 Phil. 428 (1958) [Per *J*. Padilla, *En Banc*].

[62] See *In Re Mrs. Pacita A. Gruba*, 721 Phil. 330, 341 (2013) [Per *J*. Leonen, *En Banc*].

[63] *Re: Resolution granting automatic permanent total disability benefits to heirs of Judges and Justices who die in actual service*, 486 Phil. 148, 156 (2004) [Per *J*. Garcia, *En Banc*].

[64] See *In Re Mrs. Pacita A. Gruba*, 721 Phil. 330 (2013) [Per *J*. Leonen, *En Banc*].

[65] *Rollo*, p. 17.

Petitioner's optional retirement plan is premised on length of service, not upon reaching a certain age. It rewards loyalty and continued service by granting an employee an earlier age to claim his or her retirement benefits even if the employee has not reached his or her twilight years. It would be the height of inequity to withhold respondent Cesario's retirement benefits despite being qualified to receive it, simply because he died before he could apply for it. In any case, the CBA does not mandate that an application must first be filed by the employee before the right to the optional retirement benefits may vest. Thus, this ambiguity should be resolved in favor of the retiree.

Retirement benefits are the property interests of the retiree and his or her beneficiaries.[66] The CBA does not prohibit the employee's beneficiaries from claiming retirement benefits if the retiree dies before the proceeds could be released. Even compulsory retirement plans provide mechanisms for a retiree's beneficiaries to claim any pension due to the retiree.[67] Thus, Leonila, being the surviving spouse of respondent Cesario,[68] is entitled to claim the optional retirement benefits on his behalf.

WHEREFORE, the Petition is **DENIED**. The June 21, 2013 Decision and October 4, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 126781 are **AFFIRMED**. Petitioner United Doctors Medical Center is ordered to pay respondent Cesario Bernadas, through his beneficiary Leonila Bernadas, optional retirement benefits in the amount of ₱98,252.55 as provided by the Labor Code.

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[66] *GSIS v. Montesclaros*, 478 Phil. 573, 584 (2004) [Per J. Carpio, *En Banc*].

[67] See Rep. Act No. 8282, Sec. 13 on death benefits and Rep. Act No. 8291, Sec. 20 on survivorship benefits.

[68] See *rollo*, p. 32, on the presentation of respondent's certificate of marriage.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Martires,* and *Gesmundo, JJ.,* concur.

Bersamin, J., on official leave.

FIRST DIVISION

[G.R. No. 211082. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTHONY VILLANUEVA, MELVIN TUPAZ and RUEL REGNER,** *accused,*

ANTHONY VILLANUEVA, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLES IN REVIEWING RAPE CASES; VICTIM'S TESTIMONY CREDIBLY ESTABLISHED THAT THE THREE ACCUSED ACTED IN CONCERT WITH ONE ANOTHER AND SUCCEEDED IN HAVING CARNAL KNOWLEDGE OF HER AGAINST HER WILL.— [T]he Court is tasked to weigh between two conflicting versions proposed by one claiming to be the rape victim and the other, professing innocence of the act charged. Thus, in reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of

the evidence for the defense. If private complainant's testimony successfully meets the test of credibility, then the accused may be convicted on the basis thereof. As correctly observed by the RTC and affirmed by the CA, AAA's testimony credibly established that accused-appellant, together with his co-accused Regner and Melvin, acting in concert with one another, succeeded in having carnal knowledge of her against her will. Thus, AAA categorically testified that Regner moved towards her feet and covered her mouth with his palm while accused-appellant poked her right side with a *bolo* as Melvin undressed her and inserted his penis into her vagina. Thereafter, the two other accused took turns in raping her.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS NECESSARY FOR CONVICTION.—** The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

3. **ID.; ID.; ID.; WHEN THE THREE ACCUSED CONSPIRED TO RAPE THE VICTIM, EACH ONE OF THEM SHOULD BE HELD LIABLE FOR THREE COUNTS OF RAPE.—** [T]he evidence presented by the prosecution fully support the charge that accused-appellant, together with his co-accused, conspired to rape AAA. The act of Regner in approaching and covering AAA's mouth, the act of accused-appellant in poking a *bolo* at her side, the act of Melvin in having sexual intercourse with AAA and then later on followed by Regner and accused-appellant, all point to their unified and conscious design to sexually violate AAA. Accordingly, accused-appellant should be held liable not only for the act of rape he perpetuated against AAA, but also for the rape committed by his co-accused Regner and Melvin, or for three counts of rape in all, conspiracy being extant among the three of them during the commission of each of the three violations.

4. **ID.; ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.—** [I]n the absence of an aggravating or mitigating circumstance, the penalty to be imposed is *reclusion perpetua* in each case. Additionally, exemplary damages should be awarded for the inherent bestiality of the act committed even if no aggravating

circumstance attended the commission of the crime. Thus, in accordance with recent jurisprudence, the proper amounts awarded should be ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱75,000 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

This is an appeal[1] from the Decision[2] dated July 31, 2013 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 01296 affirming with modification the Decision[3] dated May 27, 2008 of the Regional Trial Court (RTC) of Tacloban City, Branch 6, in Criminal Cases Nos. 97-01-63/97-01-64/97-01-66, which found Anthony Villanueva (accused-appellant) guilty beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code (RPC).

The Antecedents

In three separate Informations, accused-appellant, and his co-accused Melvin Tupaz (Melvin), Ruel Regner (Regner), were charged with three counts of rape, the accusatory portions of which read:

Criminal Case No. 97-01-63:

That on or about the 3rd day of November 1996, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court,

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[1] *Rollo*, pp. 16-17.

[2] Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Pamela Ann Abella Maxino and Maria Elisa Sempio Diy; *id.* at 3-15.

[3] Penned by Judge Santos T. Gil; CA *rollo*, pp. 32-44.

the above-named accused, conspiring, confederating and helping each other, by means of violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA,[4] against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 97-01-64:

That on or about the 3rd day of November 1996, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above[-]named accused, conspiring, confederating and helping each other, by means of violence and intimidation, did, then and there willfully, unlawfully, and feloniously have carnal knowledge with one AAA, against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 97-01-66:

That on or about the 3rd day of November 1996, in the City of Tacloban, Philippines, within the jurisdiction of this Honorable Court, the above[-]named accused, conspiring, confederating and helping each other, by means of violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, against her will and consent.

CONTRARY TO LAW.[5]

During the arraignment, only accused-appellant appeared and pleaded not guilty while the two other accused, Melvin and Regner, remained at large.[6]

The prosecution presented as witnesses the private complainant AAA and the examining physicians, Dr. Delsergs Jose M. Abit

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[4] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] *Rollo*, pp. 4-5.

[6] *Id*. at 5.

(Dr. Abit) and Dr. Jennylind Solite-Lesiguez (Dr. Solite-Lesiguez).[7]

The testimonies of the witnesses for the prosecution tend to establish the following facts:

AAA was a boarder in the boarding house located at Zamora St., Tacloban City owned by John Hanopol and managed by his daughter Jennylyn Hanopol (Jennylyn). AAA used to rent a room across Jennylyn's but later on shared a common room with the latter. When semestral break came, AAA went home to Jaro, Leyte while Jennylyn also went home to Cariga, Leyte.[8]

On November 3, 1996, AAA went back to the boarding house in preparation for the start of the second semester. Jennylyn, however, was not yet there.[9]

When nighttime came, AAA slept alone in the room she shares with Jennylyn. She was awakened and found three men inside the room who she recognized as Melvin, Regner and accused-appellant.[10]

Thereat, Regner approached her and covered her mouth with his palm. Meanwhile, accused-appellant poked the right side of her body with a short *bolo* or *pisao*. While being pinned at this position, Melvin undressed AAA and began kissing her. Melvin then undressed himself and inserted his penis into her vagina.[11]

After Melvin satisfied his lust, accused-appellant took his turn. Accused-appellant kicked AAA in the stomach several times and then inserted his penis into her vagina. Thereafter, AAA became unconscious.[12]

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[7] *Id*.

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

[9] *Id*. at 6.

[10] *Id*.

[11] *Id*.

[12] *Id*.

AAA was awakened when she felt accused-appellant bit her arm. It was then that Regner took his turn raping her. When Regner was finished, Melvin allowed AAA to urinate in a pail. Thereafter, the three men left AAA in the room with a warning that she would be killed should she tell anyone what happened.[13]

The next day, or on November 4, 1996, Jennylyn arrived and was told by AAA of the harrowing incident she underwent. Upon Jennylyn's advise, AAA reported the incident to the Acting Barangay Chairman Joel Tupaz (Acting Barangay Chairman) who happens to be accused Melvin's brother.[14]

During the confrontation at the barangay, accused-appellant, Melvin and Regner asked AAA to forgive them. Acting Barangay Chairman suggested that AAA just slap the three men. When asked how they were able to get inside the room, Melvin divulged that there was a secret window going to the room that he knew of being the boyfriend of Jennylyn.[15]

When AAA went home to Jaro, Leyte on November 5, 1996, she confided the incident to her grandmother who then accompanied her to the Tacloban City Police Station. On November 6, 1996, AAA submitted herself for medical examination at the Eastern Visayas Regional Medical Center (EVRMC) under the care of Dr. Abit and Dr. Solite-Lesiguez.[16] The physical examination on AAA showed that she sustained contusions on her arm and forearm while her genital examination revealed complete fresh hymenal laceration at 6:00 o'clock position and incomplete fresh hymenal laceration at 10:00 o'clock position. Further, AAA's vaginal smear showed the presence of spermatozoa.[17]

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[13] *Id*.

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

[15] *Id*. at 7.

[16] *Id*.

[17] CA *rollo*, pp. 38-39.

For the defense, the testimonies of accused-appellant, accused-appellant's friends Michael Ecleo (Ecleo) and Anivic Opomin (Opomin), and the barangay secretary Henedina Magdan (Magdan) were presented.

Accused-appellant testified that from 10:00 p.m. until 11:00 p.m. of November 3, 1996 he was watching television in the house of a certain Baby Castillo. After which, he went to the boarding house since his cousin Jennylyn requested him to sleep there. He saw AAA wearing an inverted dress and when he reprimanded AAA, the latter got irritated. He then walked home to eat his supper. On his way, he met Regner holding a mosquito coil which AAA allegedly asked him to bring.[18]

Ecleo and Opomin testified that from 9:00 p.m. of November 3, 1996 until 1:00 a.m. of the next day, they were drinking with accused Melvin and AAA. After which, they left behind Melvin and AAA in the boarding house.[19]

Finally, Magdan confirmed that AAA went to the barangay to complain about the incident and that the three men and AAA had a confrontation before the Acting Barangay Chairman.[20]

On May 27, 2008, the RTC rendered its Decision[21] finding accused-appellant guilty of rape. The RTC observed that AAA's account was straightforward and candid and corroborated by the medical findings of the examining physicians. The RTC also observed that AAA immediately reported the incident to the Acting Barangay Chairman and that during the confrontation, the three men asked AAA for forgiveness. According to the RTC, the fact that the three men asked for forgiveness is a strong indication that rape was committed. On the other hand, the RTC observed that accused-appellant's defense of denial

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[18] *Rollo*, p. 8.

[19] *Id*.

[20] *Id*.

[21] CA *rollo*, pp. 32-44.

and *alibi* are weak and deserve no weight especially in light of AAA's positive declarations.[22]

In disposal, the RTC stated:

> In view of the foregoing, **WHEREFORE**, the Court finds [accused-appellant] **guilty** beyond reasonable doubt with the crime of simple rape and with the Indeterminate Sentence Law inapplicable, absent of any mitigating or aggravating circumstances, sentences [accused-appellant] to suffer imprisonment of *reclusion perpetua* and to pay the private offended party moral damages of **FIFTY THOUSAND PESOS** (₱50,000.00) and civil indemnity of **FIFTY THOUSAND PESOS** (₱50,000.00).
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> SO ORDERED.[23]

Accused-appellant turned to the CA and sought reversal of his conviction on the ground that the prosecution failed to prove his guilt beyond reasonable doubt considering that the element of force, intimidation or threat as would characterize the sexual intercourse as rape was not shown and that AAA's testimony is replete with inconsistencies.

The Ruling of the CA

The CA denied accused-appellant's appeal. The CA held that contrary to accused-appellant's claim, the prosecution established that accused-appellant, together with his co-accused, employed force and intimidation in satisfying their bestial desire.[24] The CA disregarded accused-appellant's contention that the absence of physical marks negates the employment of force since the acts of kicking and biting may not necessarily leave physical marks on the victim.[25] Likewise, the CA held that the inconsistencies pointed out by accused-appellant on AAA's testimony were minor and do not negate rape.[26]

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[22] *Id*. at 43.

[23] *Id*. at 44.

[24] *Rollo*, p. 10.

[25] *Id*.

[26] *Id*. at 11.

Thus, the CA in its Decision[27] dated July 31, 2013, affirmed the RTC's finding that accused-appellant is guilty of rape. Additionally, the CA imposed a six percent (6%) interest on the award of damages and civil indemnity and accordingly disposed:

> **WHEREFORE,** premises considered and after a judicious perusal of the evidence on record, the instant appeal is DENIED. The trial court *a quo's* decision dated 27 May 2008 is hereby AFFIRMED with MODIFICATION. Accused-appellant is hereby found guilty beyond reasonable doubt with the crime of simple rape and is sentenced to suffer imprisonment of *reclusion perpetua* and to pay the private complainant moral damages of FIFTY THOUSAND PESOS (₱50,000.00) and civil indemnity of FIFTY THOUSAND PESOS (₱50,000.00) with an interest of six percent (6%) *per annum* on all awards from the date of finality of judgment until fully paid.
>
> **SO ORDERED**.[28]

Hence, the present recourse. Both plaintiff-appellee, through the Office of the Solicitor General, and accused-appellant, through the Public Attorney's Office, manifested that they would no longer be filing their respective supplemental briefs.

The Issue

The issue to be resolved is whether or not the guilt of the accused-appellant of the crime of rape was proven beyond reasonable doubt.

The Ruling of the Court

We dismiss the appeal.

Once again, the Court is tasked to weigh between two conflicting versions proposed by one claiming to be the rape victim and the other, professing innocence of the act charged. Thus, in reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but

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

[28] *Id*. at 14.

to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense.[29] If private complainant's testimony successfully meets the test of credibility, then the accused may be convicted on the basis thereof.[30]

As correctly observed by the RTC and affirmed by the CA, AAA's testimony credibly established that accused-appellant, together with his co-accused Regner and Melvin, acting in concert with one another, succeeded in having carnal knowledge of her against her will. Thus, AAA categorically testified that Regner moved towards her feet and covered her mouth with his palm while accused-appellant poked her right side with a *bolo* as Melvin undressed her and inserted his penis into her vagina. Thereafter, the two other accused took turns in raping her.

The inconsistencies which accused-appellant cite, *i.e.*, that AAA could not determine if she was raped in Jennylyn's room; that AAA was asked by Jennylyn to return on November 3, 1996; that she could not remember if there was another couple occupying the room beside Jennylyn's at the night of the incident; and that AAA could not account for the details of the incident due to a supposed mental black out,[31] refer only to minor and collateral details which do not detract from the fact that rape was committed by the three accused.

The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or

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[29] *People v. Marquez,* 400 Phil. 1313, 1323 (2000).

[30] *Id*.

[31] CA *rollo*, p. 28.

otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[32] In this case, accused-appellant denies having carnal knowledge of AAA, offering in defense his supposed presence at another place when the alleged incident took place. Accused-appellant likewise argues that the element of force or intimidation was not proven.

Accused-appellant's defense is based mainly on denial and *alibi*. However, "[n]othing is more settled in criminal law jurisprudence than that denial and *alibi* cannot prevail over the positive and categorical testimony of the witness."[33]

In *People v. Mateo*,[34] the Court pronounced:

> Accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. x x x. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. x x x.[35] (Citations omitted)

Indeed, denial and *alibi* are intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Emphatically, for the defense of *alibi* to prosper, accused-appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.[36] Here, accused-appellant admits having been at the boarding house at about the same time when the alleged incident took place, *i.e.*, around 11:00 p.m. of November 3, 1996. Accused-appellant likewise professes having seen AAA

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[32] *People v. Quintal, et al.*, 656 Phil. 513, 522 (2011).

[33] *People v. Bulasag*, 582 Phil. 243, 251 (2008).

[34] 582 Phil. 369 (2008).

[35] *Id*. at 384.

[36] *People v. Fernandez,* 434 Phil. 224 (2002).

at the boarding house at that time. His excuse of having gone home to eat supper cannot exculpate him from liability as it was not shown that it was actually physically impossible for him to return back to the boarding house.

As regards accused-appellant's contention that no force or intimidation was proven to have been employed against AAA in the absence of external signs of trauma, suffice to state that the extragenital examination conducted on AAA reveal contusions on her arm and forearm consistent with her testimony that accused-appellant bit her on said body part. The fact that there was no external manifestation of injury on the abdomen does not negate that accused-appellant kicked AAA on the stomach several times. Indeed, the Court in *People v. Paringit*[37] has declared that "[n]ot all blows leave marks."[38]

Succintly, the Court in *People v. Napud, Jr.*,[39] ruled:

> [T]he absence of external injuries does not negate rape. This is because in rape, the important consideration is not the presence of injuries on the victim's body, but penile contact with the female genitalia without the woman's consent.[40] (Citation omitted)

While the Court affirms the RTC's and the CA's finding that accused-appellant is guilty of rape, We note that accused-appellant was in fact charged under three separate Informations for three counts of rape, specifically stating therein that the accused-appellant, together with his co-accused, conspired, confederated and helped each other in committing the crime. While it is true that the RTC and the CA only found accused-appellant guilty of one count of rape, when he appealed from the decision of the RTC and later on, the CA, he waived the constitutional safeguard against double jeopardy and threw the whole case open to the review of the appellate court, which is

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[37] 267 Phil. 497 (1990).

[38] *Id*. at 508.

[39] 418 Phil. 268 (2001).

[40] *Id*. at 279-280.

then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the accused-appellant.[41]

In *People v. Peralta, et al.*,[42] the Court ruled:

> [T]o establish conspiracy, "it is not essential that there be proof as to previous agreement to commit a crime, it being sufficient that the malefactors shall have acted in concert pursuant to the same objective." Hence, conspiracy is proved if there is convincing evidence to sustain a finding that the malefactors committed an offense in furtherance of a common objective pursued in concert.[43] (Citation omitted)

Proof of conspiracy need not even rest on direct evidence, as the same may be inferred from the collective conduct of the parties before, during or after the commission of the crime indicating a common understanding among them with respect to the commission of the offense.[44]

Here, the evidence presented by the prosecution fully support the charge that accused-appellant, together with his co-accused, conspired to rape AAA. The act of Regner in approaching and covering AAA's mouth, the act of accused-appellant in poking a *bolo* at her side, the act of Melvin in having sexual intercourse with AAA and then later on followed by Regner and accused-appellant, all point to their unified and conscious design to sexually violate AAA. Accordingly, accused-appellant should be held liable not only for the act of rape he perpetuated against AAA, but also for the rape committed by his co-accused Regner and Melvin, or for three counts of rape in all, conspiracy being extant among the three of them during the commission of each of the three violations.

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[41] *People v. Mirandilla, Jr.*, 670 Phil. 397, 415 (2011).

[42] 134 Phil. 703 (1968).

[43] *Id.* at 722-723.

[44] *People v. Gambao, et al.,* 718 Phil. 507, 525 (2013).

Thus, in the absence of an aggravating or mitigating circumstance, the penalty to be imposed is *reclusion perpetua*[45] in each case.

Additionally, exemplary damages should be awarded for the inherent bestiality of the act committed even if no aggravating circumstance attended the commission of the crime. Thus, in accordance with recent jurisprudence,[46] the proper amounts awarded should be ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱75,000 as exemplary damages.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated July 31, 2013 of the Court of Appeals in CA-G.R. CEB CR-HC No. 01296 is **AFFIRMED** with **MODIFICATION**. The Court finds accused-appellant Anthony Villanueva **GUILTY** beyond reasonable doubt of three (3) counts of the crime of rape under Article 266-A of the Revised Penal Code, as amended and hereby sentences him to suffer the penalty of *reclusion perpetua* in each case. Accused-appellant is **ORDERED** to **PAY** private complainant the following amounts: ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱75,000 as exemplary damages, for each of the three (3) counts of rape.

Accused-appellant Anthony Villanueva is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages, and exemplary damages.

SO ORDERED.

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

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[45] REVISED PENAL CODE, Article 266-B.

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

FIRST DIVISION

[G.R. No. 211144. December 13, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MARGARITA C. MENDIOLA, LUALHATI T. TALAVERA, married to Celso Talavera; ZENAIDA M. ESTACIO, widow; FRANCISCO C. MENDIOLA, JR., married to Corazon Marindo; ESTRELLITA M. ESPIRITU, married to Danilo Espiritu; MARIO C. MENDIOLA, married to Leticia Mendiola; WILFREDO C. MENDIOLA, married to Teresita E. Mendiola; LIWAYWAY C. MENDIOLA, single; ORLANDO C. MENDIOLA, married to Melinda Mendiola; SHERRY COMELING, married to Antonio Comeling; MAMENCIA M. LACSA, married; RACHEL[*] LACSA, married to Ferdinand San Juan; PARALUMAN M. CASINSINAN, married to Leonardo Casinsinan, represented by their Attorney-In-Fact, PARALUMAN M. CASINSINAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. NO. 1529), SECTION 14 THEREOF; AN APPLICANT FOR REGISTRATION OF TITLE OVER A PARCEL OF LAND MUST ESTABLISH THE POSSESSION OF THE PARCEL OF LAND UNDER A *BONA FIDE* CLAIM OF OWNERSHIP, BY HIMSELF AND/OR THROUGH HIS PREDECESSORS-IN-INTEREST SINCE JUNE 12, 1945, OR EARLIER, AND THAT THE PROPERTY SOUGHT TO BE REGISTERED IS ALREADY DECLARED ALIENABLE AND DISPOSABLE AT THE TIME OF THE APPLICATION.— The conversion plan, technical descriptions of the property, and the Certification issued by the DENR-NCR are insufficient proof of the alienable and disposable character of the subject property. Clearly, respondents failed to prove their entitlement

[*] Also refrerred to as Racquel Lacsa in the Order dated February 22, 2010 of the Regional Trial Court of Pasig City, Branch 266.

thereto under Chapter III, Section 14 of P.D. No. 1529 x x x. Thus, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (i) possession of the parcel of land under a *bona fide* claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (ii) that the property sought to be registered is already declared alienable and disposable at the time of the application.

2. ID.; ID.; ID.; AN APPLICANT FOR LAND REGISTRATION MUST PROVE THAT THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) HAD APPROVED THE SUBJECT PROPERTY AS ALIENABLE AND DISPOSABLE, THE 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 NOT CONSTITUTE INCONTROVERTIBLE EVIDENCE TO OVERCOME THE PRESUMPTION THAT THE PROPERTY SOUGHT TO BE REGISTERED BELONGS TO THE INALIENABLE PUBLIC DOMAIN.— [R]espondents submitted DENR-NCR's Certification dated May 22, 2009, wherein it stated that the subject property was alienable and disposable. The Court, however, finds respondents' reliance on the Certification issued by the DENR-NCR misplaced. In *Rep. of the Phils. v. Lualhati*, the Court ruled that the applicant for land registration must prove that the DENR Secretary had approved the subject property as alienable and disposable, to wit: Accordingly, in a number of subsequent rulings, this Court consistently deemed it appropriate to reiterate the pronouncements in *T.A.N Properties* in denying applications for registration on the ground of failure to prove the alienable and disposable nature of the land subject therein. In said cases, it 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 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. Verily, as shown by the records of the instant case, respondents failed to present any evidence showing that the DENR Secretary had indeed released the subject property as alienable and disposable. Thus, the Court is constrained to reverse the Decision dated September 30, 2013 of the CA and deny the application for registration filed by herein respondents for failure to observe the rules and requirements on land registration.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dalmacio A. Magbuo for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a petition[1] for review on *certiorari* filed under Rule 45 of the Rules of Court assailing the Decision[2] dated September 30, 2013 and Resolution[3] dated January 29, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 95382, which upheld the Order[4] dated February 22, 2010 of the Regional Trial Court (RTC) of Pasig City, Branch 266, in Land Registration Case (LRC) No. N-11576 confirming the title of the applicants over a parcel of land covered by conversion survey plan, Swo-007607-000730-D, being a portion of Lot 2750, Mcadm-590-D, Taguig Cadastral Mapping, situated in Barangay Ibayo, Tipas, Taguig, Metro Manila (subject property).

The Facts of the Case

On July 27, 2007, respondents filed a verified application for registration of title to land under Presidential Decree (P.D.)

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[1] *Rollo*, pp. 13-38.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez concurring; *id*. at 43-50.

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

[4] Rendered by Presiding Judge Toribio E. Ilao, Jr.; *id*. at 53-57.

No. 1529,[5] as amended, otherwise known as the Property Registration Decree over the subject property before the RTC of Pasig City.[6] They claimed that they inherited the subject property from their late parents and have been in physical and continuous possession thereof in the concept of an owner even before June 17, 1945.[7]

During the initial hearing, considering that no opposition to the application was registered, the RTC issued an order of general default except against herein petitioner.

Upon presentation of evidence, the respondents submitted the following: (i) Conversion Plan and Geodetic Engineer's Certificate of the subject property; (ii) Tax Declarations; and (iii) the Certification from the Department of Environment and Natural Resources (DENR)-National Capital Region (NCR) verifying the subject property as alienable and disposable.[8]

The Ruling of the RTC

On February 22, 2010, the RTC rendered its Order[9] wherein it ruled that the respondents herein have sufficient title deemed proper for registration under P.D. No. 1529. The dispositive portion thereof reads:

WHEREFORE**,** judgment is hereby rendered thus: the title of Margarita C. Mendiola, widow; Lualhati M. Talavera, married to Celso Talavera; Zenaida M. Estacio, widow; Francisco C. Mendiola, Jr., married to Corazon Marindo; Estrellita M. Espiritu, married to Danilo Espiritu; Mario C. Mendiola, married to Leticia Mendiola; Wilfredo C. Mendiola, married to Teresita E. Mendiola; Liwayway C. Mendiola, single; Orlando C. Mendiola, married to Melinda

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[5] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES. Approved on June 11, 1978.

[6] *Rollo*, pp. 44 and 53.

[7] *Id*. at 44.

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

[9] *Id*. at 53-57.

Mendiola; Sherry Comeling, married to Antonio Comeling; Mamencia M. Lacsa, married; Racquel Lacsa, married to Ferdinand San Juan; Paraluman M. Casinsinan, married to Leonardo Casinsinan, to that parcel of land (as described on conversion survey plan, Swo-007607-000730-D, being a portion of Lot 2750, Mcadm-590-D, Taguig Cadastral Mapping), situated in Brgy. Ibayo, Tipas, Taguig, Metro Manila consisting of more or less 1,256 square meters with the afore-quoted technical descriptions, is hereby CONFIRMED.

Upon the finality of the judgment, let the proper Decree of Registration and Certificate of Title be issued to the applicants pursuant to Section 39 of P.D. [No.] 1529.

Let two (2) copies of this Order be furnished [to] the Land Registration Authority Administrator Benedicto B. Julep, thru Salvador L. Oriel, the Chief of the Docket Division of said Office, East Avenue, Quezon City.

SO ORDERED.[10]

The RTC held that the subject property was determined to be alienable and disposable as per Certification issued by the DENR-NCR dated January 3, 1968. Also, it held that the respondents had acquired title to the subject property after finding that they have been in continued possession thereof for more than 30 years.[11]

Thus, petitioner, represented by the Office of the Solicitor General (OSG), filed an appeal under Rule 41 before the CA.

The Ruling of the CA

On September 20, 2013, the CA issued its Decision[12] wherein it denied the appeal of the OSG and accordingly affirmed the Order dated February 22, 2010 of the RTC. The dispositive portion thereof states:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, the assailed Order of

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[10] *Id.* at 57.

[11] *Id.* at 56.

[12] *Id.* at 43-50.

Branch 266 of the [RTC] of Pasig City dated February 22, 2010 is **AFFIRMED**.

SO ORDERED.[13]

In denying the appeal, the CA asseverated that respondents sufficiently established their entitlement over the property by presenting evidence relevant to their possession and occupation of the property. Moreover, the CA based its ruling on the declaration in *Rep. of the Phils. v. Serrano, et al.*[14] which allowed the registration application even without the submission of the certification from the DENR Secretary classifying the land as alienable and disposable:

> While Cayetano failed to submit any certification which would formally attest to the alienable and disposable character of the land applied for, the Certification by DENR Regional Technical Director Celso V. Loriega, Jr., as annotated on the subdivision plan submitted in evidence by Paulita, constitutes substantial compliance with the legal requirement. It clearly indicates that lot 249 had been verified as belonging to the alienable and disposable area as early as July 18, 1925.
>
> The DENR certification enjoys the presumption of regularity absent any evidence to the contrary. It bears noting that no opposition was filed or registered by the Land Registration Authority or the DENR to contest respondents' applications on the ground that their respective shares of the lot are inalienable. There being no substantive rights which stand to be prejudiced, the benefit of the Certification may thus be equitably extended in favor of respondents.[15] (Emphasis and underscoring deleted)

Consequently, petitioner filed a petition for review on *certiorari* under Rule 45.

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[13] *Id*. at 49.

[14] 627 Phil. 350 (2010).

[15] *Id*. at 360.

The Issue

Essentially, the main issue in the present case is whether or not the CA erred in affirming the findings of the trial court that herein respondents are entitled to their application for registration of title over the subject property.

The Ruling of the Court

The petition is meritorious.

The conversion plan, technical descriptions of the property, and the Certification issued by the DENR-NCR are insufficient proof of the alienable and disposable character of the subject property. Clearly, respondents failed to prove their entitlement thereto under Chapter III, Section 14 of P.D. No. 1529, which states:

> Sec. 14. *Who may apply.* The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.
>
> x x x x x x x x x

Thus, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (i) possession of the parcel of land under a *bona fide* claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (ii) that the property sought to be registered is already declared alienable and disposable at the time of the application.

In the present case, respondents submitted DENR-NCR's Certification dated May 22, 2009, wherein it stated that the subject property was alienable and disposable.[16]

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[16] *Rollo*, pp. 45 and 47.

The Court, however, finds respondents' reliance on the Certification issued by the DENR-NCR misplaced.

In *Rep. of the Phils. v. Lualhati*,[17] the Court ruled that the applicant for land registration must prove that the DENR Secretary had approved the subject property as alienable and disposable, to wit:

> Accordingly, in a number of subsequent rulings, this Court consistently deemed it appropriate to reiterate the pronouncements in *T.A.N. Properties* in denying applications for registration on the ground of failure to prove the alienable and disposable nature of the land subject therein. In said cases, it 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 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.**[18] (Citations omitted and emphasis ours)

Verily, as shown by the records of the instant case, respondents failed to present any evidence showing that the DENR Secretary had indeed released the subject property as alienable and disposable. Thus, the Court is constrained to reverse the Decision dated September 30, 2013 of the CA and deny the application for registration filed by herein respondents for failure to observe the rules and requirements on land registration.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 30, 2013 and Resolution dated January 29, 2014 of the Court of Appeals in CA-G.R. CV No. 95382 are **REVERSED and SET ASIDE**. The application for registration filed by respondents Margarita C. Mendiola, Lualhati T. Talavera,

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[17] 757 Phil. 119 (2015).

[18] *Id*. at 131.

Zenaida M. Estacio, Francisco C. Mendiola, Jr., Estrellita M. Espiritu, Mario C. Mendiola, Wilfredo C. Mendiola, Liwayway C. Mendiola, Orlando C. Mendiola, Sherry Comeling, Mamencia M. Lacsa, Rachel Lacsa, and Paraluman M. Casinsinan is **DISMISSED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 212169. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOJO EJAN *y* BAYATO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THEREOF SATISFACTORILY ESTABLISHED IN CASE AT BAR.— The prosecution was able to satisfactorily establish the following elements of illegal sale of dangerous drugs: "(1) [the] identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* x x x." In this case, appellant was positively identified

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[**] Designated additional Member per Raffle dated November 20, 2017 *vice* Associate Justice Francis H. Jardeleza.

by SPO1 Germodo as the seller of a sachet containing 0.06 gram of *shabu* and the person who received the ₱200.00 marked money from the poseur-buyer. SPO1 Germodo testified that the poseur-buyer bought *shabu* from the appellant during a buy-bust operation. The testimony of SPO1 Germodo established the elements of the crime[.] x x x SPO1 Germodo was categorical that he witnessed the exchange of marked money and sachet of *shabu* from a distance of five meters. The Court finds no reason to doubt the credibility of SPO1 Germodo especially since the RTC found the same to be "categorical and candid, untainted by inconsistencies, contradictions or evasions."

2. ID.; ID.; ID.; PRESENTATION OF THE POSEUR-BUYER IN COURT IS NOT ESSENTIAL FOR CONVICTION.— In an attempt to escape culpability, appellant insists that the failure to present the poseur-buyer in court and divulge his identity is fatal to the case of the prosecution. The Court is unconvinced. Time and again, this Court has ruled that, "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative." In *People v. Legaspi*, we held that, "[t]he presentation of an informant is not a requisite for the successful prosecution of drug cases. Informants are almost always never presented in court because of the need to preserve their invaluable service to the police." In the present case, despite the non-presentation of the informant, the guilt of the appellant was proven beyond reasonable doubt through the testimonies of SPO1 Germodo who witnessed the whole transaction or sale of *shabu* unfold firsthand.

3. ID.; ID.; ID.; ARRESTING OFFICERS WERE ABLE TO PRESERVE THE INTEGRITY OF THE SEIZED DRUGS AFTER COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF R.A. 9165.— The Court finds that the arresting officers were able to preserve the integrity of the seized drug after faithfully complying with the requirements of Sec. 21 of RA 9165 regarding the custody and disposition of seized drugs. x x x SPO1 Germodo marked the sachet of *shabu* at the place of the arrest with "JE-BB" 4-2-08, which are the initials of the appellant and the corresponding date of the buy-bust operation. An inventory was then taken in the presence of the appellant with the required witnesses: DOJ representative Benlot, media

representative Juditho, and *barangay kagawad* Joel, all of whom signed the inventory along with the arresting officers, SPO1 Germodo and SI Tagle. Undoubtedly, the integrity of the seized drug was properly preserved from the time of appellant's arrest until the sachet was presented in court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal from the December 11, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01335 which affirmed the March 18, 2011 Judgment[2] of Branch 30, Regional Trial Court (RTC), Dumaguete City, Negros Oriental, in Criminal Case No. 18994 finding Jojo Ejan *y* Bayato (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Section 5, Article II of RA 9165 in the following Amended Information:

That on or about the 2nd day of April, 2008, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully[,] and feloniously sell and deliver to an NBI informant-poseur buyer one (1) heat[-]sealed transparent plastic sachet containing 0.06 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called *shabu*, a dangerous drug.

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[1] CA *rollo,* pp. 93-104; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan.

[2] Records, pp. 106-115; penned by Judge Rafael Crescencio C. Tan, Jr.

That [the] accused is found positive for use of Methamphetamine, as reflected in Chemistry Report No. CDT-044-08.

Contrary to Section 5, Article II of R.A. 9165.[3]

During arraignment held on April 25, 2008, appellant pleaded not guilty to the charge against him. Thereafter, trial on the merits followed.

Version of the Prosecution

The prosecution presented the following witnesses: SPO1 Allen June Germodo (SPO1 Germodo) and Special Investigator III Nicanor Ernesto Tagle (SI Tagle). Police Chief Inspector Josephine S. Llena (PCI Llena) was presented to identify the results of the drug test she conducted on the appellant. The testimonies of the witnesses established the following facts:

In the morning of April 2, 2008, SI Tagle received information from a confidential informant that a known drug pusher had just delivered a large amount of *shabu* at *Barangay* Dos, Dumaguete City. SI Tagle informed his local National Bureau of Investigation (NBI) Chief, Atty. Dominador Cimafranca (Atty. Cimafranca) and SPO1 Manuel Y. Sanchez (SPO1 Sanchez), head of the local Philippine Drug Enforcement Agency (PDEA) Office, about the tip. Atty. Cimafranca then gave SI Tagle instructions to conduct an anti-narcotics operation in the area. Thus at 10:30 a.m. of the said date, a team of NBI and PDEA agents, as well as police officers from the Dumaguete Police Station, were assembled at the local PDEA office where a briefing was held. During the briefing, SPO1 Sanchez provided two one hundred peso (₱100.00) bills to be used as marked money in the buy-bust operation. He gave these bills to SPO1 Germodo who placed his initials in the middle of the seal of *Bangko Sentral ng Pilipinas* on the bills. The two marked bills were given to the informant who was designated as the poseur-buyer. It was agreed that SPO1 Germodo would accompany the informant-poseur buyer while SI Tagle would lead the back-

[3] *Id*. at 42.

up team. After the briefing, the team proceeded to Luke Wright Street located at *Barangay* Dos.

Upon their arrival at Luke Wright Street, SPO1 Germodo and the informant got off from their vehicle while the back-up team of SI Tagle remained inside the vehicle and waited for the prearranged signal, a missed call from SPO1 Germodo. The informant walked towards an interior part of the area bounded by Luke Wright Street followed by SPO1 Germodo at a distance of about six or seven meters away. A man then gestured at the informant to come closer. When the informant approached the man, who was later identified as herein appellant, the former gave him the marked money. Upon receipt of the marked money, appellant in turn handed over a sachet to the informant who checked the sachet. SPO1 Germodo witnessed these activities from a distance of about five meters away. SPO1 Germodo then gave a missed call to SI Tagle to signal that the sale had been consummated. Upon seeing the approaching back-up team, SPO1 Germodo rushed to the place where the informant and the appellant were standing. The appellant saw SPO1 Germodo and immediately ran away. SPO1 Germodo then took the sachet from the informant and pursued the appellant. Eventually, SPO1 Germodo and SI Tagle succeeded in apprehending the appellant. Upon his arrest, SI Tagle informed him of his constitutional rights. SPO1 Germodo searched the appellant and recovered the marked money.

At the place of the arrest, SPO1 Germodo marked the confiscated sachet with the initials "JE-BB" 4-2-08 referring to the initials of the appellant Jojo Ejan, the "BB" for buy-bust operation, and the numbers for the date of the incident. SPO1 Germodo also conducted an inventory of the seized item in the presence of the appellant and the required witnesses, Department of Justice (DOJ) representative Anthony Chilius Benlot (Benlot), media representative Juditho Fabillar (Juditho) and *Kagawad* Joel Laspiñas (Joel). SI Tagle prepared the inventory/receipt of drugs and other property seized which was signed by these witnesses, including SPO1 Germodo as seizing officer, SI Tagle as Team Leader, and SPO1 Sanchez as PDEA representative.

SPO1 Germodo also signed as photographer, having taken the photographs of the appellant with the seized item. After the inventory, the appellant was led towards the vehicle of the team at Luke Wright Street. SPO1 Germodo kept the seized item with him at all times. While on the way to the police vehicle, the appellant managed to escape and tried to flee. The appellant hid in a residential house while the operatives ran after him. When informed that the appellant was at the house of one Dario, SPO1 Germodo and SI Tagle asked Dario's permission to enter the house. Accompanied by Dario, SPO1 Germodo and SI Tagle found the appellant hiding under a bed inside one of the rooms in Dario's house. The appellant was then brought to the PDEA office.

At the PDEA office, appellant underwent the usual booking procedure. SPO1 Germodo then prepared a memorandum request for the laboratory examination of the seized dangerous drug and a drug test on the appellant addressed to the Provincial Chief of the Philippine National Police (PNP) Crime Laboratory. SPO1 Germodo recorded the incident in the PDEA logbook.

SPO1 Germodo then brought the appellant and the seized item to the Provincial Crime Laboratory for examination. PCI Llena received the seized item and conducted physical and chemical examinations on the same. The results of the examination as contained in Chemistry Report No. D-052-08 and Certification dated April 2, 2008 revealed that the plastic sachet with markings "JE-BB" 4-2-08 contained 0.06 gram of white crystalline substance which tested positive for Methamphetamine Hydrochloride, a dangerous drug under RA 9165.

PCI Llena also conducted a drug test on the urine sample taken from the appellant and her findings, as contained in Chemistry Report No. CDT-044-08, indicated that the urine sample contained traces of THC-metabolites and Methamphetamine, both dangerous drugs.

Version of the Defense

The defense presented the appellant as its sole witness. His testimony established the following facts:

At around 10:30 a.m. of April 2, 2008, the appellant, a resident of Luke Wright Street in Dumaguete City, was sniffing "rugby" beside the house of one Baby Quizon (Baby). While sniffing "rugby," the appellant saw four or five persons being chased by SI Tagle who had earlier arrested his brother Julius. Fearing apprehension as he was then sniffing "rugby," the appellant entered the house of Baby and hid in one of the rooms. SI Tagle also entered the house and asked the appellant to come out of the room. SI Tagle then forcibly opened the room and pointed a gun at the appellant ordering him to come out, as he was already caught. SI Tagle and the appellant then went out of the room with the appellant's hands behind his head. Appellant asked SI Tagle what wrong he had done. Once outside the room, SI Tagle told the appellant that he was going to search the latter's pockets which yielded the amount of ₱52.00 that the appellant received as change when he bought "rugby." The appellant was brought outside the house where he was made to sit beside a table. At the table, the appellant saw a plastic sachet with *shabu* and money amounting to two hundred pesos (₱200.00). These items were placed there by SPO1 Germodo. The appellant told SI Tagle and SPO1 Germodo that the plastic sachet with *shabu* and the money were not his, but nobody listened to him. The appellant was then asked his name and age and was made to sign "something" which he did not understand, as it was in English. Thereafter, a *barangay* official arrived who also signed "something." A photograph was taken of the appellant, after which he was made to board a van and brought to a police station. At the police station, the appellant was made to enter a room and urinate. After urinating, the appellant was handcuffed and put inside a detention cell.

Ruling of the Regional Trial Court

On March 18, 2011, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The RTC was convinced that the prosecution was able to establish the guilt of the appellant since he was positively identified by SPO1 Germodo as the seller of

0.06 gram of *shabu* after receipt of the ₱200.00 marked money from the informant-poseur buyer. The RTC found appellant's defense of denial inherently weak in contrast to the prosecution's positive identification of the appellant as the seller of *shabu* who was caught *in flagrante delicto.* Furthermore, the RTC found that the integrity of the seized drugs was properly preserved.

The dispositive part of the RTC's decision reads:

> WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Jojo Ejan *y* Bayato GUILTY beyond reasonable doubt of the offense of violating Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> The one (1) heat-sealed transparent plastic sachet containing 0.06 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.
>
> In the service of sentence, the accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.
>
> SO ORDERED.[4]

Aggrieved by the RTC's decision, appellant appealed to the CA.

Ruling of the Court of Appeals

On December 11, 2013, the CA affirmed the RTC's Judgment and held as follows:

> WHEREFORE, in view thereof, the appeal is DENIED**.** The Judgment dated March 18, 2011 of the Regional Trial Court of Negros Oriental, Branch 30, Dumaguete City in Criminal Case No. 18994 finding accused-appellant Jojo Ejan *y* Bayato guilty of the crime charged is hereby AFFIRMED.

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[4] *Id*. at 114.

SO ORDERED.[5]

Dissatisfied with the CA's Decision, appellant elevated his case to this Court. On July 9, 2014, the Court issued a Resolution requiring both parties to submit their Supplemental Briefs. However, the parties manifested that they would no longer file supplemental briefs since they had exhaustively discussed their arguments before the CA.

The main issue raised in his Appellant's Brief is whether the trial court erred in convicting the appellant of illegal sale of *shabu* despite the prosecution's failure to prove the offense beyond reasonable doubt. Appellant maintains that the prosecution's failure to present the informant during trial was fatal since the identity of the buyer was not duly established. Because of this, the appellant posits that it is not clear whether the purported illegal transaction even took place. Appellant likewise argues that the distance of seven meters between SPO1 Germodo and the appellant made it improbable for SPO1 Germodo to witness the alleged transaction or sale of *shabu.* Appellant also doubts the integrity of the sachet of *shabu* since the same was handed by an unknown informant to the arresting officers. Appellant thus prays for his acquittal.

Our Ruling

The appeal is unmeritorious.

Both the RTC and the CA correctly found appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The prosecution was able to satisfactorily establish the following elements of illegal sale of dangerous drugs: "(1) [the] identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction

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[5] CA *rollo,* p. 104.

or sale actually took place, coupled with the presentation in court of the *corpus delicti* x x x."[6]

In this case, appellant was positively identified by SPO1 Germodo as the seller of a sachet containing 0.06 gram of *shabu* and the person who received the ₱200.00 marked money from the poseur-buyer. SPO1 Germodo testified that the poseur-buyer bought *shabu* from the appellant during a buy-bust operation. The testimony of SPO1 Germodo established the elements of the crime, to wit:

Q: And what happened when you were already 30 meters into the interior?
A: So, I noticed that our informant [was] called by a person, Sir, a man.

Q: And when you said your informant [was] called by a man, did you hear the calling?
A: Yes, Sir.

Q: How was your informant called?
A: What I saw, Sir, is that he had a gesture (witness is raising his right hand with a motion towards himself) and the words following "how much is that?"

Q: And did you hear your informant [give] any reply?
A: No, our informant, Sir, just approached near him and I was just at a distance considering that I could not be seen, and what I saw was that our informant handed over to him (2) 100 peso bills.

Q: When you said that you were just about a distance watching, how far was that distance?
A: More or less, 5 meters, Sir.

Q: And to whom did your informant hand over the (2) 100 peso bills that were marked?
A: The person who called him, Sir.

Q: What did that person do when that money was handed over to him?
A: He received the money, Sir, and thereafter he handed the sachet.

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[6] *People v. Marcelo*, 741 Phil. 412, 422 (2014).

Q: To [whom] did he hand it over?
A: To that civilian informant, Sir.

Q: And did your informant receive the sachet that was handed over to him?
A: Yes, Sir.

Q: So what happened next?
A: He examined it, Sir, then upon seeing it, I gave a [missed] call to TAGLE and then after the [missed] call, I saw them x x x approaching towards us and x x x that was the time that we rushed up.[7]

From the testimony above, it is clear that the elements of illegal sale of dangerous drugs are present. SPO1 Germodo was categorical that he witnessed the exchange of marked money and sachet of *shabu* from a distance of five meters. The Court finds no reason to doubt the credibility of SPO1 Germodo especially since the RTC found the same to be "categorical and candid, untainted by inconsistencies, contradictions or evasions."[8] And since these findings were sustained by the CA, it is with more reason that this Court will not disturb the same. In *People v. Macatingag*,[9] this Court held that:

> It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds even more stringent application where said findings are sustained by the Court of Appeals.

In an attempt to escape culpability, appellant insists that the failure to present the poseur-buyer in court and divulge his

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[7] TSN, April 21, 2010, pp. 5-6.

[8] Records, p. 113.

[9] 596 Phil. 376, 388 (2009).

identity is fatal to the case of the prosecution. The Court is unconvinced. Time and again, this Court has ruled that, "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative."[10] In *People v. Legaspi*,[11] we held that, "[t]he presentation of an informant is not a requisite for the successful prosecution of drug cases. Informants are almost always never presented in court because of the need to preserve their invaluable service to the police."

In the present case, despite the non-presentation of the informant, the guilt of the appellant was proven beyond reasonable doubt through the testimonies of SPO1 Germodo who witnessed the whole transaction or sale of *shabu* unfold firsthand.

Appellant's argument against the integrity of the sachet of *shabu* is likewise untenable. The Court finds that the arresting officers were able to preserve the integrity of the seized drug after faithfully complying with the requirements of Sec. 21 of RA 9165 regarding the custody and disposition of seized drugs. On this matter, the RTC observed that:

> While still at the crime scene, SPO1 Germodo marked the one (1) heat-sealed transparent plastic containing white crystalline substance of methamphetamine hydrochloride bought from the accused. An inventory of this item in the presence of the accused and the witnesses required by law was also conducted by SPO1 Germodo. Photographs were also taken of the accused with the seized item and with some of the witnesses to the inventory. This plastic sachet containing white crystalline substance was immediately forwarded to the Negros Oriental Provincial Crime Laboratory for examination to determine the presence of a dangerous drug. The forensic chemist found that the white crystalline substance inside the one (1) heat-sealed transparent plastic sachet was positive for methamphetamine hydrochloride or *shabu*,

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[10] *People v. Amansec*, 678 Phil. 831, 849 (2011).

[11] 677 Phil. 181, 195 (2011).

a dangerous drug. There can be no doubt that the dangerous drug bought from the accused was the same one examined in the crime laboratory. Plainly, the prosecution has established the crucial link in the chain of custody of the sold sachet of *shabu,* from the time they were first bought from the accused, until they were brought for examination. This court thus finds the integrity and the evidentiary value of the dangerous drug coming from the accused to have *not* been compromised.[12]

Additionally, SPO1 Germodo marked the sachet of *shabu* at the place of the arrest with "JE-BB" 4-2-08, which are the initials of the appellant and the corresponding date of the buy-bust operation. An inventory was then taken in the presence of the appellant with the required witnesses: DOJ representative Benlot, media representative Juditho, and *barangay kagawad* Joel, all of whom signed the inventory along with the arresting officers, SPO1 Germodo and SI Tagle. Undoubtedly, the integrity of the seized drug was properly preserved from the time of appellant's arrest until the sachet was presented in court.

All told, since the prosecution was able to establish appellant's guilt beyond reasonable doubt of violating Section 5, Article II of RA 9165, the Court finds no reason to disturb the Decision of the CA.

WHEREFORE, the appeal is **DISMISSED**. The December 11, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01335 is **AFFIRMED.**

SO ORDERED.

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

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[12] Records, pp. 112-113.

[*] Per September 6, 2017 raffle.

FIRST DIVISION

[G.R. No. 216940. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO N. POLANGCUS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF BOTH THE TRIAL COURT AND COURT OF APPEALS ARE SUPPORTED BY EVIDENCE ON RECORD.—** We have carefully reviewed the evidence on record, and we are satisfied that the findings of facts of both the RTC and the CA are thoroughly supported by the evidence on record. Both courts are in agreement that the appellant had been positively identified by prosecution witness Fernando Porlas Huerta (Fernando), a son of the victim, who testified that he in fact had a face-to-face confrontation or meeting with the appellant at the sugarcane plantation in Brgy. Tinag-an, Albuera, Leyte, that very evening of June 9, 2010; that this face-to-face encounter or meeting occurred after he saw the burst of gunfire that caused his father to fall on the ground while his father, his other brother and he were at the waiting shed that early evening of June 9, 2010; that armed with his father's knife, he went after a man wearing a hat and an army jacket and who was the source of the gunfire; that when he caught up with him, he stabbed the man with his father's knife there at the sugarcane plantation; that the appellant attempted to shoot him (witness Fernando) but the appellant's gun malfunctioned, and they grappled for possession of the gun; and, that he did not press his attack against the appellant when he noticed that the latter had a companion nearby.

2. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; CIVIL LIABILITY, MODIFIED TO CONFORM TO PREVAILING JURISPRUDENCE.—** [T]here is a need to modify the damages awarded to conform with prevailing jurisprudence. Appellant is ordered to pay the heirs of the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages in lieu of actual damages. In addition, interest at the rate of 6% *per annum* is imposed on all damages awarded.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the October 29, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB C.R. H.C. No. 01727, the dispositive portion of which states —

WHEREFORE, this appeal is DENIED. The Decision dated July 31, 2013 of the Regional Trial Court (RTC), Branch 14 of Baybay City, Leyte in Crim. Case No. B-10-09-102 for Murder is AFFIRMED with MODIFICATION only in the award of damages. Aside from the Php75,000.00 awarded by the trial court, accused-appellant is likewise directed to pay the heirs of the victim the following amounts: Php50,000.00 as moral damages; Php30,000.00 as exemplary damages and temperate damages of Php25,000.00

SO ORDERED.[2]

On August 18, 2010, the appellant Rogelio N. Polangcus was indicted for murder, the accusatory portion of the Information[3] filed therefor, alleging —

That on or about the 9th day of June, 2010, in the Municipality of Albuera, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill and with treachery, did then and there willfully, unlawfully and feloniously assault and shoot Ruperto Huerta y Real with the use of a hand gun, which accused provided [himself] for the purpose, thereby hitting and inflicting upon said Ruperto Huerta y Real gunshot

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[1] CA *rollo*, pp. 110-118; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

[2] *Id*. at 117.

[3] Records, p. 1.

entrance wound thru and thru at the left lumbar area and an exit wound at the abdomen epigastric area which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the victim.

CONTRARY TO LAW.

This Information was docketed as Criminal Case No. B-10-09-102 of Branch 14 of the Regional Trial Court (RTC) of Baybay, Leyte.

Arraigned thereon, the appellant assisted by counsel, pleaded Not Guilty.

After the mandatory pre-trial conference, trial on the merits ensued. The RTC summed up the Government's case against the appellant in this wise —

PROSECUTION EVIDENCE

The first witness for [the] prosecution is the widow of the victim in the person of Bibiana Porlas Huerta. x x x [S]he testified that at around 7:00 o'clock in the morning of June 9, 2010, while she was inside their house cooking, she heard a gun [shot] and immediately x x x went out of the house and proceeded to the waiting shed. [W]hen she reached the waiting shed, she saw her husband [and] inquired what had happened to him but the latter could no longer answer. [Police officers were already there, and she was told to bring her husband to the hospital as he [had] still a pulse beat. But she did not go to the hospital with the police officers.] She further testified that she was told by her husband while the latter was still alive that [he had a] misunderstanding with the accused regarding a chainsaw which he got from the accused. To prove the civil liability of the accused, she testified that her husband was earning Seven Hundred (₱700.00) a month as compensation for his sugarcane work and 15 sacks of palay every harvest.

On [cross-examination], she testified that the waiting shed is just across their house, and at around 7:00 o'clock in the evening of June 9, 2010, x x x while her husband together with their sons Ronald and Fernando were in the waiting shed, she heard a gun [shot] x x x and immediately x x x went outside to verify. And when she

proceeded to the place she saw her son Ronald already helping her husband, while her other son Fernando was no longer in the place. She further testified that her husband x x x no longer answer[ed] her question regarding the identity of the person who shot him.

x x x [T]he prosecution [also] presented PO1 Emmanuel Dico y Talua [who] testified that [at] around 7:00 o'clock in the evening of June 9, 2010, the Police Office of Albuera, Leyte received a request for police assistance as there was a shooting incident in Sitio Magbangon, Brgy. Tinag-an, Albuera, Leyte. That a team of police officers [led] by their Chief of Police proceeded to the scene of the incident, and when they arrived there, they saw the victim [whom] they recognized as Ruperto Huerta lying on the ground, who was shot from behind. Also present [there] were the sons of the victim. He further testified that they brought the victim to the Ormoc Hospital, but [that he] was declared dead on arrival. According to him their Chief of Police recovered [a] bull cap as well as fan knife in the crime scene.

He further narrated that [on] the following day[,] June 10, 2009, they [received] information that somebody was admitted [into the] Western Leyte Hospital. In that instance, they proceeded to the hospital [together] with Fernando Huerta x x x to identify the person[. Fernando Huerta] identified [the accused] as the person who committed the crime. x x x [S]ubsequently, [the] accused was subjected to paraffin test, after which the latter was brought again to the hospital for confinement.

[During] cross-[examination], he testified that [a] bull cap and [a] fan [knife] were recovered by their team in the scene of the crime x x x. He also testified that it was in the Baybay Hospital that [the] accused was identified as the perpetrator of the crime by the son of the victim, and [that the] accused was brought to Camp Downes, Ormoc City for paraffin testing. According to him, he does not know the name of the accused but he knew the description and identity.

The prosecution[']s x x x third witness [was] PO3 Noel O. Aranas. In his direct examination, [this witness] testified that [on] the evening of June 9, 2010, x x x they received a request for police assistance regarding a shooting incident that transpired at Sitio Magbangon, Brgy. Tinag-an, Albuera, Leyte. Their Chief of Police together with PO1 Dico and SPO2 Carisma and himself proceeded to the place. When they arrived [there], they saw the victim lying on the ground with gunshot wound at the back. Also in the scene of the crime are

the sons of the victim. He further testified that they conducted an investigation, and that they [came] to know the identity of the perpetrator as Rogelio Polangcos. Their team [also] found [a] bull cap and a fan knife in the scene of the crime. The following day, they found the accused in the Western Leyte Hospital and they arrested [him]. The accused was identified by Fernando Huerta[,] the son of the victim. After the accused was arrested, the latter was brought to Camp Downes for paraffin test, and after one week they learned that the accused was positive [for] powder burn.

In his cross-[examination], he testified that it was PO1 Dico who received the report regarding the shooting incident. That after [this] they boarded x x x the patrol car driven by SPO2 Carisma with their Chief of Police, himself[,] and PO1 Dico. According to him, he does not know how PO1 Dico recovered the bull cap and the fan [knife]. He also testified that an investigation was conducted in the waiting shed where the shooting took place. He narrated that the identity of the accused was known to them, and x x x the following day that they recognized the accused in the hospital. The son of [the] victim[,] Fernando Huerta[,] told them that he was able to [stab] the accused, but they were never told if [Fernando Huerta could] distinguish the accused by any other means.

The fourth witness for the prosecution is the son of the victim, Fernando Porlas Huerta. x x x [H]e testified that [at] around 7:00 o'clock in the evening of June 9, 2010, his father Ruperto Huerta, his brother Ronald and himself were in the waiting shed of Sitio Tinag-an, Albuera, Leyte which is across their house. All of them were facing [toward] the road. While there, he heard a gun burst, and his father complained x x x "Nak I was hit". That he immediately focus[ed] his attention [on] the direction of the sugarcane plantation where the gun burst emanated, and he saw a man wearing a cap with white stripes and an army jacket. When he saw the man who shot his father, he immediately took the knife from his father and chased the man. He further narrated that he was able to overtake the man in the sugar plantation, and the latter shot him, but the gun malfunctioned[,] so he x x x stabbed the man, and subsequently they grappled [for] possession of the firearm[;] however, he was unable to [wrest possession of] the firearm [from the accused] because the [latter had] a companion. He further narrated that he ran back to the place where his father was shot, and he saw his father lying on the ground, already dead. In that instance police officers arrived, and there he was investigated. His father was brought to the hospital in Ormoc City.

The following day he was in the Police Office of Albuera, Leyte and he came to know the name of the accused as Perio. That he went to the hospital in Baybay together with the police and identified the accused who was then [confirmed] as the person who shot his father. That the person whom he identified as the killer of his father was still wearing the same army jacket that he wore during the incident.

On cross-[examination], he testified that while he, his brother and father were in the waiting shed, they were facing the road, and x x x their back was towards the plantation. That the sugarcane plantation [had] many plants which are taller than a man, and there it was dark as it is already 7:00 o'clock in the evening. He further narrated that he saw a man wearing a hat despite the fact that it was dark, [because] when the gun burst there was light which illuminated the face of the man. That he chased the man [towards] the middle of the sugarcane plantation, and in that place there was no light, but he was able to see the face of the man because they [were facing] each other. He further narrated that before June 9, 2010, he had not seen the accused, and he is not familiar [with] the [face] of the accused. In the hospital it was the police officers who [initially] identified the accused. x x x

The fifth witness for the prosecution is [P/SInsp.] Benjamin Cruto. During his direct testimony he testified that he conducted a paraffin test examinations on June 10, 2010 at his Office on a certain person by [the] name of Rogelio Polangcus as per request of the Albuera Police Office. That the examination yielded positive result. The right hand of he accused [was] found to have x x x powder residue while the left hand was found negative.[4]

The appellant interposed the defense of alibi and insisted that he had nothing to do with the death or slaying of the victim that fateful day of June 9, 2010. The RTC summarized the appellant's testimony, thus —

DEFENSE EVIDENCE

The defense presented **its only** witness in the person of the accused. In the course of his direct testimony he testified that he has been residing for more than fifteen (15) years in Sitio Wangag, Albuera, Leyte before his detention. That he does not know the victim in this case. He further narrated that on 9th of June 2010, he passed by Brgy.

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[4] *Id*. at 167-170.

[Tinag-an,] Albuera, Leyte x x x. On 9th day of June 2010, he was in Brgy. Antipolo, sawing coco lumber, with his helpers Junilo Ando, Jessie Wenceslao and Ojing Garcia. Brgy. Antipolo is more or less two (2) kilometers away from Brgy. Tinag-an. While [there], he slid down x x x the mountain and x x x was wounded on the left side of his body. At around 9:00 o'clock of that day he was brought by his wife to [the] Western Leyte Provincial Hospital. The following day, June 10, 2010, at round 9 o'clock in the morning policemen arrived and [brought] him to the police station. x x x

On cross-[examination,] he testified that in going to Brgy. Tinag-an, he would pass by x x x Brgy. [Antipolo,] but in going to his house, he would not pass [by] Brgy. Tinag-an, and x x x would [instead] take a [shorter] route in Brgy. Salvacion. When [he] reached x x x Brgy. Salvacion, he would [ride] a habal-habal to his house. He further testified that he was confined at the Western Leyte Provincial Hospital at around 9:00 o'clock in the evening of June 9, 2010, and the following day at around 10:00 o'clock [in the morning] he was arrested by policemen. That he was not issued a Medical Certificate. He sustained [his] wound while x x x sawing the coco lumber. In the hospital it was the police officers who pointed to him as the person who killed the victim. That he x x x submitted [to] paraffin testing but he does not know the results.

On clarificatory questioning by the Court, the accused testified that he sustained [his] injury at around 2:00 o'clock in the afternoon of June 9, 2010, and he was brought to the hospital at around 9:00 o'clock in the evening of the same day. According to him he arrived in his house at around 5:00 o'clock in the afternoon in Brgy. Damulaan, Albuera, Leyte. He proceeded to [the] Western Leyte Provincial Hospital at around 8:00 o'clock in the evening. He did not immediately decide to submit himself [to] medical treatment as his wife was still looking for money. He further narrated that he does not know the person of Ruperto Huerta and [there was] no occasion [when] he had met the [latter]. When he was pinpointed as the assailant he protested but the police officers insisted [on bringing] him out of the hospital, despite the admonition of the doctor that he should not be discharged. Subsequently, he was brought to [the] Albuera Police Station[,] after which he was brought to [the] OGH. He further told the Court that he x x x no longer pass[ed] by Brgy. Tinag-an, Albuera, Leyte[,] but [that] instead he pass[ed] by another shorter route.

After the testimony of the accused, the defense rested its case.[5]

Against the foregoing backdrop, the RTC made the following findings —

FINDINGS AND RULINGS

Culled from the [evidence] presented by the prosecution and the defense, the following facts emerged:

> 'That at around 7:30 o'clock in the evening of June 9, 2010, while the victim Ruperto Huerta and his sons Fernando and Ronan where in the waiting shed of Brgy. Tinag-an, Albuera, Leyte, he was shot at the back; that the shot emanated from [the] sugarcane plantation; that in that instance, Fernando Huerta, immediately looked to the direction where the gun burst emanated, and he saw a person with a bull cap colored black with white stripes, and wearing an army jacket; that [he] immediately took the knife of his father and chased the person; that when Fernando Huerta overtook the person they have a face to face encounter; that the latter attempted to [shoot] him but the firearm malfunctioned, and subsequently, they grappled for the possession of the gun, but he retreated because the person had companions; that in the course of their encounter Fernando Huerta was able to stab the person; that the victim was brought to the hospital but [he] was pronounced dead on arrival; that at about 9:00 o'clock in the same evening the accused went to Western Leyte District Hospital for treatment of his injury, and the following day he was identified in the hospital by x x x Fernando Huerta as the person responsible [for] killing his father; that the accused was the same person Fernando Huerta met face to face in the sugarcane plantation; that in the same day June 10, 2010, the accused was submitted for paraffin test and was found positive for the presence of gun powder burn on his right hand.'

In all criminal prosecutions, the State has the onus to prove the guilt of the accused beyond x x x doubt. Failure on the part of the prosecution to adduce the required quantum of proof, the accused is entitled to acquittal as a matter of right. However, the foremost obligation of the prosecution is to establish the identity of the accused

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[5] *Id*. at 170-171.

x x x beyond reasonable [doubt]. Where the evidence of the prosecution is unsatisfactory, and the identification of the accused is not reliable while the defense of alibi is adequately proved, the accused should be acquitted x x x.

In this case at bar, this Court is confronted with a scenario where the identity of the perpetrator of the crime should be scrutinized with such certainty and caution as not to send the wrong person to the penitentiary for the most of his life. The prosecution evidence revealed inter alia that the accused [was] identified by Fernando Huerta, when the latter [focused] his attention to the portion of the sugarcane plantation when he heard the gun burst. In his testimony [this] witness admitted that it was 7:00 o'clock in evening and it was already dark, but because of the light that emanated from the firearm, he was able to recognize the accused as the person who assaulted his father. The prosecution further impressed [upon] the Court that [this] witness had a face to face encounter with the accused in the middle of the sugarcane plantation where the witness was able to stab the accused. According to the prosecution, the accused was wearing an army jacket and a bull cap colored black with white stripes. When the accused was identified in the hospital he was still wearing the same army jacket.

Anent the identification of the accused, the High Court adopted the so-called Totality of Circumstances Test on the admissibility and reliability of out-of-court identification of suspects, which utilizes the following factors, viz[.]:

(1) The witness[']s opportunity to view the criminal at the time of the crime;
(2) The witness's degree of attention at that time;
(3) The accuracy of any prior description given by the witness;
(4) The level of certainty demonstrated by the witness at the identification;
(5) The length of time between the crime and the identification;
(6) The suggestiveness of the identification procedure x x x.

Applying the foregoing factors in this case at bar, this Court is convinced that the prosecution was able to sufficiently establish the identity of the accused. The face to face encounter of the witness Fernando Huerta with the accused immediately after the commission of the crime, is more than sufficient evidence to establish that the accused is the perpetrator of the crime. The fact that the accused is not known to x x x Fernando Huerta, and that the latter does not

know the name of the former is of no moment. Those matters are not essential elements in proving the commission of the crime of murder. By human experience, the witness who had a close encounter with the accused could not be mistaken about the latter's identity despite the fact that they are not familiar with each other. In this case, it is worthy to note that the accused was still wearing his army jacket in the hospital when he was identified. The defense capitalized on the darkness of the night to negate the identity of the accused as perpetrator of the crime. However, the close encounter of the witness with the accused [with whom he fought] allows the former to have [a] close look on the latter, and his observations on the identity of the accused cannot be set aside.

As the identity of the accused is now a settled issue, it is incumbent to determine his criminal liability. From the evidence presented and proffered by the prosecution, there is no doubt that the accused perpetrated the killing of the victim with alevosia. The victim Ruperto Huerta was facing the road at the time of the shooting, while his back was exposed absolutely to his attacker without any opportunity to defend himself. The attack was so sudden and perpetrated in such a manner as to afford impunity to the attacker arising from any defense that the victim might make. The essence of treachery is the sudden, unexpected, and unforeseen attack on the person of the victim, without the slightest provocation on the part of the latter. x x x Otherwise stated, there is treachery when the following conditions concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution was deliberately or consciously adopted. x x x The cited elements exist in this case. As treachery attended the killing of the victim, the accused is liable for [murder];

x x x x x x x x x

Furthermore, the defense of alibi interposed by the accused does not [deserve] any merit. His assertions as to his whereabouts on June 9, 2010, uncorroborated by any testimony from the persons whom he alleged [to be] his companions, as well as the fact that he proffered no convincing explanation as to the cause of the injury he sustained on June 9, 2010, failed to cast any doubt on his guilt. Instead it buttressed the evidence of the prosecution. He failed to show to this Court that it would be physically impossible for him to be in the locus criminis at the time of the commission of the crime. In fact, he could easily [navigate the distance between] Brgy. [Antipolo] to [Brgy.] Tinag-an, which distance is not more than two (2) kilometers.

While this Court is not unmindful of the right of the accused to be presumed innocent, however, it cannot disregard the evidence of the prosecution that established his guilt beyond reasonable doubt. No doubts linger [about] the guilt of the accused. The prosecution successfully traversed the wall of presumption of innocence, that will result [in] the conviction of the accused.

As the accused is [criminally] liable, he should [also] be held civilly liable in accordance with Article 100 of the Revised Penal Code. As the prosecution had not established by preponderance of evidence the other civil liabilities of the accused, this Court cannot award any other damages except civil indemnity in the amount of Php75,000.00.[6]

The RTC thereafter disposed as follows —

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused guilty beyond reasonable doubt of the crime charged, and hereby sentences him to suffer the penalty of reclusion perpetua.

Accused [is] ordered to indemnify the heirs of the victim the amount of Php75,000.00

SO ORDERED.[7]

From this judgment, the appellant appealed to the CA, and in support of his appeal assigned two errors alleged to have been committed by the RTC, to wit —

(I) The [RTC] erred in finding that prosecution witness Fernando Huerta has positively identified appellant as the perpetrator of the crime x x x.

(II) The [RTC] erred in convicting the accused-appellant of the crime charged[, notwithstanding] the failure of the prosecution to prove his guilt beyond reasonable doubt.[8]

The CA however, rejected the appeal, and upheld the RTC's findings and conclusions relative to the criminal liability of

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[6] *Id*. at 171-174.

[7] *Id*. at 174.

[8] CA *rollo*, p. 53.

the appellant. It even upgraded the awards for civil liability against the latter. The CA adverted to the following findings of the RTC —

> Accused-appellant insists that the evidence presented by the prosecution did not suffice to establish the fact that he is the perpetrator and author of the crime. He capitalizes on the circumstance that the crime was committed at nighttime where no light illuminated the area. Moreover, the identification of his person was very suggestive as it was the police who presented him to Fernando Huerta for identification. In effect, the initial identification made in the hospital pointing to him as the assailant of the victim came from the police and even the manner of his identification was highly unprocedural since he was alone when 'identified' and was not placed in a line-up.
>
> We are not persuaded.
>
> Contrary to appellant's assertions, the evidence on record discloses that prosecution witness Fernando Huerta, the son of the victim, was able to see appellant sufficient enough to identify him. Stress is given that the victim and his sons were in the waiting shed. When the gunburst sounded off, Fernando Huerta immediately looked behind and towards the direction of the source of the gunburst. Immediately, he got the knife of his father and took off towards the assailant, whom he stabbed. He could have fought more with the assailant, if not for the other person whom he assumed to be acting as back-up of the accused-appellant. During the investigation conducted by the police, he described the physical features of the assailant and gave the added information that said assailant was wearing a fatigue or military-type jacket and a bull cap, aside from sustaining the stab wound he inflicted. This description led to the identification of the accused-appellant as the assailant. Additionally, accused-appellant tested positive for the presence of nitrates on his right hand, which fact he failed to adequately explain as to why he had these on his hand.
>
> Records likewise disclose that treachery attended the commission of the crime. The attack made by accused-appellant towards the victim was without warning since the former fired at the latter from the back, which attack was obviously deliberate and precise enough, affording no chance for the victim to resist or escape.
>
> We also find it incongruous that the private complainants will charge accused-appellant with the crime of *Murder* if he was not the real perpetrator. Fernando Huerta would not positively identify him

as the assailant of his father, if such had not been the truth, and allow the real perpetrator to go scot free. We also find appellant's alibi to be not worthy of credence particularly since x x x he was not able to sufficiently explain the cause of the wound he suffered, which cause was the reason why he was in the hospital. He also stated in court his alleged 'helpers' in cutting coconut lumber who could have corroborated his testimony on his alleged whereabouts, but he opted not to present them. As it stands, the positive identification of his person by Fernando Huerta will point to no other culprit but him.

Ergo, We find no reversible error in the judgment handed down by the trial court in convicting the accused-appellant with murder. However, as pointed out by the OSG, aside from the Php75,000.00 civil indemnity, it failed to award the other monetary consideration associated with being found guilty of the crime of murder. On this score, since the evidence disclosed that the heirs of the victim testified as to their grief over his death, on how they tried to revive the victim by bringing him to the hospital, and that they incurred expenses during his internment, We deem it proper to modify the award of damages. Consistent with jurisprudence, the accused-appellant is also directed to pay the heirs of the victim the following amounts: Php50,000.00 as moral damages Php30,000.00 as exemplary damages and temperate damages as Php25,000.00.[9]

The CA thereafter decreed —

WHEREFORE, this appeal is DENIED. The Decision dated July 31, 2013 of the Regional Trial Court (RTC), Branch 14 of Baybay City, Leyte in Crim. Case No. B-10-09-102 for Murder is AFFIRMED with MODIFICATION only in the award of damages. Aside from the Php75,000.00 awarded by the trial court, accused-appellant is likewise directed to pay the heirs of the victim the following amounts: Php50,000.00 as moral damages; Php30,000.00 as exemplary damages and temperate damages of Php25,000.00.

SO ORDERED.[10]

Still unwilling to accept the CA's Decision, the appellant has instituted the present recourse.

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[9] *Id*. at 115-117.

[10] *Id*. at 117.

We find no merit in the present appeal.

We have carefully reviewed the evidence on record, and we are satisfied that the findings of facts of both the RTC and the CA are thoroughly supported by the evidence on record. Both courts are in agreement that the appellant had been positively identified by prosecution witness Fernando Porlas Huerta (Fernando), a son of the victim, who testified that he in fact had a face-to-face confrontation or meeting with the appellant at the sugarcane plantation in Brgy. Tinag-an, Albuera, Leyte, that very evening of June 9, 2010; that this face-to-face encounter or meeting occurred after he saw the burst of gunfire that caused his father to fall on the ground while his father, his other brother and he were at the waiting shed that early evening of June 9, 2010; that armed with his father's knife, he went after a man wearing a hat and an army jacket and who was the source of the gunfire; that when he caught up with him, he stabbed the man with his father's knife there at the sugarcane plantation; that the appellant attempted to shoot him (witness Fernando) but the appellant's gun malfunctioned, and they grappled for possession of the gun; and, that he did not press his attack against the appellant when he noticed that the latter had a companion nearby.

All told, the CA's Decision is in accord with the evidence on record and with the law. However, there is a need to modify the damages awarded to conform with prevailing jurisprudence. Appellant is ordered to pay the heirs of the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages in lieu of actual damages.[11] In addition, interest at the rate of 6% *per annum* is imposed on all damages awarded.[12]

WHEREFORE, the appeal is **DISMISSED**. The October 29, 2014 Decision of the Court of Appeals in CA-G.R. CEB

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[11] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 373, 382.

[12] *Id.* at 390-391.

C.R. H.C. No. 01727 finding appellant Rogelio N. Polangcus guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* is hereby **AFFIRMED with MODIFICATIONS** that appellant is ordered to pay the heirs of the victim the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, in lieu of actual damages, all with interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Tijam, and *Gesmundo,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 218404. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO BAGSIC *y* VALENZUELA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-RAPE LAW OF 1997 (R.A. 8353); RAPE IS NO LONGER A PRIVATE CRIME; AFFIDAVIT OF DESISTANCE EXECUTED BY THE VICTIM IS NOT BY ITSELF A GROUND FOR THE DISMISSAL OF THE CASE.— BBB's affidavit of desistance is not a ground for the dismissal of the case. Rape is no longer considered a private crime as R.A. No. 8353 or the Anti-Rape Law of 1997 has

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[*] Designated as adiitional member per October 18, 2017 raffle vice *J*. Jardeleza who recused from the case due to prior participation as Solicitor General.

reclassified rape as a crime against persons. Rape may now be prosecuted *de officio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution. Hence, an affidavit of desistance, which may be considered as pardon by the complaining witness, is not by itself a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; VICTIM'S TESTIMONY SHOULD BE GIVEN FULL WEIGHT AND CREDENCE.—** BBB was able to withstand the rigors of direct examination and cross-examination. Not once did she falter in narrating the dastardly act committed against her and identifying accused-appellant as the perpetrator. Moreover, no decent mother would use her daughter as an instrument of revenge, especially if it will subject her child to embarrassment and lifelong stigma. A disagreement among family members, even if true, does not justify dragging a young girl's honor to merciless public scrutiny that a rape trial brings in its wake. Finally, the testimony of BBB was also corroborated by the Medico-Legal Report which stated that the physical findings suggested blunt or penetrating trauma. "When a rape victim's testimony on the manner she was defiled 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."

3. **CRIMINAL LAW; ANTI-RAPE LAW OF 1997 (R.A. 8353) IN RELATION TO R.A. 7610; ELEMENTS OF STATUTORY RAPE; WHERE AGE OF THE VICTIM AND SEXUAL INTERCOURSE ARE PROVEN, CONVICTION WILL LIE.—** For the accused to be found guilty of the crime of statutory rape, two (2) elements must concur: (1) that the offender had carnal knowledge of the victim; and (2) that the victim is below twelve (12) years old. If the woman is under 12 years of age, proof of force and consent becomes immaterial not only because force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. BBB positively identified accused-appellant as the person who molested her. x x x [T]he Medico-Legal Report lends credence to BBB's testimony. When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis

to conclude that there has been carnal knowledge. Further, at the time of the incident, it was sufficiently proven that BBB was under 12 years of age as indicated in her Certificate of Live Birth.

4. ID.; ID.; RAPE BY SEXUAL ASSAULT; ELEMENTS, PRESENT IN CASE AT BAR.— The following are the elements of rape by sexual assault: (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. All the foregoing elements were met beyond reasonable doubt. Accused-appellant inserted his finger into the vagina of BBB, a child under 12 years of age at the time of the incident[.]

5. ID.; ID.; ID.; PROPER PENALTY IN VIEW OF R.A. 7610; THE COURT IMPOSED THE HIGHER PENALTY PROVIDED IN R.A. 7610.— In this case, for the crime of sexual assault, the lower courts sentenced accused-appellant to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. This Court, however, modified such penalty, and deemed it proper to impose the higher penalty of *reclusion temporal* in its medium period, to *reclusion perpetua* as provided in R.A. No. 7610. x x x [I]f the courts would not opt to impose the higher penalty provided in R.A. No. 7610 in cases of rape by sexual assault, wherein the victims are children, an 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 by sexual assault which is punishable by *prision mayor*.

6. ID.; ID.; ID.; INSERTION OF THE FINGER INTO THE VAGINA SHOULD NOW BE CONSIDERED AS RAPE

THROUGH SEXUAL INTERCOURSE AND NOT RAPE BY SEXUAL ASSAULT.— I maintain my position in *People v. Caoili* that the insertion of the finger into the vagina constitutes rape through sexual intercourse and not rape by sexual assault. Rape by sexual assault is the act of "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." Instrument is defined as "utensil or implement." On the other hand, object is defined as "a discrete visible or tangible thing." The finger, however, is neither an instrument nor an object. Stripped to its most basic definition, a finger is a body part. Consequently, applying the principle of *expressio unius est exclusio alterius* which means that the express mention of one thing excludes all others, the insertion of the finger or any other body part into the genital or anal orifice of another person could not be properly categorized as rape by sexual assault. The basic difference between an instrument or object on the one hand and the finger or any body part on the other is that on account of its independent existence, the former, by itself, can be used in the dastardly act of assaulting another person; whereas the latter owes its function to the fact that it is attached to the body. For sure, a person would not go to the extent of cutting his finger and then use the severed finger to sexually assault another person. It is high time to revisit the archaic definition given to carnal knowledge, i.e., penile penetration, and acknowledge that the same may be accomplished in various ways: vaginal, oral, anal, and fingering. Intercourse means "physical sexual contact between individuals that involves the genitalia of at least one person." Further, jurisprudence has consistently held that "the crux of carnal knowledge is sexual bodily connection." From the foregoing definitions, the act of inserting the finger into the vagina already constitutes rape through sexual intercourse. Justice Marvic Leonen, in his dissent in *People v. Caoili*, has eloquently stated, "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." Thus, in view of the foregoing considerations and in order to provide an unequivocal higher penalty in cases of rape by sexual assault committed against children, let copies of this decision be furnished the Speaker of the House of Representatives and the Senate President for possible legislation.

7. ID.; ID.; PECUNIARY LIABILITY FOR STATUTORY RAPE AND RAPE BY SEXUAL ASSAULT.— The Court finds that pursuant to *People v. Jugueta*, the award of damages in the present case must be modified. As regards statutory rape, the award should be ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The same amounts should be paid by accused-appellant with respect to the crime of rape by sexual assault. In addition, all the damages awarded shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of the 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

MARTIRES, *J.*:

This is an appeal from the Decision,[1] dated 30 June 2014, of the Court of Appeals (*CA*) in CA-G.R. CR.-H.C. No. 06043 which affirmed with modification the Joint Decision,[2] dated 30 January 2013, of the Regional Trial Court, Branch 38, San Jose City *(RTC),* in Criminal Case Nos. 1515-09-SJC and 1516-

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Ramon R. Garcia with Associate Justices Rebecca De Guia-Salvador and Danton Q. Bueser, concurring.

[2] *Rollo*, pp. 53-62; penned by Presiding Judge Loreto S. Alog, Jr.

09-SJC finding Rolando Bagsic *y* Valenzuela *(accused-appellant)* guilty of rape by sexual assault and of statutory rape.

The Facts

On 21 July 2009, three Informations were filed before the RTC charging accused-appellant with one (1) count of statutory rape, one (1) count of rape by sexual assault, and one (1) count of violation of Section 5 (b) of Republic Act No. 7610 (*R.A. No. 7610*).

In Criminal Case No. 1514-09-SJC, the information states:

That on or about March 15, 2009, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully, feloniously and with lewd design, commit lascivious conduct on the person of (AAA), a 12 year-old minor by mashing the latter's breast, against her will, which acts debase, degrade and demean the dignity of the latter and impair her normal growth and development and to her damage and prejudice.

CONTRARY TO LAW.[3]

In Criminal Case No. 1515-09-SJC, the information states:

That on or about April 18, 2009, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously has inserted his finger into the vagina (sexual assault) of the offended party, (BBB), a minor, who is eight (8) years of age, to her damage and prejudice.

CONTRARY TO LAW.[4]

In Criminal Case No. 1516-09-SJC, the information states:

That sometime in 2007, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously

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[3] CA *rollo*, p. 53.

[4] Records, Vol. I, p. 1.

has sexual intercourse or carnal knowledge with the offended party, (BBB), a minor, who is eight (8) years of age, to her damage and prejudice.

CONTRARY TO LAW.[5]

Accused-appellant pleaded not guilty to the crimes charged.

Version of the Prosecution

The prosecution presented AAA, BBB, and their mother CCC as witnesses. Their combined testimony tended to establish the following:

AAA and BBB were born on 2 August 1996 and 18 June 2000, respectively. They called accused-appellant "Lolo" as he was the common-law husband of their maternal grandmother.[6]

Sometime in 2007, while BBB was playing with her sisters, accused-appellant called her and brought her to a hut in a field. Inside the hut, accused-appellant told BBB to lie down, lifted her shirt, and removed her shorts and underwear. Accused-appellant then removed his lower garments and had carnal knowledge of BBB, but he was unable to make a full penetration.[7]

BBB cried and pushed accused-appellant away. She did not shout for help for fear that accused-appellant would hurt her. Whenever someone came by the field, accused-appellant desisted from assaulting her.[8]

For several times, thereafter, whenever accused-appellant urinated, he made BBB watch him and hold his penis.[9]

The assault upon BBB was repeated on 18 April 2009 at about five o'clock in the morning. At that time, BBB and her

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[5] Records, Vol. III, p. 1.

[6] Records, Vol. V; TSN, 1 February 2011, pp. 3-4.

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

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

[9] *Id*. at 7-8.

two female siblings had to sleep in accused-appellant's house because their mother was at the hospital attending to AAA. While in bed, BBB was awakened by a finger being inserted into her vagina. When she opened her eyes, BBB saw accused-appellant. Sensing that BBB was already awake, accused-appellant left.[10]

About a month earlier or on 15 March 2009, AAA and her siblings stayed with accused-appellant and their maternal grandmother because their parents had to attend the wake of a deceased relative. At around four o'clock in the morning, AAA was awakened by somebody, whom she identified to be accused-appellant because of his rough hand and odor, fiddling her nipple. The incident lasted for about two minutes. Accused-appellant stopped when he realized that AAA's siblings were already awake.[11]

Thereafter, AAA and her siblings rose from bed and prepared breakfast. AAA did not tell anyone about the incident out of fear. It was only when BBB revealed the sexual acts committed against her by accused-appellant that AAA also mustered the courage to speak out.[12]

During the presentation of the prosecution's evidence, however, an Affidavit of Desistance,[13] dated 15 May 2012, was executed by AAA, BBB, and CCC.

Version of the Defense

The defense presented the maternal grandmother of AAA and BBB as its sole witness. She testified that accused-appellant became her common-law partner in February 2010, about a year after the death of her husband. Her family resented her relationship with accused-appellant because she was no longer

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[10] *Id.* at 11-15.

[11] Records, Vol. V; TSN, 5 May 2011, pp. 43-48.

[12] *Id.* at 48-51.

[13] Records, Vol. I, p. 74.

able to support them and their disagreement resulted in the filing of the rape cases against accused-appellant.[14]

The RTC Ruling

In its decision, dated 30 January 2013, the RTC acquitted accused-appellant for violation of Section 5 (b) of R.A. No. 7610 for failure of the prosecution to sufficiently establish the identity of the perpetrator. It observed that AAA admitted that she was not able to see the face of the person who assaulted her but that she concluded that said person was accused-appellant on the basis of the assailant's rough hand and odor. The RTC reasoned that AAA's mere general statement that the person who touched her breasts had the same rough hand and odor as the accused-appellant was not conclusive proof of the latter's identity as the culprit absent any showing why and how such could distinctly be attributable to accused-appellant.

The trial court, however, found accused-appellant guilty of statutory rape and of rape by sexual assault. It noted that BBB, even at such a young age, was able to withstand the lengthy cross-examination. The RTC held that the affidavit of desistance was not sufficient to reverse BBB's earlier testimony clearly narrating how accused-appellant had sexually molested her on two occasions. It added that the allegation that the cases were concocted by CCC to force a separation between accused-appellant and her mother should not be given weight because no parent would be so depraved to use her own daughter for such trivial purpose.

Finally, the RTC ruled that it was conclusively established that in 2007 and on 18 April 2009, BBB was under 12 years of age as evidenced by her birth certificate and by the defense's admission during the pre-trial conference that she was barely eight years old on 18 April 2009. It concluded that BBB's straightforward testimony duly proved that accused-appellant had carnal knowledge of her in 2007 and had assaulted her by inserting his finger into her vagina on 18 April 2009. The *fallo* reads:

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[14] Records, Vol. VI; TSN, 8 November 2012, pp. 70-73.

WHEREFORE, his guilt for the offense charged in Criminal Case No. 1514-2009-SJC not having been established beyond reasonable doubt, the accused Rolando Bagsic is ACQUITTED.

Said accused, however, is hereby found guilty of rape defined and penalized under Art. 266-A in relation to Art. 266-B of the Revised Penal Code in Criminal Cases No. 1515-2009-SJC and No. 1516-2009-SJC and is accordingly sentenced as follows:

a. In Criminal Case No. 1515-2009-SJC, to suffer an indeterminate penalty of imprisonment ranging from four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, for rape through sexual assault;
b. In Criminal Case No. 1516-2009-SJC, to suffer the penalty of reclusion perpetua, for statutory rape, and such accessory penalties provided for by law.

The accused is likewise found liable to pay BBB the following:

	In Crim. Case No. 1515-2009-SJC	In Crim. Case No. 1516-2009-SJC
a. Indemnity	₱30,000.00	₱50,000.00
b. Moral damages	₱30,000.00	₱50,000.00
TOTAL	₱60,000.00	₱100,000.00

All of which must earn interest at the rate of 6% per annum from finality of this judgment until fully paid.[15]

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In a decision, dated 30 June 2014, the CA affirmed the conviction of accused-appellant but modified the amount of damages awarded. It opined that the court *a quo* correctly accorded credence to the testimony of BBB after finding her answers to the questions on direct and cross-examination to be intelligible, candid, and unwavering. The CA found no merit in accused-appellant's attempt to discredit BBB's testimony by imputing ill motive against her; that is, that she had charged

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[15] CA *rollo*, pp. 61-62.

accused-appellant with rape at the instance of CCC who harbored resentment against him for being the common-law husband of her mother.

The appellate court pointed out that during the hearing on 7 June 2011, BBB affirmed that she was executing an affidavit of desistance, but she remained silent when asked if accused-appellant did not actually rape her. It added that BBB's testimony was corroborated by the Medico-Legal Report, dated 5 May 2009, finding that BBB's hymen suffered from incomplete laceration which suggested blunt or penetrating trauma. The CA disposed the case in this wise:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Joint Decision, dated January 30, 2013 of the Regional Trial Court, Branch 38, San Jose City is AFFIRMED with MODIFICATION in that appellant Rolando Bagsic is further ordered to pay private complainant BBB the amount of Thirty Thousand Pesos (P30,000.00) as exemplary damages in Criminal Case No. 1516-2009-SJC for statutory rape; and Thirty Thousand Pesos (₱30,000.00) in Criminal Case No. 1515-2009-SJC for rape by sexual assault, in addition to the other award of damages, all of which are subject to interest of six percent (6%) per annum from the date of finality of this judgement until they are fully paid.[16]

Hence, this appeal. Accused-appellant adopts the same assignment of error he raised before the appellate court, *viz*:

LONE ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[17]

Accused-appellant asserts that he should be acquitted of the crimes charged because the testimonies of the prosecution witnesses raised reasonable doubt on whether he sexually abused

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[16] *Rollo*, p. 19.

[17] CA *rollo*, p. 34.

BBB considering that the latter subsequently executed an affidavit of desistance. He avers that the filing of the cases was only due to the resentment of CCC towards him.[18]

THE COURT'S RULING

The appeal is bereft of merit.

BBB's affidavit of desistance cannot be given any weight.

BBB's affidavit of desistance is not a ground for the dismissal of the case. Rape is no longer considered a private crime as R.A. No. 8353 or the Anti-Rape Law of 1997 has reclassified rape as a crime against persons.[19] Rape may now be prosecuted *de officio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution.[20] Hence, an affidavit of desistance, which may be considered as pardon by the complaining witness, is not by itself a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.[21]

Moreover, it has been consistently held that courts look with disfavor on affidavits of desistance. The rationale for this was extensively discussed in *People v. Zafra*:[22]

> We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations

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[18] *Id.* at 44-45.

[19] *People v. Lindo*, 641 Phil. 635, 643 (2010).

[20] *People v. Castel*, 593 Phil. 288, 323 (2008).

[21] *People v. Dimaano*, 506 Phil. 630, 647 (2005).

[22] 712 Phil. 559-578 (2013); citing *People v. Alcazar*, 645 Phil. 181, 194 (2010).

in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.[23] [emphasis omitted.]

In addition, when asked by the court *a quo* whether her affidavit of desistance meant that she was not raped by accused-appellant, BBB simply did not answer.[24] Neither did she give any exculpatory fact that would raise doubts about the rape.

BBB's testimony should be given full weight and credence.

It must be noted that accused-appellant's only defense is the alleged resentment of CCC towards her mother's relationship with him. Such argument is flimsy and superficial. In *People v. Basmayor,*[25] the Court ruled:

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It

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[23] *Id.* at 576-577.

[24] Records, Vol. V; TSN, 14 June 2012, p. 62.

[25] 598 Phil. 194-214 (2009).

is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true. [citations omitted][26]

In this case, BBB was able to withstand the rigors of direct examination and cross-examination. Not once did she falter in narrating the dastardly act committed against her and identifying accused-appellant as the perpetrator. Moreover, no decent mother would use her daughter as an instrument of revenge, especially if it will subject her child to embarrassment and lifelong stigma.[27] A disagreement among family members, even if true, does not justify dragging a young girl's honor to merciless public scrutiny that a rape trial brings in its wake.[28]

Finally, the testimony of BBB was also corroborated by the Medico-Legal Report[29] which stated that the physical findings suggested blunt or penetrating trauma. "When a rape victim's testimony on the manner she was defiled 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."[30]

Accused-appellant is guilty of statutory rape.

For the accused to be found guilty of the crime of statutory rape, two (2) elements must concur: (1) that the offender had carnal knowledge of the victim; and (2) that the victim is below twelve (12) years old.[31] If the woman is under 12 years of age, proof of force and consent becomes immaterial not only because force is not an element of statutory rape, but the absence of a

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[26] *Id.* at 208.

[27] *People v. Bonaagua*, 665 Phil. 750, 763 (2011).

[28] *People v. Maglente*, 578 Phil. 980, 998 (2008).

[29] Records, Vol. I, p. 5.

[30] *People v. Soria*, 698 Phil. 676, 689 (2012).

[31] *People v. Arpon*, 678 Phil. 752, 772 (2011).

free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.[32]

BBB positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incident of rape as follows:

> [Fiscal Escudero]
>
> Could you recall when was the first time you were raped by Rolando Bagsic?
>
> [BBB]
>
> No, sir.
>
> Q: Could you recall what year?
> A: Yes sir.
>
> Q: What year?
> A: In 2007 sir.
>
> Q: In 2007, were you studying then?
> A: Yes sir.
>
> Q: What grade are you then?
> A: Grade I, sir.
>
> Q: Kindly tell us how were you raped on 2007, while you were still Grade 1, by Rolando Bagsic?
> A: He called me up and brought me in the field sir.
>
> Q: What were you doing when he called you and brought you to the field?
> A: I was playing with my elder sisters sir.
>
> Q: What happened when Rolando Bagsic called you?
> A: He brought me in a field where there was a hut and in that hut where Rolando Bagsic laid me down and took off my short and panty sir.
>
> Q: Where is the hut located Madam Witness?
> A: At the farm sir.
>
> x x x x x x x x x

[32] *People v. Dimaano*, 506 Phil. 630, 648 (2005).

Q: Madam Witness what are you wearing in your upper body?
A: I was wearing my upper clothes with sleeves sir.

Q: What happened to your clothes with sleeves after Rolando Bagsic take your shorts and panty off from you?
A: He lifted it up sir.

Q: So what happened Madam Witness when Rolando Bagsic removed your shorts and panty and lifted your upper garments?
A: He also took off his short and underwear sir.

Q: So what happened when Rolando Bagsic take his short pants and brief off?
A: He was forcibly inserting his penis in my private part sir. (Pinipilit po niyang ilusot yung ari niya sa ari ko)

Fiscal Escudero: May I please request your honor that the vernacular term as answered by the witness be put on record?

Court: Put that on record.

Fiscal Escudero: Was he successful in inserting his private part to your vagina Madam Witness?
A: Only partial sir. (The vernacular term used by the witness is "konti lang po")

Q: How would you explain that "konti lang po" or only partial Madam Witness?
A: Only the head of his penis sir.[33]

To reiterate, the Medico-Legal Report lends credence to BBB's testimony. When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.[34] Further, at the time of the incident, it was sufficiently proven that BBB was under 12 years of age as indicated in her Certificate of Live Birth.[35]

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[33] Records, Vol. V; TSN, 1 February 2011, pp. 5-7.

[34] *People v. Mercado*, 664 Phil. 747, 751 (2011).

[35] Records, Vol. I, p. 4.

Accused-appellant is guilty of rape by sexual assault.

The following are the elements of rape by sexual assault:

(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.[36]

(emphasis supplied)

All the foregoing elements were met beyond reasonable doubt. Accused-appellant inserted his finger into the vagina of BBB, a child under 12 years of age at the time of the incident, *viz*:

[Fiscal Escudero]

You mentioned a while ago Madam Witness that there were two separate occasions that you were raped by your Lolo Rolando Bagsic, when was the second time?

[BBB]

April 18, 2009 sir.

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[36] *People v. Soria*, 698 Phil. 676, 687 (2012).

Q: What time was that?
A: 5:00 in the morning sir.

Q: On April 18, 2009 at around 5:00 in the morning, what were you doing then Madam Witness?
A: I was sleeping sir.

x x x x x x x x x

Q: So while you were sleeping, how were you awaken?
A: Because something hard was thrusting my private part sir.

Q: Are you able to identify what is that hard object that is thrusting your private part?
A: Yes sir.

Q: Can you tell the Honorable Court what was that object that caused you to be awaken because it being thrusted to your private part?
A: His hand sir.

Q: Hand of whom?
A: Hand of Lolo Bagsic sir.

Q: How were you able to know that it is the hand of your Lolo Bagsic?
A: Because I was already awaken in that time and I saw his face sir.

x x x x x x x x x

Q: So kindly tell us how is he able to thrust his hand to your private part?
A: Because my panty was moved sideward. (Yung panty ko ay nakatagilid)

Q: If this is the hand of your Lolo Bagsic what part of the hand he used to thrust your private part?
A: This sir. (The witness is pointing to the right index finger)

Q: So you are referring to a finger not a hand Madam Witness?
A: Yes sir.

Q: Was he able to insert his finger to your vagina?
A: Yes sir.[37]

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[37] Records, Vol. V; TSN, 1 February 2011, pp. 11-14.

In sum, the Court finds no convincing reason to disturb the findings of the trial court as affirmed by the appellate court.

Proper penalty for rape by sexual assault

Accused-appellant's conviction for rape by sexual assault is affirmed, but the penalty imposed by the lower court is modified to the penalty under Article III, Section 5(b) of R.A. No. 7610:

> 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
>
> (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 maybe: 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

The Implementing Rules and Regulations of R.A. No. 7610 defines "lascivious conduct" as [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

In *People v. Chingh*,[38] the accused' conviction for rape by sexual assault was affirmed. However, in modifying the penalty imposed to that provided in Article III, Section 5(b) of R.A. No. 7610, the Court ruled:

> In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is prision mayor, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period.
>
> The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 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 prision mayor. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 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."
>
> Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

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[38] 661 Phil. 208, 222-223 (2011).

Hence, Armando should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.[39] [citations omitted]

In *People v. Ricalde*,[40] wherein accused was charged and convicted of rape by sexual assault, the same penalty was imposed.

In this case, BBB, as established by her birth certificate, was only 8 years old when the incident happened. Her age was also alleged in the information. Hence, the higher penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, as applied in the foregoing cases of *People v. Chingh* and *People v. Ricalde*, should be similarly imposed.

In the recent case of *People v. Caoili*,[41] there had been divergent opinions as to whether the act of inserting the fingers into the vagina constitutes rape by sexual intercourse. In said case, the accused was charged with the crime of rape through sexual intercourse. However, after trial, the crime proved was rape by sexual assault through the insertion of the finger into the vagina. Thus, the majority held that the accused could not be convicted of rape through sexual intercourse. In so ruling, it declared that 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. However, applying the same variance doctrine, it convicted the accused 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

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[39] *Id*. at 223.

[40] 751 Phil. 793, 815-816 (2015).

[41] G.R. No. 196342, 8 August 2017.

charged. Consequently, the accused was sentenced to suffer the penalty of *reclusion perpetua*.

In this case, for the crime of sexual assault, the lower courts sentenced accused-appellant to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. This Court, however, modified such penalty, and deemed it proper to impose the higher penalty of *reclusion temporal* in its medium period, to *reclusion perpetua* as provided in R.A. No. 7610.

From the foregoing, it can be easily discerned that if the courts would not opt to impose the higher penalty provided in R.A. No. 7610 in cases of rape by sexual assault, wherein the victims are children, an 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 by sexual assault which is punishable by *prisión mayor*.

Finally, I maintain my position in *People v. Caoili* that the insertion of the finger into the vagina constitutes rape through sexual intercourse and not rape by sexual assault. Rape by sexual assault is the act of "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."[42] Instrument is defined as "utensil or implement."[43] On the other hand, object is defined as "a discrete visible or tangible thing."[44] The finger, however, is neither an instrument nor an object. Stripped to its most basic definition, a finger is a body part. Consequently, applying the principle of *expressio unius est exclusio alterius* which means that the express mention of one thing excludes all others,[45] the

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[42] Revised Penal Code, Article 266-A.

[43] *Webster's Third New International Dictionary*, p. 1172.

[44] *Webster's Third New International Dictionary*, p. 1555.

[45] *Social Security System v. Commission on Audit*, G.R. No. 210940, 6 September 2016, 802 SCRA 229, 249.

insertion of the finger or any other body part into the genital or anal orifice of another person could not be properly categorized as rape by sexual assault. The basic difference between an instrument or object on the one hand and the finger or any body part on the other is that on account of its independent existence, the former, by itself, can be used in the dastardly act of assaulting another person; whereas the latter owes its function to the fact that it is attached to the body. For sure, a person would not go to the extent of cutting his finger and then use the severed finger to sexually assault another person.

It is high time to revisit the archaic definition given to carnal knowledge, i.e., penile penetration, and acknowledge that the same may be accomplished in various ways: vaginal, oral, anal, and fingering. Intercourse means "physical sexual contact between individuals that involves the genitalia of at least one person."[46] Further, jurisprudence has consistently held that "the crux of carnal knowledge is sexual bodily connection."[47] From the foregoing definitions, the act of inserting the finger into the vagina already constitutes rape through sexual intercourse. Justice Marvic Leonen, in his dissent in *People v. Caoili*, has eloquently stated, "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."[48]

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[46] *Webster's Third New International Dictionary*, p. 1177.

[47] *People v. Butiong*, 75 Phil. 621, 630 (2011).

[48] *Supra* note 41.

Thus, in view of the foregoing considerations and in order to provide an unequivocal higher penalty in cases of rape by sexual assault committed against children, let copies of this decision be furnished the Speaker of the House of Representatives and the Senate President for possible legislation.

Pecuniary liability

The Court finds that pursuant to *People v. Jugueta*,[49] the award of damages in the present case must be modified. As regards statutory rape, the award should be ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The same amounts should be paid by accused-appellant with respect to the crime of rape by sexual assault. In addition, all the damages awarded shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.

WHEREFORE, the appeal is denied. The 30 June 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06043 is **AFFIRMED with MODIFICATION.**

In Criminal Case No. 1515-2009-SJC, accused-appellant Rolando Bagsic is sentenced to suffer the penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is further ordered to pay BBB the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

In Criminal Case No. 1516-2009-SJC, accused-appellant Rolando Bagsic is sentenced to suffer *reclusion perpetua*. He is further ordered to pay BBB the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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[49] G.R. No. 202124, 5 April 2016, 788 SCRA 331-391.

The amounts of damages awarded shall have an interest of six percent (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen,* and *Gesmundo, JJ.,* concur.

Bersamin, J., on official leave.

FIRST DIVISION

[G.R. No. 218945. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LORETO DAGSIL *y* CARITERO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; THE PLEA OF INSANITY MUST BE REJECTED WHEN THE ACCUSED'S ANSWERS TO THE QUESTIONS PROPOUNDED TO HIM BY HIS COUNSEL ARE INTELLIGENT, RESPONSIVE AND STRAIGHTFORWARD.— A simple reading of the x x x testimony of the accused-appellant shows that he was hardly the mentally deranged or insane (whether temporarily or permanently) person that he claimed he was when he stabbed Amean Banzuela (Amean) to death. His answers to the questions propounded to him by his counsel were intelligent, responsive, and straightforward; they were not the answers of an unintelligent person or nitwit that he says he is. x x x [T]his x x x convincingly showed that he is an intelligent, cognitive, rational and thinking person at the time of the stabbing, the accused-appellant's plea of insanity must be rejected because it has no leg to stand on.

2. ID.; ID.; MURDER; PENALTY; THE PENALTY OF *RECLUSION PERPETUA* IS IMPOSED IN CASE AT BAR DUE TO THE PROSCRIPTION FOR THE IMPOSITION OF DEATH.— [I]n view of the attendant circumstance of treachery which qualified the killing to murder, as well as the presence of evident premeditation, and the ordinary aggravating circumstance of dwelling, the imposable penalty would have been death if not for the proscription for its imposition under Republic Act No. 9346. Thus, both the RTC and the CA correctly imposed the penalty of *reclusion perpetua* on accused-appellant.

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

DEL CASTILLO, *J.*:

Accused-appellant Loreto Dagsil *y* Caritero is interposing this appeal upon a lone assignment of error, to wit:

THE COURT *A QUO* GRAVELY ERRED IN NOT TAKING INTO CONSIDERATION THE EXEMPTING CIRCUMSTANCE OF TEMPORARY INSANITY IN FAVOR OF THE ACCUSED-APPELLANT.[1]

Accused-appellant was charged with the felony of murder committed, according to the Information[2] instituted therefor, as follows:

That on or about 6:00 o'clock in the morning of December 2, 2008, at Barangay San Pedro, Municipality of Sto. Domingo, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill and with treachery and evident premeditation, armed with a knife, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence

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

[2] Records, pp. 2-3.

upon the person of AMEAN R. BANZUELA, a 14-year old minor girl by then and there stabbing her chest, thereby inflicting upon her [a] mortal and fatal stab wound which was the direct and immediate cause of her death, to the damage and prejudice of the heirs of said Amean R. Banzuela.

The aggravating circumstances of treachery and evident premeditation attended the commission of the crime as the attack perpetrated by the accused was so sudden, unexpected and treacherous as the victim was asleep at the time and he deliberately planned to take the life of the said victim having been seen roaming outside the house prior to the stabbing and [waiting] for an opportune time to get inside the victim's house and he [had] sufficient time to reflect upon the consequences of his unlawful act.

The aggravating circumstances of dwelling, abuse of superior strength and disregard of age and sex also attended the commission of the crime. The crime took place inside the house of the victim after [the] accused gained unlawful entry [and] stabbed the sleeping victim, [who was] a minor 14 years of age and a female.

ACTS CONTRARY TO LAW.[3]

This indictment was docketed as Criminal Case No. FC-08-0361 of the Regional Trial Court (RTC) of Legazpi City.

During his arraignment, the accused-appellant refused to enter any plea, hence the Court entered a plea of not guilty for him.

Since it accords with the records, we take the liberty of quoting the statement of facts as thoroughly and comprehensively narrated in the brief for the accused-appellant, thus:

EVIDENCE FOR THE PROSECUTION:

In the morning of 01 December 2008, Amelita Banzuela (Amelita for brevity) was rousing her fourteen (14)-year old daughter Amean Banzuela (Amean for brevity) to prepare for school. The latter complained of [a] headache. It was then that Amean told her that accused Loreto C. Dagsil raped her. Amelita then proceeded to the police station to report what happened to Amean.

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[3] *Id*. at 2.

The next day, 02 December 2008, at about 6:00 o'clock in the morning, while Amelita was ironing their clothes, she noticed the accused lurking outside their house and so she directed her son, Angelo, to close the front door. At that time, Amean was still asleep in her room.

Thereafter, Amelita was shocked when Amean came to her, with blood all over her and said that the accused just stabbed her. She (Amelita) suddenly went hysterical and began shouting for help. Her other daughter rushed to help Amean while Amelita asked for help. It was then that she saw the accused heading towards his house carrying a knife.

In court, Amelita testified that she incurred the amount of about Twenty Thousand Pesos (Php20,000.00) for funeral expenses but was only able to present receipts worth Twelve Thousand Six Hundred Fifty Pesos (Php12,650.00).

Meanwhile, on 02 December 2008, at around 5:00 o'clock in the morning, Angelo Banzuela (Angelo for brevity) was watching television while waiting for his sister to finish taking a bath when he heard his mother asking him to close their front door since the latter spotted the accused outside their house.

After closing the door, he (Angelo) went to check on the boiling pot in the kitchen. It was at that time that he saw his sister Amean, with blood all over her body, telling their mother that she was stabbed by the accused.

Fearing that the accused might come back, Angelo locked the back door while his mother was shouting for help. He then saw the accused getting out of their house and into their yard. Thereafter, his other sister Jeca brought Amean to the hospital for treatment.

Dr. James Margallo Belgira conducted an autopsy of Amean's body. In Medico Legal Report No. MLB-150-08, Dr. Belgira declared that the cause of death is hemorrhagic shock secondary to a stab wound of the trunk. He, likewise, found clear signs of blunt vaginal penetrating trauma on her genitals.

EVIDENCE FOR THE DEFENSE:

For his part, accused Loreto C. Dagsil interjected that although he indeed stabbed Amean, he was, however, confused and did not know what he was doing at that time. In the early morning of 02

December 2008, the accused took a stroll in his yard and then went to the store to buy cigarettes. On his way back to his house, he passed by Amean's house and he remembered her taunting him that he was going to be killed and her threatening gestures at him. He was suddenly overcome with confusion and he was not conscious of what was going on.

Not really certain of what happened, the accused then found himself seated inside his bedroom. When he saw the policemen, confusion prevailed over him and he started stabbing himself with the knife he was holding. Thereafter, his bedroom door was forced open and he was brought to the hospital. Afterwards, he was brought to the precinct for processing.[4]

In rejecting the accused-appellant's argument that he should be declared criminally exempt of the murder charge because he was in a state of temporary insanity when he stabbed the now deceased Amean, the RTC ruled:

Accused, while admitting the commission of the act complained of, wants to impress upon this court that he was somewhat not in his right senses at the time, or to borrow his words, he was "*confused*" and "*lost [my] mind*" *(TSN, June 13, 2011, page 6).* The Court held - :

> *'Insanity is the exception rather than the rule in the human condition. While Art. 12(1) of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless that person has acted during a lucid interval, the presumption, under Art. 800 of the Civil Code, is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or coetaneous with the commission of the offense with which he is charged.*
>
> x x x x x x x x x

[4] CA *rollo*, pp. 27-29.

There is a vast difference between a genuinely insane person and one who has worked himself up into such a frenzy of anger that he fails to use reason or good judgment in what he does. We reiterate jurisprudence which has established that only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered.

It is apt to recall x x x where this Court ruled that the professed inability of the accused to recall events before and after the stabbing incident, as in the instant case, does not necessarily indicate an aberrant mind but is more indicative of a concocted excuse to exculpate himself. It is simply too convenient x x x to claim that he could not remember anything rather than face the consequences of his terrible deed.

The requirements for a finding of insanity have not been met by the defense. x x x The presumption of sanity has not been overcome (People of the Philippines vs. Honorio Tibon y Dieso, G.R. No. 188320, June 29, 2010).'

Except for his self-serving testimony, no other corroborative, much less medical and/or expert, evidence was presented by the defense to prove the professed mental aberration of the accused.[5]

With regard to the civil aspect of the case, the RTC held:

As to actual damages, the official receipts that the prosecution presented showed expenses that amounted to ₱12,650.00 only *(Exhibits F to F-3).*

'However, we have held that when actual damages proven by receipts amount to less than ₱25,000.00, the award of temperate damages [amounting] to ₱25,000.00 is justified, in lieu of actual damages for a lesser amount. This is based on the sound reasoning that it would be anomalous and unfair to the heirs of the victim who tried but succeeded only in proving actual damages of less than ₱25,000.00. They would be in a worse situation than another who might have presented no receipts at all, but is entitled to ₱25,000.00 temperate damages (People of the Philippines [v]s. Alvin Del Rosario, G.R. No. 189580, February 9, 2011).'

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[5] Records, pp. 161-163.

Thus, considering that expenses in the amount of ₱12,650.00 were proven by Amean's heirs, an award of ₱25,000.00 as temperate damages in lieu of this lesser amount of actual damages, is proper.[6]

The RTC thereafter disposed as follows:

ALL THE FOREGOING CONSIDERED, the guilt of the accused having been proved beyond peradventure of doubt, LORETO DAGSIL y CARITERO is hereby found guilty of murder. Accordingly, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole, pursuant to Section 3 of Republic Act No. 9346, and ordered to indemnify the heirs of Amean Banzuela, the following amounts:

(a) Php50,000.00 as civil indemnity;
(b) Php50,000.00 as moral damages;
(c) Php25,000.00 as temperate damages; and
(d) Php30,000.00 as exemplary damages.

SO ORDERED.[7]

The accused-appellant elevated the RTC's verdict to the Court of Appeals (CA) whereat it was docketed as CA-G.R. CR. HC. No. 05536; and in support of his appeal, the accused-appellant insisted that the RTC committed a reversible error in not pronouncing him criminally exempt of the murder charge since he was in the state of temporary insanity at the time he committed the crime. But the CA rejected this argument, and reasoned out *viz.*:

Thus, this Court is only faced with the issue raised by accused-appellant that he should be exculpated from the crime since he committed the same while he was in a state of temporary insanity.

We are not convinced.

Article 12 of the RPC provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless the latter has acted during

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[6] *Id*. at 163.

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

a lucid interval. This circumstance, however, is not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. Under Article 800 of the Civil Code, the presumption is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty [thereof] because of insanity. The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged.

In order for insanity to be an acceptable defense to exempt an accused from criminal liability, the same must have been proven with clear and convincing evidence. In the instant case, as aptly observed by the RTC, the accused-appellant failed to present any corroborative medical evidence to support his claim. What he presented were mere statements that he was 'confused' when he committed the horrible act which are, at best, self-serving and devoid of credence. As such, the accused-appellant failed to overthrow the presumption that he was sane during the commission of the offense.[8]

The foregoing finding was evidently based upon the following testimony-in-chief of the accused-appellant taken during the hearing before the RTC on June 13, 2011:

ATTY. CIMANES [defense counsel]

Q You said x x x you were in your residence [at Sto. Domingo].

x x x x x x x x x

Q After you woke up, Mr. Witness, what did you do?
A x x x I took a stroll [in] the yard.

Q x x x [D]o you have any companion in your residence?
A My wife.

x x x x x x x x x

Q x x x [A]fter [taking] a stroll in your yard, what did you do next x x x?
A I went to a store to buy cigarettes.

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[8] CA *rollo*, pp. 86-87.

Q Were you able to buy cigarettes?
A Yes, sir.

Q What did you do after [buying] cigarettes?
A I went back home.

Q x x x x x x x x x
A x x x [O] n my way home I happened to pass by the house [of] this person who filed a case against me. I saw the victim and at that time I x x x felt so confused. It seems that I lost my mind. I stabbed that girl.

Q x x x [W]ho filed a case against you x x x?
A Amelita Banzuela.

Q You said that you were able to stab a person, how is this person related to Amean Banzuela?
A A daughter of [Amelita].

Q x x x [W]hy [did] you x x x stab the daughter of [Amelita]?
A Because she x x x told me that I will be killed and even [placed] her hand across her neck which I interpreted as I will be killed.

Q x x x [W]ere you conscious x x x [of] your actuation at the time you [stabbed] the child of Mrs. Amelita Banzuela?
A I [was] not conscious of what I did then. I [was] confused. I [was] seeing my face as so blurred.

Q You said that you [stabbed] the daughter of Amelita Banzuela, where did you get the knife?
A From my residence. From my house.

Q [When you bought cigarettes, did] you already have that knife with you?
A I cannot recall.

Q [After stabbing] the daughter of Amelita Banzuela, [could] you recall where you proceed[ed] at that time?
A I went back to my residence and took a seat inside our bedroom.

Q What did you do after you entered your x x x bedroom?
A While waiting in my bedroom I noticed the presence of policemen. x x x I [was] confused of the situation and I decided to also stab myself using the same knife which [I was holding].

Q After you stabbed yourself x x x what happened next?
A I noticed that the door [to] my bedroom was being forced open x x x. The policeman came and x x x they placed me in the porch.

Q What happened after the policeman brought you to the porch, x x x?
A From the porch the policeman took me to the municipal police station of Sto. Domingo, Albay.

Q Were you treated [of] the injuries you sustained considering that you also stabbed yourself?
A I was also brought to the hospital.

Q You mentioned that you were able to stab the daughter of Amelita Banzuela, her daughter Amean Banzuela, who is the victim in this case?
A Yes, sir.

Q [Did] you know x x x that this Amean Banzuela died because of the stabbing incident?
A I did not know earlier.[9]

Like the RTC, the CA adjudged that the crime committed by the accused-appellant in this case was, indeed, murder, qualified by treachery and by evident premeditation. The CA declared thus:

Under Article 248 of the RPC, murder is committed when the killing of a person by another is attended by the qualifying circumstances [of] treachery, evident premeditation and abuse of superior strength.

In *People v. Isla*, the Supreme Court clarified that for treachery to exist 'the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.' It is important in ascertaining the existence of treachery that it be proven that the attack was made swiftly, deliberately, unexpectedly, and without a warning, thus affording the unsuspecting victim no chance

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[9] TSN dated June 13, 2011, pp. 5-7.

to resist or escape the attack. In the instant case, Loreto killed Amean while the latter was sleeping and had no chance to resist or escape the attack. Clearly, there was treachery. Meanwhile, the circumstance of abuse of superior strength is deemed absorbed in treachery.

The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. In the case before Us, the accused-appellant went home after taking a stroll and after buying cigarettes, then he took the knife from his residence and used same to kill the victim. Thus, We are one with the RTC in its findings that there was evident premeditation in the commission of the crime.[10]

The CA, however, modified the civil indemnity awarded by the RTC, as well as imposed interest on the damages awarded, to wit:

Lastly, in light of the Supreme Court's ruling in *People v. Malicdem* and *People v. Laurio*, the civil indemnity awarded to the heirs of Amean is increased from ₱50,000.00 to ₱75,000.00. The award of civil indemnity in the instant case is, thus, modified accordingly. Further, in accordance with the current policy, We also impose on all the monetary awards for damages an interest at the legal rate of six (6%) percent from date of finality of this Decision until fully paid.[11]

Ultimately, the CA decreed dispositively as follows:

WHEREFORE, in view of the foregoing, instant appeal is hereby DENIED. The Decision dated February 24, 2012 of the Regional Trial Court (RTC) of Legazpi City, Branch 8 in Criminal Case No. FC-08-0361, convicting accused-appellant Loreto Dagsil *y* Caritero of the crime of Murder is hereby AFFIRMED with MODIFICATION.

The civil indemnity imposed in the RTC's Decision, contained in its dispositive portion, is hereby modified to read as follows:

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[10] CA *rollo*, pp. 87-88.

[11] *Id.* at 88.

ALL THE FOREGOING CONSIDERED, the guilt of the accused having been proved beyond peradventure of doubt, LORETO DAGSIL y CARITERO is hereby found guilty of murder. Accordingly, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, pursuant to Section 3 of Republic Act No. 9346, and ordered to indemnify the heirs of Amean Banzuela, the following amounts:

(a) Php75,000.00 as civil indemnity;

(b) Php50,000.00 as moral damages;

(c) Php25,000.00 as temperate damages; and

(d) Php30,000.00 as exemplary damages.

In addition, interest shall be imposed on all the monetary awards for damages assessed at the legal rate of six (6%) percent from the date of finality of this Decision until fully paid.

SO ORDERED.[12]

As already stated, given that the instant appeal before this Court is anchored on the same ground as the appeal before the CA, a premise that the CA correctly spurned and rejected because it is utterly devoid of merit, it stands to reason that the instant appeal must now suffer the same fate that befell it before the appellate court.

A simple reading of the aforequoted testimony of the accused-appellant shows that he was hardly the mentally deranged or insane (whether temporarily or permanently) person that he claimed he was when he stabbed Amean Banzuela (Amean) to death. His answers to the questions propounded to him by his counsel were intelligent, responsive, and straightforward; they were not the answers of an unintelligent person or nitwit that he says he is. In fact, he knew where he lives – at Sto. Domingo; he knew what he did when he woke up that morning when the incident happened – he took a stroll in the yard; he knew that he has a wife who is still alive; he remembered that after taking a stroll in the yard, he went to a store to buy cigarettes; he recalled that after buying cigarettes, he went back home; he

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[12] *Id.* at 88-89.

also mentioned that on the way home, he happened to pass by the house of Amelita Banzuela (Amelita) who filed a rape case against him because he violated her daughter Amean; he admitted that when he saw Amean, he felt "confused" and stabbed the girl; he acknowledged that Amean was a daughter of Amelita; he stabbed Amean because she told him that he would be killed, and even made the gesture of placing her hand across her neck; he knew that the knife he used in the stabbing of Amean came from his residence; he also recalled what transpired after the stabbing, *i.e.*, he went back to his residence, and while inside his bedroom, he stabbed himself using the same knife which he used in stabbing Amean; he also recalled that the policeman forced open the door to his bedroom, which he himself locked after entering; placed him in the porch, and thereafter took him to the municipal police station in Sto. Domingo, Albay. Against this factual backdrop, which convincingly showed that he is an intelligent, cognitive, rational and thinking person at the time of the stabbing, the accused-appellant's plea of insanity must be rejected because it has no leg to stand on.

It must be stated, however, that in view of the attendant circumstance of treachery which qualified the killing to murder, as well as the presence of evident premeditation, and the ordinary aggravating circumstance of dwelling, the imposable penalty would have been death if not for the proscription for its imposition under Republic Act No. 9346. Thus, both the RTC and the CA correctly imposed the penalty of *reclusion perpetua* on accused-appellant. However, there is a need to modify the damages awarded. Pursuant to *People v. Jugueta*,[13] the awards for civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each.[14] The award of temperate damages, in lieu of actual damages, is also increased to ₱50,000.00.[15] The interest of 6% per annum imposed on all damages awarded is proper.

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[13] 788 Phil. 331 (2016).

[14] *Id*. at 382.

[15] *Id*. at 388.

WHEREFORE, the instant appeal is hereby **DISMISSED**. The June 19, 2014 Decision of the Court of Appeals in CA-G.R. CR. HC. No. 05536, finding accused-appellant Loreto Dagsil *y* Caritero guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with further MODIFICATIONS** that the awards for civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each while temperate damages, in lieu of actual damages, is increased to ₱50,000.00.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio,[*] *Leonardo-de Castro,* and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218958. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDILBERTO NORADA *y* HARDER, and AGUSTIN SEVA *y* LACBANES,** *accused,* **EUGENE VILLANUEVA *y* CAÑALES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE AS AMENDED BY R.A. 7659; KIDNAPPING; ELEMENTS; THE ESSENCE OF THE CRIME IS THE ACTUAL DEPRIVATION OF THE VICTIM'S LIBERTY COUPLED WITH THE INTENT OF THE ACCUSED TO EFFECT IT.— Kidnapping is defined and punished under Article 267 of the Revised Penal Code (RPC),

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[*] Per dated October 18, 2017 raffle.

as amended by Republic Act (RA) No. 7659. The crime has the following elements: (1) the accused is a private individual; (2) the accused kidnaps or detains another or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present; (a) the kidnapping or detention lasts tor more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or; (d) the person kidnapped or detained is a minor, female or a public official. "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. It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time."

2. ID.; ID.; ID.; THE CRIME OF KIDNAPPING WAS NOT SUFFICIENTLY ESTABLISHED IN CASE AT BAR; THE FACT ALONE OF WAITING FOR THE VICTIM TO FALL ASLEEP AND THEN AND THERE TYING HIS HANDS AND FEET WAS NOT DETERMINANT OF INTENT TO ACTUALLY DETAIN THE VICTIM OR DEPRIVE HIS LIBERTY.— The totality of the prosecution's evidence failed to sufficiently establish the offense of kidnapping in this case. There was no concrete evidence whatsoever to establish or from which it can be inferred that appellant and his cohorts intended to actually deprive the victim of his liberty for some time and for some purpose. There was also no evidence that they have thoroughly planned the kidnapping of the victim. There was lack of motive to resort in kidnapping the victim for they were bent to kidnap his friend Truck. The fact alone of waiting for the victim to fall asleep and then and there tying his hands and feet, based on Norada's account, was not determinant of intent to actually detain the victim or deprive his liberty. As such, the trial court was indulging in speculation when it held that the victim "will either be taken away or simply be kept in the hotel and thereafter ransom will be demanded from the Canadian Ray Truck for his release." Courts should not indulge in speculation no matter how strong the guilt of the accused. Hence since the offense of kidnapping was not sufficiently established, the trial court erred in holding appellant liable for attempted kidnapping.

3. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; INDISPENSABLE ELEMENTS TO BE APPRECIATED; THE CLAIM OF SELF-DEFENSE FAILS WHEN THE EVIDENCE RELATIVE TO UNLAWFUL AGGRESSION FELL SHORT OF BEING "CLEAR AND CONVINCING."— There is no dispute that the victim was killed. Appellant however, invokes the justifying circumstance of self-defense to exculpate himself. By invoking self-defense, appellant in effect admitted his part in killing the victim. However, before the plea of self-defense may [be] appreciated, appellant must prove by clear and convincing evidence the following indispensable elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the appellant. "In self-defense and defense of strangers, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense and defense of strangers are unavailing because there would be nothing to repel." The courts below correctly found that appellant failed to discharge the burden of proving unlawful aggression on the part of the victim. Both the RTC and the CA held that his version of the event was not only uncorroborated but crude and clumsy prevarication. We agree that appellant's evidence relative to unlawful aggression fell far short of being "clear and convincing." His claim of having been boxed by the victim did not show that he suffered any injury and no allegation on what part of his body was hit. More importantly, the punching if it was true, did not place the life of appellant in danger. Thus, appellant's claim of self-defense deserves no merit at all.

4. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, EXPLAINED; TWO CONDITIONS THAT MUST CONCUR.— "Treachery cannot be presumed [for] the circumstances surrounding the [killing] must be proved as indubitably as the crime itself." Treachery is present "when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make." "To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any

defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of the means, method or manner of execution."

5. **ID.; ID.; ID.; WHERE THE MODE AND MANNER OF THE ATTACK ON THE VICTIM DID NOT APPEAR TO HAVE BEEN CONSCIOUSLY AND DELIBERATELY ADOPTED, TREACHERY DID NOT ATTEND THE KILLING.—** Indeed, the victim was struck on the head by Norada with a piece of wood which resulted to his death. However, the records is bereft of any evidence that appellant and his co-accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the victim to defend himself. In *People v. Antonio*, it was held that "[i]t is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose." Similarly, in *People v. Catbagan*, the Court ruled that "[t]reachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing or that the death of the victim was the result of premeditation, calculation or reflection." In the present case, the mode or manner of the attack on the victim did not appear to have been consciously and deliberately adopted.

6. **ID.; ID.; HOMICIDE; IN THE ABSENCE OF QUALIFYING CIRCUMSTANCES, APPELLANT CAN ONLY BE HELD LIABLE FOR HOMICIDE; PENALTY.—** Considering that none of the circumstances alleged in the information, *i.e.,* treachery and abuse of superior strength was proven during the trial, the same cannot be appreciated to qualify the killing to murder. Appellant can only be held liable for homicide. Under Article 249 of the RPC, the penalty prescribed for the crime of homicide is *reclusion temporal*. In view of the absence of any mitigating circumstance and applying the Indeterminate Sentence Law, x x x appellant should suffer an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

7. **ID.; ID.; ID.; CIVIL LIABILITY.—** Anent appellant's civil liability, the Court finds a need to modify the same to conform to recent jurisprudence. The Court modifies the awarded amount of ₱75,000.00 as civil indemnity by the CA by reducing it to ₱50,000.00. Anent the award of moral damages, the CA correctly

imposed the amount of ₱50,000.00. The award of ₱30,000.00 as exemplary damages is deleted in view of the failure of the prosecution to prove that the killing was attended by treachery and abuse of superior strength.

8. ID.; ID.; ID.; TEMPERATE DAMAGES AND INDEMNITY FOR LOSS OF EARNING CAPACITY, AWARDED.— With respect to actual damages, the parties stipulated the amount of ₱40,000.00 for the funeral, burial and other incidental expenses and dispensed with the presentation of proof thereof. However prevailing jurisprudence dictates an award of ₱50,000.00 as temperate damages, in lieu of actual damages, when no documentary evidence of burial or funeral expenses is presented in court. Hence, we award ₱50,000.00 as temperate damages in lieu of actual damages. As to the deletion of the indemnity for loss of earning capacity by the CA, we restore the award by the RTC of the sum of ₱1,950.967.26 as unearned income as appearing from the Pay Slip submitted in evidence which the CA plainly overlooked. x x x The victim was 42 years old at the time of his death. His annual gross income was ₱154,044.00 computed based on his monthly income of ₱12,837.00. His necessary living expenses is deemed to be 50% of his gross income. His life expectancy is assumed to be 2/3 of age 80 less 42, his age when he was killed. Thus using the above formula, the indemnity for loss of earning capacity of the victim is ₱1,950,967.26.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Eugene Villanueva *y* Cañales (appellant) seeks in the present appeal, the reversal of the January 14, 2015 Decision[1] of the

[1] CA *rollo*, pp. 213-231; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

Court of Appeals (CA) in CA-G.R. CR HC No. 00686 which affirmed with modifications the July 21, 2006 Decision[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 50, convicting him of the complex crime of attempted Kidnapping with Murder.

The Antecedent Facts:

In the afternoon of February 12, 2004, Police Inspector Bonifer Gotas (PI Gotas), Precinct Commander of Precinct VI, Bacolod City received a report that a dead person was recovered in a sugarcane field at Villa Angela Subdivision. The deceased was identified as Reggie Pacil *y* Nojas (victim), a 42-year old bachelor and was the school principal of the Alijis Elementary School in Valladolid, Bacolod City.

During the investigation, PI Gotas was informed that the victim was killed at the Taculing Court Apartelle. An inquiry from a roomboy revealed that in the evening of February 11, 2004, three men on board a Suzuki multicab rented and spent some time at Room 106 of the apartelle. PI Gotas inspected the room and saw bloodstains scattered inside and on its wall. He was informed that one of the occupants of the room was Edilberto Norada *y* Harder (Norada). Days after the incident, Norada was arrested followed by appellant Villanueva and Agustin Seva *y* Lacbanes (Seva).

Rosalina Pacil (Rosalina), mother of the victim, testified that the latter received a monthly salary of ₱12,837.00 as school principal. Rosalina further testified that appellant was a friend of her son. Appellant frequently visited their house since the victim finances the former's fruit buying and selling business. On February 11, 2004, appellant was in their house waiting for the arrival of the victim. The victim arrived early in the evening with a Canadian friend, Ray Truck (Truck). Not long enough, the victim and appellant left, leaving behind Truck. That was the last time Rosalina saw her son alive.

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[2] *Id*. at 15-38; penned by Judge Roberto S. Chiongson.

In his Post Mortem Autopsy findings, Dr. Eli Cong (Dr. Cong), the medico-legal officer of the Bacolod City Health Office, found lacerated wound and contusion hematoma on the body of the victim and gave the cause of death as "Uncal Erniation, secondary to contusion hemorrhage brain parietal area, a secondary. Fracture with laceration of the skull parietal area, head, secondary to trauma by blunt instrument head, contusion hemorrhage, multiple"[3] which could have been caused by a blunt instrument like a piece of wood.

Appellant admitted that he was a close friend of the victim. His narration of the event which served as his defense and synthesized by the courts below is as follows:

> x x x On February 8, 2004, he met Reggie Pacil [who] told him that he will treat him to a disco on February 11, 2004 to celebrate in advance his forthcoming birthday. Mr. Pacil instructed him to look for a car that they can hire to be used for that occasion. When he met the accused Edilberto Norada[,] a taxi driver[,] who is an old acquaintance the following day, he told him to look for a car. Norada succeeded in leasing a red Suzuki multi-cab owned by Cecile Pioquinto, a girlfriend of the accused Agustin Seva.
>
> On February 10, 2004, [a]ccused Villanueva x x x and his co-accused Edilberto Norada, took the car from the house of Cecile Pioquinto. At that time, the accused Agustin Seva was in the house of Pioquinto. He paid rental in the amount of ₱2,000.00 for the use of the car. Leaving behind the car and Norada, Villanueva x x x went to Valladolid to fetch Reggie Pacil. Reggie Pacil was not in his house so he waited for him until about 7:30 in the evening. When Pacil arrived on board a taxi, he was with his friend from Canada a person named Ray Truck. He and Pacil took that same taxi for Bacolod City while the Canadian was left behind in Pacil's house.
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> Eugene Villanueva further declared that they met Edilberto Norada at a designated place in the Golden Field Complex but instead of proceeding directly to a disco house, Pacil suggested that they first find a place to spend the rest of the night.
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> Reggie Pacil rented a room in the Taculing Court Apartelle and said that they will wait there for Pacil's other friends who will be

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[3] *Id*. at 18.

joining them. As they were waiting, the two of them drank beer while Norada stayed outside of the room. At about 2:00 in the morning, the friends of Pacil was *(sic)* not able to arrive, so Villanueva x x x decided to go out alone. Pacil, however, would not allow him to leave. Villanueva x x x at that time x x x was beginning to realize that Pacil was intending to use him. When he held Pacil's hand to enable him to leave, he slipped and fell on the floor. Pacil placed himself over him and as they struggled, Edilberto Norada entered the room. Norada tried to pacify them but he was boxed by Pacil. Norada left and returned with a piece of wood and he hit Pacil on the head several times. Pacil fell unconscious. There was blood flowing out of Pacil's head so he and Norada panicked. They wrapped Pacil in a bedsheet and loaded him on the Suzuki multi-cab. They went around Bacolod City not knowing what to do. Eventually they dumped the body of Pacil at Villa Angela Subdivision.[4]

The testimony of accused Norada, on the other hand, was summarized by the trial court as follows:

Accused Edilberto Norada declared that he and Agustin Seva for sometime, have been hatching to organize a kidnap for ransom group in Bacolod City. This plan did not materialize as they have no money to fund the operation. Later, in 2003, he met Eugene Villanueva, a security guard of the Riverside Hospital. Eugene Villanueva revealed that he is a close friend of Reggie Pacil, a schoolteacher at the town of Valladolid. Reggie Pacil has a friend, a Canadian national named Ray Truck. This Ray Truck has plenty of money x x x. The three (3) of them, namely, himself, Agustin Seva and Eugene Villanueva, made a plan to kidnap Ray Truck.

To carry out their plan, accused Norada revealed that they rented the car of Cecile Pioquinto, who was the girlfriend of the accused Seva. They also rented a room at the Taculing Court Apartelle. The accused Villanueva would bring both Reggie Pacil and the Canadian Ray Truck at the Apartelle on the evening of February 11, 2004 and they will then execute their kidnap plan.

On the appointed day, Accused Villanueva fetched Reggie Pacil and Ray Truck in the house of Pacil in Valladolid but only Reggie Pacil came. Ray Truck remained in the house of Reggie Pacil in Valladolid. The non-appearance of Ray Truck made them change

[4] *Id*. at 21-22.

their plan. They decided to just kidnap Reggie Pacil as they were convinced that Rey Truck will pay ransom for his release. They decided that the kidnapping will take place as soon as Reggie Pacil falls asleep.

Inside their rented room in the Taculing Court Apartelle, Seva, Villanueva and Pacil [drank] liquor. Norada x x x slept [in] the car in the garage of the Apartelle.

In the early morning of the following day Norada said that Villanueva woke him up and told him that Pacil was already asleep. They began tying up Pacil but somehow he woke up and resisted. Norada said that he hit Pacil [on] the head with a piece of wood. Pacil was rendered unconscious only briefly and he again struggled. Norada hit him again and this time Pacil stayed motionless but snoring. Then Seva taped the mouth of Pacil while he and Villanueva tied x x x his hands and feet. They wrapped Pacil [in] a blanket, and loaded him into the car. Then they dumped his body at Villa Angela subdivision. Thereafter, they parted ways. x x x.[5]

Ruling of the Regional Trial Court

The RTC gave probative value to the narration of Norada respecting the conspiracy to kidnap the victim and how he was killed. The RTC further ruled that the killing was attended by treachery and abuse of superior strength. The court *a quo* ratiocinated that:

In the present case, the crime of Kidnapping was only in its Attempted Stage as the offenders only commenced the execution of the felony directly by overt acts but they failed to perform all the acts of execution x x x by reason of the resistance of Reggie Pacil. Article 267 of the Revised Penal Code defines and penalizes Kidnapping and Serious Illegal detention as a single felony such that all other offenses committed by reason of or on occasion of it are absorbed by it by express mandate of the law. But the absorption rule will not apply when the Kidnapping is only Attempted or Frustrated, as Article 267 does not so provide. [W]hen Kidnapping is attempted or Frustrated and another crime is committed arising out of the same act of attempted or frustrated kidnapping, the provision of the ordinary complex crime under Article 48 of the Revised Penal Code shall apply. An ordinary complex crime under Article 48 is

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

committed when a single act results to two or more grave or less grave felonies. The act which constituted as an attempt to kidnap was also the same act that caused the death of Reggie Pacil. x x x

It should be stressed that the Information against the accused fully and completely alleges the commission of the crime of Murder, with the killing of the victim qualified by treachery and abuse of superior strength.

Article 48 of the Revised Penal Code provides that when a single act produces two (2) or more grave or less grave felonies, the penalty for the graver offense shall be imposed, the same to be applied in its maximum period. The maximum penalty for Murder is death but since the penalty of death had already been abolished, the penalty is Reclusion Perpetua.[6]

Thus, on July 21, 2006, the RTC rendered a Decision, the dispositive part of which stated:

FOR ALL THE FOREGOING, this Court finds all the three (3) accused, namely, Eugene Villanueva Y Canales, Edilberto Norada Y Harder and Agustin Seva Y Lacbanes, GUILTY beyond reasonable doubt of the complex crime of Attempted Kidnapping with Murder, all as conspirators and all as Principals by Direct participation. All of them are sentenced to suffer the penalty of RECLUSION PERPETUA with all its accessories.

By way of civil liability, the three (3) above-named accused are held solidarily liable to pay to the heirs of the late Reggie Pacil the sum of Php1,950,967.20 as compensatory damages; the sum of Php50,000.00 as death indemnity. And to Mrs. Rosalina Pacil, the accused are solidarily liable to pay the amount of Php50,000.00 as moral damages.[7]

Norada did not appeal his conviction. Seva filed a Notice of Appeal but the same was denied for having been filed out of time. Hence only the appeal of appellant Villanueva will be resolved in this proceedings.

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

[7] *Id*. at 37-38.

Ruling of the Court of Appeals

Like the trial court, the CA gave probative weight to the sworn statement of Norada and sustained its admissibility considering that its contents were reiterated affirmatively in open court thus transposing it as a judicial admission. The CA rejected appellant's plea of self-defense for his failure to prove the element of unlawful aggression arising from the victim. Thus the CA did not find any reason to reverse the RTC Decision. Hence, on January 14, 2015, the CA rendered its assailed Decision with the decretal portion reading as follows:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED. Accordingly, the assailed *Decision dated 21 July 2006* of the Regional Trial Court, Branch 50, 6th Judicial Region, Bacolod City, in Criminal Case No. 04-26009 is hereby AFFIRMED with MODIFICATIONS.
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> As modified, all three accused are held solidarily liable to pay the heirs of the victim the amounts of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages, Php30,000.00 as exemplary damages and Php25,000.00 as temperate damages. Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.
>
> SO ORDERED.[8]

Dissatisfied with the CA Decision, appellant elevated the case to this Court.

Our Ruling

The appeal is partly meritorious.

The crime of kidnapping was not satisfactorily established.

Kidnapping is defined and punished under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 7659. The crime has the following elements:

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[8] *Id*. at 230.

(1) the accused is a private individual;
(2) the accused kidnaps or detains another or in any manner deprives the latter of his liberty
(3) the act of detention or kidnapping is illegal; and
(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 simulating public authority;
    (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or;
    (d) the person kidnapped or detained is a minor, female or a public official.[9]

"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. It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time."[10]

The totality of the prosecution's evidence failed to sufficiently establish the offense of kidnapping in this case. There was no concrete evidence whatsoever to establish or from which it can be inferred that appellant and his cohorts intended to actually deprive the victim of his liberty for some time and for some purpose. There was also no evidence that they have thoroughly planned the kidnapping of the victim. There was lack of motive to resort in kidnapping the victim for they were bent to kidnap his friend Truck. The fact alone of waiting for the victim to fall asleep and then and there tying his hands and feet, based on Norada's account, was not determinant of intent to actually detain the victim or deprive his liberty. As such, the trial court was indulging in speculation when it held that the victim "will either be taken away or simply be kept in the hotel and thereafter ransom will be demanded from the Canadian Ray Truck for

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[9] See *People v. Mamantak*, 582 Phil. 294, 302 (2008).

[10] *Id*. at 303.

his release."[11] Courts should not indulge in speculation no matter how strong the guilt of the accused. Hence since the offense of kidnapping was not sufficiently established, the trial court erred in holding appellant liable for attempted kidnapping.

There is no unlawful aggression on the part of the victim hence the justifying circumstance of self-defense is untenable.

There is no dispute that the victim was killed. Appellant however, invokes the justifying circumstance of self-defense to exculpate himself. By invoking self-defense, appellant in effect admitted his part in killing the victim. However, before the plea of self-defense may be appreciated, appellant must prove by clear and convincing evidence the following indispensable elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the appellant.[12] "In self-defense and defense of strangers, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense and defense of strangers are unavailing because there would be nothing to repel."[13]

The courts below correctly found that appellant failed to discharge the burden of proving unlawful aggression on the part of the victim. Both the RTC and the CA held that his version of the event was not only uncorroborated but crude and clumsy prevarication. We agree that appellant's evidence relative to unlawful aggression fell far short of being "clear and convincing." His claim of having been boxed by the victim did not show that he suffered any injury and no allegation on what part of his body was hit. More importantly, the punching if it was true, did not place the life of appellant in danger. Thus, appellant's claim of self-defense deserves no merit at all.

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[11] CA *rollo*, p. 35.

[12] See REVISED PENAL CODE, Article 11, Section 1.

[13] *People v. Del Castillo*, 679 Phil. 233, 250 (2012).

Treachery did not attend the killing.

However, we cannot agree that the qualifying circumstance of treachery attended the killing. According to the trial court, "it was necessary for the accused to subdue [the victim] and they attempted to perform this act in a treacherous manner, tying up [the victim] while he was asleep. [The victim] however, resisted and this prompted the accused to hit him inflicting serious injuries on his person that caused his death."[14] Clearly, this is the only context in which the trial court appreciated the qualifying circumstance of treachery and the appellate court concurred with this finding without laying any basis or explanation for its concurrence.

Contrary to the findings of the courts below, our review of the evidence shows that the killing of the victim was not attended by treachery.

"Treachery cannot be presumed [for] the circumstances surrounding the [killing] must be proved as indubitably as the crime itself."[15] Treachery is present "when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make."[16] "To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of the means, method or manner of execution."[17]

Indeed, the victim was struck on the head by Norada with a piece of wood which resulted to his death. However, the records

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[14] CA *rollo*, p. 35.

[15] *People v. Nueva*, 591 Phil. 431, 446 (2008).

[16] REVISED PENAL CODE, Article 14, paragraph 16.

[17] *People v. Garcia*, 577 Phil. 483, 503 (2008).

is bereft of any evidence that appellant and his co-accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the victim to defend himself.[18] In *People v. Antonio*,[19] it was held that "[i]t is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose." Similarly, in *People v. Catbagan*,[20] the Court ruled that "[t]reachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing or that the death of the victim was the result of premeditation, calculation or reflection." In the present case, the mode or manner of the attack on the victim did not appear to have been consciously and deliberately adopted.

Conspiracy was established among the accused.

As regards the matter of conspiracy, we note that the appellate court did not make any discussion or a finding of fact on the presence of conspiracy among the accused despite holding them solidarily liable for the payment of damages. However, we take this opportunity to tackle this issue following the principle that an appeal throws the whole case wide open for review.

We find that conspiracy in killing the victim was duly established. "Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them."[21] In the case at bar, the evidence showed that appellant did not prevent Norada from striking the head of the victim with the piece of wood. When the latter fell unconscious with blood oozing from his head, appellant even helped in wrapping the body with a bedsheet and loaded him on the Suzuki multi-cab.

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[18] See *People v. Pat. Nitcha*, 310 Phil. 287, 303-304 (1995).

[19] 390 Phil. 989, 1017 (2000).

[20] 467 Phil. 1044, 1081-1082 (2004).

[21] *People v. Robelo*, 699 Phil. 392, 401 (2012).

To completely end the life of the victim, they did not bring the victim to the hospital despite his still being alive but instead, dumped the body in a sugarcane field at Villa Angela Subdivision. These acts of appellant during and after the killing indubitably show that he acted in concert for a joint purpose and a community of interest with his co-accused in killing the victim. Thus applying the basic principle in conspiracy that "the act of one is the act of all," appellant is guilty as a co-conspirator and regardless of his participation, is liable as co-principal.[22]

No abuse of superior strength.

The aggravating circumstance of abuse of superior strength is "present if the accused purposely uses excessive force out of proportion to the means of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength."[23] However, as none of the prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case.

The crime committed was homicide.

Considering that none of the circumstances alleged in the information, *i.e.*, treachery and abuse of superior strength was proven during the trial, the same cannot be appreciated to qualify the killing to murder. Appellant can only be held liable for homicide. Under Article 249 of the RPC, the penalty prescribed for the crime of homicide is reclusion temporal. In view of the absence of any mitigating circumstance and applying the Indeterminate Sentence Law, the maximum of the sentence should be within the range of *reclusion temporal* in its medium period which has a duration of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, appellant should suffer an indeterminate prison

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[22] *Id*.

[23] *People v. del Castillo*, *supra* note 13 at 255.

term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Anent appellant's civil liability, the Court finds a need to modify the same to conform to recent jurisprudence.[24] The Court modifies the awarded amount of ₱75,000.00 as civil indemnity by the CA by reducing it to ₱50,000.00. Anent the award of moral damages, the CA correctly imposed the amount of ₱50,000.00. The award of ₱30,000.00 as exemplary damages is deleted in view of the failure of the prosecution to prove that the killing was attended by treachery and abuse of superior strength.

With respect to actual damages, the parties stipulated the amount of ₱40,000.00 for the funeral, burial and other incidental expenses and dispensed with the presentation of proof thereof. However prevailing jurisprudence dictates an award of ₱50,000.00 as temperate damages, in lieu of actual damages, when no documentary evidence of burial or funeral expenses is presented in court.[25] Hence, we award ₱50,000.00 as temperate damages in lieu of actual damages.

As to the deletion of the indemnity for loss of earning capacity by the CA, we restore the award by the RTC of the sum of ₱1,950,967.26 as unearned income as appearing from the Pay Slip[26] submitted in evidence which the CA plainly overlooked. The figure was arrived at based on the net earning capacity of the victim, to wit:

Net earning capacity =	2/3 x (80-age of the victim at the time of death) x (Gross Annual Income less the Reasonable and Necessary Living Expenses[27]

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[24] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 386-387.

[25] *Id*. at 388.

[26] Records, p. 154.

[27] *People v. Garcia*, *supra* note 17 at 508.

The victim was 42 years old at the time of his death. His annual gross income was ₱154,044.00 computed based on his monthly income of ₱12,837.00. His necessary living expenses is deemed to be 50% of his gross income. His life expectancy is assumed to be 2/3 of age 80 less 42, his age when he was killed. Thus using the above formula, the indemnity for loss of earning capacity of the victim is ₱1,950,967.26.

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated January 14, 2015 of the Court of Appeals in CA-G.R. CR HC No. 00686 is hereby **VACATED and SET ASIDE**. A new one is entered as follows:

1) appellant Eugene Villanueva *y* Cañales is hereby found **GUILTY** of the crime of Homicide and sentenced to an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

2) appellant is ordered to pay the heirs of the victim the following amounts:

a) ₱50,000.00 as civil indemnity;
b) ₱50,000.00 as moral damages;
c) ₱50,000.00 as temperate damages; and,
d) ₱1,950,967.26 as indemnity for loss of earning capacity.

In conformity with current policy, we impose interest on all the monetary awards for damages at the rate of 6% *per annum* from date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro,* and *Tijam, JJ.,* concur.

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[*] Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused from the case due to prior participation as Solicitor General.

SECOND DIVISION

[G.R. No. 224979. December 13, 2017]

IVY LIM, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and BLUE PACIFIC HOLDINGS, INC.,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; BATAS PAMBANSA BLG. 22; NOTICE OF DISHONOR; IF THE SERVICE OF THE WRITTEN NOTICE IS BY REGISTERED MAIL, THE PROOF OF SERVICE CONSISTS IN THE PRESENTATION AS EVIDENCE OF THE REGISTRY RECEIPT TOGETHER WITH AUTHENTICATING AFFIDAVIT OF THE PERSON MAILING THE NOTICE OF DISHONOR; CASE AT BAR.—** First, contrary to Lim's claim that only the unauthenticated registry return card was the only proof presented by the prosecution to establish service of a notice of dishonor, the evidence on record shows that the prosecution also presented the registry receipt and the testimony of Enriquez who sent the demand letter by registered mail. In *Resterio v. People*, the Court ruled that the notice of dishonor required under B.P. Blg. 22 to be given to the drawer, maker or issuer of the check should be written. "If the service of the written notice is by registered mail, the proof of service consists not only in the presentation as evidence of the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor. Without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient, unless the mailer personally testifies in court on the sending by registered mail." Here, the transcript of stenographic notes confirm that the prosecution complied with the requisite proof of service of the notice of dishonor by presenting Enriquez, who testified on the sending of such notice by registered mail, and identified the demand letter, the registry receipt and the registry return card.

2. **ID.; ID.; CRIMINAL ACTION FOR VIOLATION THEREOF SHALL BE DEEMED TO INCLUDE THE CORRESPONDING CIVIL ACTION, AND NO**

RESERVATION TO FILE SUCH CIVIL ACTION SEPARATELY SHALL BE ALLOWED; CASE AT BAR.— [T]he criminal action for violation of B.P. Blg. 22 shall be deemed to include the corresponding civil action, and no reservation to file such civil action separately shall be allowed. With respect to the civil aspect of a B.P. Blg. 22 case, Lim would do well to remember that when an action is founded upon a written instrument, copied in or attached to the corresponding pleading, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts. As can be gleaned from the Complaint-Affidavit dated October 5, 2005, the action of BPHI is not only meant to prosecute Lim for issuing bouncing checks to secure payment of loan as evidenced by a promissory note where Lim signed as a co-maker, but also for recovery of the amounts covered by said checks intended as payment of the loan. Lim does not specifically deny the genuineness and execution of the promissory note, let alone sets forth what he claims to be the facts. Moreover, such instrument no longer needs to be authenticated because Lim stipulated on the existence of the promissory note and her signature thereto, as shown in the Preliminary Conference Order dated March 28, 2007.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THE DISPUTABLE PRESUMPTION THAT THERE WAS A SUFFICIENT CONSIDERATION FOR THE CONTRACT WAS NOT OVERTURNED IN CASE AT BAR.—** Anent the civil aspect of the B.P. Blg 22 cases, her defense of lack of consideration for the checks fails to persuade. Apart from having admitted the authenticity and due execution of the promissory note, Lim also failed to present clear and convincing evidence to overturn the disputable presumptions that there were sufficient considerations for the said contract which she signed as a co-maker, and for the negotiable instruments consisting of 11 checks issued under her name as security for the payment of the loan. Besides, as a co-maker who agreed to be jointly and severally liable on the promissory note, Lim cannot validly claim that she hardly received any consideration therefor, as the fact that the loan was granted to the principal debtor, her sister Benito, already constitutes sufficient consideration.

4. CRIMINAL LAW; BATAS PAMBANSA BLG. 22; ELEMENTS; ESTABLISHED IN CASE AT BAR.— [T]he Court of Appeals committed no reversible error in affirming the RTC decision, which upheld the conviction of Lim for 10 counts of violation of B.P. Blg. 22 and her civil liability for the face value of the 11 checks. The elements of violation of B.P. Blg. 22 are as follows: 1. The accused makes, draws or issues any check to apply to account or for value; 2. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment; and 3. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment. All the foregoing elements were established beyond reasonable doubt by the prosecution.

5. ID.; ID.; PENALTY; A MODIFICATION OF THE FINE IS PROPER IN CASE AT BAR.— [A] modification of the fine of ₱676,176.50 imposed by the MeTC is in order because it appears to exceed the ₱200,000.00 limit under Section 1 of B.P. Blg. 22 which provides for the penalty of "imprisonment of not less than thirty days but not more than one (1) year or by **a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos**, or both such fine and imprisonment at the discretion of the court." Instead of imposing a lump sum fine, the proper penalty should be a fine of ₱67,617.65 [face value of each check] for each of the Ten (10) counts of violation of *Batas Pambansa Blg.* 22 with subsidiary imprisonment in case of insolvency.

APPEARANCES OF COUNSEL

Paul S. Alcudia for petitioner.

Office of the Solicitor General for public respondent.

Leopoldo Dela Rosa for respondent Blue Pacific Holdings, Inc.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari,* assailing the Decision[1] dated October 27, 2014 of the Court of Appeals (*CA*), which denied petitioner Ivy Lim's petition for review, and affirmed the Decision[2] dated September 30, 2013 and the Order dated December 3, 2013 rendered by the Regional Trial Court (*RTC*) of Makati City in Criminal Case No. 13-1586-86. The RTC affirmed the Joint Decision[3] dated May 22, 2013 of the Metropolitan Trial Court (*MeTC*) of Makati City, which found Lim guilty beyond reasonable doubt of ten (10) counts of violation of *Batas Pambansa Bilang* (*B.P. Blg.*) 22 in Criminal Cases No. 346643-52.

The antecedent facts are as follows:

Private respondent Blue Pacific Holdings, Inc. (*BPHI*) granted Rochelle Benito a loan amounting to ₱1,149,500.00 as evidenced by a Promissory Note acknowledged before a notary public on July 29, 2003. Petitioner Lim signed as a co-maker of her sister Benito. To secure payment of the loan, Benito and Lim issued eleven (11) Equitable PCI Bank checks with a face value of ₱67,617.65 each, or a total amount of ₱743,794.15, to wit:

Check No.	Date	Amount
0105461	May 29, 2004	₱67,617.65
0105462	June 29, 2004	67,617.65
0105463	July 29, 2004	67,617.65
0105464	August 29, 2004	67,617.65
0105465	September 29, 2004	67,617.65

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[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Carmelita S. Manahan, concurring; *rollo,* pp. 40-45.

[2] Penned by Presiding Judge Elpidio R. Calis, Branch 133; *id.* at 270-279.

[3] Penned by Presiding Judge Barbara Aleli H. Briones, Branch 61; *id.* at 224-228.

0105466	October 29, 2004	67,617.65
0105467	November 29, 2004	67,617.65
0105468	December 29, 2004	67,617.65
0105452	January 29, 2005	67,617.65
0105477	February 28, 2005	67,617.65
0105478	March 29, 2005	67,617.65

Later on, 10 of these 11 checks were dishonored when presented for payment for having been drawn against a closed account. BPHI sent Lim various demand letters, but to no avail. On June 28, 2005, BPHI sent a final demand letter, which Lim supposedly received as shown by the registry return card bearing her signature.

For failing to pay the amounts corresponding the dishonored checks, Lim was charged with 11 counts of violation of B.P. Blg. 22. For her part, Lim raised the defenses that (1) she could not have signed and issued the checks on July 29, 2003 in the presence of BPHI Finance Officer Juanito Enriquez because she was then abroad as shown by the Certification of the Bureau of Immigration and Deportation (*BID*); (2) BPHI has no permit to conduct financing business; (3) the checks were issued to facilitate illegal trafficking of teachers to the United States for which there has been a criminal action filed and resolved for human trafficking; and (4) there was no valuable consideration given.

Upon arraignment on December 13, 2006, Lim, assisted by counsel, pleaded not guilty to all charges. During the preliminary conference, the parties admitted the following matters: (1) the jurisdiction of the trial court; (2) the identity of Lim as the accused, (3) the existence of the complaint affidavit, (4) the existence of the promissory note and Lim's signature thereon, and (5) the existence and due execution of the 11 checks with BPHI as payee.

During trial, the prosecution presented its witness, BPHI Finance Officer Enriquez, and documentary evidence consisting of the complaint-affidavit, the promissory note and the 11 checks, and the demand letters, among others. For the defense, Lim claimed that the subject checks were unauthenticated because

she was out of the country on July 29, 2003, as shown by the certification of her travel record issued by the BID. She refuted the testimony of Enriquez that he personally saw her signed the checks before him.

On May 22, 2013, the MeTC rendered a Joint Decision finding Lim guilty beyond reasonable doubt of 10 counts of violation of B.P. Blg. 22, the dispositive portion of which states:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused IVY LIM a.k.a. IVY BENITO LIM ***guilty beyond reasonable doubt for violation of Batas Pambansa Blg. 22 in Criminal [Case Nos.] 346643 or ten (10) counts*** and hereby orders her to pay a FINE of SIX HUNDRED SEVENTY-SIX THOUSAND ONE HUNDRED SEVENTY-SIX PESOS AND 50/100 (₱676,176.50) which is the face value of the ten (10) checks with subsidiary imprisonment in case of insolvency in accordance with Article 39 of the Revised Penal Code.
>
> The accused IVY LIM a.k.a. IVY BENITO LIM is acquitted in Criminal Case No. 346642 for failure of the prosecution to establish all the elements of the crime charged.
>
> With regards to the civil aspect of these cases, she is hereby ordered to pay the private complainant Blue Pacific Holdings, Inc. the total amount of SEVEN HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED NINETY-FOUR PESOS AND 15/100 (₱743,794.15) which corresponds to the face value of the eleven (11) checks subject matter of the present cases, plus 12% interest *per annum* from date of the filing of the Informations on May 22, 2006 until the amount shall have been fully paid. She is likewise ordered to pay the amount of Twenty Thousand Pesos (₱20,000.00) as and for attorney's fees and to pay the costs of suit.
>
> SO ORDERED.[4]

On appeal, the RTC found no reversible error and affirmed the MeTC Decision.

Dissatisfied, Lim filed a petition for review before the CA, which denied the same and affirmed the RTC Decision. The

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[4] *Rollo*, pp. 227-228.

CA also denied her motion for reconsideration. Hence, the petition.

Lim raises the following grounds in support of her petition for review on *certiorari*:

A. AN UNAUTHENTICATED REGISTRY RETURN CARD CANNOT PROVE RECEIPT OF NOTICE OF DISHONOR AND CANNOT BE A BASIS FOR CONVICTION FOR A CHARGE OF VIOLATION OF BATAS PAMBANSA BLG. 22 UNDER PREVAILING JURISPRUDENCE SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT – THAT THERE WAS PROOF OF PERSONAL SERVICE OF NOTICE OF DISHONOR ON THE PETITIONER BASED ON A COMPARISON OF SIGNATURES ON THE SUBJECT CHECKS AND OF THE SIGNATURES ON THE REGISTRY RETURN CARD – AND THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22

B. UNAUTHENTICATED CHECKS CANNOT PROVE THAT HEREIN PETITIONER WAS THE SAME PERSON WHO ISSUED SAID CHECKS, IN ACCORDANCE WITH THE DOCTRINE ENUNCIATED IN *UNCHUAN V. LOZADA. ET AL (SUPRA.),* SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22

C. A DOCUMENT THAT WAS NEVER PRESENTED, IDENTIFIED, AUTHENTICATED NOR TESTIFIED ON DURING TRIAL CANNOT BE ADMITTED IN EVIDENCE NOR USED TO PROVE THE GUILT OF HEREIN PETITION[ER] FOR THE OFFENSE CHARGED AGAINST HER, IN ACCORDANCE WITH THE DOCTRINE IN *UNCHUAN V. LOZADA, ET AL,* (*SUPRA*.), SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT HEREIN

PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22 CRIMINALLY AND CIVILLY LIABLE.[5]

The petition lacks merit, but a modification of the imposed penalty and the interest on actual damages awarded are in order.

First, Lim argues that the signature in the registry return card of the demand letter was never authenticated because the prosecution's sole witness, Enriquez, admitted that he did not personally or actually see her receive the notice of dishonor nor sign the registry receipt. She faults Enriquez for failing to explain why he claimed that the signature on said registry return card was hers. She also contends that the CA committed manifest error in ruling that her actual receipt of the notice of dishonor was proven by comparing her signatures in the subject checks with that of the registry return card, because nowhere in the Rules of Evidence or jurisprudence is it provided that proof/ authentication can be made by comparing two unauthenticated documents.

Second, Lim points out that while Enriquez testified that he saw her personally signed the 10 postdated checks on July 29, 2003 in Makati City, his testimony was belied by a BID Certification showing that she was out of the country that day and could not have signed the same checks. Since she did not sign the checks in the presence of Enriquez on said date, then the subject checks could not have been properly authenticated in accordance with the Rules on Evidence.

Lastly, Lim asserts that in holding her liable to BPHI, the trial court primarily relied on the Promissory Note which was never produced, presented, identified, authenticated or testified on by Enriquez. Thus, the trial court erred in admitting the said evidence and using it as basis for holding her guilty beyond reasonable doubt of violation of B.P. Blg. 22. Due to the improper admission of such evidence, Lim also contends that she could not be held civilly liable to BPHI for the issuance of the postdated

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[5] *Id*. at 21.

checks, inasmuch as lack of consideration is a defense under the Negotiable Instruments Law.

Lim's arguments are untenable.

First, contrary to Lim's claim that only the unauthenticated registry return card was the only proof presented by the prosecution to establish service of a notice of dishonor, the evidence on record shows that the prosecution also presented the registry receipt and the testimony of Enriquez who sent the demand letter by registered mail.

In *Resterio v. People*,[6] the Court ruled that the notice of dishonor required under B.P. Blg. 22 to be given to the drawer, maker or issuer of the check should be written. "If the service of the written notice is by registered mail, the proof of service consists not only in the presentation as evidence of the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor. Without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient, unless the mailer personally testifies in court on the sending by registered mail."

Here, the transcript of stenographic notes confirm that the prosecution complied with the requisite proof of service of the notice of dishonor by presenting Enriquez, who testified on the sending of such notice by registered mail, and identified the demand letter, the registry receipt and the registry return card, *viz.*:

> ATTY. DELA ROSA:
> Q Mr. Witness, during the last hearing of this case, you went to identify the checks in question in this case which have been previously marked in evidence as Exhibits "E" to "O", and you testified that these checks after they were issued to your company by the accused, Ivy Lim, the same were deposited and dishonored by the bank for the reason of account closed, is that correct?
> A Yes, sir.

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[6] 695 Phil. 693, 698 (2012).

Q Now, after the checks in question were dishonored by the bank for the reason as stated account closed, what did you do?
A We called the accused by telephone to follow up payments of the returned checks, sir.

Q Were you able to talk to the accused through telephone?
A Yes, sir.

Q What was the reply of the accused, if any?
A The reply of Ms. Ivy Lim is that, can I answer that in Tagalog, your Honor?

COURT:

Yes.
(Witness testifying in Tagalog)
A "Ayaw pabayaran ni Ate."

Q What did you do after that?
A Since our demand fell on death case, the office sent a demand letter dated 18 May 2005, sir.

Q To whom, was the demand letter sent?
A To Ms. Rocel Benito and Ms. Ivy Lim, sir.

Q Do you have a copy of the letter which you sent to the accused, Ivy Lim?
A Yes, sir.

Q Will you please produce the letter which you said was sent to the accused, Ivy Lim?
A Yes, sir.

ATTY. DELA ROSA:
Witness is producing the Letter dated May 18, 2005 which has been marked in evidence as Exhibit "Q" and "Q-1", respectively.

Q Mr. Witness, there appears to be a signature on top of the name Juanito M. Enriquez, whose signature is this?
A The same is my signature, sir.

ATTY. DELA ROSA:
May we request your Honor that the signature properly identified by the witness be marked as Exhibit "Q-4".

COURT:

Mark it.

ATTY. DELA ROSA:
Q How was this demand letter sent to the accused, Ivy Lim?
A The demand letter was sent through registered mail at Malolos, Bulacan, sir.

x x x x x x x x x

Q Do you have any proof that the said letter, marked as Exhibit "Q" was sent be registered mail, as you claimed in Malolos, Bulacan?
A I have the registry receipt and the registry return card of the registered mail, sir.

Q Please produce the said registry receipt and the registry return card?
A Yes, sir.

Q Where is the Registry Receipt in this document?
A This long bond is the Registry Receipt because the registered mail is composed of several letters, sir.

ATTY. DELA ROSA:
May we respectfully request the Registry Receipt your Honor which this witness identified be marked in evidence as Exhibit "Q-5."

ATTY. ALCUDIA:
Your Honor, that's already been marked in evidence as "Q-c."

That is the list of mail matters, your Honor.

ATTY. DELA ROSA:
Yes, I stand corrected, your Honor.

Q Now, who mailed this letter in Malolos, Bulacan?
A I am, sir.

x x x x x x x x x

Q You said that you made a letter dated May 18, 2005 to the accused, Ivy Lim, what happened to this letter?
A The letter was received by Ms. Lim, sir.

Q Do you have any proof to show that the letter was received by the accused, Ivy Lim?
A The return card of that registered mail attached to the letter, sir.

Q I am showing to you the return card which have been previously marked in evidence as Exhibit "Q-2", where in this Exhibit "Q-2" will show that the accused received the letter of demand.
A The signature of Ms. Lim on May 24, 2005 at the back of the Registry Return Receipt, sir.

ATTY. DELA ROSA:
May we respectfully request that the dorsal portion of the Return Card your Honor be marked in evidence as Exhibit "Q-5" the date May 24, 2005 and Exhibit "Q-6" which is the signature of the accused.

COURT:
Mark them.[7]

In claiming that an unauthenticated registry return card cannot prove receipt of the notice of dishonor, Lim only objected to Exhibits "Q", "Q-2" and "Q-3" because there is no showing at all that the Demand Letter of Juanito Enriquez was actually and personally received by her.[8] However, actual receipt of such notice of dishonor was proved by the prosecution through Enriquez who identified the signature on the dorsal portion of the registry return card as that of Lim. Enriquez can credibly identify Lim's signature because he testified having witnessed her signed the subject checks:

ATTY. DELA ROSA:
Q Now, Mr. Witness, in Exhibit "E" there appears to be a signature on the lower portion which has been marked in evidence as Exhibit "E-2". Whose signature is that, the signature marked as Exhibit "E-2"?
A The signature of Miss Ivy Lim.

Q And why do you know that is the signature of the accused Ivy Lim?
A I was, I saw her when she signed the check sir.

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[7] TSN, December 12, 2007, pp. 2-9; *rollo*, pp. 70-76. (Emphasis added.)

[8] *Rollo*, p. 161.

Q Now again Mr, Witness, in Exhibit "F" there appears to be a signature on the lower portion of the check, more particularly this space for the drawer which has been marked Exhibit "F-2", whose signature is that Mr. Witness?
A The signature is that of Miss Ivy Lim.

Q Why do you know that is the signature of Ivy Lim?
A Again, I saw her when she signed the check.[9]

It bears emphasis that despite Lim's opposition to the prosecution's Formal Offer of Documentary Evidence, the MeTC admitted all its exhibits, noting that the objections thereto merely pertain to the weight and sufficiency of the evidence, which shall be considered by the court when it decides the case.[10] Eventually, the MeTC has exercised its sound discretion, pursuant to Section 22,[11] Rule 132 of the Rules of Court in comparing the signatures of Lim in the registry return card and the checks to ensure that the notice of dishonor was indeed received by her, to wit:

As to the third element, Exhibit "Q", the demand letter dated May 18, 2005 addressed to Ivy Benito Lim and signed by Juanito Enriquez was undisputedly received by the accused Ivy Lim as shown in Exhibit "Q-6". The distinctive strokes in writing the name "Ivy" and the flourish of the stroke in writing "im" in the latter part thereof, compared with the signatures appearing on all the checks shown that these signatures were made by one and the same person.[12]

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[9] TSN, August 29, 2007, pp. 13-14; *id.* at 61-62.

[10] Order dated April 13, 2010, *id.* at 165.

[11] Section 22. *How genuineness of handwriting proved.* – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

[12] Joint Decision dated May 22, 2013, p. 3; *id.* at 226.

There is also no merit in Lim's claim that the subject checks were unauthenticated and not proven to have been issued by her. For one, in the Preliminary Conference Order[13] dated March 28, 2007, the parties admitted that whenever the court refers to the name of Ivy Lim, the name pertains to the accused, and stipulated on the existence and due execution of the eleven (11) checks with payee Blue Pacific Holdings, Inc. For another, BPHI Finance Officer Enriquez presented and identified during trial the 11 checks issued by Lim, to wit:

ATTY. LEOPOLDO DELA ROSA:
Q Do you have in your possession or in your presence the checks that were issued in payment of a loan by the accused in this case?
A What I have sir are the checks that bounced.

Q Yes, that is why can you produce them now?
A Yes, sir.

Q Please produce them now.
A Here sir.

Q Witness is producing the checks that bounced.

COURT:
Are those ten (10) checks?

ATTY. DELA ROSA:
Yes, I'll just count it your Honor. Ten (10) checks, original checks were produced by this witness and we would like to manifest for the record that these checks have already been marked in evidence as Exhibits "E" to "O". Now, I have here in my possession your Honor the original of the checks, as well as, the photocopies of checks which had [already been] marked your Honor and we would like to request again for the second time if counsel for the accused would like to examine the photocopies as well as the original checks although these checks were already produced during the pre-marking your Honor.

ATTY. ALCUDIA:
We manifest that all checks except the check which was marked Exhibit "G" has not been presented your Honor.

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[13] *Rollo,* p. 429.

COURT:
I think he is presenting the check.

ATTY. ALCUDIA:
I make of record that Exhibit "G" has not been presented for payment.

COURT:
Not presented for payment?

ATTY. ALCUDIA:
Not presented your Honor.

COURT:
Duly noted. So they are faithful reproduction of the original?

ATTY. ALCUDIA:
Yes, all Exhibits "E" to "O" including "G."

COURT:
So stipulated.

ATTY. DELA ROSA:

x x x x x x x x x

Q Now again Mr. Witness, in Exhibit "F" there appears to be a signature on the lower portion of the check, more particularly this space for the drawer which has been marked as Exhibit "F-2", whose signature is that Mr. Witness?
A The signature is that of Miss Ivy Lim.

Q Why do you know that is the signature of Ivy Lim?
A Again I saw her when she signed the check.

Q May we manifest for the record that the signature in Exhibit "F" of the accused Ivy Lim has been marked as Exhibit "F-2". Let us go to Exhibit "G", again there appears to be a signature on the lower portion of this check, whose signature is that?
A Again the signature of Miss Ivy Lim.

Q May we respectfully manifest that the signature of Ivy Lim identified by this witness has been marked as Exhibit "G-1". In Exhibit "H" there appears to be again a signature of the drawer. Whose signature is that?
A Miss Ivy Lim sir.

Q May we again manifest that the signature appearing in Exhibit "H" is the signature of the accused marked and bracketed as Exhibit "H-1" and properly identified by this witness. Again, Mr. Witness, there appears to be a signature on the lower portion of Exhibit "I". Will you please identify the signature, whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature identified by this witness has been marked in evidence as Exhibit "I-1". Again, in Exhibit "J" for the prosecution, there appears to be a signature on the lower portion. Whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature of the accused has been previously marked and bracketed as Exhibit "J-1" and identified by this witness your Honor. In Exhibit "K" Mr. Witness, there appears to be a signature on the lower portion. Whose signature is that?

A Miss Ivy Lim sir.

Q May we request now your Honor, because apparently the signature identified by the witness has not been bracketed and marked, may we request that the same be bracketed and marked as Exhibit "K-1".

COURT

Bracket and mark.

ATTY. DELA ROSA:

Q Again in Exhibit "L" there is a signature on the lower portion. Whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature in Exhibit "L" has been marked and bracketed as Exhibit "L-1" and identified by this witness as that of the accused. In Exhibit "M" there appears to be a signature on the drawer portion, whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature identified by the witness has been marked and bracketed as Exhibit "M-1" and identified by the witness. In Exhibit "N" there appears to be again a signature, whose signature is that?

A Miss Ivy Lim.

Q May we manifest for the record that the signature identified by the witness has been marked and bracketed as Exhibit "N-1" and properly identified by this witness. In Exhibit "O" there appears to be again a signature. Whose signature is that?

A Signature of Miss Ivy Lim sir.

ATTY. DELA ROSA:

May we manifest that the signature of Miss Ivy Lim identified by the witness has been marked and bracketed as Exhibit "O-1" and identified by this witness. Your Honor, I am ready to continue, however, as I see the grim face of my fellow colleague waiting for their time and considering that I have further documents to ask from this witness, I pray for continuance your Honor.

COURT

Any objection?

ATTY. ALCUDIA:

No objection your Honor.[14]

Nowhere in the records did Lim deny that the signature on the 11 checks were hers nor claim that her signatures thereon were forged. She cannot be heard now to complain that unauthenticated checks cannot prove that she was the same person who issued them.

Raising the defenses of denial and *alibi*, Lim insists that she was abroad when she supposedly signed the 10 checks in the presence of prosecution witness Enriquez on July 29, 2003, as shown by a certification from the BID that she left the country on July 21, 2003 and returned on October 29, 2003. While the prosecution failed to refute such evidence, the MeTC correctly noted that (1) the unresolved issue is when these checks were issued and delivered to BPHI, and (2) the fact that the checks were issued is not an issue, as the existence of the checks and signatures of the accused on these checks are uncontroverted.[15]

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[14] TSN, August 29, 2007, pp. 10-18; *id.* at 58-66.

[15] *Rollo,* p. 227.

There is nothing in the direct testimony of Enriquez which states that the checks were personally signed by Lim before him on July 29, 2003, for he only said that the checks were issued in BPHI's office at Morse corner Edison Streets in Barangay San Isidro, Makati.[16] The wrong information was elicited from Enriquez' cross examination, which may have been based on the date when the promissory note was acknowledged before a notary public:[17]

ATTY. ALCUDIA:
We will proceed.

Q You have identified the Promissory Note, Exhibit "D", did you not Mr. Enriquez?
A Yes, sir.

Q And as stated here this was issued July 29, 2003, is it not?
A Yes, sir.

Q Is it not a fact that it is your claim that the checks subject of this complaint were issued and tendered to you also on July 29, 2003?
A Yes, sir.

Q All checks?
A Yes, sir.[18]

At any rate, what is material in B.P. Blg. 22 cases is the date of issuance of the checks which appear on their face, and not the exact date of the delivery or signing thereof. This can be gleaned from the fact that the offenses punished in the said law are not committed if the check is presented for payment after ninety (90) days from date of issue.

Concededly, the criminal action for violation of B.P. Blg. 22 shall be deemed to include the corresponding civil action, and no reservation to file such civil action separately shall be

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[16] TSN, August 29, 2007, p. 10; *id*. at 58.

[17] *Rollo*, p. 132.

[18] TSN, September 26, 2008, pp. 18-19; *id.* at 106-107.

allowed.[19] With respect to the civil aspect of a B.P. Blg. 22 case, Lim would do well to remember that when an action is founded upon a written instrument, copied in or attached to the corresponding pleading, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts.[20]

As can be gleaned from the Complaint-Affidavit dated October 5, 2005, the action of BPHI is not only meant to prosecute Lim for issuing bouncing checks to secure payment of loan as evidenced by a promissory note where Lim signed as a co-maker, but also for recovery of the amounts covered by said checks intended as payment of the loan. Lim does not specifically deny the genuineness and execution of the promissory note, let alone sets forth what he claims to be the facts. Moreover, such instrument no longer needs to be authenticated because Lim stipulated on the existence of the promissory note and her signature thereto, as shown in the Preliminary Conference Order[21] dated March 28, 2007.

Against Lim's claim that the promissory note was not presented, identified and testified on during trial, the transcript of stenographic notes show otherwise, as it was made an integral part of the Complaint-Affidavit, which in turn was presented, identified authenticated and testified on during trial. Pertinent portion of the transcript of stenographic reads:

ATTY. DELA ROSA: [Private counsel of BPHI]
Q Mr. Witness, why do you say that these checks were drawn and issued by the accused in this case?

ATTY. ALCUDIA: [Counsel of accused Lim]
Same objection, no basis.

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[19] Rule 111, Section 1 (b).

[20] Rule 8, Section 8.

[21] *Rollo*, p. 429.

COURT:
Objection overruled. We have now the basis. Objection overruled.

Q Why do you say that?
A: The checks were drawn and issued to us in payment of the Promissory Note, sir.

Q Were you present when these checks were issued and executed?
A Yes, your Honor.

ATTY. DELA ROSA
Q Where were the checks issued?
A In Makati, sir.

Q Where, what particular place?
A It is in our office at Morse corner Edison Streets in Barangay San Isidro, Makati.

Q In connection with this case Mr. Witness that you are testifying before this Honorable Court, do you remember that you have executed a Complaint Affidavit insofar as this case is concerned?
A Yes, sir.

Q I am showing to you Mr. Witness the original copy of the Complaint Affidavit which is attached to the record of this case and which has been previously marked as Exhibit "A" which Complaint Affidavit consist of five (5), no four (4) pages. Please examine this Affidavit or Complaint Affidavit Mr. Witness and tell us what is the relation of that Complaint to the Complaint Affidavit that you have mentioned.
A This is the Complaint Affidavit I subscribed and sworn to before Fiscal Henry Salazar.

Q Now, in this Complaint Affidavit there appears to be one of the affiant Juanito Enriquez. Who is this Juanito Enriquez?
A I am sir.

Q Do you affirm and reaffirm the truthfulness and correctness of this Affidavit Complaint before the oath that you have taken before this Honorable Court?
A Yes, sir.[22]

[22] TSN, August 29, 2007, pp. 5-7; *id.* at 53-55.

Significantly, Lim's counsel admitted during cross-examination that the prosecution has presented, identified and testified on the subject promissory note, thus:

> ATTY. ALCUDIA:
>
> Before we proceed, may we request to be allowed access to the prosecution's Exhibits "D" and "U" which witness testified on during direct examination? Your, Honor, we have been presented a document which is original document designated Promissory Note but we note this is not marked document by the prosecution. Nevertheless, we can proceed if private prosecutor will stipulate and commit that this document is the original of the document that has been provisionally marked as Exhibits "D" and "D-1".
>
> COURT:
>
> You can commit Mr. Private Prosecutor?
>
> ATTY. DELA ROSA:
>
> We admit your Honor. What happened here is that the exhibit was marked in the photocopy. I think after making a comparison.[23]

Anent the civil aspect of the B.P. Blg 22 cases, her defense of lack of consideration for the checks fails to persuade. Apart from having admitted the authenticity and due execution of the promissory note, Lim also failed to present clear and convincing evidence to overturn the disputable presumptions[24] that there were sufficient considerations for the said contract which she signed as a co-maker, and for the negotiable instruments consisting of 11 checks issued under her name as security for the payment of the loan. Besides, as a co-maker who agreed to be jointly and severally liable on the promissory note, Lim cannot validly claim that she hardly received any consideration therefor, as the fact that the loan was granted to the principal debtor, her sister Benito, already constitutes sufficient consideration.

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[23] TSN, September 26, 2008, p. 2; *id.* at 90.

[24] Rule 131, Section 3 (r) and (s).

All told, the Court of Appeals committed no reversible error in affirming the RTC decision, which upheld the conviction of Lim for 10 counts of violation of B.P. Blg. 22 and her civil liability for the face value of the 11 checks.

The elements of violation of B.P. Blg. 22 are as follows:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment; and
3. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment.

All the foregoing elements were established beyond reasonable doubt by the prosecution, as thoroughly discussed by the MeTC:

> As to the first element, the Court finds that the checks were issued for value. Accused is the co-maker of the promissory note (Exhibit "D") wherein she voluntarily bound herself to be jointly and severally liable with Rochelle Benito, her sister, to Blue Pacific Inc. for the amount of ₱605,000.00 plus interests. Accused is also a signatory to the eleven checks issued, along with her sister, in favor of Blue Pacific. These checks constitute the means for payment of the promissory note signed by the accused and her sister. It is undisputed that the co-accused, Rochelle Benito was able to travel to the United States. The expenses incurred for the said travel came, undoubtedly, from the proceeds of the said loan albeit the accused did not personally received the proceeds thereof. Although there was no personal receipt of the proceeds by the accused, it is undisputed that the principal objective of the accused, the processing and travel of her sister to the United States was accomplished. The accused then stood to benefit from the loan. The allegation of human trafficking, fraud and payment remains allegations as no evidence was presented to the Court to prove [them]. The pieces of evidence presented, testimonial and

documentary, show that this is a business transaction between Blue Pacific and the accused.

As to the second element, except for Exhibit "G", the evidence shows that the ten (10) checks were presented for payment and subsequently dishonored for the reason "Account Closed". The check dated May 29, 2004 with check number 0105461 in the amount of ₱67,617.65 was not presented for payment, and hence to criminal liability attached thereto.

As to the third element, Exhibit "Q", the demand letter dated May 18, 2005 addressed to Ivy Benito Lim and signed by Juanito Enriquez was undisputedly received by the accused Ivy Lim as shown in Exhibit "Q-6". The distinctive strokes in writing the name "Ivy" and the flourish of the stroke in writing "im" in the latter part thereof, compared with the signatures appearing on all the checks shown that these signatures were made by one and [the] same person. No evidence was presented by the defense to refute the sending, receipt and existence of the signature of accused Ivy Lim in Exhibits "Q" and "Q-6".[25]

Be that as it may, a modification of the fine of ₱676,176.50 imposed by the MeTC is in order because it appears to exceed the ₱200,000.00 limit under Section 1 of B.P. Blg. 22 which provides for the penalty of "imprisonment of not less than thirty days but not more than one (1) year or by **a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos**, or both such fine and imprisonment at the discretion of the court." Instead of imposing a lump sum fine, the proper penalty should be a fine of ₱67,617.65 [face value of each check] for each of the Ten (10) counts of violation of *Batas Pambansa Blg.* 22 with subsidiary imprisonment in case of insolvency.

Finally, the actual damages in the amount of ₱743,794.15, representing the face value of the Eleven (11) checks, which the MeTC awarded to BPHI shall further incur interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid, in line with *Nacar v. Gallery Frames, Inc.*[26]

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[25] Joint Decision dated May 22, 2013, p. 3; *rollo,* p. 226.

[26] 716 Phil. 267, 282-283 (2013).

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Court of Appeals Decision dated October 27, 2014 in CA-G.R. CR No. 36204 is **AFFIRMED** with **MODICATION:**

(1) IVY LIM a.k.a. IVY BENITO LIM is **ORDERED** to **PAY** a FINE of SIXTY-SEVEN THOUSAND SIX HUNDRED SEVENTEEN PESOS AND 65/100 (₱67,617.65) for each of the Ten (10) counts of violation of *Batas Pambansa Blg.* 22 in Criminal Cases Nos. 346643 to 346652, with subsidiary imprisonment in case of insolvency, pursuant to Article 39 of the Revised Penal Code; and

(2) With regard to the civil aspect of these cases, she is hereby **ORDERED** to **PAY** the private complainant Blue Pacific Holdings, Inc. the total amount of SEVEN HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED NINETY-FOUR PESOS AND 15/100 (₱743,794.15) of the present cases, plus twelve percent (12%) interest *per annum* from date of the filing of the Informations on May 22, 2006 until finality of this Decision, and six percent (6%) interest *per annum* from such finality until fully paid. She is, likewise, **ORDERED** to **PAY** the amount of Twenty Thousand Pesos (₱20,000.00) as and for attorney's fees and to pay the costs of suit.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

Reyes, Jr., J., on wellness leave.

THIRD DIVISION

[G.R. Nos. 228701-02. December 13, 2017]

MEHITABEL, INC., *petitioner, vs.* **JUFHEL L. ALCUIZAR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESPONDENT FAILED TO ESTABLISH THE FACT OF HIS DISMISSAL.— *Ei incumbit probatio qui dicit, non qui negat*. The burden of proof is on the one who declares, not on one who denies. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process. And in illegal termination cases, jurisprudence had underscored that the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss before the burden is shifted to the employer that the dismissal was legal. In the extant case, the records are bereft of any evidence that would corroborate respondent's claim that he was actually dismissed from employment. His asseveration that Arcenas instructed him to turnover his functions to Enriquez remains to be a naked claim. Apart from his bare self-serving allegation, nothing in the records even hints of him being severed from employment by petitioner.

2. ID.; ID.; ID.; RESPONDENT ABANDONED HIS EMPLOYMENT; NON-COMPLIANCE WITH THE DIRECTIVE TO RETURN TO WORK SIGNIFIES RESPONDENT'S INTENTION TO SEVER HIS EMPLOYMENT RELATION WITH PETITIONER.— In contrast, petitioner herein issued a Return to Work order to respondent, which the latter received through registered mail. This circumstance bears more weight and effectively negates respondent's self-serving asseveration that he was dismissed from employment; it more than implies that the company still considered respondent as its employee on August 10, 2011. Respondent's non-compliance with the directive in the Return

to Work, to Our mind, signifies his intention to sever the employment relation with petitioner, and gives credence to the latter's claim that it was respondent who abandoned his job. Moreover, such omission substantiates the testimonies of Cañete and Molina who positively attested to the fact of respondent's desertion.

3. ID.; ID.; ID.; ID.; THAT RESPONDENT FILED A COMPLAINT FOR ILLEGAL DISMISSAL DOES NOT NEGATE THE POSSIBILITY OF ABANDONMENT; REALIZING THAT HIS EMPLOYMENT WAS AT SERIOUS RISK DUE TO HIS HABITUAL NEGLECT OF HIS DUTIES, RESPONDENT TURNED THE TABLE AGAINST PETITIONER BY LODGING A BASELESS ILLEGAL DISMISSAL COMPLAINT EVEN THOUGH IT WAS HE WHO ABANDONED HIS EMPLOYMENT.— Respondent cannot harp on the fact that he filed a complaint for illegal dismissal in proving that he did not abandon his post, for the filing of the said complaint does not *ipso facto* foreclose the possibility of abandonment. It is not the sole indicator in determining whether or not there was desertion, and to declare as an absolute that the employee would not have filed a complaint for illegal dismissal if he or she had not really been dismissed is *non sequitur.* Apart from the filing of the complaint, the other circumstances surrounding the case must be taken into account in resolving the issue of whether or not there was abandonment. x x x A perusal of the emails revealed the clear dissatisfaction of the company officers with respondent's dismal performance that led to missed shipments, delayed deliveries, and lost clientele. In turn, it is beyond quibbling that a slothful work attitude falls squarely within the ambit of gross and habitual neglect of duty, which is one of the grounds for termination enumerated under Art. 297(b) of the Labor Code[.] x x x From these circumstances, it can be gathered that respondent's departure on August 10, 2011 was merely a precursor to his scheme to turn the table against petitioner. Realizing that his employment was at serious risk due to his habitual neglect of his duties, respondent jumped the gun on petitioner by lodging a baseless complaint for illegal dismissal even though it was he who abandoned his employment.

APPEARANCES OF COUNSEL

E.B. Ramos & Associates for petitioner.
Arnold V. Cugal for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

For the Court's consideration is the Petition for Review on Certiorari under Rule 45 of the Rules of Court challenging the May 19, 2016 Decision[1] and October 19, 2016 Joint Resolution of the Court of Appeals (CA) in CA-G.R. CEB SP Nos. 07302 and 07321, which reversed the July 31, 2012 Decision of the National Labor Relations Commission (NLRC), and consequently ruled that respondent Jufhel L. Alcuizar[2] was illegally dismissed from employment.

The Facts

Petitioner Mehitabel, Inc. is a duly registered corporation engaged in manufacturing high-end furniture for export.[3] The company's Purchasing Department is composed of only four (4) persons: one (1) Purchasing Manager, one (1) Purchasing Officer handling local purchases, one (1) QC Inspector, and one (1) Expediter.[4] On August 31, 2010, the company hired respondent as its Purchasing Manager.[5]

Respondent was able to earn a satisfactory rating during his first few months in the company, but beginning March 2011,

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[1] Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Pablito A. Perez and Gabriel T. Robeniol.

[2] Also appears in the records as Jefhel Alcuizar.

[3] *Rollo*, p. 14.

[4] *Id*. at 295.

[5] *Id*. at 14.

his immediate supervisor, Rossana J. Arcenas (Arcenas), started receiving complaints on his work ethics. Petitioner averred that respondent's dismal work performance resulted in delays in the production and delivery of the company's goods.[6]

To address these issues, Arcenas talked to respondent and counselled him to improve. As months passed, however, the complaints against respondent's performance have exacerbated to the point that even the top level officers of the company have expressed their dissatisfaction over his ineptitude.[7]

Sensing no improvement from the respondent and the rising complaints, Arcenas decided to sit down and talk with respondent anew sometime in early August 2011 to encourage the latter to shape up. She advised respondent that should he fail to heed her advice, she may be forced to initiate disciplinary proceedings against him for gross inefficiency.

Arcenas then alleged that respondent left the premises of petitioner's company on August 10, 2011 and gave word that he was quitting his job. Arcenas' narration was corroborated by Sherrie Mae A. Cañete (Cañete) and Wilma R. Molina (Molina), the company's Human Resource Officer and security personnel, respectively, both of whom were personally informed by respondent of his intention to sever the ties with the company.[8] On even date, petitioner wrote to respondent *via* registered mail to inform him that the company decided to treat his act of leaving the office as a violation of its code of conduct, specifically on the provision of abandonment. The letter adverted to reads:

Mr. Alcuizar,

This morning, you left the office without asking permission from your direct superior, Rosanna J. Arcenas, and only left word with Sherrie Cañete, Acting HR Officer, and the guard that you are quitting your job.

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[6] *Id*. at 15.

[7] *Id*. at 58.

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

You are already aware that your leaving during working hours is a violation of our company rules and regulations, particularly #1 of Section B (Behavior at Work) of our Code of Conduct which says:

> "Abandoning work place or company premises during working hours without prior permission from superior."

In view thereof, you are hereby advised to report back to work immediately upon receipt hereof and thereupon submit your written explanation as to why you should not be disciplined for committing the above violation. Failure to submit said written explanation shall be deemed a waiver of your right to present your side and shall constrain us to decide on your case based on available evidence.[9]

Despite respondent's receipt of the afore-quoted letter, he neither reported back to work nor submitted his written explanation.[10] Instead of receiving a reply, petitioner received summons pertaining to a labor dispute that respondent had filed, docketed as NLRC-RAB VII 08-1241-2011.

Unbeknownst then to petitioner, respondent lodged a complaint for illegal dismissal, non-payment of salary, 13th month pay, damages and attorney's fees with claims for reinstatement and backwages against the company and its president, Robert L. Booth (Booth). Respondent emphasized that as early as May 29, June 10, and June 28, 2011, petitioner caused the publication in a newspaper and online a notice of a vacant position for Purchasing Manager, the very same item he was occupying in the company. Subsequently, he was allegedly advised by Arcenas on August 10, 2011 that the company no longer required his services for his failure to satisfactorily meet the company's performance standards, and that he should turn over his work to the newly-hired Purchasing Manager, Zardy Enriquez (Enriquez). It was further alleged that Booth confirmed that respondent was being replaced.

Seeking to absolve themselves from the charge, petitioner and Booth countered that respondent was not illegally dismissed,

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[9] *Id.* at 148.

[10] *Id.* at 61.

and that it was actually the latter who abandoned his post.[11] Anent the published job opening, petitioner countered that it was a product of sheer inadvertence; that what was actually vacant was the position of Purchasing Officer, not Purchasing Manager. Respondent was allegedly informed of this inadvertence.

Ruling of the Labor Arbiter

On January 12, 2012, the Labor Arbiter Butch Donabel Ragas-Bilocura, before whom the case was pending, rendered a Decision[12] dismissing the complaint for lack of merit. She found that respondent failed to establish by substantial evidence the fact of dismissal––a precondition before the burden to prove that the dismissal is for a valid or authorized cause can be shifted onto petitioner.

Ruling of the NLRC

On appeal, the NLRC, in its July 31, 2012 Decision,[13] reversed the ruling of the Labor Arbiter and ruled thusly:[14]

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby REVERSED AND SET ASIDE and a NEW ONE ENTERED declaring validity in the dismissal of complainant. However, for respondent's failure to observe due process, complainant is entitled to be paid indemnity in the form of nominal damages in the amount of ₱10,000.00
>
> SO ORDERED.

Essentially, the NLRC held that there was dismissal for just cause. It noted that while respondent was repeatedly informed of his below par performance, he remained indolent, thereby causing needless delays in production, customer complaints,

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[11] *Id*. at 16.

[12] *Id*. at 253.

[13] Penned by Presiding Commissioner Violeta Ortiz-Bantug and concurred in by Commissioner Julie C. Rendoque.

[14] *Rollo*, p. 305.

lost shipments, and delivery issues. Petitioner was then well within its right in dismissing complainant. Nevertheless, while there exists a substantive ground for an employees' dismissal, respondent is entitled to nominal damages for petitioner's failure to observe procedural due process in terminating him from work.

Both parties moved for reconsideration, but the NLRC maintained its posture. Hence, they filed separate petitions for certiorari before the CA, which were eventually consolidated.

Ruling of the CA

On May 19, 2016, the CA promulgated its assailed Decision, the dispositive portion of which reads:[15]

> IN LIGHT OF ALL THE FOREGOING, the petition for *certiorari* filed by petitioner Jufhel L. Alcuizar, docketed as CA-G.R. SP No. 07302 is PARTLY GRANTED while the petition for *certiorari* filed by petitioner Mehitabel, Inc. and Robert L. Booth, docketed as CA-G.R. SP No. 07321, is DENIED. The Decision dated July 31, 2012 and the Resolution dated September 24, 2012 of the National Labor Relations Commission, Seventh Division, Cebu City, in NLRC Case No. VAC-05-000342-2012, are REVERSED and SET ASIDE.
>
> A new decision is hereby rendered declaring petitioner Jufhel L. Alcuizar as having been illegally dismissed. Consequently, Mehitabel, Inc. is hereby ordered to reinstate Jufhel L. Alcuizar to his former position without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and benefits, form the date he was illegally dismissed on August 10, 2011 up to the time of his actual reinstatement. Mehitabel, Inc. is also ordered to pay Jufhel L. Alcuizar attorney's fees equivalent to 10% of his monetary award.
>
> Let this case be remanded to the Labor Arbiter for the proper computation of Jufhel L. Alcuizar's monetary awards, which Mehitabel, Inc. should pay without delay.
>
> SO ORDERED.

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[15] *Id.* at 24-25.

In reversing the NLRC, the appellate court applied Art. 4 of the Labor Code, which prescribes that all doubts in the implementation and interpretation of the provisions of the Code, including its implementing rules and regulations, shall be resolved in favor of labor. It ruled that as between the divergent claims of the parties, more probative weight is to be accorded to respondent's contention.

Based on the circumstances of the case, so the CA ruled, it was more likely that respondent was verbally notified of the termination of his employment on August 9, 2011; that a day after, or on August 10, 2011, Booth confirmed the dismissal; and that feeling aggrieved, respondent instantaneously filed an illegal dismissal case.

The CA could not appreciate petitioner's defense of abandonment, absent proof of deliberate and unjustified refusal on the part of respondent to resume his employment. It found self-serving the affidavits of the company's human resource officer and security guard who testified that respondent allegedly told them that he was quitting his job. On the other hand, respondent's immediate filing of the complaint for illegal dismissal negated petitioner's theory of abandonment.

Hence, the CA found no abuse of discretion, let alone one that is grave, that can be attributed to the NLRC insofar as the latter's factual finding that petitioner was actually dismissed.

Be that as it may, the appellate court, nonetheless, pronounced that there was insufficient evidence to establish that the dismissal was for just cause. The NLRC Decision upholding the validity of the dismissal was therefore reversed, which reversal in turn became the basis for respondent's entitlement to the benefits under Art. 279 of the Labor Code. Meanwhile, Booth was absolved from liability for lack of proof of gross negligence or bad faith on his part.

Petitioner moved for reconsideration from the afore-quoted Decision of the CA, but the appellate court was unconvinced.

This brings us to the instant recourse.

The Issues

Petitioner relies on the following grounds to support its postulation that respondent was not illegally dismissed:[16]

I.

THE HONORABLE COURT OF APPEALS (20TH Division) COMMITTED SERIOUS REVERSIBLE ERROR IN APPLYING THE RULE AS ENUNCIATED IN ARTICLE 4 OF THE LABOR CODE ON AMBIGUITY IN EVIDENCE IN SUPPORT OF ITS RULING THAT RESPONDENT ALCUIZAR WAS DISMISSED FROM HIS EMPLOYMENT

II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN HOLDING THAT RESPONDENT DID NOT ABANDON HIS EMPLOYMENT WITH PETITIONER COMPANY

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN DECLARING THAT RESPONDENT WAS ILLEGALLY DISMISSED FROM HIS EMPLOYMENT

IV.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN ORDERING PETITIONER COMPANY TO REINSTATE RESPONDENT ALCUIZAR TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES WITH FULL BACKWAGES

V.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN ADJUDGING PETITIONER COMPANY LIABLE IN PAYING THE RESPONDENT HIS CLAIM FOR ATTORNEY'S FEES

Petitioner stresses that the rule on the ambiguity in evidence can only be invoked if there exists doubt in the evidence between

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

the employee and the employer. There being no substantial evidence on the part of respondent establishing the fact of dismissal, petitioner claims that Art. 4 of the Labor Code cannot then find application herein. It adds that the CA's finding that "it is more likely that [respondent] was verbally notified of the termination of his employment" is not anchored on evidence but purely on surmises and conjectures.

On the issue of abandonment, petitioner advances the theory that respondent's intention to sever his employment with petitioner was established through the sworn statements of the company's human resource officer and security guard. It was error for the CA to have so casually dismissed their statements as self-serving since there was no showing that there were factors or circumstances, other than a truthful account of what transpired, that impelled the witnesses to give their testimonies. There is also the matter of the logbook entry bearing the notation that respondent declared that he is quitting his job, and the notice to report back to work that respondent ignored, which were both overlooked by the CA.

Given the two circumstances above, petitioner would convince the Court to reinstate the Labor Arbiter's finding that respondent was not illegally dismissed—for not only did he fail to prove the fact of dismissal, it was he who abandoned his work. Petitioner also postulates that respondent is consequently not entitled to reinstatement, full backwages, and to the other benefits under Art. 279 of the Labor Code. Finally, petitioner likewise questions the basis for the award of attorney's fees.

In his Comment, respondent focuses on the unceremonious manner of his dismissal from service. He directs Our attention to the newspaper clippings and printout of online postings regarding the purported vacancy of the position in the company that he occupied. He reiterates that his dismissal was confirmed by Arcenas and Booth, and that, upon inquiry, he was advised to make a proper turnover of his work to the new purchasing manager. Thus, it is his contention that he never abandoned his post, but was actually illegally dismissed from service. His immediate filing of a complaint for illegal dismissal is evidence

that he had no intention to sever the employer-employee relation. He, therefore, prays for the dismissal of the instant petition.

The Court's Ruling

The petition is meritorious.

The respondent failed to establish the fact of dismissal

Ei incumbit probatio qui dicit, non qui negat. The burden of proof is on the one who declares, not on one who denies. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process.[17] And in illegal termination cases, jurisprudence had underscored that the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss[18] before the burden is shifted to the employer that the dismissal was legal.[19]

In the extant case, the records are bereft of any evidence that would corroborate respondent's claim that he was actually dismissed from employment. His asseveration that Arcenas instructed him to turnover his functions to Enriquez remains to be a naked claim. Apart from his bare self-serving allegation, nothing in the records even hints of him being severed from employment by petitioner.

The publication of the purported vacancy for Purchasing Manager does not bolster respondent's claim of dismissal. We find more credible petitioner's assertion that said publications were made through sheer inadvertence, and that the vacancy is

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[17] *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 579 Phil. 494, 499 (2009).

[18] *Noblejas v. Italian Maritime Academy Phils., Inc.*, G.R. No. 207888, June 9, 2014, 725 SCRA 570.

[19] *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76.

actually for the position of Purchasing Officer, rather than Purchasing Manager. This version is corroborated by the fact that petitioner caused an earlier publication, dated February 6, 2011, advertising the vacancy for Purchasing Officer, but with qualifications strikingly similar with, if not an almost verbatim reproduction of, those subsequently published on the May 29, June 10, and June 28, 2011 notices for Purchasing Manager in, to wit:

Qualifications for Purchasing Officer[20]	**Qualifications for Purchasing Manager**[21]
• Must be a graduate of a business-related course from a reputable university • With five years experience in a manufacturing industry, with at least three years of management experience • Must be able to communicate effectively in oral and written English, self-motivated, highly-organized, resourceful and can work effectively in high-pressured environment • Able to support the search and accreditation of highly potential and qualified contractors or supplier for the company • Able to relate and coordinate well within all the levels of the organization. • Quality conscious and must have a sense of urgency	• Must be a graduate of a business-related course from a reputable university • With five years experience in a manufacturing industry, with at least three years of management experience • Must be able to communicate effectively in oral and written English, able to relate and coordinate well within all the levels of the organization • A critical thinker, self-motivated, and resourceful. • Able to support the search and accreditation of highly potential and qualified contractors or supplier for the company • Quality conscious and detail oriented, must have sense of urgency, and can work effectively in high-pressured environment

The theory of petitioner is further supported by the affidavit of its Human Resource Officer, Cañete, who admitted to committing the *erratum* thusly:

5. I caused the publication of the position of Purchasing Officer in SunStar Cebu on February 6, 2011 right after [April Lyn Indab (Indab), then Purchasing Officer,] informed us that she will not be staying long with Mehitabel, as she was just waiting for a call from her

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[20] *Rollo*, p. 247.

[21] *Id*. at 179.

prospective employer from Bahrain. Alcuizar was fully aware of Indab's intention to leave the company because, prior to putting out the advertisement for Purchasing Officer, I asked him if he had someone in mind who could replace Indab;

6. Unable to get qualified applicants for the position of Purchasing Officer and because of the constant reminder by Indab of her impending resignation, I again caused the publication of the same position in the same local newspaper on May 29, 2011;

7. Not able to get any applicant from the recent newspaper advertisement, we decided to post the vacancy of Indab's position on-line or on the web. In line with this decision, I instructed our On-the-Job Trainee then, Samantha Lagcao, sometime in the latter part of June 2011 to post the ad out on Mynimo.com and Jobstreet.com.ph. Unaware of the typographical error on the job position that I just published in Sunstar Cebu, I innocently instructed Lagcao to use that particular advertisement on May 29, 2011 as her template for the on-line announcement.

8. It was only when my attention was called by our HR Director, when she received the job applications on-line, that I realized that there was a mistake in the designation of the vacant position advertised in SunStar Cebu on May 29, 2011. Instead of Purchasing Officer, what erroneously appeared in said newspaper was Purchasing Manager. It was also at that time that I realized that what were also posted by Lagcao on the websites were erroneous.

9. Alcuizar knew about this error in the ads because I personally informed him about it at the time when he asked me to immediately look for a replacement for Indab after he received the latter's resignation letter on July 20, 2011. In fact, I can vividly recall that incident because Alcuizar demanded that I should expedite the hiring of Indab's replacement as he dreaded dealing with local purchases, which Indab was assigned to do.[22]

Grave as the mistake in the designation of the position published might have been, it remains that Alcuizar was informed of the error committed, and that it was made clear to him that he was never terminated from service at that time in spite of his poor performance. With these considerations, the Court cannot

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[22] *Id.* at 244-245.

readily treat the publications, by themselves, as sufficient substantial proof of the fact of dismissal.

Respondent abandoned his employment

In contrast, petitioner herein issued a Return to Work order to respondent, which the latter received through registered mail. This circumstance bears more weight and effectively negates respondent's self-serving asseveration that he was dismissed from employment; it more than implies that the company still considered respondent as its employee on August 10, 2011.

Respondent's non-compliance with the directive in the Return to Work, to Our mind, signifies his intention to sever the employment relation with petitioner, and gives credence to the latter's claim that it was respondent who abandoned his job. Moreover, such omission substantiates the testimonies of Cañete and Molina who positively attested to the fact of respondent's desertion. In Cañete's affidavit, for instance, she stated under oath the following circumstances:

> 4. On August 10, 2011, at or about 9:30 a.m., Alcuizar dropped by my office and surprisingly said to me, 'Ako nang gibilin ang company phone and other company properties sa akong desk, pero dalhon lang nako ang USB kay akoni.' (I already left the company phone and other company properties, save for the USB since it's mine.) Reacting to his statements, I then asked him, 'Unsaon man pag reach nimo if biyaan nimo ang company cellphone?' (How can we reach you if you will leave the company cellphone?) Alcuizar did not make any response and simply left;
>
> 5. Puzzled by Alcuizar's actuations and curious as to where he was going, I called up Wilma Molina, the guard assigned at the company's entrance gate, and asked if she happened to see Alcuizar leaving. It was during my inquiry with Molina that I learned that Alcuizar had already quit his job.[23]

And in Molina's narration:

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[23] *Id*. at 143.

5. Upon approaching the gate, I asked Alcuizar for his exit pass, since it is our company policy that no one should leave the company premises during working hours unless proper permission is secured. Alcuizar replied by saying, 'Dili na nakinahanglan hasta ang exit logbook coz I'm quitting my job!' (It's no longer necessary and also the exit logbook because I'm quitting my job!);

6. Surprised by what I just heard from Alcuizar, I answered by remarking, 'Ah, binuang sir.' (You're kidding, sir), to which he replied, 'Gi-surrender nanako ang company cellphone ug ubang company properties. Dalhon ni nakong USB kay ako ni. Kahibawo na ani si Ma'am Cañete.' (I already surrendered the company cellphone and other company properties. I am bringing with me my USB as I own this. Ma'am Cañete already knows this.)

7. Realizing that he was serious, I decided to let him out of the company gate. And to record what had transpired, I immediately wrote on the exit logbook the following notations, '13. Alcuizar Jufhel 811 9:37 - - I am quietting [sic] my job/no exit pass.[24]

Evident from the foregoing is that there is no dismissal to speak of, let alone one that is illegal. Instead, it was respondent who clearly demonstrated his lack of interest in resuming his employment with petitioner, culminating in abandonment.

Respondent cannot harp on the fact that he filed a complaint for illegal dismissal in proving that he did not abandon his post, for the filing of the said complaint does not *ipso facto* foreclose the possibility of abandonment. It is not the sole indicator in determining whether or not there was desertion, and to declare as an absolute that the employee would not have filed a complaint for illegal dismissal if he or she had not really been dismissed is *non sequitur*.[25]

Apart from the filing of the complaint, the other circumstances surrounding the case must be taken into account in resolving the issue of whether or not there was abandonment. This was

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[24] *Id*. at 145.

[25] *Abad v. Roselle Cinema*, G.R. No. 141371, March 24, 2006, 485 SCRA 262, 272.

the teaching in *Basay v. Hacienda Consolacion* wherein the Court can be quoted saying:

> We are not persuaded by petitioners' contention that nothing was presented to establish their intention of abandoning their work, or that the fact that they filed a complaint for illegal dismissal negates the theory of abandonment.
>
> It bears emphasizing that this case does not involve termination of employment on the ground of abandonment. As earlier discussed, there is no evidence showing that petitioners were actually dismissed. Petitioners' filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether they have been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account.[26]

In the case at bar, there is sufficient basis for the NLRC's finding that respondent had been indolent in his job. The narration of Arcenas in her affidavit detailing the specific circumstances wherein respondent was remiss on his duties was substantiated by the electronic correspondences between respondent and his supervisors. A perusal of the emails revealed the clear dissatisfaction of the company officers with respondent's dismal performance that led to missed shipments, delayed deliveries, and lost clientele.

In turn, it is beyond quibbling that a slothful work attitude falls squarely within the ambit of gross and habitual neglect of duty, which is one of the grounds for termination enumerated under Art. 297(b) of the Labor Code, to wit:

> **Article 297.** *Termination by employer.* An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> **(b) Gross and habitual neglect by the employee of his duties;**
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

[26] G.R. No. 175532, April 19, 2010, 618 SCRA 422.

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing. (emphasis added)

From these circumstances, it can be gathered that respondent's departure on August 10, 2011 was merely a precursor to his scheme to turn the table against petitioner. Realizing that his employment was at serious risk due to his habitual neglect of his duties, respondent jumped the gun on petitioner by lodging a baseless complaint for illegal dismissal even though it was he who abandoned his employment.

WHEREFORE, in view of the foregoing, the instant petition is hereby **GRANTED**. The May 19, 2016 Decision and October 19, 2016 Joint Resolution of the Court of Appeals in CA-G.R. CEB SP Nos. 07302 and 07321 are hereby **REVERSED** and **SET ASIDE.** The January 12, 2012 Decision of Labor Arbiter Butch Donabel Ragas-Bilocura in NLRC-RAB VII 08-1241-2011, dismissing the complaint for lack of merit, is hereby **REINSTATED**.

SO ORDERED.

Leonen, Martires, and *Gesmundo, JJ.,* concur.

Bersamin, J., on leave.

FIRST DIVISION

[G.R. No. 229722. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONISIO DE CHAVEZ, JR.** ***y*** **ESCOBIDO,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; EFFECT OF DEATH OF THE ACCUSED ON HIS CRIMINAL AND CIVIL LIABILITIES; CRIMINAL AND CIVIL LIABILITIES OF THE ACCUSED, ARISING FROM OR BASED ON THE CRIME, ARE TOTALLY EXTINGUISHED UPON THE DEATH OF THE ACCUSED DURING THE PENDENCY OF HIS APPEAL; CIVIL LIABILITY BASED ON OTHER SOURCES MAY BE FILED AGAINST THE ESTATE OF THE ACCUSED.— Paragraph 1, Article 89 of the Revised Penal Code, as amended, provides the effect of death of the accused on his criminal and civil liabilities, to wit: ART. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished: 1. By the death of the convict, as to the personal penalties; and as to the pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.] x x x [I]t is clear that the death of accused-appellant de Chavez on December 9, 2016, during the pendency of his appeal, extinguished not only his criminal liability, but also his civil liabilities arising from or based on the crime. But, as held in *Bayotas*, accused-appellant de Chavez's civil liability may be based on other sources of obligation other than *ex delicto*, in which case the heirs of Virgilio A. Matundan may file a separate civil action against the estate of accused-appellant de Chavez, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is an appeal filed by accused-appellant Dionisio de Chavez, Jr. *y* Escobido (accused-appellant de Chavez)

assailing the Decision[1] dated June 29, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06079, which affirmed the Decision[2] dated November 22, 2012 of the Regional Trial Court (RTC) of Rosario, Batangas, Branch 87, in Criminal Case No. RY2K101.

In an Information dated April 17, 2000, accused-appellant de Chavez and another accused, Manolito de Chavez (co-accused Manolito) were charged with murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, committed as follows:

> That on or about the 14th day of February, 2000, at about 5:15 o'clock in the afternoon, at Barangay Lipahan, Municipality of San Juan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a *balisong* knife, conspiring and confederating together, acting in common accord and mutually helping each other, with intent to kill, with treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said *balisong* knife suddenly and without warning one Virgilio A. Matundan, thereby inflicting upon the latter stab wounds on his back, which directly caused his death.[3]

Co-accused Manolito was arrested while accused-appellant de Chavez initially evaded arrest. After pre-trial but before trial could begin, however, co-accused Manolito died. Thus, in an Order dated February 26, 2004, the RTC ordered the dismissal of the case against Manolito, and the archival of the case against accused-appellant de Chavez who was then still at-large.

On March 17, 2005, accused-appellant de Chavez was arrested. Accordingly, his case was revived.

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Ramon A. Cruz with Associate Justices Marlene B. Gonzales-Sison and Henri Jean Paul B. Inting concurring.

[2] CA *rollo*, pp. 57-64; penned by Presiding Judge Rose Marie Manalang-Austria.

[3] *Rollo*, p. 3.

After trial on the merits, the RTC rendered a Decision dated November 22, 2012, finding accused-appellant de Chavez guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

> VIEWED FROM THE FOREGOING, conclusion is inescapable that the accused Dionisio de Chavez is GUILTY beyond reasonable doubt of the crime of MURDER defined in and penalized by Article 248 of the Revised Penal Code as amended by Republic Act [No.] 7659 for which the Court sentences him to suffer the penalty of *RECLUSION PERPETUA*, with all the accessory penalties of the law. Furthermore, the accused Dionisio de Chavez is ordered to pay the heirs of the deceased the amount of Seventy-Five Thousand Pesos (Php75,000.00) as civil indemnity; Seventy-Five Thousand Pesos (Php75,000.00) as moral damages; Seventy-Five Thousand Pesos (Php75,000.00) as exemplary damages and, Twenty-Five Thousand Pesos (Php25,000.00) as temperate damages.[4]

On appeal, the Court of Appeals affirmed the RTC Decision in a Decision dated June 29, 2016, to wit:

> WHEREFORE, premises considered, the appeal is hereby DISMISSED, and the Decision dated November 22, 2012 of the Regional Trial Court of Rosario, Batangas, Branch 87, in Criminal Case No. RY2K101, is AFFIRMED.[5]

Hence, this final appeal to the Court. During the pendency of the present appeal, however, in a letter[6] dated August 10, 2017, Police Superintendent (P/Supt.) I Roberto R. Rabo, Superintendent of the New Bilibid Prison, informed this Court that accused-appellant de Chavez had died on December 9, 2016 at the New Bilibid Prison Hospital. A certified true copy of the Certificate of Death[7] of accused-appellant de Chavez was attached to the said letter.

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[4] CA *rollo*, p. 64.

[5] *Rollo*, p. 11.

[6] *Id*. at 36.

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

In view of the death of accused-appellant de Chavez on December 9, 2016, therefore, the criminal case against him, which includes this appeal, is hereby dismissed.

Paragraph 1, Article 89 of the Revised Penal Code, as amended, provides the effect of death of the accused on his criminal and civil liabilities, to wit:

> ART. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to the pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Bayotas*,[8] this Court applied the foregoing provision and laid down the following guidelines when the accused dies prior to final judgment:

> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of [the] accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
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> a) Law
> b) Contracts
> c) Quasi-contracts
> d) x x x
> e) Quasi-delicts
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> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by

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[8] G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with [the] provisions of Article 1155 of the Civil Code that should thereby avoid any apprehension on a possible privation of right by prescription.

From the foregoing, it is clear that the death of accused-appellant de Chavez on December 9, 2016, during the pendency of his appeal, extinguished not only his criminal liability, but also his civil liabilities arising from or based on the crime. But, as held in *Bayotas*, accused-appellant de Chavez's civil liability may be based on other sources of obligation other than *ex delicto*, in which case the heirs of Virgilio A. Matundan may file a separate civil action against the estate of accused-appellant de Chavez, as may be warranted by law and procedural rules.

WHEREFORE, the appealed Decision dated June 29, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06079 is **SET ASIDE** and Criminal Case No. RY2K101 before the Regional Trial Court of Rosario, Batangas, Branch 87, is **DISMISSED**, by reason of the death of accused-appellant Dionisio de Chavez, Jr. *y* Escobido. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Leonen,[*] and *Jardeleza, JJ.,* concur.

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[*] Per Raffle dated November 22, 2017.

THIRD DIVISION

[G.R. No. 230228. December 13, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL DELA ROSA *y* LUMANOG @ "MANNY",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PROOF THAT THE SALE TRANSPIRED COUPLED WITH THE PRESENTATION IN COURT OF THE *CORPUS DELICTI* IS MATERIAL.— The essential elements that have to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.

2. ID.; ID.; ID.; CHAIN OF CUSTODY, EXPLAINED; REQUIREMENTS OF SECTION 21 OF RA 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR), EMPHASIZED AND EXPLAINED.— Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. x x x Section 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physically inventory;

and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.** In addition, Section 21 of the IRR of R.A. No. 9165 provides 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.** It further states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.** x x x [I]n the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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. In the present case, as the alleged crime was committed on March 29, 2009, then the provisions of Section 21 of R.A. No. 9165 and its IRR shall apply.

3. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION 21 OF RA 9165 AND ITS IRR, TO PROVIDE JUSTIFIABLE GROUND FOR ITS NON-COMPLIANCE, AND TO PROPERLY SAFE-KEEP THE CONFISCATED ITEMS CREATES REASONABLE DOUBT ON THE CRIMINAL LIABILITY OF THE ACCUSED.— [S]trict compliance with the prescribed procedure under Section 21 of R.A. No. 9165 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. x x x [T]he Court finds that there are several errors in the prosecution of the case. There were inconsistent dates on the conduct of the alleged buy-bust operation because of the conflicting statements and

affidavits of the prosecution witnesses. Likewise, the requirement under Section 21 of R.A. No. 9165 was not complied with because a representative of the DOJ was not present at the time of the inventory of the seized item. Further, the inventory was done fifty-four (54) kilometres away from the place of seizure. No justifiable reason was provided for the non-compliance with Section 21. The apprehending officers also failed to properly safe-keep the seized item because they did not place it in a secured container. Finally, the forensic chemist did not give a consistent statement as to who received the seized item and that the crime laboratory's arrangement made it possible for other personnel to contaminate the evidence. Accordingly, the prosecution failed to prove that the integrity and evidentiary value of the confiscated item were preserved. Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized marijuana that the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of accused-appellant.

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

GESMUNDO, *J.*:

On appeal is the Decision,[1] dated August 12, 2016, of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06607, which affirmed the Decision,[2] dated November 19, 2013, of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 39 *(RTC)* in Criminal Case No. CR-09-9515 finding accused-appellant

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[1] Penned by Associate Justice Edwin Sorongon with Associate Justice Ricardo R. Rosario and Associate Justice Marie Christine Azcarraga-Jacob, concurring; *rollo,* pp. 2-13.

[2] Penned by Judge Manual C. Luna, Jr.; CA *rollo,* pp. 244-250.

Manuel dela Rosa y Lumanog *(accused-appellant)* guilty of violation of Section 5, Article II of Republic Act *(R.A.)* No. 9165.

In an Information,[3] dated May 3, 2009, accused-appellant was charged with the crime of illegal sale of marijuana weighing 0.682 gram. On July 22, 2009, he was arraigned and he pleaded "not guilty."[4] Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented IO1 Noe Briguel *(IO1 Briguel),* PCI Rhea Fe Dela Cruz Alviar *(PCI Alviar)* and IO1 Ed Bryan Echavaria *(IO1 Echavaria)* as its witnesses. Their combined testimonies tended to establish the following:

On March 28, 2009, at around 9:00 o'clock in the morning, a confidential informant reported to PCI Marijane Ojastro *(PCI Ojastro)* of the Philippine Drug Enforcement Agency Regional Office IV-B *(PDEA IV-B Office)* located at Filipiniana Complex, Calapan City, that accused-appellant was selling marijuana at White Beach, Puerto Galera, Oriental Mindoro. The informant said that he could introduce an agent to accused-appellant as a buyer of marijuana.

Based on the said information, PCI Ojastro directed the conduct of a buy-bust operation against accused-appellant with IO1 Mary Grace Cortez as the team leader. IO1 Briguel was designated as poseur-buyer using a ₱200.00 bill bearing serial numbers EC235898 and a ₱100.00 bill bearing serial numbers QC609916, which were marked with "NSB."[5] IO1 John Rick Jabano *(IO1 Jabano)* and IO1 Echavaria were assigned as arresting officers. A Pre-Operation Report[6] was prepared.

The team left for Puerto Galera at around 1:00 o'clock in the morning of March 29, 2009 and they stayed for a while in

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[3] Records, pp. 1-3.

[4] *Id*. at 116.

[5] *Id*. at 50.

[6] *Id*. at 47.

Sabang. IO1 Briguel, however, testified that they arrived at Puerto Galera on March 30, 2009. At about 3:00 o'clock in the afternoon of that day, IO1 Briguel and the informant proceeded to the Island Tattoo shop while the other operatives positioned themselves in the area.

Arriving thereat, the informant introduced IO1 Briguel to accused-appellant. IO1 Briguel asked accused-appellant, a tattoo artist, to put a henna tattoo on his right shoulder. As accused-appellant was doing the tattoo, IO1 Briguel asked him: *"Manny, pwede bang umiskor?"* to which he replied: *"Meron."* IO1 Briguel told accused-appellant that he was going to buy ₱300.00 worth of drugs, and handed the marked money to accused-appellant, who, in turn, handed to IO1 Briguel folded dried banana leaves containing suspected dried marijuana leaves. Thus, IO1 Briguel made the pre-arranged signal of removing the handkerchief wrapped around his head. Immediately, IO1 Jabano and IO1 Echavaria arrived and arrested accused-appellant. IO1 Briguel frisked him and the marked money was recovered from him.

Subsequently, accused-appellant was boarded into the service vehicle of the PDEA to avoid any commotion at the shop. While inside the vehicle, IO1 Briguel marked the seized marijuana with his initials and the date of the arrest. He then testified that he placed the suspect dried marijuana leaves in his pocket.

The team then proceeded back to the PDEA IV-B Office at Calapan City, which was 54 kilometers away from Puerto Galera. There, IO1 Briguel conducted the Inventory,[7] which was witnessed by Barangay Chairperson Anacleto Vergara *(Brgy. Captain Vergara)* and media representative Dennis Nebrejo *(Nebrejo).* Photographs were likewise taken during the marking and inventory of the seized item.

IO1 Briguel then brought the suspected marijuana and the Request for Laboratory Examination[8] to the Philippine National

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[7] *Id*. at 54.

[8] *Id*. at 18.

Police *(PNP)* Crime Laboratory Regional Office in Camp Efigenio C. Navarro, Calapan City for forensic examination. Based on Chemistry Report No. D-010-09[9] prepared by PCI Alviar, the specimen weighed 0.682 gram and it tested positive for marijuana.

Version of the Defense

The defense presented accused-appellant as its sole witness. He testified that on the date of the said arrest, he was inside his tattoo shop, located beside a bar and restaurant at White Beach, Puerto Galera, Oriental Mindoro. While accused-appellant was attending to several customers, a man suddenly approached him and asked if he was Manny. When he replied in the affirmative, the said man asked him to go with him. When accused-appellant refused, the man pulled out a .45 caliber pistol from his waist and threatened him that he would make a scene at his shop. Reluctantly, accused-appellant accompanied the man to a van parked away from his shop. While inside the van, the man handcuffed accused-appellant and brought him to the PDEA IV-B Office. For unknown reasons, accused-appellant was incarcerated therein for a month before a case was filed against him. He presupposed that he was arrested and detained because he was associated with a certain Cris Pelino, who was also arrested earlier due to drug related charges.

The RTC Ruling

In a decision, dated November 19, 2013, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. No. 9165. Accordingly, the trial court sentenced accused-appellant to the penalty of life imprisonment and to pay a fine of ₱500,000.00.

The RTC held that the prosecution was able to prove the identity of the buyer, the seller, the object and the consideration in the illegal sale of the marijuana. It also held that the delivery of the said drug by accused-appellant and the payment thereof

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[9] *Id*. at 21.

by IO1 Briguel during the buy-bust operation were duly established. The RTC further ruled that it was reasonable for the PDEA to conduct the inventory of the seized item at their office in Calapan, Mindoro to prevent a commotion at the place of the arrest.

Aggrieved, accused-appellant appealed before the CA arguing in his Brief for the Accused-Appellant[10] that: the testimonies of the prosecution witnesses were inconsistent because IO1 Briguel testified that the buy-bust was conducted on March 30, 2009, while IO1 Echavaria testified that it was conducted on March 29, 2009; that the *sinumpaang salaysay* of IO1 Briguel, IO1 Echavaria and IO1 Jabano alleged that the buy-bust was conducted on March 30, 2009; that the integrity and evidentiary value of the confiscated item was not secured because it was merely wrapped in a banana leaf and it was not placed in an envelope or evidence bag; that there was an inconsistency as to who received the confiscated drug at the crime laboratory; and that the crime laboratory was not secured at the time of the examination because any personnel and policemen could enter the premises and even sleep there.

In their Brief for the Appellee,[11] the Office of the Solicitor General *(OSG)* countered that all the elements of the crime of illegal sale of dangerous drugs were established; that the confiscated drug was properly inventoried in the presence of accused-appellant, media representative, and an elected official; that the custody of the drug was duly accounted for; and that accused-appellant failed to refute the evidence against him.

The CA Ruling

In its decision, dated August 12, 2016, the CA dismissed the appeal. It held that the RTC correctly ruled that all the elements of the crime of illegal sale of dangerous drugs were duly proven. Likewise, the CA held that full faith and credence must be given to the testimonies of the PDEA agents pursuant

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[10] CA *Rollo,* pp. 46-61.

[11] *Id.* at 78-88.

to the presumption of regularity in the performance of their official duty. It observed that the buy-bust actually happened on March 29, 2009 based on the evidentiary documents of the prosecution.

Further, the CA highlighted that the prosecution was able to prove that there was substantial compliance with the chain of custody rule. It stated that the drug was marked by IO1 Briguel; that he also prepared the inventory and PCI Ojastro prepared the request for laboratory examination; that the marked item was delivered by IO1 Briguel to the crime laboratory; that it tested positive for marijuana; and that the same marked item was presented in court. The CA concluded that there was no compromise in the integrity and evidentiary value of the seized drug.

Hence, this appeal.

Issue

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,[12] dated July 12, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desire. In its Manifestation (In Lieu of Supplemental Brief),[13] dated August 24, 2017, the OSG manifested it will no longer file a supplemental brief considering that its Brief for the Appellee had already amply discussed the assigned errors. In his Manifestation (In Lieu of a Supplemental Brief),[14] dated September 15, 2017, accused-appellant stated that he will no longer file a supplemental brief since no new issue material to the case that were not elaborated upon in his appellant's brief were discovered.

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[12] *Rollo,* p. 18.

[13] *Id.* at 21-23.

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

The Court's Ruling

The appeal has merit.

There are inconsistent dates when the alleged transaction took place

The essential elements that have to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[15]

In this case, the Court agrees with accused-appellant that the prosecution witnesses presented inconsistent dates regarding the occurrence of the alleged drug transaction. On March 3, 2010, IO1 Briguel, the poseur-buyer, testified in his direct examination as follows:

Q: Now, tell us Mr. Witness prior to the conduct of the operation what did your office receive in connection with the same, if any?

A: On **March 28, 2009** one of our confidential informants went to our office and talked to our OIC Marijane T. Ojastro and informed her that he knew of somebody selling illegal drugs.

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Q: After you have already formed the team, you as the poseur buyer, IO1 Jabano and IO1 Echavaria as arresting officers and Mary Grace Cortez the team leader, what did you agree on in connection with [sic] effecting the operation?

A: We set the date on within which we should be proceeding to Puerto Galera to proceed with our operation and we agreed that we should go to the said place on **March 30**.

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[15] *People v. Carlit,* G.R. No. 227309, August 16, 2017.

Q: Before going to that place on **March 30** what preparations did you make if any?
A: Prior to that date and if I am not mistaken that was on **March 29** we had a briefing regarding the operation and we also prepared the pre-operational report ma'am.

x x x x x x x x x

Q: So tell us in that early morning of **March 30**, how did you proceed to Puerto Galera?
A: We proceeded to Puerto Galera on board our service the Toyota Revo ma'am.[16] (emphases supplied)

It is clear from the testimony of IO1 Briguel that they met their confidential informant in the PDEA office on March 28, 2009. Then, on March 29, 2009, the buy-bust team had a briefing regarding the operation and it was then that they prepared the pre-operation report. Finally, on March 30, 2009, the team proceeded to Puerto Galera for the buy-bust operation. The said testimony reflects the statements in the IO1 Briguel's *Sinumpaang Salaysay*,[17] dated April 1, 2009. Likewise, the said dates are reflected in the *Magkasanib na Sinumpaang Salaysay*,[18] similarly dated April 1, 2009, of IO1 Jabano and IO1 Echavaria.

Later, on September 7, 2010, IO1 Briguel retracted his statement and, instead, insisted that the buy-bust operation occurred on March 29, 2009 based on his *Karagdagang Sinumpaang Salaysay*,[19] to wit:

Q: My question now, Mr. Witness, why did you have to execute a Karagdagang Sinumpaang Salaysay when you have already executed a sworn statement with respect to this case?
A: When we filed the case we found out that what is written during the operation was March 30. The date of operation was March 29.

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[16] TSN, dated March 3, 2010, pp. 5-9.

[17] Records, pp. 6-7.

[18] *Id.* at 12-13.

[19] *Id.* at 64.

Q: Now, what was the date indicated in all other documents aside from your Sinumpaang Salaysay?
A: Not all, ma'm.

Q: So, you are telling us that the correct date of your operation was March 29, 2009 but what you have indicated in your Sinumpaang Salaysay is March 30 as the date of your operation. Now my question is, in what other documents did this March 30, 2009 appeared?
A: In the laboratory result wherein March 29 was indicated.

Q: So you are telling us that it is only in your original initial Sinumpaang Salaysay that March 30 was indicated?

A: Yes, ma'm, and the Sinumpaang Salaysay of the two (2) arresting officers.[20]

The *Karagdagang Sinumpaang Salaysay* of IO1 Briguel, however, contains questionable circumstances. The said document was simply dated April 2009 without indicating the exact day of execution. It was also notarized on April 2, 2009. Assuming *arguendo* that the said *Karagdagang Sinumpaang Salaysay* was notarized on April 2, 2009, then it is dubious as to why IO1 Briguel did not mention the said document at all when he initially testified on March 3, 2010. It was only on September 7, 2010 that IO1 Briguel suddenly remembered that he executed such crucial affidavit. The only plausible explanation is that the incomplete affidavit did not exist as of March 3, 2010.

The Court is of the view that the *Karagdagang Sinumpaang Salaysay* was only executed as a mere afterthought to conceal the inconsistent dates of the buy-bust operation indicated in IO1 Briguel's testimony on March 3, 2010, his *Sinumpaang Salaysay* dated April 1, 2009, and the *Magkasanib na Sinumpaang Salaysay,* similarly dated April 1, 2009, of IO1 Jabano and IO1 Echavaria. Accordingly, there is doubt as to the actual date of the buy-bust operation; whether it was done on March 29 or March 30, 2009.

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[20] TSN, dated September 7, 2010, pp. 5-6.

Glaringly, the OSG neither addressed nor explained the discrepancy of these dates. Further, the prosecution was remiss of its duty because it did not immediately act to rectify its mistake. It was only on September 7, 2010, when IO1 Briguel testified, that the prosecution attempted to explain the inconsistent dates, which existed as early as April 1, 2009. The prosecution, however, chose to rely on the *Karagdagang Sinumpaang Salaysay* of IO1 Briguel, which contained doubtful dates of execution and notarization.

The chain of custody rule

Aside from the inconsistent dates of the conduct of the buy-bust operation, the Court finds that the prosecution failed to sufficiently comply with the chain of custody rule. In prosecuting both illegal sale of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of sale are present, the fact that the dangerous drug illegally sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[21]

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[22]

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[21] *People v. Del Mundo,* G.R. No. 208095, September 20, 2017.

[22] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

As the means of ensuring the establishment of the chain of custody, Section 21 (1) of RA No. 9165 specifies that:

> (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.

Section 21 (a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 complements Section 21 (1) of RA No. 9165, to wit:

> (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;

Based on the foregoing, Section 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physically inventory; and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official**

who shall be required to sign the copies of the inventory and be given a copy thereof.[23]

In addition, Section 21 of the IRR of R.A. No. 9165 provides 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.** It further states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**[24]

Interestingly, Section 21 of R.A. No. 9165 was amended recently by R.A. No. 10640, which became effective on July 15, 2014, and it essentially added the provisions contained in the IRR with a few modifications, to wit:

> (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, 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

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[23] *People v. Dahil*, 750 Phil. 212, 228 (2015).

[24] *People v. Dela Cruz,* 591 Phil. 259, 271 (2008).

by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Notably, in the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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. In the present case, as the alleged crime was committed on March 29, 2009, then the provisions of Section 21 of R.A. No. 9165 and its IRR shall apply.

The apprehending team did not comply with Section 21 of R.A. No. 9165 and its IRR

The records of the case show that the physical inventory of the confiscated drug and the photographs of the same where only done in the presence of the accused-appellant, Brgy. Captain Vergara and media representative Nebrejo. Clearly, a representative of the DOJ, as required by Section 21 of R.A. No. 9165, was not present during the inventory of the seized item.

More importantly, the apprehending team did not immediately conduct the physical inventory and the taking of the photographs at the time the suspected drug was confiscated or at the nearest police station. Instead, they travelled fifty four (54) kilometers from Puerto Galera, the place of the seizure, to Calapan City before they conducted the inventory of the seized drug.

The prosecution failed to provide a justifiable ground for the non-compliance of Section 21 of R.A. No. 9165

As a rule, strict compliance with the prescribed procedure under Section 21 of R.A. No. 9165 is required because of the

illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[25]

In this case, the prosecution failed to recognize its procedural lapses and give a justifiable ground for the non-compliance with Section 21 of R.A. No. 9165. Particularly, they were not able to explain the absence of a representative of the DOJ and the distant conduct of the inventory of the seized item. IO1 Echavaria attempted to explain that the said inventory was not done at the place of the arrest at Puerto Galera because they could not secure a representative of the media or the DOJ and, thus, went back to their office in Calapan City.[26] Nevertheless, upon their arrival in Calapan City, there was still no representative from the DOJ to witness the inventory of the confiscated item.

On the other hand, the witnesses of the prosecution attempted to explain the conduct of the inventory of the seized item fifty-four (54) kilometers away from the place of the arrest. IO1 Briguel testified as follows:

Q: Did you bother to coordinate with the barangay officials of White Beach, Barangay Isidro, Puerto Galera?
A: As I recall, no sir.

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[25] *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, G.R. No. 206888, July 4, 2016, 775 SCRA 459.

[26] TSN, dated August 3, 2011, p. 11.

Q: In other words Mr. Witness, you are telling this Honorable Court that you implemented this buy-bust operation 54 kilometers away from Calapan City and in the actual site, you did not bother to coordinate with the barangay official of the place where you conducted your buy-bust operation.
A: No, sir.

Q: What do you mean "no"?
A: We did not coordinate because that was the decision of our team leader.

Q: So, in other words, your team leader instructed you not to coordinate and instead do the inventory when you travelled back 54 kilometers away to Calapan, is it not correct?
A: Yes, sir.[27] (emphasis supplied)

In the same manner, IO1 Echavaria testified on the subject matter as follows:

Q: Now, since you were there already in the early morning of that date, can you please tell the Honorable Court whether or not you coordinate with any member of the media or barangay official for the purpose of that buy bust operation?
A: We did the coordination only during the inventory to meet the requirements.

Q: So in other words, during the eight (8) long hours, you did not bother to call any barangay official nor did you bother to secure the representative from the media while you were in Puerto Galera?
A: Our team leader deemed it no longer necessary to coordinate with the media or with the barangay officials. It was only during the inventory of the confiscated items that we did the coordination with such agencies.

Q: So can we be clarified as to where you conducted this inventory?
A: In our regional office, Sir.

Q: In Calapan City?
A: Yes Sir.

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[27] TSN, dated February 2, 2011, pp. 13-14.

Q: Why did you not conduct that in Puerto Galera?
A: Because there were already many people in the exact place so we decided to do the inventory in our office.

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COURT:

Questions from the Court.

Q: During your cross-examination you stated that it was not practical to conduct the inventory at the scene and instead you made the inventory at your office. What do you mean by it is not practical?
A: Your Honor because during that particular situation there were many people around so we could only do the marking[s] but we could not do the inventory at that place.

Q: What do you mean by it is not practical?
A: Because we could not secure the presence of the witnesses if we have done the inventory in the exact scene where the buy bust operation happened, Your Honor.

Q: Why can you not conduct the inventory at the scene and at the presence of the media and the DOJ representative?
A: Your Honor because we could not completely do the inventory at the scene if we would first call the representative of the media and the barangay official so we just did the marking on that place and did the inventory in the office.

Q: And how far is your office from the place of the incident?
A: I could not exactly determine. It took us about an hour and a half to reach our office.

Q: And in this particular case did you not prepare the inventory in Puerto Galera but instead prepared it in your office in Calapan, is it not?
A: Yes Your Honor.

Q: Would it not be impractical for the media, the DOJ representative and the barangay official to travel from Puerto Galera to Calapan City in your office and witness the preparation of the inventory?
A: Because in the preparation of the inventory we needed some witnesses.

Q: Who are these witnesses that you are referring to that you needed to contact for the inventory?
A: The barangay official, media representative and DOJ representative, your Honor.[28] (emphases supplied)

As can be gleaned from the witnesses' testimony, the excuses they proffered to justify the distant conduct of the inventory fifty-four (54) kilometers away from the place of seizure, are: (1) it was the team leader's discretion to conduct the inventory in Calapan City; (2) to avoid commotion at the place of seizure; and (3) they could not secure the witnesses required by law in the said place.

The Court finds that these excuses are unmeritorious. *First,* Section 21 of the IRR is clear that the physical inventory and photograph shall be conducted at the place of the seizure or at the nearest police station or at the nearest office of the apprehending team. In this case, the apprehending team did not even bother to look for the nearest police station at the place of seizure to conduct the inventory. Instead, they leisurely took their time and travelled 54 kilometers away from the said place to secure an inventory of the seized item.

Second, another reason stated by the prosecution witness – that the inventory was done in Calapan to avoid a commotion at the place of the seizure – is unavailing. Evidently, there is no need to travel fifty four (54) kilometers away from Puerto Galera simply to avoid a commotion. As stated in IO1 Echavaria's testimony, the apprehending team had eight (8) hours to prepare before the operation was conducted and they could have easily identified the nearest police station in Puerto Galera for the inventory of the seized item. Certainly, the PDEA office in Calapan City is not the nearest police station in Puerto Galera.

Third, the apprehending officers allegedly travelled all the way back to Calapan City because only there could they secure the witnesses required by law. However, as discussed above, even when they travelled 54 kilometers to their office, they

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[28] TSN, dated December 13, 2011, pp. 4-12.

still failed to complete all the witnesses needed during the inventory. The RTC even observed that it was impractical for the media representative, DOJ representative and the elected official to travel from Puerto Galera all the way to Calapan City to simply witness the inventory. Indeed, the inventory could have been done at the nearest police station in Puerto Galera and the required witnesses could have conveniently attended thereat.

In *Dela Riva v. People*,[29] the Court acquitted the accused-appellant therein because although the buy-bust operation occurred in Subic, Zambales, the apprehending team conducted the marking, inventory and photographing of the seized item in Quezon City, which was several kilometers away. The prosecution could not give any justifiable reason for the unusually distant conduct of the physical inventory.

The prosecution failed to establish that the integrity and evidentiary value of the seized item was preserved

Aside from failing to provide a justifiable ground for the non-compliance of Section 21 of R.A. No. 9165, the prosecution also failed to establish that the integrity and evidentiary value of the seized item was preserved.

In the *first link* of the chain of custody, the apprehending officer acquires possession of the suspected drug from the offender at the time of the arrest. The apprehending officer is required to mark the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — and it should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.[30] In this case, the marking was not done at the place of the seizure; rather it was done at the vehicle. While there may be exceptions to the immediate marking of the seized

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[29] 769 Phil. 872 (2015).

[30] *People v. Martinez*, 652 Phil. 347, 377 (2010).

item,[31] even a less stringent application of the requirement would not suffice in sustaining a conviction in this case.

Aside from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.[32] The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.

Here, as shown by its photographs,[33] the seized marijuana was simply wrapped in a dried banana leaf; while the marking was merely written on a strip of paper that was attached to the seized item. Evidently, the confiscated marijuana was not placed in a secured container. IO1 Briguel testified as to how he handled the specimen, viz:

Q: Now, Mr. Witness, going back to the specimen which was earlier presented to you by the government prosecutor. How did you secure the dried marijuana leaves after you bought that from the body of the accused?

A: I took it from him and placed it in my pocket, sir.

Q: But insofar as the way you packed it, it appears that it is wrapped with banana leaves and what did you do after you packed it with banana leaves?

A: It was already packed when we bought it, sir.

Q: Did you not bother to put the same in a secured sealed container?

A: We did not bring any, sir, so I just placed it in our [sic] pocket.

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[31] See *People v. Resurreccion*, 618 Phil. 520 (2009).

[32] *Supra* note 30, at 377.

[33] Records, p. 46.

Q: So, in other words when you received the unsecure specimen you did not bother to make it sure that the integrity of the specimen will be protected by putting it in a seal (sic) container or plastic sachet?
A: After marking the said specimen and when we were already in our way home we placed it in a plastic container, sir.

Q: You said that you placed it in a plastic to secure the specimen. But where is the sealed plastic, Mr. Witness?
A: When we brought this specimen in the crime laboratory and then submitted the same to the office of the prosecutor they already removed it from the plastic, sir.

Q: In other words, you did not bother to put your initial on the plastic in which you placed this specimen?
A: None, sir.

Q: Why did you not do that?
A: I was not able to do it sir.[34] (emphasis supplied)

From the above testimony, it can be observed that when IO1 Briguel seized the marijuana wrapped in dried banana leaves, he simply placed the said item inside his pocket without securing it in a sealed container. Evidently, due to the poor packaging of the item, it is susceptible to tampering or alteration. Realizing his damaging testimony, IO1 Briguel suddenly changed his tune and stated that he allegedly placed the confiscated item in a plastic container. However, the purported plastic container was neither presented in evidence nor was it marked by IO1 Briguel. Glaringly, the photographs, Inventory[35] and the Chemistry Report No. D-010-09[36] demonstrate that the seized marijuana was merely wrapped in a dried banana leaf and was not secured in a plastic container.

Further, there are also irregularities in the *third link* of the chain of custody. In the said link, there must be a delivery by the investigating officer of the illegal drug to the forensic chemist.

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[34] TSN, dated February 2, 2011, pp. 14-16.

[35] *Id.* at 54.

[36] *Id.* at 21.

Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.[37]

In this case, while IO1 Briguel claims that he delivered the confiscated item to the PNP Crime Laboratory in Camp Efigenio C. Navarro, Calapan City, it was not clear who received the confiscated drug thereat. On direct examination, PCI Alviar testified as follows:

PROSECUTOR OLIVAR

Q: Madam Witness, in this letter request the one [sic] received the said specimen on behalf of the Regional Crime Laboratory is one PO1 Carreon. Would you confirm that PO1 Carreon is connected with your office?
A: Yes, ma'm.

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Q: May we know if there is also SPO1 Watson in that crime lab?
A: Yes, ma'm.

Q: What is his position in that crime laboratory?
A: He is now assigned at Mamburao, ma'm.

Q: But when he was with the Crime Laboratory what was his position?
A: Macro itching technician, ma'm.

Q: And also authorized in receiving specimen being submitted?
A: Yes, ma'm.

Q: And how about PSI Niduaza, Jr.? Is he also connected with your office?
A: Yes, ma'm. He is our forensic chemical officer.

Q: From whom did you received that specimen for examination?
A: From PSI Ernesto Niduaza, ma'm.

Q: Who received the same from PO1 Carreon?
A: It was received by PSI Ernesto Niduaza, ma'm.[38]

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[37] *Supra* note 23 at 237.

[38] TSN, dated November 9, 2010, pp. 7-9.

On cross-examination, however, PCI Alviar presented a different chain of custody.

Q: When it was delivered to the crime laboratory what time was that when it was delivered to the crime laboratory.
A: Our office received the letter request based on the stamp marked appearing on the lower portion 2300H of March 29, 2009, ma'm.

Q: That is eleven o'clock in the evening?
A: Yes, ma'm.

Q: And are you the chemist on duty during that time?
A: Yes, ma'm. It was received by PSI Ernesto Niduaza.

Q: It was received by PSI Niduaza because during the time when it was received you were not the one on duty, is it not?
A: I cannot remember. I do not know if we have SOCO response during that time, sir.

Q: But is it not that the chemist on duty at the PNP Crime Laboratory in Suqui is either you or Engr. Niduaza being the two chemist available thereat?
A: Yes, sir.

Q: So, if Engr. Niduaza is present logically it (sic) meaning to say that you were not around during that time because Engr. Niduaza is on duty?
A: No, sir.

Q: But you cannot remember having been around that time?
A: Yes, sir.[39]

From the testimony, it can be gathered that PCI Alviar initially testified that the specimen was received by PO1 Carreon; that PO1 Carreon, SPO1 Watson and PSI Niduaza were authorized to handle the specimen; that PCI Alviar acquired the item from PSI Niduaza. Then on cross-examination, she then stated that it was PSI Niduaza that actually received the same; that the latter was present in the crime laboratory but was not on duty; and that she was on duty but cannot remember whether she was present at the crime laboratory. Accordingly, there is doubt

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

as to who actually received the seized item from IO1 Briguel. Within the crime laboratory, the said specimen was handed from one person to another. It was even received by an officer who was not on duty at that time. The changing of hands of the specimen is precarious considering that it was not placed in a secured container.

Likewise, as properly pointed out by accused-appellant, the arrangement of the PNP Crime Laboratory therein is problematic based on the testimony of PCI Alviar, to wit:

Q: Is it not that the PNP Crime Laboratory is composed of three separate rooms, the PNP Crime Laboratory in Suqui?
A: We do not have permanent room, sir.

x x x x x x x x x

Q: The laboratory itself, the sink where you conduct your examination was located at the middle because the first portion of your office is the receiving area where there are many tables side by side, the second part is this portion where there is a one way mirror?
A: Yes, sir.

Q: And there is a door to enter that?
A: Yes, sir.

Q: And the third part is the storage room or evidence room?
A: Yes, sir.

Q: It is not that inside that second part, the sink, where you conduct your examination, there is a double deck bed?
A: Yes, sir.

Q: And it is where some of your personnel and even some policemen would sleep there, day in and day out whenever there is operation?
A: Yes, sir.[40]

PCI Alviar admitted that the room where the drugs are inspected had a double deck bed where the personnel and the policemen would sleep when there is a police operation. These

[40] TSN, dated November 9, 2010, pp. 15-17.

persons can enter the forensic room and there is a possibility they could contaminate the evidence. Surely, the reliability of the seized drugs cannot be preserved when there are various persons in the forensic room who are not even connected with the crime laboratory. The testimony of PCI Alviar falls short of the requirement that the intergrity and evidentiary value of the seized drug must be preserved.

Conclusion

In fine, the Court finds that there are several errors in the prosecution of the case. There were inconsistent dates on the conduct of the alleged buy-bust operation because of the conflicting statements and affidavits of the prosecution witnesses. Likewise, the requirement under Section 21 of R.A. No. 9165 was not complied with because a representative of the DOJ was not present at the time of the inventory of the seized item. Further, the inventory was done fifty-four (54) kilometres away from the place of seizure. No justifiable reason was provided for the non-compliance with Section 21.

The apprehending officers also failed to properly safe-keep the seized item because they did not place it in a secured container. Finally, the forensic chemist did not give a consistent statement as to who received the seized item and that the crime laboratory's arrangement made it possible for other personnel to contaminate the evidence. Accordingly, the prosecution failed to prove that the integrity and evidentiary value of the confiscated item were preserved.

Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized marijuana that the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of accused-appellant.[41]

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[41] *Supra* note 23 at 239.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 12, 2016, of the Court of Appeals in CA-G.R. CR-HC No. 06607 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellant Manuel dela Rosa who is accordingly **ACQUITTED** of the crime charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this decision and to inform this Court of the date of the actual release from confinement of the accused-appellant within five (5) days from receipt hereof.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen,* and *Martires, JJ.,* concur.

Bersamin, J., on official leave.

FIRST DIVISION

[G.R. No. 188666. December 14, 2017]

SPOUSES JUAN and ANTONINA CANO, ROLANDO CANO and JOSEPHINE "JOSIE" CANO-AQUINO, *petitioners, vs.* **SPOUSES ARTURO and EMERENCIANA CANO,** *respondents.*

[G.R. No. 190750. December 14, 2017]

SPOUSES JUAN CANO and ANTONINA SORIANO-CANO, *petitioners, vs.* **SPOUSES ARTURO CANO and EMERENCIANA DACASIN,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; DONATION; DONATIONS *PROPTER NUPTIAS*; DONATIONS MADE PRIOR TO THE FAMILY CODE MAY BE ACCEPTED IMPLIEDLY BUT THOSE MADE THEREAFTER MUST BE EXPRESSLY ACCEPTED BY THE DONEE IN A PUBLIC INSTRUMENT.— It is settled that only laws existing at the time of the execution of a contract are applicable thereto. The donation *propter nuptias* in this case was executed on 30 May 1962, while the provisions on such donations under the Civil Code were still in force and *before* the Family Code took effect on 3 August 1988. The formal requisites for the validity of the donation should therefore be determined in accordance with the x x x provisions of the Civil Code x x x. Given that this old rule governs this case, it is evident that the CA erroneously invalidated the donation *propter nuptias* in favor of petitioners. The absence of proof that the gift was accepted in a public instrument is not controlling, since implied acceptance — such as the celebration of marriage and the annotation of this fact in the OCT — must be deemed sufficient. We must clarify that the foregoing rule applies only to donations *propter nuptias* made *prior* to the Family Code (as in this case). At the time, Article 129 of the Civil Code allowed acceptance of those donations to be made impliedly. Since that provision is no longer part of the current Family Code, donations *propter nuptias* made thereafter are now subject to the rules on ordinary donations including those on the formal requisites for validity. As a result, donations of immovables under the Family Code, including those made by reason of marriage, must now be expressly accepted by the donee in a public instrument.

2. ID.; ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; REGISTRY OF PROPERTY; RIGHTS OVER IMMOVABLE PROPERTY MUST BE REGISTERED TO BIND THIRD PERSONS.— Pursuant to Article 709 of the Civil Code, all rights over immovable property must be duly inscribed or annotated on the Registry of Deeds before they can affect the rights of third persons. x x x The same rule is enunciated in Presidential Decree No. (P.D.) 1529, or the Property Registration Decree, specifically Sections 51 and 52 thereof x x x. In this case, petitioners do not deny that

the donation *propter nuptias* was never registered. x x x [T]he conveyance of the property in their favor is not considered binding on third persons, who had no participation in the deed or any actual knowledge thereof. x x x In the absence of proof that respondents participated in the transaction, or had knowledge of petitioners' interest over the land at the time the property was purchased in 1982, this Court must rule that they are not bound by the unregistered donation. Hence, the conveyance had no effect as to respondents.

3. ID.; ID.; ID.; ID.; FOR PRIOR UNREGISTERED INTEREST TO AFFECT THIRD PERSONS DESPITE THE ABSENCE OF REGISTRATION, THE LAW REQUIRES ACTUAL KNOWLEDGE OF THAT INTEREST.— The records of both the cases for ejectment and the quieting of title are bereft of evidence of respondents' participation in or actual knowledge of the deed. In fact, petitioners never made that assertion in any of their submissions before the courts. Instead, they focused on their claim that respondents were aware of the former's *possession* of the property. We emphasize, however, that in order for prior unregistered interest to affect third persons despite the absence of registration, the law requires actual knowledge of that interest. Nothing less would suffice.

4. ID.; ID.; OBLIGATIONS AND CONTRACTS; SALES; INNOCENT PURCHASERS FOR VALUE; BUYERS ARE NOT REQUIRED TO GO BEYOND WHAT THE CERTIFICATE OF TITLE INDICATES ON ITS FACE, PROVIDED THE ACQUISITION OF THE LAND IS MADE IN GOOD FAITH.— The acquisition of the property by respondents must x x x be respected because they were innocent purchasers for value. They had every right to rely on OCT No. 62276 insofar as it indicated that (1) one-fourth of the property was owned by Feliza; and (2) the land was subject only to the encumbrances annotated on the title, which did not include the donation *propter nuptias* in favor of petitioners. Our ruling is rooted in the general principle that persons dealing with registered land have the right to completely rely on the Torrens title issued over the property. Buyers are not required to go beyond what the certificate of title indicates on its face, provided the acquisition of the land is made in good faith, that is, without notice that some other person has a right to, or interest in, the property.

5. ID.; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); REGISTERED LANDS; CANNOT BE ACQUIRED BY PRESCRIPTION OR ADVERSE POSSESSION.— As early as 1902, when Act No. 496 created the Torrens system of registration, the law already declared that registered land cannot be acquired by prescription or adverse possession. This principle is currently found in Section 47 of P.D. 1529 x x x. It is undisputed that the subject property is registered land. Hence, even assuming that petitioners occupied it for a considerable period after the sale, their possession could not have ever ripened into ownership.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Nolan R. Evangelista for respondents.

D E C I S I O N

SERENO, *C.J.*:

These consolidated Petitions for Review involve a dispute over possession and ownership of a parcel of land located in the Barrio of Palaming, City of San Carlos, Pangasinan. Petitioners Juan and Antonina Cano anchor their claim upon a donation *propter nuptias* allegedly made by Feliza[1] Baun in their favor in 1962. Respondents Arturo and Emerenciana Cano, on the other hand, claim that they purchased the land from Feliza in 1982 and caused the annotation of the Deed of Absolute Sale on the Original Certificate of Title (OCT) No. 62276 covering the property.

The Petition in G.R. No. 188666 assails the Decision[2] and the Resolution[3] of the Fourth Division of the Court of Appeals

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[1] "Felisa" in some parts of the record.

[2] *Rollo* (G.R. No. 188666), pp. 168-177; Decision dated 29 April 2009 penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Fernanda Lampas-Peralta and Apolinario D. Bruselas, Jr.

[3] *Id*. at 185A-185; Dated 3 July 2009.

(CA) in CA-G.R. SP No. 104200, which affirmed the Regional Trial Court (RTC) Resolution[4] ordering petitioners to vacate the property and surrender possession thereof to respondents. Meanwhile, the Petition in G.R. No. 190750 questions the CA Decision[5] and the Resolution,[6] which affirmed the RTC Decision[7] confirming respondents' ownership of the property. The factual background and the proceedings held in each case will be discussed in turn.

FACTUAL ANTECEDENTS

G.R. No. 188666
(Ejectment Case)

On 16 November 1999, respondents filed a Complaint for Ejectment with Prayer for Injunction[8] against petitioners on the basis of a Deed of Absolute Sale[9] executed in the former's favor by Feliza, the registered owner of the property. Immediately after the sale, respondents allegedly (1) took possession of the land;[10] (2) employed a relative to act as caretaker thereof;[11] and (3) received the fruit of the mango trees planted thereon.[12]

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[4] *Id.* at 148-150; Dated 27 May 2008 and penned by Presiding Judge Anthony Q. Sison.

[5] *Rollo* (G.R. No. 190750), pp. 69-76; Decision dated 30 September 2009 and penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Andres B. Reyes, Jr. and Vicente S.E. Veloso.

[6] *Id.* at 83; Dated 14 December 2009.

[7] *Id.* at 52-61; Civil Case No. SCC-2323 penned by Presiding Judge Anthony Q. Sison.

[8] *Rollo* (G.R. No. 188666), 45-48; The case was filed with the Municipal Trial Court in Cities (MTCC) of San Carlos City and docketed as Civil Case No. MTCC 1334.

[9] *Id.* at 63.

[10] *Id.*

[11] *Id.* at 56.

[12] *Id.* at 55.

Respondents also asserted that they benevolently allowed petitioners to take actual possession of the property after the sale because the parties were all blood relatives.[13] This peaceful arrangement continued until 3 October 1999, the day petitioners allegedly harassed and threw stones at the individuals hired by respondents to spray the mango trees with chemical fruit inducers.[14] This act of ingratitude supposedly prompted respondents to send petitioners a demand letter to vacate the property.[15]

Because the demand to vacate went unheeded, respondents filed an ejectment complaint before the Municipal Trial Court in Cities (MTCC) of San Carlos City, Pangasinan.[16] They prayed for (a) an order directing petitioners to vacate the property and pay moral damages and attorney's fees to the former;[17] and (b) an injunction to restrain petitioners from performing acts that would disturb or harass respondents or the latter's agents in violation of their right of ownership and possession over the property.[18]

In an Answer with Affirmative and/or Special Defenses and Counterclaim,[19] petitioners denied the allegations in the Complaint. They claimed ownership of the property on the basis of (1) a donation *propter nuptias*[20] executed in their favor by Feliza on 30 May 1962; and (2) their continuous possession of the land since they were born, or for more than 63 years at the time of the filing of the suit for ejectment.[21] They also asserted

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[13] *Id*. at 56.

[14] *Id*. at 57.

[15] *Id*. at 53.

[16] *Id*. at 45-48.

[17] *Id*.at 47.

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

[19] *Id*. at 93-95.

[20] *Id* at 99.

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

that the Deed of Absolute Sale cited by respondents was a falsified instrument.[22]

The MTCC Ruling

In a Decision[23] dated 21 February 2000, the MTCC dismissed the Complaint for lack of merit. Citing an Ocular Inspection Report submitted by the sheriff who investigated the disputed property, the court noted that three semi-concrete houses owned by petitioners, as well as several mango trees, were standing on the land. These improvements were considered as evidence of laches on the part of respondents and justified the dismissal of the Complaint:

> Plaintiffs['] failure to raise a restraining arm to the defendants' introduction of several improvements on the disputed property in a span of almost eighteen (18) years is simply contrary to their claim of ownership.
>
> Thus, the plaintiffs['] long inaction or passivity in asserting their alleged rights over the disputed property will preclude them from recovering the same under the equitable principle of laches.
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> x x x x x x x x x
>
> If, indeed the plaintiffs are very assertive of their claim of ownership over the disputed property, they should have filed a judicial action for recovery of possession or ejectment before or at the time of the construction of two (2) additional houses of defendant Juan Cano's children, namely defendants Rolando Cano and Josie Aquino, and NOT merely paying realty taxes and securing Tax Declarations, only on December 22, 1999 considering that tax receipts and tax declarations are only prima facie evidence of ownership and possession (Heirs of Leopoldo Vencilao, Sr., et al. vs. CA, April 1, 1998).[24]

As to the issue of ownership, the MTCC ruled in favor of petitioners. It upheld the validity of the donation *propter nuptias*

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[22] *Id*. at 94.

[23] Civil Case No. MTCC 1334 penned by Judge Jose S. Vallo; *id*. at 109-115.

[24] *Id*. at 113-114.

in view of the absence of a declaration by a proper forum that the instrument was null and void[25] and the lack of evidence that Feliza was indeed incapable of signing her name on the instrument of donation. [26]

The following circumstances were likewise deemed consistent with the claim of ownership by petitioners: (a) their payment of realty taxes on the property; (b) the continued registration of the title to the property in the name of their mother, Feliza; and (c) the execution of the donation *propter nuptias* **prior** to the Deed of Sale.[27]

The RTC Ruling

While the RTC initially affirmed the MTCC Decision and considered the claim of respondents barred by laches,[28] it subsequently reversed its own ruling. In a Resolution dated 27 May 2008,[29] the RTC declared respondents as the true owners of the property on account of the registered Deed of Absolute Sale in their favor. This instrument was considered as evidence of a preferred right as against petitioners' claim based on an unregistered donation *propter nuptias*:

> The Court notes that the Deed of Absolute Sale executed in favor of plaintiffs-appellants over the portion pertaining to Felisa Baun is registered on the title itself. This registration is proof of their ownership over the land, the purpose of which is to quiet title to land and to put a stop forever to any question of the legality of the title. Not only that, the annotation on the said title says that that portion pertaining to the share of Felisa Baun is tenanted by plaintiff-appellant[,] Arturo Cano. Clearly, plaintiff-appellant, before and at the time he was ousted by the defendants-appellees, was in possession of the property, first as a tenant prior to 1982 and as the owner thereof from 1982 onwards.

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[25] *Id*. at 114.

[26] *Id*. at 113-114.

[27] *Id*.

[28] Decision dated 4 August 2000 in Civil Case No. SCC-2333 penned by Presiding Judge Bienvenido R. Estrada; *Id*. at 133-137.

[29] Penned by Presiding Judge Antony Q. Sison; *Id*. at 148-150.

Indeed, as provided under Section 51, 2nd paragraph, P.D. 1529, "the act of registration shall be the operative act to convey or affect the [l]and insofar as third parties are concerned, and in all cases under this Decree, the registration shall be made in the office of the Registrar of Deeds for the province or city where the land lies." As between the two transactions, the donation and the sale, respectively, concerning the subject parcel of land in the name of Felisa Baun, plaintiffs-appellants who have registered the sale in their favor [have] a preferred right over the defendants-appellees who have not registered their title.[30]

The CA Ruling

On appeal,[31] the CA upheld the RTC ruling and declared that the registered transaction should prevail over the earlier unregistered right:[32]

It is not contested that the property in question is a registered land with Original Certificate of Title No. 62276. It is also uncontested that the sale in favor of respondents herein have been annotated on the title. On the other hand, the purported Donation Propter Nuptias in favor of petitioners herein has not been annotated in the Title of the property subject of this case.

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Clearly, as between the Deed of Sale in favor of respondents herein that is annotated in the title and the donation in favor of petitioners, the effective and binding transfer is that covered by the Deed of Sale.[33]

The CA denied the Motion for Reconsideration filed by petitioners,[34] prompting them to file the Petition for Review in G.R. No 188666.[35]

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[30] *Id*. at 149.

[31] *Id*. at 168; The appeal was made via a Petition for Review under Rule 42 of the Rules of Civil Procedure.

[32] *Id*. at 174.

[33] *Id*. at 173-176.

[34] *Id*. at 185A-185; Resolution dated 3 July 2009.

[35] *Id*. at 11-27.

Proceedings before the Court

Before this Court, petitioners contend that the non-registration of the donation *propter nuptias* in their favor does not make their claim inferior to that of respondents.[36] Citing Article 749 of the Civil Code, the petitioners argue that donations of immovable property are considered valid so long as these are made in a public document.[37] They also claim that registration does not vest ownership over any particular property, but is merely an evidence of title thereto.[38] Moreover, registration was supposedly unnecessary in this case, because respondents were "manifestly aware of the petitioners' existing interest in the property, albeit not registered,"[39] as petitioners were in possession of the property at the time it was allegedly purchased.[40]

Petitioners also emphasize that the donation *propter nuptias* was executed by Feliza 20 years *before* the alleged execution of the Deed of Absolute Sale.[41] Assuming that she had agreed to the sale, this second transaction conveyed nothing to respondents.[42] Finally, petitioners assert that even if the donation *propter nuptias* is assumed to be invalid, they still have a better right over the property as they have already established their ownership by virtue of acquisitive prescription.[43]

In their Comment,[44] respondents deny the allegation that they were aware of petitioners' claim over the property at the time

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[36] *Id*. at 17.

[37] *Id*. at 18.

[38] *Id*. at 17-18 citing *Heirs of Florencio v. Heirs of De Leon*, 469 Phil. 459.

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

[40] *Id*. at 19.

[41] *Id*. at 22.

[42] *Rollo* (G.R. No. 190750), p. 26.

[43] *Rollo* (G.R. No. 188666), pp. 20-21.

[44] Dated 10 February 2010; *id*. at 189-191.

they purchased it.[45] They also assert that after they had purchased the lot, they had the Tax Declarations transferred to their names, and that they henceforth paid the realty taxes thereon up to the present.[46] Respondents likewise pray for the dismissal of the Petition for raising factual issues that have already been resolved by the lower courts.[47]

During the pendency of G.R. No. 188666, a second Petition docketed as G.R. No. 190750 was filed before this Court. As will be discussed, the second case involves the same property and the same parties, but pertains specifically to the issue of ownership.

G.R. No. 190750
(Quieting of Title Case)

The dispute in G.R. No. 190750 stemmed from a Complaint for Quieting of Title, Declaration of Nullity of Document, Ownership and Damages[48] filed by petitioners with the RTC of San Carlos City, Pangasinan.[49] The suit was instituted while the ejectment case in G.R. No. 188666 was pending.

In the Complaint, petitioners claimed absolute ownership over the subject property citing the donation *propter nuptias* executed in their favor,[50] as well as their possession of the land since 1962. They further alleged that the quieting of title was necessary, because respondents were claiming ownership of the same lot on the basis of a spurious and simulated deed of sale.

In their Sworn Answer,[51] respondents sought the dismissal of the Complaint on the following grounds: (1) failure to comply

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[45] *Id*. at 190.

[46] *Id*. at 190-191.

[47] *Id*. at 191.

[48] *Rollo* (G.R. No. 190750), pp. 25-28.

[49] The case was docketed as Civil Case No. SCC-2323.

[50] *Rollo* (G.R. No. 190750), p. 26.

[51] *Id*. at 31-33.

with a condition precedent, i.e., the conduct of *barangay* conciliation proceedings; (2) forum shopping; (3) laches; (4) prescription; and (5) failure to state a cause of action. [52] They also asserted that the signature of Feliza on the instrument of donation was spurious, considering that she did not know how to write and could only affix her thumbmark to legal documents.

The RTC Ruling

In a Decision[53] dated 27 May 2008, the RTC declared respondents the rightful owners of the property.[54] While affirming the validity of both the donation *propter nuptias* made in favor of petitioners and the Deed of Absolute Sale presented by respondents, the trial court declared that the sale prevailed over the donation because of the operative fact of registration.[55] The RTC explained:

> The formalities required by law having been established on the two (2) documents (Donation Propter Nuptias for the plaintiffs and Deed of Absolute Sale for the defendants), We now proceed to determine which between these documents prevails over the other. The Court finds the right of the defendants superior over that of the plaintiffs.
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> Section 51, 2nd paragraph, P.D. 1529 provides, "the act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned and in all cases under this Decree, the registration shall be made in the office of the Registrar of Deeds for the province or city where the land lies.
>
> It is settled in this jurisdiction that the maxim "Prior est in tempore. Potior est injure." (He who is first in time is preferred in right) is observed in land registration matters. As between the two transactions, the donation and the sale, respectively, concerning the subject parcel of land in the name of Felisa Baun, the defendants who have registered the sale in their favor have a preferred right over the plaintiffs have

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[52] *Id.* at 32.

[53] *Id.* at 52-61; Penned by Presiding Judge Anthony O. Sison.

[54] *Id.* at 61.

[55] *Id.* at 60.

not registered their title, even if the latter are in actual possession of the property involved.[56]

The RTC also noted that respondents presented sufficient evidence to prove their possession of the property since 1982, while petitioners failed to submit proof in support of the latter's claim of ownership and occupancy:

> Moreover, as established by evidence, the house on which plaintiffs stay was once the ancestral house of the family of Felissa Baun. It was likewise the only house standing on the land in question until the dispute between the parties arose in 1999. The annotation on TCT no. 62276 in 1982 that defendant Arturo Cano is the tenant of the subject parcel of land would show that indeed it was defendant Arturo Cano who possessed and took care of the land prior to the said year until he purchased the same in 1982. Defendants, after the sale[,] had declared the subject property for taxation purposes in their names. Likewise, from 1982 up to 2005, defendants religiously paid the realty tax due from (sic) the subject property. Their possession however was disturbed in 1999, the year he was disallowed entry by the plaintiffs. Aside from defendants' registered ownership over the parcel of land in question, the tax declaration and annual tax payments bolster the fact of their ownership of the subject lot.
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> Plaintiffs on the other hand failed to present evidence that indeed they are the legitimate owners of the subject parcel of land. Except for their present possession of the subject property, they and their children failed to present evidence that the subject land and the improvements, particularly the houses standing thereon, are declared in their names. They also failed to present any documentary evidence to prove payment of taxes due from the property.[57]

On the basis of its determination that respondents were the rightful owners of the property, the RTC declared that they had the right to possess it.[58] Moreover, since petitioners were staying on the property by the mere tolerance of the real owners, the trial court ruled that it was incumbent upon them to vacate

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

[57] *Id*. at 60.

[58] *Id*.

the land[59] and to pay respondents for actual damages caused by the dispossession.[60]

The CA Ruling

Petitioners sought the reversal of the RTC Decision, but the CA dismissed the appeal for lack of merit.[61] The appellate court agreed with the trial court's ruling that respondents were the rightful owners of the property, albeit on a different ground; that is, the invalidity of the donation *propter nuptias* executed by Feliza in their favor:

> The document captioned as Donation Property Nuptias does not show that plaintiffs-appellants, as the donees, accepted the subject parcel of land as a gift from the donor. Neither have the plaintiffs-appellants presented any other document that would evidence such acceptance and notification to the donor. Hence, it is our considered view that the ownership over the subject parcel of land did not pass to plaintiffs-appellants by reason of their failure to accept the donation as required by law. And, by necessary consequence, considering that Felisa retained the ownership over the subject parcel of land, she can validly sell the same, as she did in 1982, in favor of defendants-appellees.[62] (Emphases omitted)

The CA also emphasized that respondents were purchasers in good faith, as there was nothing in OCT No. 62276 itself or in the circumstances of the sale that could have warned them that the property was being claimed by others:

> [E]very person dealing with registered land may safely rely on the correctness of its certificate of title and the law will not oblige him to go beyond what appears on the face thereof to determine the condition of the property. This rule applies to defendants-appellees who are purchasers in good faith of the subject parcel of land. There

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

[60] *Id.* at 61.

[61] *Id.* at 69-76; Decision dated 30 September 2009 in CA-G.R. CV No. 91587.

[62] *Id.* at 73.

was nothing in TCT No. 62276 or the circumstances surrounding the subject parcel of land that could have warned or made them suspicious that other persons have a claim over the land. At the time they purchased the subject parcel of land in 1982, the same remains covered by TCT No. 62276 in the name of Felisa, and her co-owners, and the donation of the land by Felisa to plaintiffs-appellants does not appear in said TCT. Likewise, as the trial court found based on the evidence on record, only the ancestral house of Felisa was standing on the subject parcel of land at the time the latter sold it to defendants-appellees. In view thereof, the reliance of defendants-appellees on TCT No. 62276 when they purchased the subject parcel of land is supported by law. We also find no defect in the Deed of Absolute Sale executed by Felisa and defendants-appellees, which effected the transfer of ownership of the subject parcel of land from the former to the latter.[63]

Petitioners sought reconsideration of the Decision, but the CA denied the motion in its Resolution dated 14 December 2009.[64]

Proceedings before this Court

Petitioners filed a Petition for Review before this Court[65] seeking the reversal of the above CA Decision and Resolution. They contend that the CA erred in declaring the donation *propter nuptias* invalid on the ground of lack of acceptance by the donee. It allegedly made that declaration even if the applicable provisions of the Civil Code did not impose that requirement.[66] They assert that since the donation had been validly made, Feliza sold nothing to respondents in 1982, as she had already divested herself of ownership over that same property in 1962.[67]

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

[64] *Id*. at 83.

[65] *Id*. at 9-20.

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

[67] *Id*. at 16.

The Comment[68] filed by respondents on the Petition in G.R. No. 190750 raises substantially the same arguments as those found in their Comment in G.R. No. 188666.

Consolidation of Cases

Considering that the two Petitions involved identical parties litigating over the same property, the two cases were consolidated by the Court in a Resolution[69] dated 17 March 2010. Petitioners were thereafter ordered to file a consolidated reply to the Comments filed in both petitions.[70]

In their Consolidated Reply,[71] petitioners point out that the two cases involve not only the issue of possession, but also of ownership.[72] Consequently, they argue that the findings of the lower courts on possession were not controlling in this case.[73] They also reiterate their arguments on the validity of the donation in their favor. [74]

ISSUES

The consolidated Petitions present the following issues for resolution:

(1) Whether the CA erred in nullifying the donation *propter nuptias* executed by Feliza in favor of petitioners because of the absence of an express acceptance by the donee

(2) Whether the CA erred in declaring that respondents are the rightful owners of the property

(3) Whether the CA erred in awarding the possession of the property to respondents

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[68] *Id*. at 86-89.

[69] *Rollo* (G.R. No. 188666), p. 192; *rollo* (G.R. No. 190750), p. 84.

[70] *Rollo* (G.R. No. 188666), p. 204.

[71] *Id*. at 202-207.

[72] *Id*. at 204.

[73] *Id*.

[74] *Id*. at 204-205.

OUR RULING

We **DENY** the Petitions.

While we disagree with certain pronouncements of the CA in respect of the validity of donations *propter nuptias*, we affirm its ultimate conclusion that respondents are the rightful owners of the property and are consequently entitled to possession thereof.

Written acceptance and notification to the donor are not required for donations **propter nuptias** *executed under the Civil Code***.**

Disposing of a preliminary matter, we clarify our position with respect to the pronouncement of the CA in G.R. No. 190750 that the donation *propter nuptias* executed in favor of petitioners was invalid.

In the CA Decision affirming the RTC ruling in the action for quieting of title, the appellate court invalidated the donation *propter nuptias* because of petitioners' failure to comply with the formal requirement of acceptance. The CA explained:

When applied to a donation of an immovable property, the law further requires that the donation be made in a public document and that the acceptance thereof be made in the same deed or in a separate public instrument; in cases where the acceptance is made in a separate instrument, it is mandated that the donor be notified thereof in an authentic form, to be noted in both instruments. The acceptance of the donation by the donee is indispensable. Where the deed of donation fails to show the acceptance, or where the formal notice of the acceptance, made in a separate instrument, is either not given to the donor or else not noted in the deed of donation and in the separate acceptance, the donation is null and void.

The document captioned as Donation Propter Nuptias does not show that plaintiffs-appellants, as the donees, accepted the subject parcel of land as a gift from the donor. Neither have plaintiffs-appellants presented any other document that would evidence such acceptance and notification to the donor. Hence, it is our considered view that

the ownership over the subject parcel of land did not pass to plaintiffs-appellants by reason of their failure to accept the donation as required by law. And, by necessary consequence, **considering that Felisa retained the ownership over the subject parcel of land, she can validly sell the same, as she did in 1982, in favor of defendants-appellees.**[75] (Emphases in the original)

We note that petitioners do not deny that they never accepted the donation in their favor. They insist, though, that acceptance of the gift was not required, since the donation *propter nuptias* was executed on 30 May 1962, or while the Civil Code was still in effect.[76] Thus, they contend that the CA erred in applying the ordinary rules of donation to the instrument herein,[77] when the applicable provisions were in fact Articles 126 to 134 of the Civil Code.

We agree with petitioners on this point.

It is settled that only laws existing at the time of the execution of a contract are applicable thereto.[78] The donation *propter nuptias* in this case was executed on 30 May 1962,[79] while the provisions on such donations under the Civil Code were still in force and *before* the Family Code took effect on 3 August 1988. The formal requisites for the validity of the donation should therefore be determined in accordance with the following provisions of the Civil Code:

ARTICLE 126. Donations by reason of marriage are those which are made before its celebration, in consideration of the same and in favor of one or both of the future spouses.

ARTICLE 127. These donations are governed by the rules on ordinary donations established in Title III of Book III, except as to their form which shall be regulated by the Statute of Frauds; and insofar as they are not modified by the following articles.

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[75] *Rollo* (G.R. No. 190750), p. 73.

[76] *Id.* at 17.

[77] *Id.* at 18.

[78] *Valencia v. Locquiao*, 459 Phil. 247 (2003).

[79] *Rollo* (G.R. No. 188666), p. 99.

ARTICLE 129. Express acceptance is not necessary for the validity of these donations.

In *Valencia v. Locquiao*,[80] we explained the effect of these Civil Code provisions on the formal requirements for donations *propter nuptias*:

> Unlike ordinary donations, donations *propter nuptias* or donations by reason of marriage are those "made before its celebration, in consideration of the same and in favor of one or both of the future spouses." The distinction is crucial because the two classes of donations are not governed by exactly the same rules, especially as regards the formal essential requisites.
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> x x x x x x x x x
>
> Under the New Civil Code, the rules are different. **Article 127 thereof provides that the form of donations *propter nuptias* are [sic] regulated by the Statute of Frauds. Article 1403, paragraph 2, which contains the Statute of Frauds requires that the contracts mentioned thereunder need be in writing only to be enforceable. However, as provided in Article 129, express acceptance "is not necessary for the validity of these donations**." Thus, implied acceptance is sufficient.[81] (Emphases supplied)

Given that this old rule governs this case, it is evident that the CA erroneously invalidated the donation *propter nuptias* in favor of petitioners. The absence of proof that the gift was accepted in a public instrument is not controlling, since implied acceptance – such as the celebration of marriage and the annotation of this fact in the OCT[82] – must be deemed sufficient.

We must clarify that the foregoing rule applies only to donations *propter nuptias* made *prior* to the Family Code (as in this case). At the time, Article 129 of the Civil Code allowed acceptance of those donations to be made impliedly. Since that provision is no longer part of the current Family Code, donations *propter nuptias* made thereafter are now subject to the rules on

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[80] *Supra* note 78.

[81] *Id.* at. 259-260.

[82] See *Valencia v. Locquiao, supra* note 78.

ordinary donations[83] including those on the formal requisites for validity. As a result, donations of immovables under the Family Code, including those made by reason of marriage, must now be expressly accepted by the donee in a public instrument.[84]

The CA correctly ruled that respondents are the rightful owners of the property.

The validity of the donation *propter nuptias* executed by Feliza in favor of petitioners, however, does not detract from our ultimate conclusion that respondents are the rightful owners of the property. On this point, we agree with the CA that the prior unregistered donation does not bind respondents, who are innocent purchasers for value. Hence, it correctly declared them the rightful owners of the subject property.

The unregistered donation *propter nuptias* does not bind third persons.

Pursuant to Article 709 of the Civil Code, all rights over immovable property must be duly inscribed or annotated on the Registry of Deeds before they can affect the rights of third persons. The provision states:

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[83] Article 83 of the Family Code states:

> Art. 83. These donations are governed by the rules on ordinary donations established in Title III of Book III of the Civil Code, insofar as they are not modified by the following articles.

[84] Book III, Title III, Chapter 2, Article 749 of the Civil Code, provides:

> ARTICLE 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.
>
> The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.
>
> If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

Art. 709. The titles of ownership, or other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

The same rule is enunciated in Presidential Decree No. (P.D.) 1529, or the Property Registration Decree, specifically Sections 51 and 52 thereof, which provide:

SECTION 51. *Conveyance and other dealings by registered owner* — x x x But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, x x x.

SECTION 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

In *Gonzales v. Court of Appeals*, we explained the significance of the foregoing provisions to unregistered donations as follows:[85]

From the foregoing provisions, it may be inferred that as between the parties to a donation of an immovable property, all that is required is for said donation to be contained in a public document. Registration is not necessary for it to be considered valid and effective. **However, in order to bind third persons, the donation must be registered in the Registry of Property (now Registry of Land Titles and Deeds). Although the non-registration of a deed of donation shall not affect its validity, the necessity of registration comes into play when the rights of third persons are affected,** as in the case at bar.

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[85] 411 Phil. 232 (2001).

It is undisputed in this case that the donation executed by Ignacio Gonzales in favor of his grandchildren, although in writing and duly notarized, has not been registered in accordance with law. For this reason, it shall not be binding upon private respondents who did not participate in said deed or had no actual knowledge thereof. Hence, while the deed of donation is valid between the donor and the donees, such deed, however, did not bind the tenants-farmers who were not parties to the donation. **As previously enunciated by this Court, non-registration of a deed of donation does not bind other parties ignorant of a previous transaction** (Sales vs. Court of Appeals, 211 SCRA 858 [1992]).[86] (Emphases supplied)

In this case, petitioners do not deny that the donation *propter nuptias* was never registered. Applying the rule laid down in *Gonzales,* the conveyance of the property in their favor is not considered binding on third persons, who had no participation in the deed or any actual knowledge thereof.[87] The Court is convinced that respondents fall within the scope of this rule.

The records of both the cases for ejectment and the quieting of title are bereft of evidence of respondents' participation in or actual knowledge of the deed. In fact, petitioners never made that assertion in any of their submissions before the courts. Instead, they focused on their claim that respondents were aware of the former's *possession* of the property.[88]

We emphasize, however, that in order for prior unregistered interest to affect third persons despite the absence of registration, the law requires actual knowledge of that interest. Nothing less would suffice. As we explained in *Pineda v. Arcalas*,[89] mere possession of the property is not enough:

True, that notwithstanding the preference given to a registered lien, this Court has made an exception in a case where a party has

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[86] *Id.* at 239-240.

[87] *Sales v. Court of Appeals*, G.R. No. L-40145, 29 July 1992, 211 SCRA 858.

[88] *Rollo* (G.R. No. 190750), pp. 53-56; RTC Decision in Civil Case No. SCC-2323.

[89] 563 Phil. 919 (2007).

actual knowledge of the claimant's actual, open, and notorious possession of the disputed property at the time the levy or attachment was registered. In such situations, the actual notice and knowledge of a prior unregistered interest, not the mere possession of the disputed property, was held to be equivalent to registration.

Lamentably, in this case, Pineda did not even allege, much less prove, that Arcalas had actual knowledge of her claim of ownership and possession of the property at the time the levy was registered. The records fail to show that Arcalas knew of Pineda's claim of ownership and possession prior to Pineda's filing of her third party claim before the Quezon City RTC. Hence, the mere possession of the subject property by Pineda, absent any proof that Arcalas had knowledge of her possession and adverse claim of ownership of the subject property, cannot be considered as equivalent to registration.[90]

In the absence of proof that respondents participated in the transaction, or had knowledge of petitioners' interest over the land at the time the property was purchased in 1982, this Court must rule that they are not bound by the unregistered donation.[91] Hence, the conveyance had no effect as to respondents.

Respondents are innocent purchasers for value.

The acquisition of the property by respondents must likewise be respected because they were innocent purchasers for value. They had every right to rely on OCT No. 62276 insofar as it indicated that (1) one-fourth of the property was owned by Feliza; and (2) the land was subject only to the encumbrances annotated on the title, which did not include the donation *propter nuptias* in favor of petitioners.

Our ruling is rooted in the general principle that persons dealing with registered land have the right to completely rely on the Torrens title issued over the property.[92] Buyers are not

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[90] *Id.* at 93.

[91] See *Buason v. Panuyas*, 105 Phil. 795-799 (1959).

[92] Section 44 of P.D. 1529 states:

> Section 44. Statutory liens affecting title. — Every registered owner receiving a certificate of title in pursuance of a decree of registration,

required to go beyond what the certificate of title indicates on its face,[93] provided the acquisition of the land is made in good faith, that is, without notice that some other person has a right to, or interest in, the property.

Nevertheless, the protection granted by law to innocent purchasers for value is not absolute. In *Lausa v. Quilaton,*[94] the Court explained:

> Jurisprudence has established exceptions to the protection granted to an innocent purchaser for value, such as when the purchaser has actual knowledge of facts and circumstances that would compel a reasonably cautious man to inquire into the status of the lot; or of a defect or the lack of title in his vendor; or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.
>
> The presence of anything that excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of the certificate. One

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> 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 encumbrances of record.
> Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.
> Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.
> Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform. (Emphasis supplied)

[93] *Nobleza v. Nuega*, G.R. No. 193038, 11 March 2015.

[94] G.R. No. 170671, 19 August 2015.

who falls within the exception can neither be denominated as innocent purchaser for value nor a purchaser in good faith, and hence does not merit the protection of the law.

In particular, the Court has consistently held that that a buyer of a piece of land that is in the actual possession of persons other than the seller must be wary and should investigate the rights of those in possession. Without such inquiry, the buyer can hardly be regarded as a buyer in good faith.[95]

Here, petitioners maintain that they had prior physical possession of the land, and that they built permanent structures thereon even before respondents' acquisition of the property from Feliza. Citing the findings of the MTC during the ocular inspection conducted in G.R. No. 188666, petitioners argue that the permanent structures and the trees found on the disputed property prove their possession thereof over a considerable period of time.[96] They insist that respondents cannot feign ignorance of these facts; hence, the latter cannot claim to be innocent purchasers for value.[97]

We are not persuaded.

The Court notes that petitioners have failed to sufficiently establish their assertion. Notably, the RTC in both the cases for ejectment and quieting of title declared that it was respondent Arturo Cano who was in possession of the property as a tenant prior to and at the time of the sale in 1982, based on the annotation on the title to the property (OCT No. 62276).

In its Decision dated 27 May 2008, the RTC in G.R. No. 190750 dismissed the case filed by petitioners for quieting of title on the basis of the following findings of fact:

x x x **The annotation on TCT no. 62276 in 1982 that defendant Arturo Cano is the tenant of the subject parcel of land would show that indeed it was defendant Arturo Cano who possessed**

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[95] *Id*.

[96] *Rollo* (G.R. No. 188666), pp. 19-20.

[97] *Id*.

and took care of the land prior to the said year until he purchased the same in 1982. Defendants, after the sale[,] had declared the subject property for taxation purposes in their names. Likewise, from 1982 up to 2005, defendants religiously paid the realty tax due from (sic) the subject property. Their possession however was disturbed in 1999, the year he was disallowed entry by the plaintiffs. Aside from defendants' registered ownership over the parcel of land in question, the tax declaration and annual tax payments bolster the fact of their ownership of the subject lot.

x x x x x x x x x

x x x **The Court further notes that prior to defendants' purchase of the land, they were the ones tilling the subject land as tenants. Clearly, therefore, prior to 1982 and thereafter, defendants were in possession of the subject land as tenants and thereafter as registered owners.** Their possession, however, was disturbed in 1999 when plaintiffs, who as established are staying on the subject lot upon the tolerance of the defendants were disallowed entry by the former.[98] (Emphasis supplied)

On the other hand, the RTC in G.R. No. 188666 ordered the ejectment of petitioners from the property, upon a finding that respondents had been in continuous possession of the land even prior to their purchase thereof in 1982:

Not only that, **the annotation on the said title says that that portion pertaining to the appellant,** before and at the time he was ousted by the defendants-appellees, **was in possession of the property, first as a tenant prior to 1982 and as the owner thereof from 1982 onwards**.

x x x x x x x x x

x x x **Likewise, from 1982 up to 2005, plaintiffs-appellants religiously paid the realty tax due from the subject property. The plaintiffs-appellants have explained on the observation of this Court that prior to the purchase plaintiffs-appellants were already in possession at that time, being the tenants thereof.** Their possession however was disturbed in October 3, 1999, the day plaintiff-appellant Arturo was disallowed entry by the defendants-appellees. Aside from plaintiffs-appellants' registered ownership over the parcel

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[98] RTC Decision in Civil Case No. SCC-2323; *supra* note 4, p. 60.

of land in question, the tax declaration and tax payments bolster the fact of their ownership of the subject lot.[99] (Emphases supplied)

In their petition, petitioners allude to three semi-concrete houses and several trees currently standing on the land as evidence of their possession thereof. However, they have failed to prove that these structures were already in place *at the time of the sale* in 1982. In fact, the RTC and the CA in the case for quieting of title declared that the only house standing on the property was the ancestral house of the seller, Feliza, when the Deed of Sale was executed. The RTC declared:

> Moreover, as established by evidence, the house on which plaintiffs stay was once the ancestral house of the family of Felissa Baun. It was likewise the **only house standing on the land in question until the dispute between the parties arose in 1999**.[100] x x x**.** (Emphasis supplied)

This finding was affirmed by the CA in its Decision dated 30 September 2009:

> At the time they purchased the subject parcel of land in 1982, the same remains covered by TCT No. 62276 in the name of Felisa, and her co-owners, and the donation of the land by Felisa to plaintiffs-appellants does not appear in said TCT. Likewise, as the trial court found based on the evidence on record, **only the ancestral house of Felisa was standing on the subject parcel of land at the time the latter sold it to defendants-appellees**.[101] (Emphasis supplied)

We find no reason to overturn the foregoing factual findings.

It must be emphasized that the Petitions before us were filed under Rule 45 of the Rules of Court. As such, our mandate is limited to only a review of errors of law.[102] It is not our place to analyze the factual findings of the lower courts and weigh

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[99] RTC Decision in Civil Case No. SCC-2333; *supra* note 28, at 149.

[100] *Supra* note 98.

[101] CA Decision dated 30 September 2009, *supra* note 5, at 63-64.

[102] Rules of Court, Rule 45, Section 1.

the evidence all over again.[103] At most, our inquiry should only pertain to whether these findings are sufficiently supported by evidence.

In this case, the determinations made by the CA and the RTC as to the party in possession of the property, and the structures standing on the land at a specific point of time, are entitled to deference. These factual determinations are supported by the annotation on OCT No. 62276, the tax declarations submitted by petitioners and other pieces of evidence that show that only the ancestral house of the seller was standing on the land.

Considering that the factual findings of the lower courts are consistent with the evidence on record, we affirm their conclusion that respondents are innocent purchasers for value who had no reason to investigate further or to go beyond what was stated in the OCT. Having acquired the land in good faith, respondents' claim of ownership must be upheld.

Acquisitive prescription does not apply to registered land.

The assertion of petitioners that they acquired ownership of the property by virtue of their open, continuous, adverse and exclusive possession thereof for more than 60 years[104] is likewise untenable.

As early as 1902, when Act No. 496 created the Torrens system of registration, the law already declared that registered land cannot be acquired by prescription or adverse possession.[105] This principle is currently found in Section 47 of P.D. 1529:

> Section 47. *Registered land not subject to prescriptions.* No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.

It is undisputed that the subject property is registered land. Hence, even assuming that petitioners occupied it for a

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[103] *Malison v. Court of Appeals*, 554 Phil. 10 (2007).

[104] *Rollo* (G.R. No. 188666), p. 39.

[105] Act No. 496, Section 46; Also see *Lausa v. Quilaton*, *supra* note 94.

considerable period after the sale, their possession could not have ever ripened into ownership.

Respondents are entitled to possession of the property.

In view of our ruling in favor of respondents on the issue of ownership, we likewise conclude that they are entitled to possession of the land in question. They have the right to enjoy and dispose of it without limitations other than those imposed by law. [106]

Our ruling on ownership also renders immaterial the issue of tolerance raised by petitioners. Since their supposed title over the land – based on the donation *propter nuptias* and on their claim of acquisitive prescription – has been defeated by the registered Deed of Absolute Sale, petitioners clearly have no right to remain on the property. Regardless of whether or not their prior possession of the property had been tolerated by respondents, it is evident that petitioners must now vacate the land.

Accordingly, we rule that the CA committed no reversible error in declaring respondents as the rightful owners of the land in the action for the quieting of title; and in ordering petitioners to vacate the property in the ejectment case.

As a final point, the Court is aware that our ruling will affect the structures currently standing on the property, which petitioners claim to own. Our decision may then engender certain issues of accession, particularly the right to reimbursement of expenses and payment of damages. Unfortunately, these matters were not raised by any of the parties before this Court or any of the lower courts. The dearth of evidence on this point likewise prevents us from making any pronouncement on the matter. These questions must perforce be dealt with in another proceeding.

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[106] CIVIL CODE, Art. 428; *Heirs of Florencio v. Heirs of De Leon*, 469 Phil. 459 (2004).

WHEREFORE, the Petitions are **DENIED**. The Court of Appeals Decision and Resolution dated 29 April 2009 and 3 July 2009, respectively, in CA-G.R. SP No. 104200, and the Decision and Resolution dated 30 September 2009 and 14 December 2009, respectively, in CA-G.R. CV No. 91587 are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 201031. December 14, 2017]

TOMAS R. LEONIDAS, *petitioner, vs.* **TANCREDO VARGAS and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); REGISTRATION OF AN IMPERFECT AND INCOMPLETE TITLE; REQUIREMENTS.— "The Regalian doctrine, embodied in Section 2, Article XII of the 1987 Constitution, provides that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land." "[Commonwealth Act No. 141, in turn,] governs the classification and disposition of lands of the public domain. Section 11 [thereof] provides, as one of the modes of disposing public lands that are suitable for agriculture, the 'confirmation of imperfect or incomplete titles.' Section 48 [thereof], on the other hand, enumerates those who are considered to have acquired an imperfect or incomplete title over public lands and, therefore,

entitled to confirmation and registration under the Land Registration Act [now PD 1529]." The latter law then "specifies who are qualified to apply for registration of land." Taken together, all the foregoing provide for the requisites for the confirmation and registration of an imperfect and incomplete title x x x. "[A]pplicants for registration of title under Section 14 (1) [of PD 1529] must sufficiently establish: *(1)* that the subject land forms part of the disposable and alienable lands of the public domain; *(2)*that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and *(3)* that his possession has been under a *bona fide* claim of ownership since June 12, 1945, or earlier. These triple requirements of alienability and possession and occupation since June 12, 1945 or earlier under Section 14 (1) are indispensable prerequisites to a favorable registration of title to the property. Each element must necessarily be proven by no less than clear, positive and convincing evidence; otherwise, the application for registration should be denied."

2. ID.; ID.; ID.; ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN; AN APPLICATION FOR LAND REGISTRATION MAY BE GRANTED DESPITE THE ABSENCE OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SECRETARY'S CERTIFICATION; CONDITION.— The first requirement [that the subject lots form part of the alienable and disposable lands of the public domain,] is complied with in the case at bench. Notwithstanding that only a CENRO certification covering the subject lots was presented in the instant case, the subject lots are considered alienable and disposable lands of the public domain because of this Court's ruling that an application for land registration may be granted despite the absence of the DENR Secretary's certification, provided that the same was pending at the time *Republic v. Vega* was promulgated on January 17, 2011. x x x It is worth stressing, however, that the foregoing ruling is the exception, not the rule.

3. ID.; ID.; ID.; POSSESSION AND OCCUPATION; NOT DULY ESTABLISHED WHEN THE APPLICANT FAILS TO PROVE HIS AND HIS PREDECESSOR-IN-INTEREST'S ACTUAL, NOTORIOUS, EXCLUSIVE AND CONTINUOUS POSSESSION OF THE SUBJECT LOTS FOR THE PERIOD REQUIRED BY LAW.— [P]etitioner

failed to establish *bona fide* possession and ownership over the subject lots since June 12, 1945 or earlier. x x x [H]is predecessors-in-interest became the owners of the subject lots pursuant to the May 17, 1937 Certificate of Sale of the Forfeited Real Property issued by the Provincial Treasurer of Iloilo x x x. **[T]he Certificate of Public Sale indicated that the balance of the purchase price in the amount of ₱29.44, was yet to be paid on or before December 31, 1937**. No incontrovertible proof was, however, presented to establish the fact that this balance of the purchase price in the said amount of ₱29.44 had indeed been paid on or before December 31, 1937. x x x [E]ven as petitioner was able to submit TDs and evidence of tax payments only for a few years, he nevertheless failed to explain why he or his predecessors-in-interest declared the subject lots for taxation purposes only in **1976**, this despite his claim that his predecessors- in-interest had been in possession and occupation of the subject lots since 1937, as allegedly shown in the Provincial Treasurer's Certificate of Sale. It is settled that intermittent and irregular tax payments run counter to a claim of ownership or possession. x x x [P]etitioner x x x failed to prove his and his predecessors-in-interests actual, notorious, exclusive and continuous possession of the subject lots for the length of time required by law. x x x [P]etitioner did not present clear and convincing evidence that the subject lots had indeed been cultivated by him or by his predecessors-in-interest for the period of time required by law. Needless to say, all these failings weaken his claim that he has been a *bona fide* possessor and occupant of the subject lots in the manner and for the period prescribed by law.

4. ID.; ID.; ID.; ID.; A CLAIM FOR REGISTRATION OF IMPERFECT TITLE MAY BE DISMISSED WHEN THE APPLICANT FAILS TO PROVE HOW HE ACQUIRED THE SUBJECT PROPERTY FROM HIS PREDECESSORS-IN-INTEREST.— Tancredo failed to show that his or his predecessor-in--interest's possession and occupation over the disputed portions had been under a *bona fide* claim of ownership since June 12, 1945, or earlier. x x x Tancredo failed to adduce clear and convincing evidence which established the origin or antecedents of Tomas's straightforward possession and occupation, or claim of ownership, over the disputed portions. x x x Tancredo did not present clear, convincing evidence to support his claim that the disputed

> portions were in fact transferred to him by his father, Tomas. Tancredo merely testified that the disputed portions were given to him solely by Tomas, an act that was allegedly consented to by his siblings. x x x Nonetheless, there is nothing in the records to support or confirm Tancredo's claim that the property was in fact deeded over to him by his father, Tomas. x x x Tancredo also failed to establish that he and his predecessors-in-interest had/have been in open, continuous, exclusive and notorious possession and occupation of the disputed portions since June 12, 1945, or prior thereto. x x x [T]he records showed that Tancredo merely submitted photocopies of four tax declarations which were attached as annexes to his Opposition. x x x It would thus appear that Tancredo had erected his opposition/claim to the lots in question upon the said photocopies of four tax declarations whose authenticity or genuineness is open to the most serious doubts. And, even on the assumption that the said tax declarations are in fact authentic and genuine, still it is settled that tax declarations are not conclusive proof of ownership. If anything, tax declarations are merely corroborative of a person's claim of possession. More than that, x x x intermittent and irregular tax payments, as in this case, do not really provide strong support for a claim of ownership or possession.

APPEARANCES OF COUNSEL

F. Evari O. Tupas for private respondent.
The Solicitor General for public respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the August 13, 2009 Decision[2] and February 22, 2012

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[1] *Rollo*, pp. 7-13.

[2] *Id.* at 14-31; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda.

Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 02296, which affirmed with modification the March 19, 2007 Decision[4] of the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66, in LRC Case No. 02-195.

Factual Antecedents

On February 2, 2002, Tomas R. Leonidas (herein petitioner) filed an application for land registration[5] (Application) covering Lot 566 and Lot 1677 which are both situated in Concepcion, Iloilo (collectively, subject lots).

Petitioner alleged that he inherited the subject lots from his parents, Ponciano Leonidas, Jr. (Ponciano) and Asuncion Roxas de Leonidas (Asuncion); that as evidenced by the May 17, 1937 Certificate of Sale issued by the Provincial Treasurer of Iloilo, the subject lots, then covered by Tax Declaration (TD) No. 722, were purchased by Asuncion when auctioned due to delinquency in the payment of real property taxes by the original owners, the heirs of Inis Luching; that Asuncion immediately took possession of the subject lots and exercised dominical rights thereover notoriously, continuously, and exclusively; that upon Asuncion's death in 1986, Ponciano succeeded to the ownership and possession of the subject lots; that after Ponciano's death in 1991, the subject lots became his (petitioner's) own exclusive property; that he permitted and tolerated the occupation of some portions of the subject lots by Juanito Tisolan, Pancing Guevarra, Carmencita Guevarra, Delia Aspera-Ecleo, Victorino Mosqueda, Nora Biñas, Crisanto Amangas (Amangas),[6] Rosana Vasquez, Henry Asturias, Ronnie Astorias, Antonio Asturias, and Jacob Narciso; that as far as known to him (petitioner), the following are the owners of all adjoining properties, *i.e.* the owners of

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[3] *Id*. at 69-70; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes.

[4] Records, pp. 207-215; penned by Judge Rogelio J. Amador.

[5] *Id*. at 2-4.

[6] Also referred to as Crisanto Mangas in some parts of the records.

Lot 564, Lot 565, Lot 1578, and Lot 1677, Mansueto Sicad, Francisco Aspero, Brigido Celestial, and Eugenio Bondoc, Jr. who are all from Poblacion, Concepcion, Iloilo, and Carmen Paoli of unknown address; that Lot 566 is bounded on the west by the provincial road and he (petitioner) does not claim any portion thereof; that the latest assessed value of the subject lots is ₱51,660.00 as certified by the Provincial Treasurer of Iloilo; that to the best of his knowledge and belief, there is no mortgage or encumbrance of any kind whatsoever affecting the subject lots except for taxes due thereon; that a certain Tomas Vargas (Tomas), however, had declared a portion of the subject lots in his name for taxation purposes; but that Tomas died shortly after the end of the Second World War, and the whereabouts of his heirs, if any, are unknown, despite his diligent search to locate them in Concepcion, Iloilo, and elsewhere.

Petitioner also alleged that he was 77 years old, Filipino, a resident of No. 55 Chestnut St., West Fairview, Quezon City, and married to Ofelia Gustilo Leonidas (Ofelia); that attached to his Application were the original Survey Plans with two photographic copies each, the Tracing Cloth Plan (Sepia), a certificate of unavailability issued by the Chief, Records Section, Land Management Services, Department of Environment and Natural Resources (DENR), Region VI, Iloilo City, in lieu of the surveyor's certificate, Technical Descriptions with three photographic copies, the Certificate in quadruplicate of the Provincial Treasurer showing the latest assessed value of the subject lots, and a copy of the muniment of title to prove ownership of the subject lots, with the original to be presented at the trial.

Petitioner thus prayed that the subject lots be brought under the operation of the Property Registration Decree[7] (PD 1529) and that the titles thereto be registered and confirmed in his name.

The Republic of the Philippines (Republic), represented by the Office of the Solicitor General (OSG), opposed the said

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[7] Also known as Presidential Decree No. 1529.

Application. The Republic claimed that neither the petitioner nor his predecessors-in-interest had been in continuous, exclusive, and notorious possession and occupation of the subject lots since June 12, 1945, or prior thereto, as required by Section 48 of Commonwealth Act (CA) No. 141, as amended by PD 1073; that the petitioner's muniment/s of title, tax declarations, and tax payment receipts did not constitute competent and sufficient evidence of either a *bona fide* acquisition of the subject lots, and neither did the petitioner's bare claim of open, continuous, exclusive, and notorious possession and occupation thereof in the concept of owner since June 12, 1945, or prior thereto, amount to convincing proof of his claim of possession and ownership over the subject lots; that, although the petitioner's muniments of title might appear genuine, the tax declarations and/or tax payments showing the pretended possession were, in fact, of recent vintage; that the claim of ownership in fee simple on the basis of a Spanish title or grant could no longer be availed of by petitioner who had failed to file an appropriate application therefor within the period of six months from February 16, 1976, as required by PD 892; and that the subject lots are portions of the public domain belonging to the Republic which are not subject to private appropriation. Thus, the Republic prayed that the petitioner's Application be denied and that the subject lots be declared part of the public domain.

On March 11, 2003, Tancredo Vargas (Tancredo) also filed an Opposition[8] to the Application. Tancredo averred that he is Tomas' legitimate son and compulsory heir; that during Tomas's lifetime, the latter was the absolute and exclusive owner of a certain parcel of land located at Loong, Concepcion, Iloilo, which parcel of land is bounded on the north by the seashore, on the south by Severino Asturias (Asturias),[9] on the east by the seashore, and on the west by Asturias and Braulio Celestial; that this parcel of land had an area of 36,237 square meters and was covered by TD No. 3549 in Tomas's name; that the

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[8] Records, pp. 73-76.

[9] Also referred to as Severino Esturias or Severini Asturias or Severino Estorias or Severino Isturias in some parts of the records.

petitioner does not exclusively own Lot 1677 since it had been split into two, *viz*. Lot 1677-A and Lot 1677-B; that he (Tancredo) is the owner of Lot 1677-A; that Lot 566 was also not exclusively owned by the petitioner, as this Lot 566 had also been divided into two lots, *viz*. Lot 566-A and Lot 566-B; that he (Tancredo) is the owner of Lot 566-A as shown in the RPTA Tax Mapping project in the Municipality of Concepcion, Iloilo; that the petitioner's allegation that the owners of the property covered by TD 772 became delinquent in the payment of the tax due thereon, for which reason the Provincial Treasurer of Iloilo allegedly sold the same to Asuncion, was not at all true; that the property covered by TD 772 was not sold at public auction because the forfeiture was lifted prior to the public auction sale; and that the fact that the Office of the Provincial Treasurer of Iloilo did not have a copy of the Certificate of Sale dated May 17, 1937 bolstered the argument that petitioner's allegation is questionable. Tancredo thus prayed that the petitioner's Application be denied insofar as the portions covered by the TDs in the name of Tomas (disputed portions) are concerned.

On March 21, 2003, another Opposition[10] to the Application was filed by Moncerat A. Sicad-De Julian, Gil A. Sicad, represented by his wife, Elizabeth Sicad, Teresita A. Sicad-Bayuran, Villaluz Sicad-Zarriz, Eden A. Sicad, and Melchor Sicad, represented by his wife, Elena D. Sicad, (Elena; collectively, the Sicads) all represented by their attorney-in-fact, Elena.[11] These oppositors claimed that they are the heirs of the late Mansueto Sicad (Mansueto) who was the owner of a portion of the subject lots (Sicads's contested portion); that the Sicads's contested portion was bought by Mansueto from Asturias as evidenced by the Deed of Definite Sale of a Parcel of Land described as Doc. No. 75, Page No. 35, Book No. 1, Series of 1950 of the notarial register of notary public Crespo Celestial; that the Sicads's contested portion had been in the possession of Mansueto during the latter's lifetime; that they

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[10] Records, pp. 83-85.

[11] Also referred to as Elene Sicad in some parts of the records.

had been in possession of the Sicads's contested portion since Mansueto's death; that part of the Sicads's contested portion had already been registered under Original Certificate of Title (OCT) No. F-36795; and that the petitioner had never been in possession of the lots subject of his Application. The Sicads thus prayed that the petitioner's Application be dismissed, insofar as it concerned the Sicads's contested portion as set forth in the aforesaid Deed of Definite Sale; and that the Sicads's contested portion be registered instead in their names.

At the trial, the petitioner presented himself and Geronimo C. Peñaflorida (Peñaflorida), Land Management Inspector, DENR, Community Environment and Natural Resources Office (CENRO), at Sara, Iloilo as witnesses.[12] On the other hand, Catalino Guinez, Emeliana Isturias Matulac, and Elena testified for the Sicads.[13] For his part, Tancredo presented himself and a former overseer or tenant of the Vargas family,[14] Jose Etchona (Etchona).[15] Then on August 8, 2003, the petitioner filed his Formal Offer of Evidence[16] wherein he submitted the Certificate of Sale dated May 17, 1937, TD 014134 for the year 1976 in Asuncion's name and covering Cadastral Lot Nos. 1, 2, and 3 PSU-216090, TD 0037 for the year 1994 in the names of Asuncion and Ponciano and covering Cadastral Lot No. 1677, TD 0036 for the year 1994 in the names of Asuncion and Ponciano and covering Cadastral Lot No. 566, TD 0114 for the year 2003 in the names of Asuncion and Ponciano and covering Cadastral Lot No. 1677-A, TD 0118 for the year 2003 in the names of Asuncion and Ponciano and covering Cadastral Lot No. 1677-B, TD 0116 for the year 2003 in the names of Asuncion and Ponciano and covering Cadastral Lot No. 566-A; and TD 0117 for the year 2003 in the names of Asuncion and Ponciano and covering

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[12] TSN, June 2, 2003, August 18, 2003, and December 5, 2005.

[13] TSN, August 18, 2003 and August 19, 2003.

[14] TSN, October 20, 2003.

[15] Also referred to as Jose Echonas or Jose Echona in some parts of the records.

[16] Records, pp. 111-134.

Cadastral Lot No. 566-B,[17] tax receipts for the years 1986, 1987, 1988, 1989, 1990, 1991, 1994, 2002 and 2003, statement of the assessed value issued by the Provincial Assessor of Iloilo on March 26, 1996, Lot No. 566's Blue Print Survey Plan with technical description, Lot 1677's Blue Print Survey Plan with technical description, Certificate of Unavailability of Surveyor's Certificate of Survey for Lots 566 and 1677, and Survey Inspection Report dated August 28, 1997 for Lot Nos. 566 and 1677 issued by Peñaflorida,[18] *i.e.* CENRO Report dated August 28, 1997, to the effect that the subject lots are free from liens and encumbrances, and are moreover within the alienable and disposable area. Pursuant to the RTC's directive, petitioner also offered as additional evidence the originally-approved subdivision plan covering Lot No. 1677, Csd-06-008798 to prove the identity and location of the easement for public use;[19] and a certification by Joel B. Diaz, CENRO at Sara, Iloilo, to the effect that Lot No. 1677, Pls 1099, situated in Brgy. Loong, Concepcion, Iloilo, with an area of 8,062 square meters was issued Patent No. 063015-92-846 dated May 28, 1992 in the name of Flordeluz Sedigo, but that Lot No. 1677 has doubled with the lot situated at Poblacion, Concepcion, Iloilo in the name of the Heirs of Ponciano and that this latter lot is not covered by any public land application filed with the CENRO in Sara, Iloilo, which explained why no patent has been issued therefor, hence indicating that this other Lot No. 1677, Pls 1099, which is situated in Brgy. Aglusong, Concepcion, Iloilo is entirely different from Lot No. 1677, which is situated in Sitio Loong, Poblacion, Concepcion, Iloilo.[20]

The petitioner likewise submitted in evidence an Ocular Inspection Report covering an ocular inspection earlier ordered by the RTC.[21]

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[17] Identified therein as Lot No. 566-A but probably referring to Lot No. 566-B since Lot No. 566-A is indicated therein as the North boundary.

[18] Records, p. 134.

[19] Exhibit "W", *id*. at 150 and 190-191.

[20] Exhibit "Y", *id*. at 149 and 190-191.

[21] *Id*. at 164-167.

Ruling of the Regional Trial Court

In its Decision dated March 19, 2007, the RTC disposed of this case in this wise:

> WHEREFORE, general default having been declared and the [A]pplication supported by evidence, the adjudication and registration of portion of Lot No. 566 with an area of 3.1161 hectares and portion of Lot 1677 with an area of 3.7255 hectares, all of Concepcion Cadastre, together with all the improvements thereon are hereby ordered in favor of applicant [petitioner], of legal age, married to [Ofelia], Filipino, and resident of Fairview, Quezon City, Philippines. Portions of Lot [No.] 1677 with an area of 2.3642 hectares and portion of Lot [No.] 566 with an area of 1.1782 hectares are hereby adjudicated in favor of [Tancredo], of legal age, single, Filipino, and resident of Lawa-an Village, Balantang, Jaro, Iloilo City, Philippines which portions shall be segregated in a proper subdivision survey and to follow the description of the plan of Municipal Assessor of Concepcion, Iloilo commensurate to Lot 1677-A under [T.D.] No. 0548[22] and 566-A under [T.D.] No. 0550.
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> The easement of right of way of the lots, highways, streets, alleys, shorelines and other portion[s] of land not specified as lots located within the borders of the land covered by this case are declared to be the properties of the [Republic].
>
> The Clerk of Court is directed to forward copies of this decision to all government agencies concerned.
>
> And finally, the Administrator, Land Registration Authority, is hereby directed, after this decision shall have become final for which he shall be duly advised by specific order of this Court, to issue [a] decree of registration and title in accordance with the amended plan on file in the record.
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> SO ORDERED.[23]

The RTC held that petitioner had sufficiently established that his predecessors-in-interest had possessed and owned a parcel of land in *Barangay* Loong, Concepcion, Iloilo to the

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[22] Should be T.D. No. 0549 per *id*. at 79.

[23] *Id*. at 215.

extent not covered by Tancredo's Opposition; that while petitioner and his predecessors-in-interest might not have been in actual possession of the subject lots at all time, they nonetheless had been consistently visiting the same; and that petitioner's claim of possession and ownership is supported by documents consisting of the Certificate of Sale issued by the Provincial Treasurer of Iloilo on May 17, 1937, the tax declarations in Asuncion's name for the years 1976, 1994, and 2003, the official receipts showing payments of real estate taxes thereon, and the statement of the assessed value issued by the Provincial Assessor of Iloilo on May 26, 1996. The RTC stressed that the period of possession by petitioner and his predecessors-in-interest sufficed to confer a registrable title upon petitioner.

The RTC likewise ruled that Tancredo was also able to establish a superior claim with respect to his disputed portions; that all of the tax declarations in Asuncion's name continuously bore the annotation acknowledging Tomas's adverse claim relative to Tancredo's disputed portions; that Tomas's open and continuous possession for more than the required number of years was sufficiently shown by a tax declaration issued as early as the year 1945; that the overseers and other persons authorized to manage Tancredo's disputed portions were never driven out by petitioner; and that Tancredo had visited the disputed portions more frequently than petitioner who, as the evidence shows, has his permanent residence in Quezon City, Metro Manila.

With regard to the claim of the Sicads, the RTC held that Mansueto and his successors-in-interest had no more interest in the Sicads' contested portion because what was shown to have been sold by Asturias to Mansueto pertained to a lot measuring only two hectares, 52 acres, and 92 ares, a parcel of land at par with the land covered by the aforementioned free patent issued to Mansueto.

The RTC emphasized that it is well-entrenched in jurisprudence that alienable public land openly, continuously, and exclusively possessed by a person personally or through his predecessors-in-interest for at least 30 years becomes *ipso*

jure private property by mere lapse of time, or by completion of said period pursuant to Section 48(b) of CA 141, as amended by RA 1942 and RA 3872.

Ruling of the Court of Appeals

Only the petitioner and the Republic filed their respective Notices of Appeal[24] which were given due course by the RTC in its Order of May 25, 2007.[25] These notices of appeal were consolidated and docketed as CA-G.R. CV No. 02296. In a Decision dated August 13, 2009, the CA disposed as follows:

> WHEREFORE, the Decision dated March 19, 2007 is modified, as follows: 1.) the portion pertaining to the award of [Lot No.] 566 with an area of 3.1161 hectares and [Lot No.] 1677 with an area of 3.7255 hectares to [petitioner], is REVERSED and SET ASIDE; and 2.) the portion pertaining to the award of [Lot No.] 1677 with an area of 2.3642 hectares and [Lot No.] 566 with an area of 1.1782 hectares in favor of [Tancredo] is AFFIRMED.
>
> SO ORDERED.[26]

The CA held that, contrary to the Republic's stance, the records showed that there had been compliance with the jurisdictional requirements of publication, posting, and notice; that petitioner had properly identified the subject lots; that the subject lots had already been classified as alienable and disposable at the time that petitioner filed the Application in 2002, pursuant to the CENRO Report dated August 28, 1997 issued by Peñaflorida; that it has been held that "[a] certification by the CENRO of the DENR stating that the subject lots are found to be within the alienable and disposable site per land classification project map is sufficient evidence to show the real character of the land subject of the application;"[27] that these **notwithstanding**, petitioner **failed** to prove with the requisite evidence the kind

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[24] *Id*. at 218-220 and 221-222.

[25] *Id*. at 223.

[26] *Rollo*, p. 30.

[27] *Id*. at 22; citation omitted.

of possession and the length of time required by law for the registration of the subject lots in his name, because his lone testimony did not suffice to establish his and his predecessors-in-interest's alleged open, continuous, exclusive, and notorious possession over the subject lots since June 12, 1945, or earlier; that petitioner's alleged acts of swimming in, and planting trees on the subject lots, his having finished high school at the Victorino Salcedo High School in the neighboring town of Sara, Iloilo, and his having left the subject lots when he attended college — all these neither added up nor supported his assertion of dominion or ownership over the subject lots; that his allegation that his childhood memories regarding the subject lots all came back to him after the death of his father Ponciano was indicative of the fact that he was really unaware of the existence of the subject lots; that his Application was even opposed by Tancredo and by the Sicads who claimed exclusive possession over certain portions of the subject lots; that petitioner's failure to explain why he or his predecessors-in-interest declared the subject lots for taxation purposes only in 1976, was inconsistent with his claim of possession thereover since 1937; and that it is an axiom of the law that the burden of proof in a land registration case rests upon the applicant who must present clear, positive, and convincing evidence establishing the alleged possession and occupation in good faith, and for the period required by law.

On the other hand, the CA ruled that Tancredo had sufficiently proven his open, continuous, exclusive, and notorious possession and occupation for the period required by law, over the portions of the subject lots he was claiming in the concept of an owner; that Tomas's adverse claims were annotated on the TDs issued in Asuncion's name covering the disputed portions, *i.e.* TD 014134, 0114, and 0117;[28] that Tomas declared the disputed portions for taxation purposes in his name as early as 1945; that Tancredo himself testified that Tomas first used the disputed portions as rice land and converted the same into coconut land in the 1960s; that Tancredo's witness, Etchona, likewise

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[28] Tax Declaration No. 0117 should instead be Tax Declaration No. 0116 per records, p. 121.

testified that Tomas employed him and Domingo Celestial not only to cultivate, but also to guard the disputed portions, and that Tomas himself appropriated the harvest from the disputed portions and introduced improvements thereon; and that even petitioner himself admitted in his Application that Tomas had declared the disputed portions in his (Tomas') name for taxation purposes.

Petitioner moved for reconsideration[29] but was denied by the CA in its Resolution of February 22, 2012.[30]

Issue

Before this Court, petitioner now raises the following issue:

> [Whether] the [CA] gravely abused its discretion in denying the registration of [his] already vested title [over] Lot [Nos.] 566 and 1677 of the Concepcion, Iloilo Cadastre as his private property, and in awarding some portions thereof in favor of [Tancredo] in this land registration proceeding.[31]

Petitioner's arguments

Petitioner insists in his Petition,[32] Consolidated Reply,[33] and Memorandum[34] that the CA erred in finding that he failed to prove that he and his predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the subject lots since June 12, 1945, or earlier, and that there is indubitable evidence that the subject lots were in fact sold in a tax sale on May 17, 1937 by the government through the Provincial Treasurer of Iloilo; that he filed the present Application so that an OCT can be issued in his name as evidence

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[29] CA *rollo*, pp. 97-102.

[30] *Rollo*, pp. 69-70.

[31] *Id*. at 7.

[32] *Id*. at 7-13.

[33] *Id*. at 127-129.

[34] *Id*. at 154-157.

of his vested title over the subject lots; that assuming that the subject lots are still part of the public domain, he is nevertheless still entitled to have the subject lots registered in his name by reason of his and his predecessors-in-interest's exclusive possession and occupation thereof for more than 30 years, as compared to Tancredo's possession which supposedly began only in 1945; that under the Land Registration Act, as amended, the possessor is deemed to have acquired by operation of law the right to a government grant upon compliance with the conditions therefor, which was just what he did in this case; that the confirmation proceeding is a mere formality and the registration thereunder does not confer title but merely recognizes a title that is already vested; that rejection of his vested title to the questioned lots will occasion loss of confidence in the government's sales of forfeited property by reason of tax delinquency; that the CA erred in finding that the TDs in Asuncion's name carried Tomas's adverse claim, as the attached copies thereof did not bear any such annotations; that the CA also erred in stating that petitioner did not present any TDs to support his claim of ownership over the subject lots for the reason that the CA Decision itself mentioned that he submitted a TD for the year 1976; that contrary to the CA's findings, he did testify that he had visited the subject lots every so often to plant trees after he and his parents left Concepcion in 1945, and that such improvements were reflected in his exhibits; that the CA likewise erred in holding that he only came to know about the subject lots after the death of his father, Ponciano, for the fact is that he did testify that he and his cousins used to swim in the sea near the subject lots, as early as when he was 12 years old; that the CA moreover erred in concluding that Tancredo had successfully established his claims over the disputed portions of the subject lots because the TDs in Asuncion's name are all annotated with Tomas's adverse claim, and that Tomas had declared said disputed portions in his name as early as 1945; that the tax declarations supposedly in Tomas's name were neither presented nor offered in evidence; that Tancredo admitted during his cross-examination that Tomas's 1945 tax declaration was procured notwithstanding the fact that the subject lots had already been declared in Asuncion's name;

that Tancredo did not comply with the pertinent provisions of the Land Registration Act, as amended, because he did not present evidence to prove the specific date in 1945 when Tomas acquired the disputed portions, or how Tomas in fact acquired the same; that besides these, Tancredo could not identify the disputed portions that he was claiming; that if Tancredo wanted to vindicate his claims of ownership over the disputed portions, then Tancredo should institute the proper action before a court of general jurisdiction, and not in the land registration court, as the subject lots were no longer part of the public domain; that the issue of whether the sale by the government to Asuncion on May 17, 1937 changed the classification of the subject lots from public to private is of first impression and should be resolved by the Supreme Court *En Banc*; and that the circumstances obtaining in this case are exceptions to the rule that only questions of law are allowed in a petition filed pursuant to Rule 45 of the Revised Rules of Court; and that to deny his Application, or to render judgment ordering the reversion to public ownership of the subject lots would amount to grave abuse on the part of the judiciary.

The Republic's Arguments

In its Comment[35] and Memorandum,[36] the Republic counters that the instant Petition merely raises questions of fact which are proscribed under Rule 45 of the Revised Rules of Court; that this Court is not a trier of facts; that petitioner's case does not fall under any of the exceptions to the rule that factual findings of the CA are invariably binding upon the Supreme Court; and that the assailed CA Decision should not be disturbed because the CA had amply justified the reversal of the RTC Decision which was erected upon the petitioner's failure to substantiate his claim of ownership over the subject lots.

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[35] *Id.* at 73-91.

[36] *Id.* at 134-152.

Tancredo's Arguments

In his Comment[37] and Memorandum,[38] Tancredo maintains that the disputed portions had been in the absolute possession and dominion of Tomas; that the findings of the RTC and the CA regarding petitioner's ineligibility to obtain title to the disputed portions due to non-compliance with the requirements of the law, and for insufficiency of evidence, should not be disturbed; that the CA's finding that petitioner's TDs bore the annotated claims of Tomas on the subject lots is a factual finding and should not be disturbed; that petitioner's possession is not the possession required by law for purposes of land registration because petitioner failed to present evidence that would prove actual, notorious, continuous, and exclusive possession and occupation of the subject lots; that the evidence adduced by petitioner is self-serving, hence undeserving of any weight; that the origin of the disputed portions as pointed out by the RTC is Assessor's Lot No. 337, which is individually identified after the Cadastral Survey as Lot Nos. 1676-A, 1677-A, and 566-A, all of the Concepcion (Iloilo) Cadastre; that petitioner is barred or estopped from questioning the identity of the disputed portions that had been adjudicated to him (Tancredo), as the lack of sufficient identification pertained to the subject lots that petitioner himself was trying to register; and that the issues raised by petitioner were factual in nature, and the same is proscribed under Rule 45 of the Revised Rules of Court.

The fundamental issues to be resolved in this case are: (1) Whether the petitioner is entitled to obtain a title over the subject lots; and (2) Whether Tancredo has established, by his own evidence, that he was qualified to acquire title over the disputed portions claimed by him.

The Court's Ruling

The Petition is denied.

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[37] *Id.* at 49-59.

[38] *Id.* at 175-191.

Requisites for the confirmation and registration of an imperfect and incomplete title under CA 141 and PD 1529

"The Regalian doctrine, embodied in Section 2, Article XII of the 1987 Constitution, provides that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land."[39] "[Commonwealth Act No. 141, in turn,] governs the classification and disposition of lands of the public domain. Section 11 [thereof] provides, as one of the modes of disposing public lands that are suitable for agriculture, the 'confirmation of imperfect or incomplete titles.' Section 48 [thereof], on the other hand, enumerates those who are considered to have acquired an imperfect or incomplete title over public lands and, therefore, entitled to confirmation and registration under the Land Registration Act [now PD 1529]."[40] The latter law then "specifies who are qualified to apply for registration of land."[41] Taken together, all the foregoing provide for the requisites for the confirmation and registration of an imperfect and incomplete title, thus —

x x x In particular, Section 14 (1) [of PD 1529] in relation to Section 48 (b) of [CA] 141, as amended by Section 4 of P.D. No. 1073, states:

> SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance [now *Regional Trial Court*] 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.

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[39] *Republic v. Raneses,* 735 Phil. 581, 591 (2014).

[40] *Roman Catholic Archbishop of Manila v. Ramos,* 721 Phil. 305, 316 (2013).

[41] *Republic v. Belmonte,* 719 Phil. 393, 401 (2013).

x x x x x x x x x

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 [now 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 [PD 1529], to wit:

x x x x x x x x x

(b) 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 acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These 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.

Based on these legal parameters, applicants for registration of title under Section 14 (1) must sufficiently establish: *(1)* that the subject land forms part of the disposable and alienable lands of the public domain; *(2)* that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and *(3)* that his possession has been under a *bona fide* claim of ownership since June 12, 1945, or earlier.

These triple requirements of alienability and possession and occupation since June 12, 1945 or earlier under Section 14 (1) are indispensable prerequisites to a favorable registration of title to the property. Each element must necessarily be proven by no less than clear, positive and convincing evidence; otherwise, the application for registration should be denied.[42]

Petitioner did not cite the specific provision of CA 141 upon which he based his Application. Nevertheless, the allegations

[42] *Id.* at 401-402; citations omitted; emphases in the original.

therein seem to establish the fact that his claim is one of imperfect title under the above-quoted Section 48(b) of CA 141 in relation to Section 14(1) of PD 1529.

The subject lots are considered alienable and disposable lands of the public domain

The first requirement is complied with in the case at bench. Notwithstanding that only a CENRO certification covering the subject lots was presented in the instant case, the subject lots are considered alienable and disposable lands of the public domain because of this Court's ruling that an application for land registration may be granted despite the absence of the DENR Secretary's certification, provided that the same was pending at the time *Republic v. Vega*[43] was promulgated on January 17, 2011. In *Republic v. Alora*,[44] this Court expressly clarified this matter in this wise:

> x x x [I]n *Republic v. T.A.N. Properties, Inc.*, which was promulgated on 26 June 2008 x x x we held that applicants for land registration must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. x x x
>
> x x x In *Republic v. Serrano* [(decided on 24 February 2010)], we allowed the approval of a land registration application even without the submission of the certification from the DENR Secretary. As this ruling presented an apparent contradiction with our earlier pronouncement in *Republic v. T.A.N. Properties, Inc.*, we sought to harmonize our previous rulings in *Republic v. Vega* [(decided on 17 January 2011)]. We then said that the applications for land registration may be granted even without the DENR Secretary's certification provided that the application was currently pending at the time *Republic v. Vega* was promulgated. x x x[45]

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[43] 654 Phil. 511 (2011).

[44] 762 Phil. 695 (2015).

[45] *Id.* at 704-705.

It is worth stressing, however, that the foregoing ruling is the exception, not the rule. As explicitly elucidated in *Republic v. Vega*:[46]

> It must be emphasized that the present ruling on substantial compliance applies *pro hac vice*. It does not in any way detract from our rulings in *Republic v. T.A.N. Properties, Inc.*, and similar cases which impose a strict requirement to prove that the public land is alienable and disposable, especially in this case when the Decisions of the lower court and the [CA] were rendered prior to these rulings. To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under [PD 1529] must include **both** (1) a CENRO or PENRO certification **and** (2) a certified true copy of the original classification made by the DENR Secretary.
>
> As an exception, however, the courts — in their sound discretion and based solely on the evidence presented on record — may approve the application, *pro hac vice*, on the ground of substantial compliance showing that there has been a positive act of government to show the nature and character of the land and an absence of effective opposition from the government. This exception shall only apply to applications for registration **currently pending** before the trial court prior to this Decision and shall be inapplicable to all future applications. (Underscoring and emphases in the original)[47]

That said, we hold that both the petitioner and Tancredo failed to establish clearly and convincingly their respective rights to registration of imperfect titles under CA 141 and PD 1529, as will be discussed below.

Petitioner failed to prove possession of the subject lots in the manner and for the period required by law

First off, petitioner failed to establish *bona fide* possession and ownership over the subject lots since June 12, 1945 or earlier. His contention that his predecessors-in-interest became the

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[46] *Supra.*

[47] *Id.* at 527.

owners of the subject lots pursuant to the May 17, 1937 Certificate of Sale[48] of the Forfeited Real Property issued by the Provincial Treasurer of Iloilo appears to be consistent with the fact that TD 3549 in Tomas's name which was found by the CA as issued in 1945 bears an annotation stating that such is "[c]ontested by [Asuncion]".[49] **Even then, the Certificate of Public Sale indicated that the balance of the purchase price in the amount of ₱29.44, was yet to be paid on or before December 31, 1937**.[50]

No incontrovertible proof was, however, presented to establish the fact that this balance of the purchase price in the said amount of ₱29.44 had indeed been paid on or before December 31, 1937. In addition, the CA also correctly pointed out that even as petitioner was able to submit TDs and evidence of tax payments only for a few years, he nevertheless failed to explain why he or his predecessors-in-interest declared the subject lots for taxation purposes only in **1976**, this despite his claim that his predecessors-in-interest had been in possession and occupation of the subject lots since 1937, as allegedly shown in the Provincial Treasurer's Certificate of Sale. It is settled that intermittent and irregular tax payments run counter to a claim of ownership or possession.[51]

Second, even assuming for argument's sake that petitioner's predecessors-in-interest had paid the balance of the delinquent tax payment, petitioner nonetheless failed to prove his and his predecessors-in-interests actual, notorious, exclusive and continuous possession of the subject lots for the length of time required by law.

To be sure, petitioner's failure to explain what happened after his family supposedly left the subject lots in 1941, when the war broke out, *vis-à-vis* his failure to prove that he had

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[48] *Rollo*, p. 32.

[49] Records, p. 77.

[50] *Rollo*, p. 32.

[51] *Republic v. Belmonte*, *supra* note 41 at 404; *La Tondeña, Inc. v. Republic,* 765 Phil. 795, 817 (2015).

indeed introduced valuable improvements in the subject lots during the time that he and his parents had been allegedly in actual possession and occupation thereof, cast doubts upon his claim of actual possession and occupation thereof. Withal, petitioner's testimony of having swum near the subject lots, of having planted trees thereon, and his having finished high school at the Victorino Salcedo High School in the neighboring town of Sara can hardly be considered as acts of dominion or ownership over the subject lots. Besides, petitioner did not present clear and convincing evidence that the subject lots had indeed been cultivated by him or by his predecessors-in-interest for the period of time required by law. Needless to say, all these failings weaken his claim that he has been a *bona fide* possessor and occupant of the subject lots in the manner and for the period prescribed by law, to wit:

> The possession contemplated by Section 48 (b) of [CA] 141 is actual, not fictional or constructive. In *Carlos v. Republic of the Philippines*, the Court explained the character of the required possession, as follows:
>
> > The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property**.[52] (Emphases in the original)

Oddly enough, while in its Decision, the RTC appeared to have granted petitioner's Application, said Decision seemed to have indulged in a bit of non-sequitur when it said that

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[52] *Roman Catholic Archbishop of Manila v. Ramos, supra* note 40 at 319-320.

"[petitioner] and his predecessors were **not** in actual possession of the [subject lots] all the time" x x x.[53] Simply said, the CA effectively ruled that since petitioner **failed** to prove that he or his predecessors-in-interest had indeed performed the required acts of possession and occupation, or specific acts of dominion over the subject lots, it stands to reason that registration thereof in his name **cannot** be allowed.

Tancredo also failed to establish possession and occupation over the disputed portions in the manner and for the period required by law

At this juncture, we shall revisit the uniform finding by both the RTC and the CA, which in effect upheld Tancredo's right to register the disputed portions in his name (as an exception to the settled rule that questions of fact are proscribed in a Rule 45 petition since a correct evaluation of the facts will yield a different conclusion).[54]

First off, Tancredo failed to show that his or his predecessor-in-interest's possession and occupation over the disputed portions had been under a *bona fide* claim of ownership since June 12, 1945, or earlier. We are inclined to agree with petitioner's posture that Tancredo failed to adduce clear and convincing evidence which established the origin or antecedents of Tomas's straightforward possession and occupation, or claim of ownership, over the disputed portions. Consider the following exchange/s between/among Tancredo, the petitioner, and the Court —

[Petitioner]: (to the witness[, Tancredo])

Q: When did your father acquire this property?
A: In 1945.

Q: From whom?
A: I have no idea.

x x x x x x x x x

[53] Records, p. 212; emphases supplied.

[54] *Roman Catholic Archbishop of Manila v. Ramos, supra* note 40 at 315-316.

Q: Did you not ask your father from whom he acquired this property?
A: No, I did not.

Q: As a matter of fact[,] until the death of your father[,] you have not ask[ed] him from whom did he acquire the property?
A: No, Sir.

x x x x x x x x x

COURT: (to the witness[, Tancredo])

Q: Your father died in 1995[,] why did you not [cause] the transfer of tax declaration in your name or to the heirs?
A: Because the plan of the heirs is, if the property [is registered] in my father[']s name [then] the title should be transferred in my name.

x x x x x x x x x

Q: Your tax receipts correspond only [to] the year 2003, how about other tax receipts?
A: I [will just [try] to find out if the Provincial Treasurer's Office still has the copy.

Q: Even just a certification stating that you [continued] in paying realty tax from 1946 up to 2003?
A: Yes, I can ask the provincial treasurer for that matter.

Q: When you secure[d] the tax declaration[,] you [knew] that the lot was also declared in the name of [Asuncion], is it not?
A: Yes, Your Honor.

Q: That was in the office of the Municipal Assessor?
A: Yes, Your Honor.

Q: Did you verify if they were paying taxes also?
A: No, Your Honor.

Q: You did not?
A: I [did] not[,] Your Honor.

Q: If that is the case[,] why did you [say] a while ago that you [knew] only [about] the case of [petitioner] when this case was filed because the tax declaration itself [stated] that the lot was also declared in the name of [Asuncion]?
A: Although I have already seen the notation on the tax declaration that they also [secured a] tax declaration [over]

> the [disputed portions]. I did not mind it Your Honor because they did not openly claim ownership over the [disputed portions]. And in the same manner[,] Your Honor[,] in their tax declaration it is also indicated that the [disputed portions] is also declare[d] in the name of [Tomas].[55]

More than this, Tancredo did not present clear, convincing evidence to support his claim that the disputed portions were in fact transferred to him by his father, Tomas. Tancredo merely testified that the disputed portions were given to him solely by Tomas, an act that was allegedly consented to by his siblings. Thus —

> [Petitioner]: (to the witness, Tancredo)
>
> Q: You have siblings, meaning brothers and sisters?
> A: Yes, Sir.
>
> Q: You said a while ago that you succeeded to the ownership of the [subject lots] when your father died in 1985, how about your siblings[?] [Did they] not succeed to the [ownership of the subject lots?]
> A: They sign[ed] a deed of adjudication in favor of me[.] I have a copy and it was notarized.
>
> x x x x x x x x x
>
> Q: In your [O]pposition you said that you were authorized?
> A: Yes, Sir.
>
> Q: By whom?
> A: By my brothers and sisters.
>
> Q: Where is your authority?
> A: I can produce it. I can pass [sic] it anytime.
>
> Q: You did not [s]tate in your [O]pposition that you have your siblings with you?
> A: Because the property was given to me by my father.[56]

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[55] TSN, October 20, 2003, pp. 18-19 and 36-37; underscoring supplied.

[56] TSN, October 20, 2003, pp. 16-17; underscoring supplied.

Nonetheless, there is nothing in the records to support or confirm Tancredo's claim that the property was in fact deeded over to him by his father, Tomas.

In *Buenaventura v. Pascual*,[57] this Court affirmed the lower courts' dismissal of the claims for registration of imperfect titles because, among others, both the applicant and oppositors failed to adduce evidence as to how they acquired the subject property from their respective predecessors-in-interest, *i.e.*, whether by succession or by donation or by some other mode. Furthermore, we stressed therein that the applicant failed to prove the manner by which her predecessors-in-interest possessed the subject property.

Then, again, Tancredo also failed to establish that he and his predecessors-in-interest had/have been in open, continuous, exclusive and notorious possession and occupation of the disputed portions since June 12, 1945, or prior thereto.

If anything, the records showed that Tancredo merely submitted photocopies of four tax declarations which were attached as annexes to his Opposition. These included the 1945 TD 3549 as adverted to by the CA in the records[58] pertaining to a 3.6237-hectare lot in an unstated cadastral lot, TD 0548 covering an 813-hectare lot in Cadastral Lot No. 1676-A,[59] TD 0549 for a 2.3642-hectare lot in Cadastral Lot No. 1677-A,[60] and TD 0550 concerning a 1.1782-hectare lot in Cadastral Lot No. 566-A.[61] All four TDs are in Tomas's name, without copies of the dorsal portions thereof, and bearing annotations stating either "[c]ontested by [Asuncion]" or "[a]lso declared in the name of [Asuncion] or [Ponciano]".

It would thus appear that Tancredo had erected his opposition/claim to the lots in question upon the said photocopies of four

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[57] 592 Phil. 517 (2008).

[58] Records, p. 77.

[59] *Id.* at 78.

[60] *Id.* at 79.

[61] *Id.* at 80.

tax declarations whose authenticity or genuineness is open to the most serious doubts. And, even on the assumption that the said tax declarations are in fact authentic and genuine, still it is settled that tax declarations are not conclusive proof of ownership. If anything, tax declarations are merely corroborative of a person's claim of possession. More than that, as elsewhere indicated, intermittent and irregular tax payments, as in this case, do not really provide strong support for a claim of ownership or possession.[62]

It is axiomatic of course that "[i]t is the policy of the State to encourage and promote the distribution of alienable public lands as a spur to economic growth and in line with the social justice ideal enshrined in the Constitution. **At the same time, the law imposes stringent safeguards upon the grant of such resources lest they fall into the wrong hands to the prejudice of the national patrimony**."[63] This ruling controls the present case.

As a final note: All of the foregoing discussion showed that the issues raised in this case have all been previously resolved and determined by settled jurisprudence; hence, there is no reason to grant petitioner's prayer for this case to be referred to or heard by the Court *En Banc*, as this is not a case of first impression at all.

WHEREFORE, the Petition is hereby **DENIED**. We **AFFIRM with MODIFICATION** the August 13, 2009 Decision and the February 22, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 02296 in that the award by the Regional Trial Court of Barotac Viejo, Iloilo, Branch 66 in LRC Case No. 02-195 of Lot No. 1677 with an area of 2.3642 hectares and Lot No. 566 with an area of 1.1782 hectares, both in favor of respondent Tancredo Vargas, is **OVERTURNED and NULLIFIED.**

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[62] See *Republic v. Belmonte*, *supra* note 41 at 404; *La Tondeña, Inc. v. Republic, supra* note 51 at 817.

[63] *Republic v. Court of Appeals,* 249 Phil. 148, 149-150 (1988); emphases supplied.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 204045. December 14, 2017]

MAGDALENA C. DILLENA, *petitioner, vs.* **MARIANO ALCARAZ, BERNARDO ALCARAZ, JOSELITO ALCARAZ and AMOR ALCARAZ STA. MARIA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; PROVINCIAL AGRARIAN REFORM ADJUDICATOR AND DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; HAVE NO JURISDICTION OVER A LANDHOLDING WHICH HAS CEASED TO BE COVERED BY THE COMPREHENSIVE AGRARIAN REFORM LAW, SINCE THEIR JURISDICTION IS LIMITED TO AGRARIAN DISPUTES.— When petitioner filed DCN R-03-02-0837'04 with the Bulacan PARAD in 2004, RA 7881 was already in effect; therefore, the subject landholding — which remained undistributed under and was not subjected to the CARP — ceased to be covered by the CARL. Consequently, the Bulacan PARAD, as well as the DARAB, had no authority to take cognizance of her case, since their jurisdiction is limited to agrarian disputes. x x x RA 7881 supersedes RA 3844, with regard to fishponds and prawn farms. x x x [P]etitioner filed her petition to be declared a *de jure*

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[*] Per raffle dated October 18, 2017 vice Justice Francis H. Jardeleza who recused due to prior participation as Solicitor General.

tenant before the PARAD in 2004, when the subject landholding already ceased to be covered by the CARP by virtue of the amendments under RA 7881, which took effect as early as 1995.

2. ID.; ID.; FARMWORKERS OF A LANDHOLDING WHICH CEASED TO BE COVERED BY AGRARIAN LAWS CANNOT CLAIM PROTECTION UNDER THE SAID LAWS.— Petitioner and her husband Narciso, who was then still alive, were not exactly without remedies, as they were given, pursuant to DAR Administrative Order No. 3, Series of 1995, the option to remain as workers or become beneficiaries in other agricultural lands. If they had chosen to remain in the exempt area, they should be entitled to such rights, benefits and privileges granted to farmworkers under existing laws, decrees, and executive orders — but not under the agrarian laws, for the specific and precise reason that the subject landholding ceased to be covered by the CARP and RA 3844. Evidently, petitioner and Narciso did not apply to become beneficiaries in other landholdings, and chose instead to remain in the subject fishponds; for this, they could not claim protection specifically under the CARL and other agrarian laws, as the landholding ceased to be covered under said laws.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance for petitioner.
Maglalang Lagman & Maglalang Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the February 28, 2012 Decision[2] of the Court of Appeals (CA) in CA G.R. SP No. 110423, which reversed and set aside the

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[1] *Rollo*, pp. 8-21.

[2] *Id*. at 23-31; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Antonio L. Villamor and Ramon A. Cruz.

March 2, 2009 Decision[3] and August 4, 2009 Resolution[4] of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 15202 and dismissed herein petitioner's Petition with Very Urgent Motion for the Immediate Issuance of Writ of Preliminary Injunction or Status Quo Order[5] in DCN R-03 02-0837'04, as well as the CA's October 11, 2012 Resolution[6] denying petitioner's Motion for Reconsideration.[7]

Factual Antecedents

As found by the CA, the facts are as follows:

Magdalena C. Dillena[8] x x x, represented by Enrico C. Dillena, filed a *Petition with Very Urgent Motion for the Immediate Issuance of Writ of Preliminary Injunction or Status Quo Order* dated June 30, 2004 with the Office of the Provincial Agrarian Reform Adjudicator (PARAD), Malolos, Bulacan against Mariano Alcaraz, Bernardo Alcaraz, Joselito Alcaraz and Amor Alcaraz Sta. Ana[9] x x x alleging that Salud Crespo was the original owner of the subject landholding, a fishpond with an area of more than ten (10) hectares located in Barangay Nagbalon, Marilao, Bulacan; sometime in 1950, Salud Crespo instituted Catalino Dillena as tenant of the subject landholding; when Ana Alcaraz purchased the subject landholding sometime in 1960, she recognized Catalino Dillena's tenancy over

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[3] *Id*. at 80-87; penned by DARAB member Ambrosio B. De Luna and concurred in by DARAB Members Augusto P. Quijano, Gerundio C. Madueño, and Ma. Patricia P. Rualo-Bello.

[4] *Id*. at 88 -89; penned by DARAB Member Ambrosio B. De Luna and concurred in by DARAB Members Gerundio C. Madueño, Jim G. Coleto, and Ma. Patricia P. Rualo-Bello.

[5] *Id*. at 46-50.

[6] *Id*. at 34-36; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Franchito N. Diamante and Ramon A. Cruz.

[7] *Id*. at 113-118.

[8] Herein Petitioner. Hereinafter "Dillena" or "petitioner."

[9] Herein Respondents.

the same; and when Catalino Dillena died, [petitioner's] husband, Narciso, succeeded to the former's tenancy rights.

[Petitioner] further alleged that on April 21, 1995, Ana Alcaraz died and was survived by [respondents] who inherited the subject landholding and who also recognized Narciso's tenancy rights therein; that Narciso continued to pay the annual lease rental of ₱120,000.00 and introduced improvements thereon worth ₱200,000.00 upon the assurance of [respondents] that they would maintain Narciso in peaceful possession of the landholding; that sometime in May 2004 or about a month after Narciso died, (respondents) informed [petitioner] about their intention to increase the annual lease rental from ₱120,000.00 to ₱240,000.00 which [petitioner] believed was unconscionable and was merely meant to dispossess her of the subject landholding; and that [respondents] gave [petitioner] 30 days or until June 30, 2004 to vacate the subject landholding, which prompted her to file the petition with the PARAD praying that she be declared as a de jure tenant and be maintained in peaceful possession of the subject property.

[Respondents] filed a *Motion to Dismiss* assailing the PARAD's jurisdiction over the subject matter of the petition. [Respondents] alleged, *inter alia*, that [petitioner] is a civil law lessee and that the *Kasunduan sa Upahan ng Palaisdaan* expired in May 2004. As a civil law lessee, any dispute that may arise from this relationship of the parties is cognizable by the regular courts.

[Respondents] further alleged that assuming that there is an agrarian dispute, the case should have been brought first to the Barangay Agrarian Reform Committee (BARC) for mediation or conciliation, and that absent a BARC Certification attesting that efforts for mediation or conciliation failed, the PARAD cannot assume jurisdiction over the dispute pursuant to Section 1, Rule 3 of the DARAB New Rules of Procedure.

In a Resolution dated September 20, 2004, the PARAD denied [respondents'] *Motion to Dismiss*. Thus, [respondents] filed an *Answer with Counterclaim with Opposition to the Prayer for the Issuance of Preliminary Injunction or Status Quo Order* essentially reiterating their averments in their *Motion to Dismiss*.

After the submission by the parties of their respective position papers, the PARAD rendered a Decision dated September 15, 2006 declaring [petitioner] as a bonafide tenant who is entitled to peacefully possess and cultivate the subject landholding.

[Respondents] filed a *Motion for Reconsideration* but it was denied by the PARAD in an Order dated February 26, 2007.

[Respondents] interposed an appeal to the DARAB, which rendered the assailed Decision dated March 2, 2009 affirming the PARAD's *Decision*. The dispositive portion of the DARAB's Decision reads:

> 'WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the appeal for lack of merit and the decision of the Provincial Agrarian Reform Adjudicator is hereby AFFIRMED *in toto*.
>
> [Respondents] x x x are hereby DIRECTED to immediately turn over and reinstate possession of the subject landholding to herein [petitioner] x x x.
>
> SO ORDERED.'

[Respondents] filed a *Motion for Reconsideration* of the above Decision but it was denied by the DARAB in the assailed Resolution dated August 4, 2009.[10]

Ruling of the Provincial Agrarian Reform Adjudicator (PARAD)

In his September 15, 2006 Decision,[11] the PARAD held that the culture of tilapia fish is not an industrial activity that is exempt from agrarian laws; that fishponds remain agricultural lands covered by the Comprehensive Agrarian Reform Law (CARL); that the dispute between the parties is an agrarian controversy within the jurisdiction of his office; that petitioner is a legitimate tenant and not a mere civil law lessee of the subject landholding, her predecessors-in-interest having been instituted by the former landowners as such; and, that petitioner enjoys security of tenure pursuant to her tenurial arrangement with respondents.

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[10] *Rollo*, pp. 23-26.

[11] *Id.* at 67-75; penned by PARAD Andrew N. Baysa.

Ruling of the Department of Agrarian Reform Adjudication Board (DARAB)

In its March 2, 2009 Decision, the DARAB held that —

Section 166 of Republic Act No. 3844 defines Agricultural land as **land devoted to any growth including but not limited to crop lands, salt beds, fishponds, idle lands and abandoned land as defined in paragraphs 18 and 19 of this section.** This Board cannot give any other interpretation to this explicit, direct and crystal clear provision.

x x x x x x x x x

In the case of Sanches, Jr. vs. Marin et al. (G.R. No. 171346, October 9, 2007), the Supreme Court ruled that DARAB continued to be possessed of jurisdiction despite the passage of said Republic Act No. 7881 as, meanwhile, petitioner, as previously declared as bona fide tenant and later displaced/ejected without court order. The Court said, "x x x as a tenant of the subject fishpond and his right to security of tenure x x x (he) has acquired a vested right over the subject fishpond which has become fixed and established and is no longer open to doubt or controversy x x x even if the fishpond was later excluded/exempted from the coverage of CARL x x x."

Besides, the court further held that since jurisdiction was already assumed by the PARAD, same may not be denied/withdrawn by the mere passage of said Republic Act No. 7881 by according it retroactive application.

That fishpond is now an industry or no longer agricultural in character is a matter that is still an open issue. What is provided under said amendatory law, clearly by its tenor, is that same ceased to be covered by CARL of 1988, meaning, that it cannot under said law be anymore covered, acquired and redistributed to the farmer beneficiaries. But, this may not prevent the continued applicability of Republic Act 3844, as amended.

The possession of petitioner's predecessors in interest for a period of almost 50 years has been admitted by the respondents x x x in their pleadings and during the proceedings before the Adjudicator *a quo*. In fact, in one of the hearings, the landowner himself declared in open court that prior to the institution of this complaint, petitioner and her husband were tenants/lessees of the landholding and such

was for 50 years including the possession of the petitioner's predecessors.

Being recognized as such, petitioner x x x having inherited the right from her deceased spouse, Narciso Dillena who inherited the same from his father Catalino Dillena, agricultural leasehold relationship is not extinguished by a mere expiration of period. Section 10 of R.A. 3844 provides that the agricultural leasehold relation shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possessions of the landholding.

As correctly observed by the Adjudicator *a quo*:

> 'It is an established fact that the late Narciso Dillena was the identified tenant of the subject landholding and had performed his obligations as such for a period of fifty years. This fact was never refuted by the respondents in all of their pleadings and was never questioned in all stages of the proceedings for their defense was anchored solely on the fact that the late Narciso Dillena is not a tenant but is more of a civil law lessee. Respondents anchored their defense on the series of alleged civil law lease contracts that the late Narciso Dillena executed with the landowner and from the fact that the subject land is industrial land, which argument was, however, already ruled out by this Board.
>
> 'x x x x x x x x x
>
> 'Hence, the mere expiration of the term or period in a leasehold contract will not terminate the rights of the agricultural lessee who is given protection by the law by making such rights enforceable against the transferee or the landowner's successor in interest (Tinalgo vs. Court of Appeals, G.R No. L-34508, April 30, 1980)' x x x

There is simply no valid ground for the Board to deviate from the findings and conclusion of the Adjudicator *a quo*, as they are supported by substantial evidence.

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the appeal for lack of merit and the decision of the Provincial Agrarian Reform Adjudicator is hereby AFFIRMED *in toto*.

Respondents x x x are hereby DIRECTED to immediately turn over and reinstate possession of the subject landholding to herein petitioner x x x.

SO ORDERED.[12]

Respondents moved for reconsideration, but the DARAB stood its ground.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[13] before the CA, respondents questioned the above DARAB dispositions and prayed for the dismissal of the petition in DCN R-03-02-0837'04.

On February 28, 2012, the CA rendered the assailed Decision in favor of respondents, decreeing thus:

The main issue in this petition involves a question of jurisdiction, that is, whether or not the PARAD and DARAB have jurisdiction over the action filed by [petitioner] for maintenance of peaceful possession of the subject fishpond.

The Court's Ruling

The petition is meritorious.

The crux of the instant controversy is whether or not the PARAD and the DARAB have jurisdiction over the instant dispute between [respondents] and [petitioner] regarding the lease of the subject fishpond.

[Respondents] aver that the subject fishpond is not an agricultural land; fishponds are exempted or excluded from the coverage of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL) pursuant to Section 10(b) of Republic Act No. 7881 or "An Act Amending Certain Provisions of Republic Act No. 6657." [Respondents] allege that, since a fishpond is not an agricultural land, no agricultural tenancy relationship can be created between the parties and no agrarian dispute can emanate therefrom. [Respondents] further aver that [petitioner] has no security of tenure, being a mere civil law lessee over the subject fishpond.

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[12] *Id*. at 84-86.

[13] *Id*. at 90-112.

We rule for the [respondents].

Prior to the enactment of R.A. No. 7881, under R.A. No. 3844 ("Agricultural Land Reform Code) and R.A. No. 6657 ("Comprehensive Agrarian Reform Law"), fishponds were considered as agricultural lands. In the case of ***Sanchez, Jr. vs. Marin***, the Supreme Court explained:

> 'x x x this Court traced the classification of fishponds for agrarian reform purposes. Section 166(1) of Republic Act No. 3844 defined an agricultural land as land devoted to any growth, including but not limited to crop lands, salt beds, fish ponds, idle land and abandoned land. Thus, it is beyond cavil that under this law, fishponds were considered agricultural lands. Even when Republic Act No. 6657 entitled, 'Comprehensive Agrarian Reform Law of 1988,' took effect on 15 June 1988, fishponds were still considered as agricultural land.'

However, with the enactment of R.A. No. 7881 on February 20, 1995, fishponds were exempted or excluded from the coverage of the CARL. Section 2 of R.A. No. 7881, amending Section 10 of R.A. No. 6657, explicitly provides:

> 'SECTION 2. Section 10 of Republic Act No. 6657 is hereby amended to read as follows:
>
> 'Sec. 10. Exemptions and Exclusions.
>
> 'a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.
>
> 'b) ***Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act***; Provided, that said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.'

The ruling of the Supreme Court in ***Sanchez, Jr. Vs. Marin***, is instructive:

'In sum, the issues in this case may be summarized as follows:

I. Whether the subject fishpond is exempted/excluded from the coverage of the Comprehensive Agrarian Reform Program of the government by virtue of the amendments introduced by R.A. No. 7881 to R.A. No. 6657.

II. Granting that the subject fishpond is exempted/ excluded from the coverage of the CARL, whether the DARAB has jurisdiction over the case.

The Petition is meritorious.

The Court of Appeals grounded its Decision on this Court's pronouncements in *Romero v. Tan*. In the said case, this Court traced the classification of fishponds for agrarian reform purposes. Section 166 (1) of Republic Act No. 3844 defined an agricultural land as land devoted to any growth, including but not limited to crop lands, salt beds, fish ponds, idle land and abandoned land. Thus, it is beyond cavil that under this law, **fishponds** were considered agricultural lands. Even when Republic Act No. 6657 x x x took effect on 15 June 1988, fishponds were still considered as agricultural land. However, when Republic Act No. 7881 was passed by Congress on 20 February 1995, it amended several provisions of Republic Act No. 6657. **Section 2 of Republic Act No. 7881 amended Section 10 of Republic Act No. 6657 by expressly exempting/excluding private lands actually, directly and exclusively used for prawn farms and fishponds from the coverage of the CARL.** Section 3(c) of Republic Act No. 6657, as amended, now defines agricultural land as land devoted to agricultural activity and not otherwise classified as mineral, forest, residential, commercial, or industrial land. As to what constitutes an agricultural activity is defined by Section 3 (b) of Republic Act No. 6657, as amended, as the **cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices** performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical. **By virtue of the foregoing amendments, the operation of fishponds is no longer considered an agricultural activity, and a parcel of land devoted to fishpond operation is no longer an agricultural land.** x x x

Section 10 of Republic Act No. 6657, as amended by Republic Act No. 7881, explicitly provides:

SEC. 10. Exemptions and Exclusions.–

x x x x x x x x x

b) **Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act; Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.** x x x

x x x x x x x x x

This Court likewise affirms that the DARAB correctly assumed jurisdiction over the case, contrary to the declaration made by the appellate court in its Decision. Notably, the present case was instituted as early as 1991 when the petitioner filed a Petition before the PARAD for the fixing of his lease rental on the subject fishpond. Respondents subsequently filed a countercharge against the petitioner for the accounting, collection of sums of money, and dispossession. At such point, the law applicable was Republic Act No. 6657, wherein fishponds and prawn farms were not yet exempted/excluded from the CARL coverage. Evidently, there was an agrarian dispute existing between the petitioner and the respondents, cognizable by the PARAD at the time it rendered its Decision on 2 March 1993 in favor of the petitioner. On 20 February 1995, however, Republic Act No. 7881 came into being, which expressly exempted/excluded fishponds and prawn farms from the coverage of the CARL. In effect, cases involving fishponds and prawn farms are no longer considered agrarian disputes as to make the case fall within the jurisdiction of the DARAB or its Adjudicators. Nevertheless, considering that prior to the enactment of Republic Act No. 7881, this case was already pending appeal before the DARAB, the aforesaid amendments then cannot be made to apply as to divest the DARAB of its jurisdiction over the case. It is well-settled that once jurisdiction is acquired by the court, it remains with it until the full termination of the case.' x x x

Following the pronouncements made by the Supreme Court in ***Sanchez, Jr. vs. Marin***, the present rule is that fishponds are no longer considered as agricultural lands in accordance with the explicit provisions of R.A. No. 7881. Accordingly, all disputes arising from or involving the operation of fishponds after the enactment of R.A. No. 7881 on February 20, 1995 now fall within the jurisdiction of

the regular courts. However, the PARAD or DARAB shall not lose and continue to exercise jurisdiction over cases involving fishponds which have been filed or pending before said agency prior to the enactment of R.A. No. 7881 pursuant to the doctrine that once jurisdiction is acquired by the court, it remains with it until the full termination of the case, and the proscription against the retrospective application of R.A. No. 7881.

Thus, considering that [petitioner's] *Petition with Very Urgent Motion for the Immediate Issuance of Writ of Preliminary Injunction or Status Quo Order* dated June 30, 2004 was filed long after the enactment of R.A. No. 7881 on February 20, 1995, the PARAD and the DARAB have no authority to act on said [petitioner's] *Petition* x x x. Accordingly, said petition must be dismissed in view of the obvious lack of jurisdiction on the part of the PARAD and the DARAB to entertain the same. This renders unnecessary the resolution of the other issues raised by [respondents] in the instant petition for review.

WHEREFORE, premises considered, the instant petition for review is **GRANTED**. The Decision dated March 2, 2009 and Resolution dated August 4, 2009 of the Department of Agrarian Reform Adjudication Board are **REVERSED** and **SET ASIDE**. [Petitioner's] *Petition with Very Urgent Motion for the Immediate Issuance of Writ of Preliminary Injunction or Status Quo Order* is ordered **DISMISSED**.

SO ORDERED.[14] (Citations omitted; emphasis in the original)

Petitioner filed a Motion for Reconsideration but the CA denied the same *via* its October 11, 2012 Resolution. Hence, the instant Petition.

In a March 24, 2014 Resolution,[15] the Court resolved to give due course to the Petition.

Issues

Petitioner raises the following issues for resolution:

(1)

THE HON. PUBLIC RESPONDENT ERRONEOUSLY RULED THAT THE DARAB HAS OBVIOUS LACK OF JURISDICTION

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[14] *Id*. at 26-31.

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

OVER THE INSTANT CASE, IN VIEW OF R.A. NO. 7881 THAT FISHPONDS ARE NO LONGER AGRICULTURAL LANDS WITHOUT CONSIDERING THAT THIS CASE BELONGS TO THE EXCEPTION THAT TENURIAL RELATION IS ALREADY A VESTED RIGHT AND THEREFORE IT REMAINS AN AGRARIAN DISPUTE.

(2)

HON. PUBLIC RESPONDENT ERRONEOUSLY REFUSED TO RULE ON THE ISSUE OF THE EXISTENCE OF TENANCY WHICH ALREADY EXISTED PRIOR TO THE PASSAGE OF R.A. 7881.[16]

Petitioner's Arguments

In her Petition and Reply[17] seeking reversal of the assailed CA dispositions and, in lieu thereof, the reinstatement of the PARAD and DARAB Decisions, petitioner essentially argues that the CA erred in failing to consider that her case falls within the exceptions laid down in Republic Act (RA) No. 7881, in that there is an existing tenurial arrangement between her and respondents which must be respected; that the amendments introduced in 1995 by RA 7881 to RA 6557 (CARL) cannot be given retroactive application as to deprive a farmer of his rights under previous agrarian laws; that while the subject landholding is no longer covered by the CARL, the parties' tenurial arrangement subsists and remains governed by RA 3844 as it was vested prior to the effectivity of RA 7881; and thus, the PARAD and DARAB possess jurisdiction over the parties' dispute.

Respondents' Arguments

In their Comment[18] to the Petition, respondents counter that the operation of fishponds is no longer an agricultural activity but an industrial one; that under Department of Agrarian Reform Administrative Order No. 3, Series of 1995, it is specifically

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

[17] *Id*. at 157-164.

[18] *Id*. at 135-150.

declared that under R.A. 7881, aquaculture, fishponds, and prawn farms are excluded from the coverage of the Comprehensive Agrarian Reform Program (CARP); that under the CARL, a fishpond is not an arable land; that in *Spouses Romero v. Tan*,[19] the Court held that the PARAD has no jurisdiction over cases involving fishponds, as they are no longer considered agricultural lands; and that the relationship between the parties is that of civil law lessor and lessee.

Thus, respondents pray for denial of the instant Petition.

Our Ruling

The Court denies the Petition.

Under Section 2 of RA 7881, which took effect on February 20, 1995,

> b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

When petitioner filed DCN R 03-02-0837'04 with the Bulacan PARAD in 2004, RA 7881 was already in effect; therefore, the subject landholding — which remained undistributed under and was not subjected to the CARP — ceased to be covered by the CARL. Consequently, the Bulacan PARAD, as well as the DARAB, had no authority to take cognizance of her case, since their jurisdiction is limited to agrarian disputes. In *Pag-asa Fishpond Corporation v. Jimenez*,[20] this Court held:

> The jurisdiction of the PARAD, DARAB and the CA on appeal, is limited to agrarian disputes or controversies and other matters or incidents involving the implementation of the CARP under R.A. No. 6657, R.A No. 3844 and other agrarian laws. An agrarian dispute

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[19] 468 Phil. 224 (2004).

[20] 578 Phil. 106, 125-127 (2008).

is defined as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farm workers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

As early as February 20, 1995, private lands actually, directly and exclusively used for prawn farms and fishponds were exempted from the coverage of the CARL by virtue of R.A. No. 7881. Section 2 of the said law expressly provides:

> Sec. 2. Section 10 of Republic Act No. 6657 is hereby amended to read as follows:
>
> Sec. 10. Exemptions and Exclusions.
>
> x x x x x x x x x
>
> b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.
>
> x x x x x x x x x

Admittedly, there is no express repeal of R.A. No. 3844 as a whole. Its provisions that are not inconsistent with R.A. No. 6657 may still be given suppletory effect. Nonetheless, there is now irreconcilable inconsistency or repugnancy between the two laws as regards the treatment of fishponds and prawn farms. Such repugnancy leads to the conclusion that the provisions of R.A. No. 6657 supersede the provisions of RA. No. 3844 insofar as fishponds and prawn farms are concerned. In any event, Section 76 of R.A. No. 6657, as amended, provides that all other laws, decrees, issuances, or parts thereof inconsistent thereto are repealed or amended accordingly.

Verily, the DARAB finding of agricultural leasehold tenancy relations between petitioners civil law lessee David Jimenez and respondents have [sic] no basis in law. x x x

The above pronouncement also nullifies petitioner's claim that a tenurial arrangement, which is governed by RA 3844, exists between her and the respondents. In short, and to repeat,

RA 7881 supersedes RA 3844, with regard to fishponds and prawn farms. This is understandable; to subscribe to petitioner's view would precisely render the exemption and exclusion of fishponds and prawn farms from CARP granted under the amendatory law practically useless; it would be as if no exemption was granted.

The case of *Sanchez, Jr. v. Marin*,[21] cited by petitioner, the PARAD, and DARAB cannot be made to apply in the present case either. In that case, the petition for the fixing of the farmer-complainant's lease rental was instituted in 1991, when RA 7881 was not yet in effect and fishponds and prawn farms were not as yet exempted/excluded from CARL coverage. Thus, the Court held that there was an agrarian dispute existing between the parties cognizable by the PARAD at the time it rendered its Decision on March 2, 1993. Thus, considering that prior to the enactment of RA 7881, the case was already pending appeal before the DARAB, the amendatory law cannot be made to apply as to divest the DARAB of its jurisdiction over the case. In the present case, however, petitioner filed her petition to be declared a *de jure* tenant before the PARAD in 2004, when the subject landholding already ceased to be covered by the CARP by virtue of the amendments under RA 7881, which took effect as early as 1995.

Petitioner and her husband Narciso, who was then still alive, were not exactly without remedies, as they were given, pursuant to DAR Administrative Order No. 3, Series of 1995,[22] the option to remain as workers or become beneficiaries in other agricultural lands. If they had chosen to remain in the exempt area, they should be entitled to such rights, benefits and privileges granted to farmworkers under existing laws, decrees, and executive orders — but not under the agrarian laws, for the specific and precise

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[21] 562 Phil. 907 (2007).

[22] Rules and Regulations Governing the Exemption/Exclusion of Fishpond and Prawn Farms from the Coverage of the Comprehensive Agrarian Reform Law (CARL), Pursuant to Republic Act (R.A.) No. 6657, as amended by R.A. No. 7881.

reason that the subject landholding ceased to be covered by the CARP and RA 3844. Evidently, petitioner and Narciso did not apply to become beneficiaries in other landholdings, and chose instead to remain in the subject fishponds; for this, they could not claim protection specifically under the CARL and other agrarian laws, as the landholding ceased to be covered under said laws.

WHEREFORE, the Petition is **DENIED**. The February 28, 2012 Decision and October 11, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 110423 are **AFFIRMED *in toto***.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Jardeleza*, and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 214805. December 14, 2017]

MARIANITO PADILLA and ALFREDO JAVALUYAS, *petitioners, vs.* **UNIVERSAL ROBINA CORPORATION, represented by its Senior Vice President, JOHNSON ROBERT GO,** *respondent.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; PREPONDERANCE OF EVIDENCE; PETITIONERS FAILED TO PROVE BY PREPONDERANCE OF EVIDENCE THAT RESPONDENT CORPORATION COMMITTED A BREACH OF IMPLIED WARRANTY UNDER THEIR CONTRACT.— [I]t is incumbent on petitioners to establish the liability of URC on the basis of breach of implied warranty. No evidence, however,

was adduced. They even failed to dispute Lim's testimony that the feeds passed quality control and of the possibility that other ingredients from other sources were mixed to the feeds. As correctly observed by the CA, there was nothing in the records, except self-serving claims, which proves that URC delivered low-quality feeds tainted with high aflatoxin and other harmful components. There were no veterinarians/nutritionists or any other credible evidence presented by petitioners to confirm that the poultry feeds supplied by URC were contaminated or affected the growth of the broiler chicks. x x x This alleged admission on the part of URC's Satellite Farm Manager as revealed by Del Pilar, however, is undeniably hearsay because it was not based on the witness' personal knowledge but on the knowledge of some other person who was never presented on the witness stand. Parenthetically, Del Pilar's testimony regarding the Satellite Farm Manager's admission can be admitted merely for the purpose of establishing such utterance but not to establish its truth. Hence, Del Pilar's testimony did not sufficiently establish the truth of the claim that the feeds supplied by URC were defective, which could have affected the growth of the broiler chickens. In fine, petitioners failed to prove by preponderance of evidence the fault or negligence of URC. For this reason, petitioners can be held liable for their unsettled obligations under the CCAREMs they executed in favor of URC.

APPEARANCES OF COUNSEL

Castro & Associates for petitioners.
Reyes-Beltran Flores & Ballicud Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the April 22, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV

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[1] *Rollo*, pp. 5-14.

[2] CA *rollo*, pp. 241-256, penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S. E. Veloso and Nina G. Antonio-Valenzuela.

No. 93260 reversing and setting aside the December 13, 2008 Decision[3] of the Regional Trial Court (RTC) of Gapan City, Branch 36, in Civil Case No. 1495 for damages and injunction with preliminary injunction. The trial court declared the obligations of petitioners Marianito Padilla (Padilla) and Alfredo Javaluyas (Javaluyas) to respondent Universal Robina Corporation (URC) extinguished, ordered the release of the real estate mortgages executed by petitioners in favor of URC, and made permanent the Writ of Preliminary Injunction enjoining the extrajudicial foreclosure of petitioners' mortgaged properties.

Factual Antecedents

This case stemmed from a Complaint[4] for Damages filed by several poultry farmers, namely Eduardo Pineda, Simplicio Ortiz Luis, Jose Bantigue, Azucena Vergara, Eduardo Guingon and herein petitioners (complainants) against URC on May 26, 1995, before the RTC of Gapan City, Branch 36.

The facts, as culled from the records of the case, are as follows:

For various years, URC, a corporation engaged in the manufacture and sale of various agro-industrial products, sold/supplied on credit day-old chicks and poultry feeds to complainants who, in turn, provided the labor, poultry houses, electricity and water facilities to care and grow these chicks until they are ready for harvest after 50 days, more or less. URC had the option of buying from complainants the full-grown broiler chickens that met the target harvest weight at an agreed price per kilo. Liquidation was made within 15 days after the harvest by setting off the price of the full grown broiler chickens with the amount of purchases made by complainants on credit. Thus, if the purchases on credit were greater than the value of the chickens harvested, complainants paid the balance to URC, but if it were otherwise, complainants received their respective paybacks or earnings.

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[3] Records (Folio 2), pp. 543-553, penned by Presiding Judge Arturo M. Bernardo.

[4] Records (Folio 1), pp. 1-7.

Documents entitled Continuing Credit Accommodation with Real Estate Mortgage (CCAREM)[5] were executed by the parties whereby URC agreed to extend a continuous credit accommodation in favor of each complainant, for the latter's purchases of day-old chicks, poultry feeds, and other agricultural products from the former, while each complainant put up a real estate mortgage. The relevant terms and conditions of the CCAREM are as follows:

x x x x x x x x x

I. AS TO CREDIT ACCOMMODATION –

1. It is agreed upon by the parties that all purchases will be paid not later than sixty (60) days from the date of every purchase. Any purchase not paid or settled within the said period will automatically make all subsequent purchases due and payable even before their due dates.

2. The MORTGAGOR and/or PRINCIPAL will be considered in default if they fail to pay their obligation upon maturity with or without demand and it is agreed that a certified statement by the COMPANY- MORTGAGEE, as to the amount due from the MORTGAGOR and/or PRINCIPAL will be accepted by the latter as conclusive evidence of their obligation.

3. The obligation of the MORTGAGOR and/or PRINCIPAL in case of their default shall earn an interest at the rate of 16% per annum until fully paid.

4. The parties agree and stipulate that ownership in the thing purchase[d] will not be transferred to the MORTGAGOR and/or PRINCIPAL until they have fully paid the price.

5. In case the thing purchased should be lost, damaged or destroyed without the fault of the COMPANY-MORTGAGEE, or by reason of fortuitous events or force majeure - like death of day-old chicks or chickens by reason of any sickness, disease, "peste or NCD," theft, robbery, typhoon, fire, flood and others – the risk of loss shall be

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[5] Exhibits "P", "1", and "2", Records (Folio 2), pp. 345-346, 383-386, and 387-390, respectively.

> borne by the MORTGAGOR and/or PRINCIPAL and their liability to pay their obligation to COMPANY-MORTGAGEE is not extinguished. The MORTGAGOR and/or PRINCIPAL are still obligated to pay the day- old chicks, poultry feeds and other products purchased from the COMPANY-MORTGAGEE.
>
> x x x x x x x x x[6]

The business relationship between URC and complainants continued for years and the CCAREMS were renewed yearly. However, sometime in the year 1993, complainants informed URC of the stunting or slow growth and high mortality rate of the chickens. They claimed that URC supplied them with low quality feeds with high aflatoxin content and class B or junior day-old chicks. Meanwhile, the stunted chickens that failed to meet the standard target weight for harvest were rejected by URC and were condemned (beheaded). As a result, complainants incurred outstanding obligations. URC made several demands for complainants to settle their unpaid obligations under the CCAREMs,[7] but they refused to pay. Hence, on June 25, 1995, URC filed an application for extrajudicial foreclosure of the real estate mortgages on complainants' respective properties under the CCAREMs.

Proceedings before the Regional Trial Court

On May 26, 1995, complainants filed a Complaint[8] for damages, docketed as Civil Case No. 1495, with the RTC of Gapan City, Branch 36, against URC. The complainants claimed that they incurred losses and sustained damages from the stunting/slow growth of the chickens as a result of the low quality feeds with high aflatoxin content and class B or junior day-old chicks supplied by URC in evident bad faith. Since the stunting and eventual condemnation/death of the chickens was due to URC's

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[6] *Id*. at 345, 383 and 387.

[7] See collection/demand letters of respondent to petitioners, *id*. at 393-396.

[8] Records (Folio 1), pp. 1-7.

fault, complainants claimed that their obligation to pay URC was extinguished. Complainants thereafter filed an Amended Complaint[9] to include, as a nominal party defendant, Notary Public Olivia V. Jacoba (Notary Public Jacoba), and, as additional cause of action, the issuance of an ex-parte restraining order and a preliminary injunction prohibiting Notary Public Jacoba from selling their real properties at the scheduled public auction for the extrajudicial foreclosure of the real estate mortgages, claiming that Notary Public Jacoba had no authority to issue the Notices of Auction Sale[10] for lack of a notarial commission.

In its Answer *Ad Cautela*,[11] URC alleged that complainants had no cause of action; that the terms and conditions of its agreement with complainants were clearly indicated in the CCAREMs duly signed by them; that it was compelled, under the CCAREM, to foreclose extrajudicially the properties mortgaged when complainants defaulted in their payment; that it never ordered the condemnation of the defective chickens; that the cause of the chicks' stunted growth was complainants' lack of care in the growing of the chicks; and that it supplied the complainants with feeds of good quality. In its Amended Answer,[12] URC further claimed that the venue of complainants' case was improperly laid.

On July 14, 1995, the RTC issued an Order[13] restraining URC from selling the real properties of complainants. After the hearing on the prayer for preliminary injunction, the RTC, in its Order dated January 18, 1998,[14] issued a Writ of Preliminary Injunction prohibiting the extrajudicial foreclosure of complainants' real properties mortgaged under the CCAREMs upon complainants' filing of an injunction bond. A motion for reconsideration was

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[9] *Id*. at 22-31.

[10] *Id*. at 32-41.

[11] *Id*. at 84-86.

[12] *Id*. at 201-204.

[13] *Id*. at 44.

[14] *Id*. at 150-154.

filed by URC questioning the legal basis of the Writ of Preliminary Injunction, but was, however, denied by the RTC in an Order dated October 7, 1998.[15] Both the January 18, 1998 and October 7, 1998 Orders of the RTC were affirmed by the CA upon appeal by URC, which became final on July 27, 2001.[16]

Meanwhile, complainants, except petitioners, withdrew their complaints and opted to settle their respective outstanding obligations with URC under the CCAREMs. They recanted their previous allegation that the stunting growth of the chicks was due to URC's fault and instead attributed the same to local pestilence and oversight on their part in the care of the chicks.[17] Petitioners, on the other hand, insisted on URC's fault, hence, trial proceeded only with respect to them.

During the hearing, petitioners testified that they were contract growers of URC by virtue of CCAREMs signed by them;[18] that as per their agreement with URC, they would take care and grow the chicks supplied by URC for more or less forty-five (45) to fifty (50) days;[19] that sometime in May 1993, they noticed that the chicks, which they described as "small and runts" and "*maliit at bansot*" were not growing normally;[20] that they reported the matter to URC which prompted the latter to send a representative who later told them that the cause of the stunting growth of the chickens was the purported defective feeds supplied by URC;[21] and that URC decided to condemn/discard those

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[15] *Id*. at 176.

[16] See CA Decision dated June 9, 2000 and Entry of Judgment, Records (Folio 2), pp. 287-292 and 293, respectively.

[17] See complainants' Motions to Withdraw Complaint, Records (Folio 1), pp. 120-122, Records (Folio 2) pp. 241-243, 268-278, 296-298; and TSN, April 15, 2005, pp. 4-5.

[18] TSN, September 14, 1995, pp. 7 and 13.

[19] TSN, April 15, 2005, pp. 9-10; TSN, August 18, 2006, p.10.

[20] TSN, April 15, 2005, pp. 11-12.

[21] TSN, July 23, 2004, pp. 3-5; TSN, April 15, 2005, pp. 14 and 18-20; TSN, August 18, 2006, p. 11.

chickens that did not satisfy the standard target weight for harvest.[22] Petitioners added that since the slow growth of the chicks was caused by URC's fault, their obligation was extinguished.[23]

URC, on the other hand, presented as witness William Lim (Lim) who testified that he was the National Sales Manager of URC, and as such, was responsible for the monitoring of sales activities and delivery of chicks and poultry feeds to the company's customers.[24] He testified that URC entered into continuing credit accommodation contracts with complainants, by virtue of CCAREMs,[25] wherein URC, under a buy back arrangement, would sell on credit chicks to complainants, who, in turn, would grow the chicks according to their own management without URC's intervention. URC would thereafter offer to buy back the full-grown broiler chickens at an agreed price.[26] In 1993, URC was compelled to investigate several complaints regarding the slow growth of the chickens, which investigation revealed that the cause of the stunted growth was some viral infection causing respiratory problems among the chickens and not due to defective feeds as falsely alleged by complainants.[27] Lim denied that the feeds supplied by URC were defective since it passed quality control[28] or that URC ordered the condemnation of the chickens, explaining that only complainants, as owner thereof, can dispose of the same.[29] Since URC only harvested those chickens that met the standard weight and since the value of the full grown ones was not enough to pay for the amount of chicks and poultry feeds purchased from

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[22] TSN, September 14, 1995, p. 16; TSN, April 15, 2005, p. 22.

[23] TSN, September 14, 1995, pp. 8-9 and 16.

[24] TSN, January 21, 1997, pp. 3-4.

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

[26] TSN, January 21,1997, p. 7; TSN, March 23, 2007, p. 17.

[27] TSN, January 21, 1997, pp. 7-8; TSN, February 28, 1997, pp. 21-22.

[28] TSN, February 28, 1997, pp. 20-21; TSN, March 23, 2007, p. 26.

[29] TSN, July 18, 1997, p. 7; TSN, March 23, 2007, p. 32.

URC, complainants incurred outstanding obligations prompting URC to initiate foreclosure proceedings when complainants refused to pay on demand.[30]

As rebuttal evidence, petitioners presented Eduardo Del Pilar (Del Pilar), a former employee of URC who performed the functions of Dressed Chicken Checker, Live Broiler Chicken Checker, and Materials Coordinator.[31] According to Del Pilar, he attended a meeting called by the management of URC wherein it was discussed that the cause of the stunted growth was the poultry feeds supplied by URC. During that meeting, URC also ordered the condemnation of the stunted chickens.[32] On cross-examination, he stated that he was ordered by Lim to witness the condemnation and in the process, prepared/issued the corresponding condemnation reports.[33]

On December 13, 2008, the trial court rendered a Decision,[34] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is rendered:
>
> a) declaring the obligations of Alfredo Javaluyas and Marianito Padilla to Universal Robina Corporation under the latter's statements of account both dated 03 January 1997, in the amount of Php624,872.04 and Php727,317.59 respectively, extinguished;
>
> b) making the Writ of Preliminary Injunction, enjoining the URC to desist from foreclosing extrajudicially the properties mortgaged by Alfredo Javaluyas and Marianito Padilla permanent;
>
> c) ordering defendant Universal Robina Corporation:
>
> 1) to release the real estate mortgages executed by Alfredo Javaluyas and Marianito Padilla in its favor;

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[30] TSN, March 23, 2007, pp. 26-31.

[31] TSN, September 14, 2007, pp. 6-7 and 21.

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

[33] TSN, November 9, 2007, pp. 24-29.

[34] Records (Folio 2), pp. 543-553; penned by Presiding Judge Arturo M. Bernardo.

2) to pay the sum of Php50,000.00 as attorney's fee; and

[3] to pay the cost of suit.

SO ORDERED.[35]

In declaring petitioners' contractual obligation with URC as extinguished, the trial court found the CCAREMs as unconscionable and against public policy for being a contract of adhesion which contained terms that were heavily weighed in favor of URC. It held that what the parties entered into was actually a growing agreement whereby petitioners, as contract growers, took care and grew the broiler chicks supplied by URC which retained ownership of the chicks. The delivery of the chicks to petitioners did not transfer its ownership to them nor make the relationship of the parties one of a buy back arrangement considering that the contract growers had no right to sell the broiler chickens to others except to URC and that URC controlled the operation and growing of the chicks by exclusively supplying poultry feeds and agricultural products, as well as by giving orders of condemnation. As the owner of the broiler chicks/chickens, URC should bear the loss. At the same time, the trial court found petitioners not guilty of negligence in the care of the chicks as to hold them liable for the loss. Since neither of the parties was shown to be at fault by preponderance of evidence, the RTC held that each had to bear their respective losses and accordingly was not entitled to damages against each other.

Proceedings before the Court of Appeals

URC appealed to the CA, assailing the trial court ruling that it entered into a growing agreement with petitioners; that it retained ownership of the broiler chickens; that the CCAREMs were unconscionable and against public policy; and that the obligations of petitioners were extinguished. It also claimed that the trial court erred in ordering the release of the real estate mortgages executed by petitioners; in making permanent the writ of injunction; and in ordering it to pay attorney's fees and the cost of suit.

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[35] *Id*. at 553.

On April 22, 2014, the CA rendered a Decision[36] granting URC's appeal. The CA held that petitioners' acquiescence to the terms and provisions of the CCAREMs made it a binding agreement between the parties that should govern and delineate their respective rights and obligations. Under the CCAREM, URC shall only be accountable if the loss, damage, or destruction of the subject livestock was due to its fault, which, in this case, was not proven. In ruling in favor of URC, the CA held that there was no credible evidence, except mere self-serving claims, that URC supplied contaminated poultry feeds which affected the growth of the broiler chicks. No veterinarians or nutritionists were presented to prove petitioners' claims. The CA therefore ruled that petitioners should bear the loss of the broiler chickens and are liable to pay URC their outstanding obligations plus interest and attorney's fees in accordance with the provisions of the CCAREM.

The CA struck down for being improper the foreclosure sale made at the instance of Notary Public Jacoba who lacked the necessary notarial commission. However, in recognizing URC's right to avail of the remedy of foreclosure as provided under the CCAREM, the CA lifted the permanent injunction issued by the trial court to allow URC to initiate other foreclosure proceedings against the mortgaged properties of petitioners.

The CA further denied URC's claim for exemplary damages since there was no showing that petitioners exhibited bad faith in dealing with URC.

The dispositive portion of the Decision reads:

WHEREFORE, the Appeal is GRANTED. The Decision dated 13 December 2008 of Branch 36, Regional Trial Court (RTC) of Gapan City is hereby REVERSED and SET ASIDE.

ACCORDINGLY, this Court hereby:

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[36] CA *rollo*, pp. 241-256; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S. E. Veloso and Nina G. Antonio-Valenzuela.

1. DECLARES plaintiff-appellee Marianito Padilla liable to pay defendant-appellant Universal Robina Corporation the following amounts: (a) ₱368,009.10 as principal; (b) ₱213,844.97 as interest; and (c) ₱145,463.52 as attorney's fee;

2. DECLARES plaintiff-appellee Alfredo Javaluyas liable to pay defendant-appellant Universal Robina Corporation the following amounts: a) ₱272,069.26 in principal; (b) ₱213,844.97[37] as interest; and (c) ₱145,463.52[38] as attorney's fee;

3. LIFTS the Permanent Injunction issued by Branch 36, Regional Trial Court (RTC) of Gapan City on the Foreclosure of plaintiffs-appellees' Real Estate Mortgage. However, the foreclosure sale of TCT Nos. NT-186419, P-108280, and NT-191940; and TCT No. 196756 made with fee participation of Notary Public Olivia-Velasco Jacoba is declared VOID and of NO EFFECT;

4. DENIES defendant-appellant's claim for exemplary damages for lack of merit.

SO ORDERED.[39]

Petitioners filed a Motion for Reconsideration[40] of the CA Decision, arguing that they have proven by preponderance of evidence that the cause of the stunted growth of the broiler chickens was the low-quality poultry feeds supplied by URC. They averred that Del Pilar's testimony as regards the admission by URC of its fault in supplying defective feeds, as well as the failure of respondent URC's lone witness to deny this admission, were enough evidence to prove their cause. This motion for reconsideration was, however, denied by the CA in its Resolution[41] of September 17, 2014.

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[37] Petitioner Alfredo Javaluyas' liability on the amount of interest on the principal at 18% per annum should be ₱227,828.37, not ₱213,844.97; see Records (Folio 2), p. 410.

[38] Petitioner Alfredo Javaluyas' liability in terms of attorney's fee at 25% of the total amount sued stands at ₱124,974.41, not ₱145,463.52; see Records (Folio 2), p. 410.

[39] CA *rollo*, pp. 255-256.

[40] *Id.* at 260-263.

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

Issue

Hence, this present Petition on the sole, ground that:

THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE LOSS, DAMAGE OR DESTRUCTION OF THE SUBJECT LIVESTOCKS WAS NOT DUE TO URC'S FAULT.[42]

Petitioners aver that the testimony of Del Pilar, a disinterested witness, on what actually transpired during a meeting conducted by URC when the latter, through Lim, admitted that the stunted growth of the broiler chicks was due to the poultry feeds it supplied, should be given weight and credence. Not having been denied by Lim when he was presented as witness, this positive testimony and admission deserves great weight to establish the fault or negligence of URC. Hence, their obligation was already extinguished due to URC's admission of fault.

Our Ruling

The Petition is unmeritorious.

At the outset, it must be stated that the CCAREMs executed and signed by the parties govern their rights and obligations considering that the validity of its provisions was not assailed by petitioners.

The threshold issue is whether or not there is sufficient evidence to establish URC's fault or negligence for the defective/stunted growth of the broiler chickens as would extinguish petitioners' obligation under the CCAREM. Paragraph 5 of the CCAREM provides that:

In case the thing purchased should be lost, damaged or destroyed without the fault of the COMPANY-MORTGAGEE, or by reason of fortuitous events or force majeure – like death of day-old chicks or chickens by reason of any sickness, disease, "peste or NCD," theft, robbery, typhoon, fire, flood and others – the risk of loss shall be borne by the MORTGAGOR and/or PRINCIPAL and their liability to pay their obligation to COMPANY-MORTGAGEE is not

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[42] *Rollo*, p. 8.

extinguished. The MORTGAGOR and/or PRINCIPAL are still obligated to pay the day-old chicks, poultry feeds and other products purchased from the COMPANY-MORTGAGEE.[43]

Based on the foregoing, URC is accountable only if the loss, damage, or destruction of the broiler chickens was due to its fault, otherwise, petitioners should bear the loss and their obligation to pay the day-old chicks and poultry feeds purchased from URC is not extinguished.

"[I]t is basic rule in civil cases that the party making the allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent."[44] The Court finds that petitioners failed to prove by preponderance of evidence their claims against URC as to extinguish their obligation under the contract.

It bears stressing that both the RTC and the CA found no evidence of fault or negligence on the part of URC. The CA affirmed the finding of the trial court that there was no basis to the allegation that the stunted growth of the broiler chickens was caused by the purported low-quality poultry feeds supplied by URC. Suffice it to say that factual findings of the trial court, when adopted by the CA, are binding and conclusive on this Court.[45] Besides, this Court has already ruled that the finding of negligence is a question of fact which it cannot look into as the Court is not a trier of facts.[46]

In any event, the Court finds no compelling reason to deviate from the finding of the lower courts inasmuch as it is supported by the evidence and records of the case. It was held, in the case of *Nutrimix Feeds Corporation v. Court of Appeals*,[47] that the manufacturer or seller of animal feeds cannot be held liable

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[43] Records (Folio 2), p. 345.

[44] *Otero v. Tan*, 692 Phil. 714, 729 (2012).

[45] *Allied Banking Corporation v. Lim Sio Wan*, 573 Phil. 89, 101 (2008).

[46] *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 162 (2002).

[47] 484 Phil. 330, 343 (2004).

for any damage allegedly caused by the product in the absence of proof that the product was defective. The defect of the product requires evidence that there was no tampering with, or changing of the animal feeds.[48] The Court explained that "[i]n the sale of animal feeds, there is an implied warranty that it is reasonably fit and suitable to be used for the purpose which both parties contemplated."[49]

In this case, URC maintains that it is unlikely that it supplied its customers with defective poultry feeds because if it were, it would not have passed quality control.[50] Further, there is evidence showing the possibility of tampering with the poultry feeds in the hands of the poultry farmers. On cross-examination, Lim testified in this manner:

Court:
Q So, there was no instance where the growers ever bought feeds from other sources?
A There [were] instances [when] they bought other ingredients from other source[s], sir.

Q I am asking you feeds not ingredients.
A It is added to the feeds, sir, so it becomes part of the feeds.

Court:
In this case, did you find [that] the plaintiff added ingredients to the feeds?

A There [were] instances, sir.

Court:
Q Did you personally see that they mix[ed] or add[ed] some ingredients to the feeds that you supplied]?
A Yes, sir. Court:

Court:
Where is your proof?
A I saw it personally, sir.[51]

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[48] *Id*. at 344.

[49] *Id*. at 343.

[50] TSN, February 28, 1997, pp. 20-21; March 23, 2007, p. 26.

[51] TSN, January 21, 1997, pp. 14-15.

In light of the ruling in *Nutrimix*, it is incumbent on petitioners to establish the liability of URC on the basis of breach of implied warranty. No evidence, however, was adduced. They even failed to dispute Lim's testimony that the feeds passed quality control and of the possibility that other ingredients from other sources were mixed to the feeds. As correctly observed by the CA, there was nothing in the records, except self-serving claims, which proves that URC delivered low-quality feeds tainted with high aflatoxin and other harmful components. There were no veterinarians/nutritionists or any other credible evidence presented by petitioners to confirm that the poultry feeds supplied by URC were contaminated or affected the growth of the broiler chicks. The documentary evidence proffered by petitioners, to wit: 1) Notices of Auction Sale[52] of the properties mortgaged under the CCAREMs, 2) Certifications[53] of the Clerks of Court of RTC Gapan and Cabanatuan City stating that Notary Public Jacoba had no notarial commission, and 3) Condemnation Mortality Rate Reports[54] showing the number of disposed/ condemned broiler chickens, do not prove any liability on URC of its alleged supply of defective feeds.

Petitioners, however, insist that the cause of the stunted growth of the broiler chicks was the defective poultry feeds supplied by URC, and that URC caused the condemnation of the chickens, based on the alleged admission made by Lim during a meeting called by the URC management. In addition, they aver that Lim never denied this purported admission when he was presented in court.

The Court is not persuaded.

For one, nowhere in the testimonies of Del Pilar was it categorically stated that Lim admitted that URC delivered defective feeds. While he testified that it was Lim who ordered the condemnation of the stunted chickens,[55] it was the Satellite

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[52] Records (Folio 1), pp. 32-41.

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

[54] Records (Folio 2), pp. 340-343.

[55] TSN, November 9, 2007, pp. 24-25.

Farm Manager of URC's Satellite Poultry Farm (not Lim) who discussed the problems regarding the feeds. The testimony of Del Pilar is summarized as follows:

Court:

Q As a Live Broiler Checker for a long time, do you know what could have caused this stunted growing of the chickens of these Contract Growers?

A What was discussed in the Office is regarding the feeds, sir.

Q Who discussed the problem regarding the feeds?

A The *Satellite Farm Manager*, sir. And [the feeds] was the subject matter, the Satellite Manager of [Universal Robina Corporation] [who] also [had] a poultry, and when they used other brand of feeds[,] the chicken [grew], sir.

Q What are these Satellites?

A [Universal Robina Corporation] rented empty poultry and they put their chickens there, sir.

Q In other words, this Satellite Poultry [was] practically managed by Universal Robina Corporation?

A Yes, sir.

Q And this Satellite Poultry [also] suffered stunted growing of their chicken?

A Yes, sir.

Q And it was discussed in the Office that the one problem that caused the stunted growth was the feeds?

A Yes, sir.

Q How did it happen that you were present during that discussion?

A There was a meeting called by the management and I was included there in the meeting, and the condemnation [of the chickens] was ordered, sir.

Q Now, they discussed about the problem [of] the stunted growth, you said the problem is the feeds, do you know what feeds they are referring [to]?

A The Robina feeds, sir.

Q The same feeds provided by the Universal Robina Corporation to the Contract Growers?

A Yes, sir.[56]

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[56] TSN, September 14, 2007, pp. 16-17.

x x x x x x x x x

Cross-Examination
Atty. A. Garcia:

Q Mr. witness, you mentioned that you knew that the problem is the feeds because you heard it being discussed in the company, is that correct?
A Yes, sir.

Q Were you able to confirm it?
A Yes, sir.

Q How did you confirm it, Mr. witness?
A I talked with the *farm manager*, sir. They used other feeds for the chicken and the chickens grew well, sir.

Q So, in other words, Mr. witness, you were not able to witness this because it was only told to you?
A Yes, sir.

Q In other words, Mr. witness, since you were not able to see the chickens, you were not able to confirm it?
A Yes, sir.[57]

Lim was URC's Sales Manager and Del Pilar was clearly not referring to him but to URC's Satellite Farm Manager. This alleged admission on the part of URC's Satellite Farm Manager as revealed by Del Pilar, however, is undeniably hearsay because it was not based on the witness' personal knowledge but on the knowledge of some other person who was never presented on the witness stand.[58] Parenthetically, Del Pilar's testimony regarding the Satellite Farm Manager's admission can be admitted merely for the purpose of establishing such utterance but not to establish its truth.[59] Hence, Del Pilar's testimony did not sufficiently establish the truth of the claim that the feeds supplied by URC were defective, which could have affected the growth of the broiler chickens.

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[57] TSN, November 9, 2007, pp. 34-35.

[58] *People v. Cui*, 372 Phil. 837, 850 (1999); *People v. Sarmiento*, 159-A Phil. 615, 623 (1975).

[59] *American Express International, Inc. v. Court of Appeals*, 367 Phil. 333, 340 (1999).

In fine, petitioners failed to prove by preponderance of evidence the fault or negligence of URC. For this reason, petitioners can be held liable for their unsettled obligations under the CCAREMs they executed in favor of URC.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision of the Court of Appeals dated April 22, 2014 in CA-G.R. CV No. 93260 is **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 215194. December 14, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO DELOSO *y* BAGARES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; RAPE THROUGH CARNAL KNOWLEDGE; COMMITTED WHEN THE OFFENDER HAD CARNAL KNOWLEDGE OF A WOMAN AND HE ACCOMPLISHED SUCH ACT THROUGH FORCE, THREAT, OR INTIMIDATION, OR WHEN SHE WAS DEPRIVED OF REASON OR OTHERWISE UNCONSCIOUS, OR WHEN SHE WAS UNDER TWELVE YEARS OF AGE OR WAS DEMENTED.— In the Revised Penal Code, as amended, the crime of rape is committed in the following manner: "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." For a charge of rape to prosper under the above provision, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.

2. ID.; ID.; ID.; FORCE OR INTIMIDATION; IN CASES WHERE RAPE IS COMMITTED BY A CLOSE KIN, IT IS NOT NECESSARY THAT ACTUAL FORCE OR INTIMIDATION BE EMPLOYED, FOR MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.— Anent the element of force, threat or intimidation, Deloso claims that the same was not fully established in the testimony of AAA and he was not even armed with any weapon with which to threaten AAA. The Court of Appeals was correct to dismiss said argument, given the settled rule 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.

3. REMEDIAL LAW; EVIDENCE; DENIAL; CONSTITUTES SELF-SERVING NEGATIVE EVIDENCE WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE DECLARATION OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.— In his defense, Deloso could only muster a denial in that he allegedly did not have sexual intercourse with AAA, but he merely inserted his finger into her female organ. The Court finds that the lower courts did not err in disregarding Deloso's denial. Totally unsupported by any other evidence, the allegation cannot overcome AAA's and CCC's positive declarations on the identity of Deloso and his perpetration of the crime charged. We held in *People v. Malones*, that "denial is inherently a weak defense. It cannot prevail over positive identifications, unless buttressed by strong evidence of non-culpability." Stated alternatively, a denial, just like alibi,

constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; APPRECIATED WHEN SPECIFICALLY ALLEGED IN THE INFORMATION AND SUFFICIENTLY PROVED DURING THE TRIAL OF THE CASE; PENALTY IN CASE AT BAR.— Under Article 266-B of the Revised Penal Code, the minority of a rape victim and her relationship to the offender qualify the charge of rape. x x x In this case, we uphold the trial court's finding that the qualifying circumstances of minority and relationship attended the commission of the crime. Said circumstances were specifically alleged in the information and sufficiently proved during the trial of the case. The fact that AAA was only 13 years old when the rape incident occurred on September 16, 2009 was established by her Certificate of Live Birth that was offered in evidence, which stated that she was born on July 22, 1996. As to the relationship of AAA to Deloso, the defense already stipulated on the fact that Deloso is the common-law spouse of AAA's mother and he likewise admitted this fact when he testified in court. Notwithstanding the provisions of Article 266-B of the Revised Penal Code, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon Deloso is *reclusion perpetua*. This is in accordance with the provisions of Republic Act No. 9346, which prohibits the imposition of the death penalty.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; EXEMPLARY DAMAGES; AWARDED IN RAPE CASES WHEN THE AGGRAVATING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP WERE ALLEGED IN THE INFORMATION AND PROVED DURING THE TRIAL.— In lieu of temperate damages, exemplary damages is awarded in the amount of ₱100,000.00. We held in *People v. Llanas, Jr.* that "[t]he award of exemplary damages is also proper not only to deter outrageous conduct, but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense, both of which were alleged in the information and proved during the trial."

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

We decide the appeal filed by the accused-appellant Ronaldo Deloso *y* Bagares[1] from the Decision[2] dated July 30, 2014 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00981-MIN. The appellate court affirmed the Decision[3] dated October 7, 2011 of the Regional Trial Court (RTC) of Cagayan De Oro City, Branch 19 in FC Crim. Case No. 2009-506, which found Deloso guilty of one count of qualified rape.

Deloso was charged with one count of rape committed against AAA[4] in an Information, the accusatory portion of which provides:

That on September 16, 2009 at more or less twelve midnight, at [XXX], Cagayan de Oro City, Philippines and within the jurisdiction

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[1] Also referred to as Ronald Deloso in other parts of the records.

[2] *Rollo*, pp. 3-16; penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo T. Lloren and Edward B. Contreras concurring.

[3] CA *rollo*, pp. 49-54; penned by Presiding Judge Evelyn Gamotin Nery.

[4] The real name of the private complainant and those of her immediate family members who are involved in this case are withheld per Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC effective November15, 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto*, 533 Phil. 703 (2006).

Thus, the private offended party is referred to as AAA. The initials BBB refers to the mother of the private offended party, CCC to the private offended party's younger brother, and DDD to the nephew of the offended party. The initials XXX denotes the place where the crime charged was committed and YYY to the place of work of BBB.

of this Honorable Court , the above-named accused, while being the common law spouse of the mother of the offended party, by means of force, threat and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of the offended party, child [AAA], thirteen years of age, against her will and consent, to the damage and prejudice of the said offended party.

Contrary to law and with the aggravating circumstances that the offended party is below eighteen years old and the accused is the common law spouse of the parent of the offended party.[5]

When arraigned, Deloso pleaded not guilty to the charge.[6] After the pre-trial conference, the trial court issued a Pre-Trial Order[7] dated December 14, 2009 that contained the following stipulations of fact:

1. Identity of the accused;

2. Accused is the common-law spouse of [BBB], mother of "AAA";

3. Minority of the complainant;

4. [BBB] comes home every Saturday at [XXX], Cagayan de Oro City;

5. Authenticity and due execution of the Living Case Report dated September 1, 2009.

The pre-trial order containing the foregoing stipulations was signed by the accused and his counsel. In the trial that followed, the prosecution presented the testimonies of BBB,[8] AAA,[9] and CCC[10] (the younger brother of AAA). The defense presented the lone testimony of Deloso.[11]

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[5] Records, p. 4.

[6] *Id.* at 16.

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

[8] TSN, May 24, 2010.

[9] TSN, August 4, 2010.

[10] TSN, September 3, 2010.

[11] TSN, May 2, 2011.

The RTC summed up the prosecution's testimonial evidence as follows:

EVIDENCE FOR THE PROSECUTION:

40 years old "BBB", mother of the offended party "AAA" a resident of XXX attests that she and [Deloso] were live-in-partners for 5 years. She works as [a] dishwasher in a restaurant in [YYY], Cagayan de Oro and comes home to [XXX] only every Saturday. This leaves [Deloso], "AAA" and her youngest, 11 years (sic) old son "CCC" in the house. x x x.

"BBB" recalls that on September 17, 2009 at 9:00 o'clock in the morning, a certain "Inday Ayon" called her through telephone at her workplace to go home as her daughter "AAA" was molested by [Deloso] the night before. She immediately went home and arrived at [XXX] at 10:00 o'clock in the morning. Nobody was home, thus she proceeded to the (Puerto) Police Station and there she saw "AAA" crying, while [Deloso] was already inside the detention cell.

"AAA" worriedly told her that her stepfather [Deloso] molested her: accordingly the first on September 15, 2009 and was successively done until September 16, 2009, which incident was witnessed by [her] youngest son, "CCC". "AAA" further told her that [Deloso] would kill them all if she reveals to them the incident. "CCC" also confirmed to her that he saw [Deloso] molesting "AAA" by holding her and mounting her in the room of their house in [XXX] about 12:00 midnight. She had the incident blottered x x x.

Private complainant "AAA," avers that she is now 14 years old having been born on July 22, 1996. x x x.

"AAA" recalls that on September 16, 2009, at about 12:00 o'clock midnight, she, together with [her] 11-year-old brother "CCC" and a certain nephew [DDD] were sleeping side by side in their room – sized about (2 by 2 meters/ 2 square meters) while [Deloso] was sleeping in the "*sala*." She was awakened when [Deloso] removed her shirt and panty. [Deloso], who was only wearing [a] shirt, without lower garments and underwear, inserted his penis into her vagina. "AAA" felt pain. She did not shout but wrestled against [Deloso] who held her both hands. When asked where was her brother "CCC" when [Deloso] inserted his penis into her vagina, "AAA" clarified that [Deloso] first carried and transferred "CCC" somewhere at her feet's side. While on top of her, [Deloso] warned not to tell "BBB"

of the incident. [Deloso] then dressed up, wore his underwear and lie beside her, when "CCC" suddenly shouted at the accused that he will report him to the Barangay. [Deloso] was pissed off - saying "bullshit" to "CCC" and threw the blanket at the latter. "CCC" ran through the small door towards their aunt's house. [Deloso] chased him while "AAA" attempted to follow "CCC" but did not push through, instead went back to their house. After a while, [Deloso] came back in the house and slept in the "sala." "AAA" further testified that though it was the first time that "CCC" witnessed [Deloso] raping her, she revealed x x x to the Court that [Deloso] has been sexually abusing her several times already. x x x "CCC" reported the raping incident to their aunt, and eventually to the Barangay Office that led to the arrest of [Deloso].

"AAA" on the clarificatory questions by the Court admitted that her mother "BBB" had long been suspecting that [Deloso] had raped her, but she had to deny to "BBB" every time the latter would ask her because she was afraid of the threats of [Deloso].

Last prosecution witness is the 12 years old brother of the private complainant, "CCC". His relationship with the accused is not good, since [Deloso] "raped" [his] sister "AAA" in their house. When asked how, "CCC" elaborated this by testifying that [Deloso] opened the skirt of "AAA," removed her panty and mounted on her making a push and pull movement several times and holding her both hands, while "AAA" was crying. He further heard [Deloso] telling "AAA" "*pagtarung ba ayaw paglingas!*" (be cooperative don't keep moving!) "CCC" testified that he was able to wake up when [Deloso] transferred him from beside "AAA" to the place near the door. When asked how he saw [Deloso] raping "AAA," "CCC" answered that there was a light illuminated from their neighbor's house. Though he did not actually see the penis of [Deloso] inserted to "AAA's" vagina, he was certain that [Deloso] was not wearing his "brief"/underwear and that the accused made push and pull motions. When [Deloso] finished raping "AAA" it was then that he shouted at the accused that he would report him to the Barangay Chairman. [Deloso] then threw the blanket at him, saying "bullshit!" "CCC" then ran (passing through a small opening of their house) towards his cousin's house to hide. "CCC" could not exactly recall the date of the raping incident, but he was so certain that it happened in *a midnight in 2009* and at that time he was going to school.[12] (Citations omitted.)

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[12] CA *rollo*, pp. 50-52.

The prosecution presented the following documentary evidence: (1) the Certificate of Live Birth[13] of AAA; and (2) the Living Case Report[14] issued by the Northern Mindanao Medical Center, which contained the results of the medical examination of AAA.

On the other hand, the RTC summarized the testimony of Deloso in this wise:

EVIDENCE FOR THE DEFENSE:

Sole witness for the defense is the accused himself, Ronaldo Deloso to prove that on the night of [the] incident he merely inserted his finger but not his penis into the vagina of "AAA."

On September 16, 2009, he was just in their house at XXX together with "AAA" and "CCC", the children of his live-in-partner "BBB". The children slept early while he slept at 11:00 o'clock in the evening. Admittedly, he inserted his finger into her vagina that night (or as referred by him at 1:00 o'clock early dawn of September 17, 2009) of September 16, 2009 while "AAA" was lying down. [Deloso] claimed that he was never on top of "AAA". "AAA" was then awakened and also "CCC". "CCC" shouted and ran outside. The following day at 7:00 o'clock he was arrested. [Deloso] further denied that he had sexually molested nor had any sexual intercourse with her prior to September 16, 2009.[15]

In its **Decision dated October 7, 2011**, the RTC found Deloso guilty of the crime charged. The trial court decreed:

ALL THE FOREGOING CONSIDERED, the Court finds accused Ronaldo Deloso GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined under the 1st paragraph of Article 266-A of the Revised Penal Code, and for which he is imposed the penalty to serve the imprisonment of RECLUSION PERPETUA without eligibility for parole as provided for by Republic Act No. 9346 and to indemnify to pay the victim, "AAA" ₱75,000.00 as

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[13] Records, p. 86.

[14] *Id.* at 87.

[15] CA *rollo*, p. 52.

civil indemnity, ₱50,000.00 as moral damages, and ₱10,000 as temperate damages.[16] (Citations omitted.)

The RTC gave more credence to the positive testimonies of AAA and CCC that Deloso had sexual intercourse with AAA and rejected the allegation of Deloso that he merely inserted his finger into AAA's female organ. The trial court also found that the qualifying circumstances of AAA's minority and her relationship with Deloso, *i.e.*, that he is the common-law spouse of BBB, were both alleged in the information and proven in this case.

On appeal,[17] the Court of Appeals rendered the assailed **Decision dated July 30, 2014** that affirmed *in toto* the judgment of the trial court. The appellate court found no reason to depart from the trial court's appreciation of the credibility of the prosecution witnesses. The clear and categorical testimony of AAA, as corroborated by the testimony of CCC, was held to be sufficient to establish the act of rape committed by Deloso. The latter's defense of denial cannot prevail over the straightforward, categorical, and unequivocal testimonies of said witnesses.

The case is now before us on appeal[18] and the parties herein no longer filed their respective supplemental briefs.[19]

The Ruling of the Court

We resolve to deny the appeal.

In the Revised Penal Code, as amended, the crime of rape is committed in the following manner:

Article 266-A. *Rape; When And How Committed.* – Rape Is Committed –

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[16] *Id.* at 54.

[17] Records, p. 142.

[18] *Rollo*, pp. 17-19.

[19] *Id.* at 24-27, 37-40.

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.

For a charge of rape to prosper under the above provision, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.[20]

In this case, both the RTC and the Court of Appeals found that the element of carnal knowledge had been duly established by the testimonial evidence adduced by the prosecution that Deloso forcibly had sexual intercourse with AAA around midnight on September 16, 2009. The lower courts found credible and convincing the testimonies of AAA and CCC on this matter and their positive identification of Deloso as the offender in this case. After thoroughly reviewing the records before us, we find no reason to disturb, much less overturn, the lower courts' appreciation of the credibility of the testimonies of AAA and CCC. The same were given in a straightforward manner and devoid of any material inconsistencies. As reiterated in our ruling in *People v. Leonardo*:[21]

It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly

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[20] *People v. Rayon, Sr.*, 702 Phil. 672, 685 (2013).

[21] 638 Phil. 161, 189 (2010).

when affirmed by the Court of Appeals. This Court has repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The appellate courts will generally not disturb such findings unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. (Citations omitted.)

Anent the element of force, threat or intimidation, Deloso claims that the same was not fully established in the testimony of AAA and he was not even armed with any weapon with which to threaten AAA. The Court of Appeals was correct to dismiss said argument, given the settled rule 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.[22]

In his defense, Deloso could only muster a denial in that he allegedly did not have sexual intercourse with AAA, but he merely inserted his finger into her female organ. The Court finds that the lower courts did not err in disregarding Deloso's denial. Totally unsupported by any other evidence, the allegation cannot overcome AAA's and CCC's positive declarations on the identity of Deloso and his perpetration of the crime charged. We held in *People v. Malones*,[23] that "denial is inherently a weak defense. It cannot prevail over positive identifications, unless buttressed by strong evidence of non-culpability." Stated alternatively, a denial, just like alibi, constitutes self-serving negative evidence which cannot be accorded greater evidentiary

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[22] *People v. Padua*, 661 Phil. 366, 370 (2011); *see* also *People v. Belen,* G.R. No. 215331, January 23, 2017.

[23] 469 Phil. 301, 328 (2004).

weight than the declaration of credible witnesses who testify on affirmative matters.[24]

Furthermore, as pointed out by the Court of Appeals, Deloso neither alleged nor proved any ill motive on the part of AAA, CCC, and even BBB to falsely accuse him of the rape. As such, Deloso's denial pales into insignificance when compared with the credibility of the prosecution witnesses' testimonies.

The Proper Penalties

Under Article 266-B of the Revised Penal Code, the minority of a rape victim and her relationship to the offender qualify the charge of rape. Thus:

> Art. 266-B. *Penalties*. — x x x.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In this case, we uphold the trial court's finding that the qualifying circumstances of minority and relationship attended the commission of the crime. Said circumstances were specifically alleged in the information and sufficiently proved during the trial of the case.

The fact that AAA was only 13 years old when the rape incident occurred on September 16, 2009 was established by her Certificate of Live Birth that was offered in evidence, which stated that she was born on July 22, 1996. As to the relationship of AAA to Deloso, the defense already stipulated on the fact that Deloso is the common-law spouse of AAA's mother and he likewise admitted this fact when he testified in court.

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[24] *People v. Francisco,* 397 Phil. 973, 985 (2000).

Notwithstanding the provisions of Article 266-B of the Revised Penal Code, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon Deloso is *reclusion perpetua*. This is in accordance with the provisions of Republic Act No. 9346,[25] which prohibits the imposition of the death penalty.

As to the award of damages, the Court finds that the same should be modified. In accordance with our ruling in *People v. Jugueta*,[26] the award of civil indemnity is increased from ₱75,000.00 to ₱100,000.00 and the award of moral damages is increased from ₱50,000.00 to ₱100,000.00. In lieu of temperate damages, exemplary damages is awarded in the amount of ₱100,000.00. We held in *People v. Llanas, Jr.*[27] that "[t]he award of exemplary damages is also proper not only to deter outrageous conduct, but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense, both of which were alleged in the information and proved during the trial."

WHEREFORE, the Court **AFFIRMS with MODIFICATIONS** the Decision dated July 30, 2014 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00981-MIN. The accused-appellant Ronaldo Deloso *y* Bagares is found **GUILTY** beyond reasonable doubt of one count of qualified rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. The accused-appellant is **ORDERED** to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary

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[25] "An Act Prohibiting the Imposition of Death Penalty in the Philippines." Section 2 thereof states:

SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[26] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[27] 636 Phil. 611, 626 (2010).

damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision. Costs against the accused-appellant.

SO ORDERED.

Sereno, C.J. (Chairperson), Peralta,[*] *del Castillo,* and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 219175. December 14, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AMRODING MACUD *y* DIMAAMPAO,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; MAY BE OVERCOME BY THE PROSECUTION BY PROVING THE LIABILITY OF THE ACCUSED BY PRESENTING EVIDENCE SHOWING THAT ALL THE ELEMENTS OF THE CRIME CHARGED ARE PRESENT.— In every criminal prosecution, the Constitution affords the accused presumption of innocence until his or her guilt for the crime charged is proven beyond reasonable doubt. The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence showing that all the elements of the crime charged are present.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

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[*] Per Raffle dated November 22, 2017.

ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To sustain a conviction for the offense of illegal sale of dangerous drug as penalized under Section 5 of RA No. 9165, the following elements must be established: "1) the identity of the buyer and the seller, the object, and the consideration; and 2) the delivery of the thing sold and the payment therefor." x x x Evidence must be shown that the sale transaction transpired, coupled with the presentation of the *corpus delicti, i.e.*, the body or substance of the crime establishing its commission. In a charge for illegal sale of dangerous drugs, the *corpus delicti* is the dangerous drug subject of the transaction.

3. **ID.; ID.; ID.; THE MONEY USED IN THE BUY-BUST OPERATION IS NOT REQUIRED TO BE PRESENTED IN EVIDENCE SINCE ITS ABSENCE WILL NOT NECESSARILY DISPROVE THE TRANSACTION.—** [W]e address Macud's contention that the failure to present the marked ₱500.00 bill used in the illegal sale of dangerous drugs is fatal to the prosecution's case. The failure to present the marked money in evidence, by itself, is not material since its absence will not necessarily disprove the transaction. "[N]either law nor jurisprudence requires the presentation of [the] money used in [the] buy-bust operation."

4. **ID.; ID.; CUSTODY OF SEIZED DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; AIMS TO PRESERVE THE INTEGRITY OF THE ITEMS TO BE USED IN PROSECUTIONS UNDER THE LAW.—** Section 21 of RA No. 9165 provides a special rule on the handling of items seized and confiscated in dangerous drugs cases. It establishes a **chain of custody rule** which aims to preserve the integrity of the items to be used in prosecutions under the law. The adoption of a special rule in the handling of the dangerous drugs in particular is necessitated by the nature of the dangerous drug itself which is likely to be tampered, altered, contaminated, or substituted.

5. **ID.; ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY.—** Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: "*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 from the forensic chemist to the court."

6. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE TO BE OBSERVED IMMEDIATELY AFTER THE SEIZURE AND CONFISCATION OF THE DANGEROUS DRUGS SHALL NOT RENDER INVALID THE SEIZURE OF AND CUSTODY OVER SAID ITEMS; CONDITION.— Section 21(1) of RA No. 9165 prescribes the procedure to be observed immediately after the seizure and confiscation of the dangerous drugs. x x x The law requires that, immediately after the seizure and confiscation of the dangerous drugs, the apprehending team having initial custody and control of the dangerous drugs shall **physically inventory** and **photograph** the same. **Both acts** must be **done in the presence of the following persons**: 1. the accused or his/her representative or counsel; 2. a representative from the media; 3. a representative from the Department of Justice (DOJ); and 4. any elected public official. The witnesses shall then sign the inventory and be given copies thereof. The above procedure is supplemented by the Implementing Rules and Regulations (IRR) of RA No. 9165. Under Section 21(a) of the IRR, the physical inventory and photograph of the items seized shall be conducted where the search warrant is served; otherwise, in case of warrantless seizures, these shall be conducted at the nearest police station or at the nearest office of the apprehending officer/team. Despite the mandatory language of the law, rigid compliance with the x x x procedure is not expected. For this reason, the last proviso of Section 21(a) of the IRR states 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." The prosecution must thus be able to explain the reasons behind the procedural lapses and to prove as facts the grounds raised to justify non-compliance. Moreover, it must show that the integrity and evidentiary value of the seized evidence must have been preserved. x x x In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; NEGATED BY THE FAILURE TO OBSERVE THE PROPER PROCEDURE ON THE CUSTODY OF SEIZED DANGEROUS DRUGS.— Any doubt on the conduct of the police operations cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The failure to observe the proper procedure negates the operation of the regularity accorded to police officers. Moreover, to allow the presumption to prevail notwithstanding clear lapses on the part of the police is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court is the appeal[1] of accused Amroding Macud *y* Dimaampao a.k.a. "Ambro" (Macud) seeking the reversal of the Decision[2] dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06239. The CA affirmed the Judgment[3] dated April 30, 2013 of the Regional Trial Court (RTC), Branch 164, Pasig City in Criminal Case No. 17847-D. The RTC convicted Macud of violating Section 5 of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, as amended.

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[1] Notice of Appeal, *rollo*, pp. 14-16.

[2] CA *rollo*, pp. 91-102; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

[3] Records, pp. 83-90; penned by Presiding Judge Jennifer A. Pilar.

The Facts

Through an Amended Information dated January 31, 2012, Macud and his co-accused, Mohammad Khair M. Bayabao a.k.a. "Khalil" (Bayabao), were charged with the offense of illegal sale of dangerous drugs penalized under Section 5 of RA No. 9165, allegedly committed in the following manner:

> On or about January 10, 2012, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, and not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to Police Officer Lorenzo S. Catarata, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing eight (8) centigrams (0.08 gram) marked as "CATS 1-10-12 with signature", which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drugs, in violation of the said law.
>
> Contrary to law.[4]

Bayabao was not arrested and, to this day, remains at large.

During the arraignment, Macud (assisted by a lawyer from the Public Attorney's Office) pleaded not guilty to the offense charged.[5] After the pre-trial proceedings were conducted, trial on the merits ensued.[6]

The Prosecution's Evidence

The prosecution's case revolves around its claim that the charge against Macud arose from a legitimate buy-bust operation. It presented as its witnesses (1) Police Officer 2 Lorenzo S. Catarata (PO2 Catarata), (2) Police Chief Inspector Lourdeliza G. Cejes (PCI Cejes), (3) Police Officer 2 Jay Santos Francisco

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[4] *Id*. at 24.

[5] *Id*. at 31.

[6] *Id*. at 34.

(PO2 Francisco), and (4) Police Officer 2 Jeffrey Male (PO2 Male).

PO2 Catarata testified on the acts constituting the offense charged and leading to the apprehension of Macud. He narrated that, at about 6:00 p.m. of January 10, 2012, the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of Pasig City, led by Police Chief Inspector Joel Q. Quintero (PCI Quintero), held a briefing for the conduct of a buy-bust operation at Vicper Compound, *Barangay* Malinao, Pasig City.[7] The operation was supposedly in response to confidential information received by the SAID-SOTG that illegal drug activities were being done in the area. A team was formed to conduct the operation, which included PO2 Catarata, PO2 Francisco, PO2 Male, and three other police officers.[8] PO2 Catarata was to act as the poseur buyer and was given a ₱500.00 bill on which he placed the mark "CATS," representing his surname.[9]

Accompanied by their informant, the team proceeded to and arrived at the Vicper Compound at about 8:20p.m. of the same day. As the other team members spread out and positioned themselves, PO2 Catarata and the informant proceeded to the house of on "Khalil" (later identified as the co-accused Bayabao). When they approached the house, they saw Macud standing outside of it and inquired if "Khalil" was inside because they wanted to buy "tres" or ₱300.00 worth of *shabu*. In reply, Macud nodded and asked for the money. PO2 Catarata then gave the marked ₱500.00 bil1 to Macud. After receiving the money, Macud went upstairs to the second floor of the house where "Khalil" was. PO2 Catarata claimed that he heard Macud and "Khalil" talking but did not understand what they said as they were speaking in their vernacular. He then saw Macud hand

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[7] CA *rollo*, p. 93.

[8] Identified as Special Police Officer 1 Rescue, Police Officer 1 Reginald Layug, and Police Officer 2 Victorinio L. Oreiro, records, p. 84; CA *rollo*, p. 93.

[9] CA *rollo*, p. 93.

over to "Khalil" the ₱500.00 bill, and "Khalil" in turn gave Macud a small plastic sachet. Macud thereafter went downstairs and gave the plastic sachet to PO2 Catarata. It was at this point that PO2 Catarata arrested Macud, introduced himself as a police officer, and read Macud his rights. The other team members tried to chase "Khalil" but he was able to flee, allegedly with the marked ₱500.00 bill.[10]

PO2 Catarata further testified on what he did with the plastic sachet that Macud gave him after the buy-bust operation. He claimed that, immediately after arresting Macud, he placed the mark "CATS 1-10-12'' and his signature on the single heat-sealed transparent plastic sachet containing white crysta1line substance and then prepared the Inventory of Seized Evidence, which Macud refused to sign.[11] PO2 Catarata and the team thereafter brought Macud and the plastic sachet, first, to the police station for the preparation of documents, and second, to the Crime Laboratory Office in Marikina City for the examination of Macud and the contents of the plastic sachet.[12]

PCI Cejes testified on the delivery and receipt of the plastic sachet and the examination of its contents. She stated that she was the Forensic Chemist assigned at the Crime Laboratory Office in Marikina City. At about 11:15 p.m. of January 10, 2012, she received from PO2 Francisco a Request for Laboratory Examination of a specimen contained in one heat-sealed transparent plastic sachet marked "CATS 1-10-12" with signature, along with the mentioned specimen. She proceeded with the laboratory examination of the specimen, which she marked as "Exhibit A, D-0010-2012E LGC," and found that it tested positive for methamphetamine hydrochloride or *shabu*. She then prepared Physical Science Report No. D-0010-2012E where she listed her findings on the submitted specimen.[13]

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[10] *Id*.

[11] *Id*.

[12] *Id*. at 93-94.

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

The testimonies of **PO2 Francisco** and **PO2 Male** were dispensed with after the prosecution and the defense agreed on the following stipulation of facts:

As to PO2 Francisco:

1. That he was the investigator in the present case;
2. That, as investigator, he prepared the Booking Sheet and Arrest Report of the accused, the Request for Laboratory Examination of the specimen, and the Request for Drug Test of the accused;
3. That he took pictures of the accused and the seized evidence at the police station;
4. That he delivered the Request for Laboratory Examination and the specimen subject of the request, and the Request for Drug Test of the accused to the Crime Laboratory Office in Marikina City; and
5. That he has no personal knowledge of the circumstances surrounding the arrest of the accused and the origin and source of the specimen.[14]

As to PO2 Male:

1. That he was the police officer who coordinated with the Philippine Drug Enforcement Agency (PDEA).[15]

In addition to the above testimonies, the prosecution offered the following documentary and object evidence:[16]

▪ Exhibit A and its submarkings	Request for Laboratory Examination dated January 10, 2012[17]
▪ Exhibit B	Improvised brown envelope with markings "D-10-2012 E LGC"
▪ Exhibit B-1	One (1) heat-sealed transparent plastic sachet containing 0.08 gram of white crystalline substance, with

[14] Records, p. 84; CA *rollo*, p. 94.

[15] *Id*.; *id*.

[16] Records, p. 86.

[17] *Id*. at 65.

	markings "CATS 1-10-12" and signature
▪ Exhibit C and its submarkings	Physical Sciences Report No. DD-00 l0-2012E[18]
▪ Exhibit D and its submarkings	Sinumpaang Salaysay ng Pag-Aresto[19]
▪ Exhibit E and its submarkings	Inventory of Seized Evidence[20]
▪ Exhibit F	Booking Sheet and Arrest Report of the accused[21]
▪ Exhibit G	Photograph of the accused after he was arrested[22]
▪ Exhibit H	Photograph of one (1) heat-sealed transparent plastic sachet containing 0.08 gram of white crystalline substance, with markings "CATS 1-10-12" and signature[23]
▪ Exhibit I	Request for Drug Test[24]
▪ Exhibit J and its submarkings	Request for Laboratory Examination[25]
▪ Exhibit L	Pre-Operation Report[26]
▪ Exhibit M	Coordination Sheet[27]

[18] *Id*. at 66.

[19] *Id*. at 67.

[20] *Id*. at 68.

[21] *Id*. at 69.

[22] *Id*. at 70.

[23] *Id*.

[24] *Id*. at 71.

[25] *Id*. at 72.

[26] *Id*. at 73.

[27] *Id*. at 74.

The Accused's Evidence

Macud denied the charges against him and raised as defense frame up/extortion by the police officers.

Macud stated that he earned a living by selling toys in the market. On January 10, 2012, at about 8:20p.m., he was walking along Vieros Street on his way to the market when he saw five men entering an alley that led to the Vicper Compound. One of the men asked if he knew "Cali" to which he replied "no;" the men then continued walking. A few seconds after, a commotion ensued but he continued on his way. Suddenly, two of the five men returned, held him, and ordered him to join them to their office for questioning. The men then brought him to the Pasig City Motorpool where they frisked him and demanded ₱50,000.00 from him, otherwise, they threatened to file a case against him. When Macud replied that he had no such amount, he was brought to Marikina City for drug test and medical examination. Thereafter, he was detained in jail for about 21 days until he was transferred to Nagpayong.[28]

Macud claimed that he does not know the men and saw them for the first time only during their encounter on January 10, 2012. He said that prior to his arrest, he had been living at Vicper Compound tor about three months[29] and he previously came from Mindanao.[30]

Ruling of the RTC and the CA

The RTC found that the prosecution's evidence sufficiently established that Macud committed the offense charged. Macud was caught in *flagrante delicto* illegally selling *shabu*, a dangerous drug. Accordingly, it rendered judgment finding Macud guilty beyond reasonable doubt of the offense of illegal

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[28] CA *rollo*, p. 94.

[29] TSN, April 3, 2013, p. 9.

[30] *Id*.

sale of dangerous drugs, and sentenced him to life imprisonment and to pay a fine of ₱500,000.00.[31]

As mentioned, the CA affirmed the RTC's guilty verdict after finding Macud's appeal unmeritorious. Like the RTC, the CA found that the prosecution's evidence sufficiently established that the elements of the offense of illegal sale of dangerous drugs and that Macud was liable therefor.[32]

The CA did not agree with Macud's contention that the police officers' failure to comply with Section 21 of RA No. 9165 on the custody and disposition of the seized drugs tainted the buy-bust operation and rendered the evidence inadmissible. It declared that there was substantial compliance with the procedure to establish an unbroken chain of custody which preserved the integrity and evidentiary value of the seized evidence.[33]

Moreover, the CA did not find credible Macud's claim of frame up/extortion by the police officers. This claim was uncorroborated and unsupported by any proof of ill motive on the part of the police officers why they would falsely testify against Macud. The CA considered Macud's defense as a mere alibi which cannot stand against the clear and positive testimony of PO2 Catarata who was performing his job when he caught Macud illegally selling *shabu*.[34]

The Appeal

Through the present appeal, Macud seeks the reversal of his conviction by claiming that his guilt was not proven beyond reasonable doubt.[35] He alleges that no legitimate buy-bust operation was conducted; instead, what transpired was an

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[31] Records, p. 90.

[32] CA *rollo*, p. 97.

[33] *Id*. at 98-99.

[34] *Id*. at 101.

[35] Per Manifestation dated October 16, 2015, Macud adopts the Appellant's Brief which he filed before the CA as his Supplemental Brief and repleads the allegations therein, *rollo*, p. 21.

extortion attempt. In support of this allegation, he refers to the failure of the police officers to comply with the procedural requirements under Section 21 of RA No. 9165 and of the prosecution to present the marked money used in the alleged buy-bust operation.[36]

The People, represented by the Solicitor General, disagrees and contends that all the elements of the offense charged were duly proved.[37] It claimed that Macud was arrested through a valid buy-bust operation where he was caught *in flagrante* selling shabu. Hence, the appeal must be denied and the conviction affirmed.

The Court's Ruling

The Court grants the appeal and reverses the CA Decision that affirmed Macud's conviction for the offense charged. We find that the integrity and relevance of the prosecution's evidence have been compromised by the failure of the police to preserve the chain of custody of the dangerous drug subject of the crime charged and, thus, insufficient to support Macud's conviction therefor.

The preservation of the chain of custody is essential in a successful prosecution for the illegal sale of dangerous drug

In every criminal prosecution, the Constitution affords the accused presumption of innocence until his or her guilt for the crime charged is proven beyond reasonable doubt.[38] The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence showing that all the elements of the crime charged are present.[39]

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[36] CA *rollo*, pp. 51-52.

[37] Per Manifestation and Motion dated October 22, 2015, the Plaintiff-Appellee adopts the Appellee's Brief which it filed before the CA as its Supplemental Brief and repleads the allegations therein, *rollo*, pp. 25-27.

[38] CONSTITUTION, Article III, Section 14(2).

[39] *People v. Garcia*, 599 Phil. 416, 426 (2009).

To sustain a conviction for the offense, of illegal sale of dangerous drug as penalized under Section 5 of RA No. 9165, the following elements must be established:

"1) the identity of the buyer and the seller, the object, and the consideration; and

2) the delivery of the thing sold and the payment therefor."[40]

At this point, we address Macud's contention that the failure to present the marked ₱500.00 bill used in the illegal sale of dangerous drugs is fatal to the prosecution's case. The failure to present the marked money in evidence, by itself, is not material since its absence will not necessarily disprove the transaction. "[N]either law nor jurisprudence requires the presentation of [the] money used in [the] buy-bust operation."[41] We declared in *People v. Rebotazo* what evidence has to be presented in prosecuting a violation of Section 5 of RA No. 9165:

> in prosecuting a case for the sale of dangerous drugs, the failure to present marked money does not create a hiatus in the evidence for the prosecution, **as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court**.[42] (Emphasis supplied)

Evidence must be shown that the sale transaction transpired, coupled with the presentation of the *corpus delicti, i.e.*, the body or substance of the crime establishing its commission.[43] In a charge for i11egal sale of dangerous drugs, the *corpus delicti* is the dangerous drug subject of the transaction.[44]

Section 21 of RA No. 9165 provides a special rule on the handling of items seized and confiscated in dangerous drugs

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[40] *Id*.

[41] *People v. Rebotazo*, 711 Phil. 150, 163-164 (2013).

[42] *Id*. at 164.

[43] *Id*.

[44] *People v. Dela Cruz*, 744 Phil. 816, 827-30 (2014); *People v. Mendoza*, 736 Phil. 749, 760 (2014).

cases. It establishes a **chain of custody rule** which aims to preserve the integrity of the items to be used in prosecutions under the law.[45] The adoption of a special rule in the handling of the dangerous drugs in particular is necessitated by the nature of the dangerous drug itself which is likely to be tampered, altered, contaminated, or substituted. As the Court explained in *Mallillin v. People*[46]—

> 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**.[47] (Emphasis supplied)

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: "*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 from the forensic chemist to the court."[48]

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[45] *People v. Mendoza*, *supra* at 759-760.

[46] 576 Phil. 576 (2008).

[47] *Id.* at 588-589.

[48] *People v. Holgado*, 741 Phil. 78, 94-95 (2014), citing *People v. Nandi,* 639 Phil. 134, 144-145 (2010).

With regard the first two links, Section 21(1) of RA No. 9165[49] prescribes the procedure to be observed immediately after the seizure and confiscation of the dangerous drugs. It reads:

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, contro1led precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so

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[49] Section 21(1) was subsequently amended by RA No. 10640 in 2014 and now reads 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 sealed items 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, 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*, 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.

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**, and **any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)
>
> x x x x x x x x x

The law requires that, immediately after the seizure and confiscation of the dangerous drugs, the apprehending team having initial custody and control of the dangerous drugs shall **physically inventory** and **photograph** the same. **Both acts** must be **done in the presence of the following persons**:

1. the accused or his/her representative or counsel;
2. a representative from the media;
3. a representative from the Department of Justice (DOJ); and
4. any elected public official.

The witnesses shall then sign the inventory and be given copies thereof.

The above procedure is supplemented by the Implementing Rules and Regulations (IRR) of RA No. 9165.[50] Under

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[50] In light of the amendments introduced by RA No. 10640, the PDEA has revised its guidelines on the IRR of RA No. 9165, see Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640 and the Amendment to the Guidelines.

The relevant portion of the Guidelines, as amended, states:

> A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR.
>
> A.1 The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall,

Section 21(a) of the IRR, the physical inventory and photograph of the items seized shall be conducted where the search warrant

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immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A.1.1 The marking, physical inventory and photograph of the seized/ confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur buyer of his/her initials and signature on the item/s seized.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.

A.1.5. The physical inventory and photograph of the seized/ confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.

A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/ seizing officer for submission to the forensic laboratory for examination.

A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or

is served; otherwise, in case of warrantless seizures, these shall be, conducted at the nearest police station or at the nearest office of the apprehending officer/team.[51]

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gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/ confiscated plant sources following the chain of custody of evidence.

A.1.9. Noncompliance, under justifiable grounds, with the requirements of Section 21(1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/ confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86(a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.

A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventories, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

[51] In *People v. Sanchez*, 590 Phil. 214, 241 (2008), the Court noted that, despite the distinction made by Section 21(a) of the IRR on the venue where the physical inventory and photography shall be made, "nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value."

Despite the mandatory language of the law, rigid compliance with the above procedure is not expected. For this reason, the last proviso of Section 21(a) of the IRR states 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." The prosecution must thus be able to explain the reasons behind the procedural lapses and to prove as facts the grounds raised to justify non- compliance.[52] Moreover, it must show that the integrity and evidentiary value of the seized evidence must have been preserved.[53]

There was a break in the chain of custody of the seized dangerous drug which the prosecution failed to explain

The Court now proceeds to determine whether the laws and rules discussed have been complied with in the present case.

The chain of custody began with PO2 Catarata who testified that he received from Macud a plastic sachet containing white crystalline substance after he indicated interest to buy ₱300.00 worth of *shabu* and handed over the marked ₱500.00 bill. Upon receipt of the plastic sachet, PO2 Catarata said he arrested Macud and promptly prepared the Inventory of Seized Evidence.

According to PO2 Catarata, he had custody of the plastic sachet from the time Macud gave it to him up to the time it was turned over to the Criminal Laboratory Office in Marikina for examination:

PROS. MADAMBA:
Q: By the way, Mr. Witness, you are the one who is in custody of the transparent plastic sachet at the time that you arrest [sic] the accused?

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[52] *People v. Beran*, 724 Phil. 788, 822 (2014).

[53] *Id*.

[PO2 CATARATA]
A: Yes, ma'am.

Q: At the time you were at the office[,] **who is in custody of the evidence?**
A: **From the start when I was able to confiscate it [sic] was in my custody until it was delivered to the Crime Laboratory.**

Q: So who gave the specimen to the Crime Laboratory?
A: I was the one.[54] (Emphasis supplied)

PO2 Catarata's testimony, however, is contradicted by that of PCI Cejes – the forensic chemist in the Crime Laboratory Office, who stated that she received both the Request for Laboratory Examination and the specimen, not from PO2 Catarata, but from PO2 Francisco:

[PROS. MADAMBA:]
Q: On that day, did you receive any document and specimens [sic] with regard to this case?

[PCI CEJES]
A: Yes, ma'am. **I received request for laboratory examination from [PO2] Francisco** from the Pasig City Police Station and **together with the request is one heat sealed plastic sachet containing white crystalline substance.**

Q: Please show to us the evidence that it was received by your office?
A: There is a stamp receipt located at the lower portion of the document and in that stamp receipt indicates the case number and the date and time received and the person who delivered. **It was PO2 Francisco**, and my name is written in the received by [sic] portion, PCI Cejes.

x x x x x x x x x

Q: You said it was not you who put the stamp mark receipt?
A: It was the duty recording clerk. The specimen was given to me by PO2 Francisco and I instructed the... (discontinued).

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[54] TSN, July 10, 2012, p. 15.

COURT:
The request for laboratory examination?
The specimen, Your Honor, one heat-sealed transparent plastic sachet.

x x x x x x x x x

RE-DIRECT EXAMINATION BY PROS. MADAMBA:
Q: What is your standard operating procedure upon receiving the specimen, subject of the request for laboratory examination?
A: Upon receiving the request for laboratory examination and the specimen, the duty recording clerk will record the documents that would be received by the of the office and he will put the receipt and he will write entries on the document, while the specimen will be handed over to the forensic chemist who is the duty officer for that particular case.

Q: Do you know the reason why he put your name PCI Cejes as received by?

ATTY. AMPONG III:
She will be incompetent.

PROS. MADAMBA:
If she knows.

COURT:
Witness may answer.

A: Because, I am the duty forensic chemist and **I was the one who received the specimen from PO2 Francisco**.

x x x x x x x x x

Q: Who received the specimen, subject of your laboratory examination, one heat sealed plastic sachet?
A: **I was the one, from PO2 Francisco.**[55] (Emphasis supplied)

Later in his testimony, PO2 Catarata was asked to clarify who turned over what item to PCI Cejes:

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[55] TSN, June 25, 2012, pp. 5, 10, 12-13.

Q: Mr. Witness, as you mentioned a while ago, you're carrying that specimen from your office to the Crime Laboratory in Marikina and what about this document who handed over this to the Marikina Crime Laboratory personnel, if you can remember?

ATTY. AMPONG:
I believe, Your Honor, it [has] already been answered.

COURT:
No, witness may answer. The prosecution is asking who handed the Request for Laboratory Examination.

A: Perhaps, it was Francisco.

PROS. MADAMBA:
Q: But a while ago, when you were asked who went with you to the Crime Laboratory. you didn't mention Francisco, Mr. Witness?
A: Yes, ma'am

Q: But now you remember it was PO2 Francisco who handed over this document?
A: Yes, ma'am.

Q: How about the specimen who handed that specimen?
A: I was the one, we were together in going to the Crime Laboratory.

x x x x x x x x x

[CROSS-EXAMINATION BY ATTY. AMPONG]
Q: In fact, after that the Request for Laboratory Examination was shown to you and you saw in this stamp receipt the name of PO2 Francisco, that was the only time that you said PO2 Francisco accompanied you to the Crime Laboratory, isn't it.
A: Yes, sir.

x x x x x x x x x

Q: What is that something that PO2 Francisco handed to the receiving officer?
A: Document, sir.

Q: He was the one who handed that document but you were the one who handed the plastic sachet to the receiving officer, correct?
A: Yes, sir.[56] (Emphasis supplied)

While no one is expected to have a perfect memory, we find more credible PCI Cejes' straightforward and consistent statement that it was PO2 Francisco who handed her both the document entitled Request for Laboratory Examination and the specimen subject of the request, *i.e.*, the plastic sachet with *shabu*. Indeed, this was among the facts that the parties stipulated on with regard the testimony of PO2 Francisco:

x x x (4) that he was the one who delivered the request for laboratory examination together with the specimen stated thereon, and the request for drug test to the Crime Laboratory Service in Marikina City; x x x[57]

There is thus a break in the chain of custody of the dangerous drug that was never explained by the prosecution, even when the opportunity to do so arose. **Nothing in the records showed when, how, and why the custody of the plastic sachet was transferred from PO2 Catarata to PO2 Francisco.** We emphasized in *Mallillin v. People*[58] how the chain of custody must be explained:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken**

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[56] TSN, July 10, 2012, pp. 16-17, 22-23.

[57] Records, p. 84.

[58] *Supra* note 46 at 587.

to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Emphasis supplied)

It may nevertheless be argued that the identity and integrity of the *corpus delicti* was preserved, since the plastic sachet that PO2 Catarata, PO2 Francisco, PCI Cejes had all bore the marking "CATS 1-10-12" and PO2 Catarata's signature, suggesting that they all handed the same item that was seized from Macud. Though such an explanation is plausible, we note that there are other significant lapses in the prosecution's evidence that – viewed as a whole – cast reasonable doubt on its case against Macud.

There was an unjust failure to comply with the procedure prescribed under Section 21, RA No. 9165

The prosecution never contested that the police officers failed to comply with Section 21(1) of RA No. 9165 and Section 21(a) of its IRR. The lapses constituted of the following:

first, the absence of a representative of the media, the DOJ, and any elected public official to witness the marking and physical inventory of the seized drugs; and

second, although the marking and physical inventory of the seized drugs were done immediately after the arrest, the photograph was done *after* the operation and in the police station by PO2 Francisco,[59] also without the requisite persons who should have witnessed the act.

When asked to explain why there was failure to comply with the procedural requirements, PO2 Catarata simply said that doing so could compromise the buy-bust operation:

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[59] These were one of the stipulated facts as regards the testimony of PO2 Francisco, records, p. 84.

COURT:
Q: Mr. Witness, why in the inventory receipt there is no representative from PDEA, from barangay, Department of Justice and media?

WITNESS:
A: We have no companion, your Honor.

COURT:
Q: You did not coordinate with the barangay of Vicper Compound?
A: Yes, your Honor.

COURT:
Q: Why?

WITNESS:
A: Because if we will coordinate it might compromise the operation, your Honor.

COURT:
Witness, you're [excused].[60] (Emphasis supplied)

We find this justification insufficient. Other than PO2 Catarata's bare allegation that coordination with the local officials could have compromised the buy-bust operation, the prosecution offered no factual evidence to substantiate this claim. Even if the claim were true, there is no requirement under the law that the elected public official who should witness the operation must be one of those elected in the same locality where the operation is conducted so as not to compromise the police operation in the area. This is clear from the wordings of the law itself which says "*any* elected public official."[61]

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[60] TSN, July 10, 2012, pp. 34-35.

[61] REPUBLIC ACT No. 9165, Section 21. The Guidelines on the IRR of Section 21 of RA No. 9165, as amended by RA No. 10640 now clarifies that:

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. **The elected public official is any incumbent public official regardless of the place where he/she is elected.** (Emphasis supplied)

We cannot even declare that there was substantial compliance with the law in this case as the police officers invited no other person to witness the procedures that were done *after* the buy-bust operation, *i.e.*, the marking, inventory, and photography of the seized drugs. There was no representative of the media or the DOJ and no allegation that these people could similarly compromise the operation if they had been informed of and present before, during, and after the operation.

The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[62] The insulating presence of such witnesses would have preserved an unbroken chain of custody.[63] We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. In *People v. Dela Cruz*[64] where there was a similar failure to comply with Section 21 of RA No. 9165, the Court declared:

> x x x This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution tailed to present the required quantum of evidence, appellants acquittal is in order.[65]

As in *Dela Cruz*, and in view of the foregoing, the Court finds the acquittal of Macud in order.

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[62] *People v. Mendoza*, *supra* note 46 at 761-762.

[63] *Id*. at 764.

[64] 591 Phil. 259 (2008).

[65] *Id*. at 271.

The prosecution cannot rely on the presumption of regularity in the performance of official functions and the weakness of the defense's evidence to bolster its case

Any doubt on the conduct of the police operations cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The failure to observe the proper procedure negates the operation of the regularity accorded to police officers.[66] Moreover, to allow the presumption to prevail notwithstanding clear lapses on the part of the police is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.

Macud may not have offered much by way of defense; he simply denied the charges and claimed that it was nothing but an extortion attempt by the police. Nevertheless, the prosecution cannot rely on the weaknesses of the defense's evidence to bolster its case. "If the prosecution cannot establish, in the first place, the [accused's] guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises."[67]

We recognize the pernicious effects of dangerous drugs in our society, but the effort to defeat or eradicate these cannot trample on the constitutional rights of individuals, particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed men of the State. Time and again, we have exhorted courts "to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses."[68] This case in particular exhibits how a miniscule amount – 0.08 gram – of drugs could have cost a man his liberty for a lifetime due a bungled up buy-bust operation.

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[66] *People v. Dela Cruz,* 589 Phil. 259, 272 (2008), citing *People v. Santos,* 562 Phil. 458 (2007).

[67] *People v. Sanchez, supra* note 51 at 244.

[68] *People v. Rebotazo*, *supra* note 41 at 162.

We thus end our ruling by reiterating our words in *People v. Holgado*:[69]

> It is lamentable that while our dockets are dogged 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.

WHEREFORE, premises considered, the Decision dated July 31, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 06239 is **REVERSED and SET ASIDE**. Accused-appellant Amroding Macud *y* Dimaampao is hereby **ACQUITTED** for the 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 a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

SO ORDERED.

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[69] *Supra* note 48 at 100.

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

FIRST DIVISION

[G.R. No. 228671. December 14, 2017]

EXPEDITION CONSTRUCTION CORPORATION, SIMON LEE PAZ, and JORDAN JIMENEZ,* *petitioners, vs.* **ALEXANDER M. AFRICA, MARDY MALAPIT, JESUS ESER, JACOB RONGCALES, JONAMEL CARO, ALFREDO RILES,** REYNALDO GARCIA, FREDDIE DELA CRUZ, JUNIE AQUIBAN, CRISINCIO GARCIA,*** DINO AQUIBAN, SAMUEL PILLOS, JEFFREY A. VALENZUELA, ERWIN VELASQUEZ HALLARE and WILLIAM RAMOS DAGDAG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTION; PRESENT IN CASE AT BAR.— It is settled that only questions of law may be raised in a petition for review on *certiorari* filed under Rule 45. However, there are also recognized exceptions to this rule, one of which is when the factual findings of the labor tribunals are contradictory to each other, such as obtaining in the case at bar.

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* Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused from the case due to prior participation as Solicitor General.

* Also referred to as Jourdan Jimenez in some parts of the records.

** Also referred to as Alfredo Rilles in some parts of the records.

*** Also referred to as Cresencio Garcia in some parts of the records.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST IN DETERMINING THE EXISTENCE THEREOF.— Jurisprudence has adhered to the four-fold test in determining the existence of an employer-employee relationship, to wit: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called 'control test.'"

3. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; IT IS INCUMBENT UPON AN EMPLOYEE TO FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF HIS DISMISSAL FROM EMPLOYMENT BY POSITIVE AND OVERT ACTS OF AN EMPLOYER INDICATING THE INTENTION TO DISMISS.— In illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause. However, it is likewise incumbent upon an employee to first establish by substantial evidence the fact of his dismissal from employment by positive and overt acts of an employer indicating the intention to dismiss. It must also be stressed that the evidence must be clear, positive and convincing. Mere allegation is not proof or evidence. In this case, there was no positive or direct evidence to substantiate respondents' claim that they were dismissed from employment.

4. ID.; ID.; ID.; SEPARATION PAY; MAY BE AWARDED AS A MEASURE OF SOCIAL JUSTICE EVEN IN CASES WHERE THERE IS NO FINDING OF ILLEGAL DISMISSAL.— Here, there was no sufficient proof that respondents were actually laid off from work. Thus, the CA had no basis in ruling that respondents' employment was illegally terminated since the fact of dismissal was not adequately supported by substantial evidence. There being no dismissal, the *status quo* between respondents and Expedition should be maintained. However, it cannot be denied that their relationship has already been ruptured in that respondents are no longer willing to be reinstated anymore. Under the circumstances, the Court finds that the grant of separation pay as a form of financial assistance is deemed equitable. As a measure of social justice, the award of separation pay/financial assistance has been upheld in some cases even if there is no finding of illegal dismissal.

APPEARANCES OF COUNSEL

Morales Risos-Vidal & Daroy Morales for petitioners.
R.R. Ranion & Associates Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[1] seeking to set aside the March 31, 2016 Decision[2] of the Court of Appeals (CA) in CA G.R. SP No. 142007, which dismissed the Petition for *Certiorari*[3] filed therewith and affirmed with modification the April 30, 2015 Resolution[4] of the National Labor Relations Commission (NLRC) by ordering the reinstatement and the payment of full back wages of respondents Alexander M. Africa, Mardy Malapit, Jesus Eser, Jacob Rongcales, Jonamel Caro, Alfredo Riles, Reynaldo Garcia, Freddie Dela Cruz, Junie Aquiban, Crisincio Garcia, Dino Aquiban, Samuel Pillos, Jeffrey A. Valenzuela, Erwin Velasquez Hallare, and William Ramos Dagdag (respondents) for having been illegally dismissed. Likewise assailed is the December 9, 2016 Resolution[5] of the CA denying petitioners' Motion for Reconsideration.[6]

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[1] *Rollo*, pp. 34-68.

[2] CA *rollo*, pp. 297-310; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino.

[3] *Id*. at 3-44.

[4] Records, pp. 234-238; penned by Commissioner Pablo C. Espiritu, Jr., concurred in by Commissioner Mercedes R. Posada-Lacap, and partly concurred in by Presiding Commissioner Joseph Gerard E. Mabilog (with Dissenting Opinion).

[5] CA *rollo*, pp. 411-412.

[6] *Id*. at 317-330.

Factual Antecedents

Petitioner Expedition Construction Corporation (Expedition), with petitioners Simon Lee Paz and Jordan Jimenez as its Chief Executive Officer and Operations Manager, respectively, is a domestic corporation engaged in garbage collection/hauling. It engaged the services of respondents as garbage truck drivers to collect garbage from different cities and transport the same to the designated dumping site.

Respondents filed separate cases[7] (which were later on consolidated) against Expedition for illegal dismissal; underpayment and non-payment of salaries/wages, holiday pay, holiday premium, rest day premium, service incentive leave pay, 13th month pay, separation pay, and Emergency Cost of Living Allowance (ECOLA); illegal deduction; moral and exemplary damages and attorney's fees. In their Position Paper,[8] respondents alleged that in August 2013, they were illegally terminated from employment when they were prevented from entering the premises of Expedition without cause or due process. They claimed that they were regular employees of Expedition; were required to work a minimum of 12 hours a day, seven days a week, even on holidays, without rest or vacation; and, were not paid the minimum wage, holiday or premium pay, overtime pay, service incentive leave pay and 13th month pay. They also averred that the costs of repair and maintenance of the garbage trucks were illegally deducted from their salaries.

Expedition, in its Position Paper,[9] countered that respondents were not illegally dismissed. It averred that it entered into separate

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[7] See Complaints filed by: (*a*) respondents Alexander M. Africa, Mardy Malapit, Jesus Eser, Jacob Rongcales, Jonamel Caro, Alfredo Riles, Reynaldo Garcia, Freddie Dela Cruz, Junie Aquiban, Crisincio Garcia, and Dino Aquiban, on November 12, 2013, docketed as NLRC NCR Case No. 12-16015-13 (Records, pp. 1-3); (*b*) respondents Samuel Pillos and Jeffrey A. Valenzuela, on December 16, 2013, docketed as NLRC NCR Case No. 12-16159-13 (*id*. at 8-9); and (*c*) respondent Erwin Velasquez Hallare, on January 8, 2014, docketed as NLRC NCR Case No. 01-00166-14 (*id*. at 16-17).

[8] *Id*. at 50-63.

[9] *Id*. at 36-48.

contracts with the cities of Quezon, Mandaluyong, Caloocan, and Muntinlupa for the collection and transport of their garbage to the dump site; that it engaged the services of respondents, as dump truck drivers, who were oftentimes dispatched in Quezon City and Caloocan City; that the need for respondents' services significantly decreased sometime in 2013 after its contracts with Quezon City and Caloocan City were not renewed; and, that it nonetheless tried to accommodate respondents by giving them intermittent trips whenever the need arose.

Expedition denied that respondents were its employees. It claimed that respondents were not part of the company's payroll but were being paid on a per trip basis. Respondents were not under Expedition's direct control and supervision as they worked on their own, were not subjected to company rules nor were required to observe regular/fixed working hours, and that respondents hired/paid their respective garbage collectors. As such, respondents' money claims had no legal basis.

In their Reply,[10] respondents insisted that they worked under Expedition's control and supervision considering that: (1) Expedition owned the dump trucks; (2) Expedition expressly instructed that the trucks should be used exclusively to collect garbage in their assigned areas and transport the garbage to the dump site; (3) Expedition directed them to park the dump trucks in the garage located at Group 5 Area Payatas, Quezon, City after completion of each delivery; and (4) Expedition determined how, where, and when they would perform their tasks.

Respondents also adverted to petitioners' counsel's manifestation during the mandatory conciliation proceedings,[11] regarding Expedition's willingness to accept them back to work, as proof of their status as Expedition's regular employees. To further support their claim, respondents attached in their

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[10] *Id*. at 77-85.

[11] See Minutes of the Mandatory Conciliation and Mediation Conference dated January 28, 2014, *id*. at 22-23.

Rejoinder[12] affidavits of Eric Rosales[13] (Rosales) and Roger A. Godoy[14] (Godoy), both claiming to be former employees of Dodge Corporation/Expedition Construction Corporation and attesting that respondents were regular employees of Expedition.

Ruling of the Labor Arbiter

In a Decision[15] dated June 26, 2014, the LA dismissed respondents' complaints and held that there was no employer-employee relationship between Expedition and respondents. The LA did not find any substantial proof that respondents were regular employees of Expedition. First, respondents had no fixed salary and were compensated based on the total number of trips made. Next, Expedition had no power to terminate respondents. More importantly, respondents performed their work independent of Expedition's control. The LA ruled that respondents were independent contractors, contracted to do a piece of work according to their own method and without being subjected to the control of Expedition except as to the results of their work.

Respondents appealed to the NLRC where they insisted that they were under Expedition's control and supervision and that they were regular employees who worked continuously and exclusively for an uninterrupted period ranging from four to 15 years and whose tasks were necessary and desirable in the usual business of Expedition.

Ruling of the National Labor Relations Commission

In a Resolution[16] dated September 30, 2014, the NLRC dismissed respondents' appeal and affirmed the ruling of the LA. The NLRC similarly found no evidence of an employer-

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[12] *Id*. at 101-105.

[13] *Id*. at 106.

[14] *Id*. at 108.

[15] *Id*. at 131-138; penned by Labor Arbiter Joanne G. Hernandez-Lazo.

[16] *Id*. at 190-206, penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioner Gregorio O. Bilog III.

employee relationship between Expedition and respondents. The NLRC did not consider as evidence the alleged admission of petitioners during the mandatory conciliation conference since statements made in these proceedings are regarded as privileged communication. Likewise, the affidavits of Rosales and Godoy did not help respondents' cause as the affiants were not employees of Expedition but of some other company.

The NLRC opined that respondents were project employees hired for a specific undertaking of driving garbage trucks, the completion and termination of which was coterminous with Expedition's contracts with the Local Government Units (LGUs). As project employees, respondents were not dismissed from work but their employment simultaneously ended when Expedition's contracts with Quezon City and Caloocan City expired. There being no illegal dismissal, the NLRC found no basis in awarding respondents their money claims.

Undaunted, respondents filed a Motion for Reconsideration[17] arguing that they were not project employees because the nature of their work was necessary and desirable to Expedition's line of business and that their continuous and uninterrupted employment reaffirmed their status as regular employees. They averred further that there was no written contract evidencing project employment nor were they informed of their status as project employees. They stressed that Expedition's right of control over the performance of their work was apparent when: (1) they were made to report everyday at the premises owned by Expedition; (2) there was an express instruction to report from Monday to Sunday; (3) they were not allowed to engage in any other project; (4) they were mandated to return the hauling truck and park the same at Expedition's premises after the garbage collection was completed; (5) Expedition determined how, where, and when they would perform their tasks; and, (6) they were not allowed to collect garbage beyond the area indicated by Expedition.

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[17] *Id.* at 209-125.

In a Resolution[18] dated April 30, 2015, the NLRC partly granted respondents' motion for reconsideration and modified its earlier Resolution of September 30, 2014. This time, the NLRC ruled that respondents were employees of Expedition in view of Expedition's admission that it hired and paid respondents for their services. The NLRC was also persuaded that Expedition exercised control on when and how respondents would collect garbage.

The NLRC, however, sustained its earlier finding that there was no illegal dismissal ratiocinating that respondents were merely placed on a floating status when the contracts with Quezon City and Caloocan City expired and thus were merely waiting to be re-assigned to other similar work. As there was no dismissal to speak of, the NLRC ordered respondents' reinstatement but without the payment of back wages. However, due to lack of clients where respondents could be re-assigned, the NLRC opted to award separation pay in lieu of reinstatement. The dispositive portion of the Resolution reads:

> WHEREFORE, complainants-appellants' Motion for Reconsideration is hereby PARTLY GRANTED. Our Resolution dated 30 September 2014 is MODIFIED finding employer-employee relationship between complainants and the respondents and concomitantly the latter is hereby ordered to pay complainants' separation pay at the rate of ½ month salary for every year of service a fraction of at least 6 months to be considered as one (1) whole year in the following computed amounts:
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> | | |
> |---|---|
> | 1. Alexander M. Africa | 426 x 13 x 12 = 66,456 |
> | 2. Jesus Eser | 426 x 13 x 10 = 55,380 |
> | 3. Jonamel Caro | 426 x 13 x 12 = 66,456 |
> | 4. Reynaldo Garcia | 426 x 13 x 15 = 83,070 |
> | 5. Mardy Malapit | 426 x 13 x 14 = 77,532 |
> | 6. Jacob Rongcales | 426 x 13 x 14 = 77,532 |
> | 7. Alfredo Rilles | 426 x 13 x 15 = 83,070 |
> | 8. Freddie Dela Cruz | 426 x 13 x 5 = 27,690 |

[18] *Id.* at 234-238; penned by Commissioner Pablo C. Espiritu, Jr., concurred in by Commissioner Mercedes R. Posada-Lacap and partly concurred in by Presiding Commissioner Joseph Gerard E. Mabilog (with Dissenting Opinion).

9. Junie Aquiban	426 x 13 x 5 = 27,690
10. Dino Aquiban	426 x 13 x 4 = 22,152
11. Samuel G. Pillos	426 x 13 x 5 = 27,690
12. William Dagdag	426 x 13 x 14 = 77,532
13. Crisincio Garcia	426 x 13 x 12 = 66,456
14. Jeffrey A. Valenzuela	426 x 13 x 5 = 27,690
15. Erwin V. Hallare	426 x 13 x 9 = 49,842

The rest of Our resolution is hereby AFFIRMED.

SO ORDERED.[19]

Expedition filed a Motion for Reconsideration[20] attributing error on the NLRC in ruling that there was an employer-employee relationship and in awarding separation pay despite the finding that there was no illegal dismissal. Expedition also questioned the NLRC's computation of separation pay and sought the remand of the case to the LA for proper determination of the correct amount. This motion, however, was denied by the NLRC in its Resolution[21] of June 30, 2015.

Expedition sought recourse to the CA via a Petition for *Certiorari*.[22]

Ruling of the Court of Appeals

On March 31, 2016, the CA rendered a Decision[23] dismissing Expeditions Petition for *Certiorari* and ruling in favor of respondents. The CA affirmed the April 30, 2015 Resolution of the NLRC insofar as the existence of an employer-employee relationship between the parties. The CA noted that respondents were hired and paid by Expedition. Further, Expedition exercised the power to provide and withhold work from respondents. Most importantly, the power of control was evident since Expedition

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[19] *Id*. at 237.

[20] *Id*. at 250-264.

[21] *Id*. at 266-268.

[22] CA *rollo*, pp. 3-44.

[23] *Id*. at 297-310.

determined how, where and when respondents would perform their tasks. The CA held that the respondents needed Expedition's instruction and supervision in the performance of their duties. The CA likewise ruled that respondents were regular employees entitled to security of tenure because they continuously worked for several years for the company, an indication that their duties were necessary and desirable in the usual business of Expedition.

The CA, however, did not agree with the NLRC that respondents were on floating status since petitioners did not adduce proof of any dire exigency justifying failure to give respondents any further assignments. The CA observed that the irregular dispatch of respondents due allegedly to the decrease in the need for drivers led to the eventual discontinuance of respondents' services and ultimately, their illegal termination. Accordingly, the CA ruled that respondents were illegally dismissed when Expedition prevented them from working, and consequently, ordered their reinstatement with full back wages. The dispositive portion of the Decision reads:

> FOR THESE REASONS, the petition is DISMISSED. The Decision of the National Labor Relations Commission dated April 30, 2015 is hereby AFFIRMED with MODIFICATIONS. The respondents were illegally dismissed, and are thus entitled to reinstatement with full backwages from the time of illegal dismissal up to the finality of this Decision and attorney's fee equivalent to ten percent (10%) of the total monetary award. The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid. The case is remanded to the Labor Arbiter for the computation of respondents' monetary awards.
>
> SO ORDERED.[24]

Expedition filed a Motion for Reconsideration[25] on the ground that the CA erred in finding that respondents were its employees and that respondents were illegally dismissed. It impugned the award of reinstatement and back wages in favor of respondents,

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[24] *Id.* at 309-310.

[25] *Id.* at 317-330.

submitting that an amount of financial assistance would be the more equitable remedy for respondents' cause. It, then, manifested its willingness to offer financial assistance to respondents in the amounts equivalent to the separation pay awarded to respondents in the April 30, 2015 NLRC Resolution.

Expedition's motion was, however, denied by the CA in its Resolution[26] dated December 9, 2016.

Issues

Hence, Expedition filed this instant Petition presenting the following grounds for review:

[1.] THE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE NLRC'S FINDING THAT THERE WAS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONER CORPORATION AND RESPONDENTS.

[2.] EVEN ASSUMING ARGUENDO THAT THERE WAS EMPLOYER-EMPLOYEE RELATIONSHIP, THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENTS WERE REGULAR EMPLOYEES.

[3.] THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENTS WERE ILLEGALLY DISMISSED.

[4.] AGAIN, EVEN ASSUMING THAT RESPONDENTS WERE REGULAR EMPLOYEES AND THAT THEY HAD BEEN ILLEGALLY DISMISSED, THE COURT OF APPEALS GRAVELY ERRED WHEN IT AWARDED REINSTATEMENT WITH FULL BACKWAGES INSTEAD OF SEPARATION PAY ONLY.[27]

Expedition maintains that it did not exercise the power of selection or engagement, payment of wages, dismissal, and control over respondents. The CA, thus, had no legal basis in finding that respondents were its employees, much less had regular employment status with it. Expedition likewise insists that there was no illegal dismissal and that the CA erred in

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

[27] *Rollo*, pp. 47-48.

awarding reinstatement and backwages instead of separation pay, which was prayed for by respondents.

Our Ruling

The Petition is partly granted.

Respondents were regular employees of Expedition.

At the outset, it bears emphasis that the question of whether or not respondents were employees of Expedition is a factual issue. It is settled that only questions of law may be raised in a petition for review on *certiorari* filed under Rule 45.[28] However, there are also recognized exceptions to this rule, one of which is when the factual findings of the labor tribunals are contradictory to each other,[29] such as obtaining in the case at bar.

Jurisprudence has adhered to the four-fold test in determining the existence of an employer-employee relationship, to wit: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called 'control test.'"[30]

In ruling that respondents were employees of Expedition, the CA found all the elements of employer-employee relationship to be present. As shown in the records, Expedition hired respondents as dump truck drivers and paid them the amount of ₱620.00 per trip. The CA held that Expedition wielded the power to dismiss respondents based on Expedition's admission that when the dispatch of drivers became irregular, it tried to accommodate them by giving trips when the need arose. The control test was likewise established because Expedition

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[28] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 585 (2013).

[29] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 506 (2015).

[30] *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 306 (2014).

determined how, where, and when respondents would perform their tasks.

Expedition, however, proffers that the actual findings of the CA on this matter had no legal basis. It claims that respondents were never hired but were merely engaged as drivers; that they worked on their own and were not subjected to its control and supervision; that they were compensated based on output or number of trips made in a day; that they selected their own garbage collectors, chose their own route and determined the manner by which they would collect the garbage; and, that they performed their work at their own pleasure without fear of being sanctioned if they chose not to report for work.

The Court finds Expedition's position untenable. First, as clearly admitted, respondents were engaged/hired by Expedition as garbage truck drivers. Second, it is undeniable that respondents received compensation from Expedition for the services that they rendered to the latter. The fact that respondents were paid on a per trip basis is irrelevant in determining the existence of an employer-employee relationship because this was merely the method of computing the proper compensation due to respondents.[31] Third, Expedition's power to dismiss was apparent when work was withheld from respondents as a result of the termination of the contracts with Quezon City and Caloocan City. Finally, Expedition has the power of control over respondents in the performance of their work. It was held that "the power of control refers merely to the existence of the power and not to the actual exercise thereof."[32] As aptly observed by the CA, the agreements for the collection of garbage were between Expedition and the various LGUs, and respondents needed the instruction and supervision of Expedition to effectively perform their work in accordance with the stipulations of the agreements.

Moreover, the trucks driven by respondents were owned by Expedition. There was an express instruction that these trucks

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[31] *Chavez v. National Labor Relations Commission*, 489 Phil. 444, 457 (2005).

[32] *Almeda v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 113 (2008).

were to be exclusively used to collect and transport garbage. Respondents were mandated to return the trucks to the premises of Expedition after the collection of garbage. Expedition determined the clients to be served, the location where the garbage is to be collected and when it is to be collected. Indeed, Expedition determined how, where, and when respondents would perform their tasks.

Respondents were neither independent contractors nor project employees. There was no showing that respondents have substantial capital or investment and that they were performing activities which were not directly related to Expedition's business to be qualified as independent contractors.[33] There was likewise no written contract that can prove that respondents were project employees and that the duration and scope of such employment were specified at the time respondents were engaged. Therefore, respondents should be accorded the presumption of regular employment pursuant to Article 280 of the Labor Code which provides that "employees who have rendered at least one year of service, whether such service is continuous or broken x x x shall be considered [as] regular employees with respect to the activity in which they are employed and their employment shall continue while such activity exists."[34] Furthermore, the fact that respondents were performing activities which were directly related to the business of Expedition confirms the conclusion that respondents were indeed regular employees.[35]

Having gained regular status, respondents were entitled to security of tenure and could only be dismissed for just or authorized cause after they had been accorded due process. Thus, the queries: Were respondents dismissed? Were they dismissed in accordance with law?

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[33] *Petron Corporation v. Caberte*, 759 Phil. 353, 368 (2015).

[34] *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 346 (2014).

[35] *Id*.

There was no illegal dismissal.

In illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause. However, it is likewise incumbent upon an employee to first establish by substantial evidence the fact of his dismissal from employment[36] by positive and overt acts of an employer indicating the intention to dismiss.[37] It must also be stressed that the evidence must be clear, positive and convincing.[38] Mere allegation is not proof or evidence.[39]

In this case, there was no positive or direct evidence to substantiate respondents' claim that they were dismissed from employment. Aside from mere assertions, the record is bereft of any indication that respondents were barred from Expedition's premises. If at all, the evidence on record showed that Expedition intended to give respondents new assignments as a result of the termination of the garbage hauling contracts with Quezon City and Caloocan City where respondents were regularly dispatched. Despite the loss of some clients, Expedition tried to accommodate respondents and offered to engage them in other garbage hauling projects with other LGUs, a fact which respondents did not refute. However, instead of returning and waiting for their next assignments, respondents instituted an illegal dismissal case against Expedition. Note that even during the mandatory conciliation and mediation conference between the parties, Expedition manifested its willingness to accept respondents back to work. Unfortunately, it was respondents who no longer wanted to return to work. In fact, in their complaints, respondents prayed for the payment of separation pay instead of reinstatement.

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[36] *Carique v. Philippine Scout Veterans Security and Investigation Agency, Inc.*, 769 Phil. 754, 762 (2015).

[37] *Noblejas v. Italian Maritime Academy Phils., Inc.*, 735 Phil. 713, 722 (2014).

[38] *Tri-C General Services v. Matuto*, 770 Phil. 251, 262 (2015).

[39] *Villanueva v. Philippine Daily Inquirer, Inc.,* 605 Phil. 926, 937 (2009).

Here, there was no sufficient proof that respondents were actually laid off from work. Thus, the CA had no basis in ruling that respondents' employment was illegally terminated since the fact of dismissal was not adequately supported by substantial evidence. There being no dismissal, the *status quo* between respondents and Expedition should be maintained. However, it cannot be denied that their relationship has already been ruptured in that respondents are no longer willing to be reinstated anymore. Under the circumstances, the Court finds that the grant of separation pay as a form of financial assistance is deemed equitable.

As a measure of social justice, the award of separation pay/ financial assistance has been upheld in some cases[40] even if there is no finding of illegal dismissal. The Court, in *Eastern Shipping Lines, Inc. v. Sedan*,[41] had this to say:

> x x x We are not unmindful of the rule that financial assistance is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Neither are we unmindful of this Court's pronouncements in *Arc-Men Food Industries Corporation v. NLRC*, and *Lemery Savings and Loan Bank v. NLRC*, where the Court ruled that when there is no dismissal to speak of, an award of financial assistance is not in order.
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> But we must stress that this Court did allow, in several instances, the grant of financial assistance. In the words of Justice Sabino de Leon, Jr., now deceased, financial assistance may be allowed as a measure of social justice [under] exceptional circumstances, and as an equitable concession. The instant case equally calls for balancing the interests of the employer with those of the worker, if only to approximate what Justice Laurel calls justice in its secular sense.

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[40] *Luna v. Allado Construction Co., Inc.*, 664 Phil. 509, 524-527 (2011); *Piñero v. National Labor Relations Commission*, 480 Phil. 534, 543-544 (2004); *Indophil Acrylic Mfg. Corporation v. National Labor Relations Commission*, 297 Phil. 803, 810 (1993).

[41] 521 Phil. 61, 70 (2006).

In a Manifestation[42] submitted before the CA, Expedition expressed willingness to extend gratuitous assistance to respondents and to pay them the amounts equivalent to the separation pay awarded to each respondent in the April 30, 2015 NLRC Resolution. In view of this and taking into account respondents' long years of service ranging from four to 15 years, the Court finds that the grant of separation pay at the rate of one-half (½) month's salary for every year of service, as adjudged in the April 30, 2015 Resolution of the NLRC, is proper.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The assailed Decision dated March 31, 2016 and Resolution dated December 9, 2016 of the Court of Appeals in CA-G.R. SP No. 142007 are **AFFIRMED** with **MODIFICATION** that the awards of reinstatement, back wages, attorney's fees and legal interest are **DELETED** there being no illegal dismissal. The award of separation pay, as a form of financial assistance, in the National Labor Relations Commission's Resolution dated April 30, 2015 is **REINSTATED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.*, concur.

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[42] CA *rollo*, pp. 406-408.

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of possession of real property: 1) ejectment (either for unlawful detainer or forcible entry) in case the dispossession has lasted for not more than a year; 2) *accion publiciana* or a plenary action for recovery of real right of possession when dispossession has lasted for more than one year; and 3) *accion reinvindicatoria* or an action for recovery of ownership. (Regalado *vs* De La Rama *vda*. De La Pena, G.R. No. 202448, Dec. 13, 2017) p. 705

Jurisdiction — Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases; what determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint; jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiffs cause of action. (Anama *vs*. Citibank, N.A. (formerly First National City Bank), G.R. No. 192048, Dec. 13, 2017) p.

Prosecution of civil action — When one of the petitioners did not reserve her right to institute a separate civil action, her cause of action for damages was deemed impliedly instituted with the criminal case; Rule 111, Sec. 3 of the Rules of Court prohibits offended parties from recovering damages twice for the act being prosecuted in the criminal action; thus, she is now barred from instituting this case. (Torreon *vs*. Aparra, Jr., G.R. No. 188493, Dec. 13, 2017) p. 561

ADMINISTRATIVE DUE PROCESS

Concept — The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heard; "reasonable opportunity" should not be confined to the mere submission of position papers and/or affidavits and the parties must be given the opportunity to examine the witnesses against them; the right to a hearing is a right which may be invoked by the parties

covered by the CARP and R.A. No. 3844. (Dillena *vs.* Alcaraz, G.R. No. 204045, Dec. 14, 2017) p. 969

Provincial Agrarian Reform Adjudicator and Department of Agrarian Reform Adjudication Board — The Bulacan PARAD, as well as the DARAB, had no authority to take cognizance of petitioner's case, since its jurisdiction is limited to agrarian disputes; R.A. No. 7881 supersedes R.A. No. 3844, with regard to fishponds and prawn farms; petitioner filed her petition to be declared a *de jure* tenant before the PARAD in 2004, when the subject landholding already ceased to be covered by the CARP by virtue of the amendments under R.A. No. 7881, which took effect as early as 1995. (Dillena *vs.* Alcaraz, G.R. No. 204045, Dec. 14, 2017) p. 969

AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED (R.A. NO. 10951)

Guidelines in application — The Court, in the interest of justice and expediency, directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose; when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed; enumerated and explained. (Hernan *vs.* Hon. Sandiganbayan, G.R. No. 217874, Dec. 5, 2017) p. 148

Penalty — The provisions of R.A. No. 10951 shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, *estafa*, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which

Elements — The elements of violation of B.P. Blg. 22 are as follows: 1. The accused makes, draws or issues any check to apply to account or for value; 2. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment; and 3. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment; all the foregoing elements were established beyond reasonable doubt. (Lim *vs*. People, G.R. No. 224979, Dec. 13, 2017) p. 839

Notice of dishonor — In *Resterio v. People*, the Court ruled that the notice of dishonor required under B.P. Blg. 22 to be given to the drawer, maker or issuer of the check should be written; "If the service of the written notice is by registered mail, the proof of service consists not only in the presentation as evidence of the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor; without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient, unless the mailer personally testifies in court on the sending by registered mail"; application. (Lim *vs*. People, G.R. No. 224979, Dec. 13, 2017) p. 839

Notification to the issuer — What the Bouncing Checks Law requires is that the accused must be notified in writing of the fact of dishonor; this notice gives the issuer an opportunity to pay the amount on the check or to make arrangements for its payment within five (5) days from receipt thereof, in order to prevent the presumption of knowledge of the insufficiency of funds from arising. (Montelibano *vs.* Yap, G.R. No. 197475, Dec. 6, 2017) p. 262

Violation of — While petitioner's conviction is affirmed, the Court deems it proper to impose a fine instead of the penalty of imprisonment meted by the MTCC and sustained

— Strict compliance with the prescribed procedure under Sec. 21 of R.A. No. 9165 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise; the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of accused-appellant. (*Id.*)

— There are links that must be established in the chain of custody in a buy-bust situation, viz: *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 from the forensic chemist to the court. (People *vs*. Calvelo *y* Consada, G.R. No. 223526, Dec. 6, 2017) p. 423

Corpus delicti — In all prosecutions for violations of R.A No. 9165, the *corpus delicti* is the dangerous drug itself; the *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale, i.e., the prohibited or regulated drug, has been preserved. (People *vs*. Calvelo *y* Consada, G.R. No. 223526, Dec. 6, 2017) p. 423

Illegal sale of dangerous drugs — Continuing accretions of jurisprudence restate the requirements to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor. (People *vs*. Calvelo *y* Consada, G.R. No. 223526, Dec. 6, 2017) p. 423

— The essential elements that have to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs are: (1) the identity of

the consideration; and 2) the delivery of the thing sold and the payment therefor". (*Id.*)

Section 21 — The Court finds that the arresting officers were able to preserve the integrity of the seized drug after faithfully complying with the requirements of Sec. 21 of R.A. No. 9165 regarding the custody and disposition of seized drugs; the integrity of the seized drug was properly preserved from the time of appellant's arrest until the sachet was presented in court; explained. (People *vs.* Ejan *y* Bayato, G.R. No. 212169, Dec. 13, 2017) p. 757

CONTEMPT OF COURT

Direct contempt — For decades, the respondents successfully evaded the implementation of agrarian reform laws by violating the rules of procedure and making a mockery of justice; the Court refuses to close its eyes to the detestable strategy employed by the respondents and will not reward such inexcusable behavior; penalty. (Heirs of Fermin Arania *vs.* Intestate Estate of Magdalena R. Sangalang, G.R. No. 193208, Dec. 13, 2017) p. 643-644

CORPORATIONS

Concept — A corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected. (Zaragoza *vs.* Tan, G.R. No. 225544, Dec. 4, 2017) p. 51

Corporate officers — To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. (Zaragoza *vs.* Tan, G.R. No. 225544, Dec. 4, 2017) p. 51

Doctrine of piercing the veil of corporate fiction — Obligations incurred as a result of the acts of the directors and officers

EJECTMENT OR *ACCION INTERDICTAL*

Forms — Ejectment or *accion interdictal* takes on two forms: forcible entry and unlawful detainer; remedies laid down in Sec. 1, Rule 70 of the Rules of Court; in *Sarmiento v. Court of Appeals,* the distinction between forcible entry and unlawful detainer had been clearly explained. (Bugayong-Santiago *vs*. Bugayong, G.R. No. 220389, Dec. 6, 2017) p. 394

EMPLOYEES, KINDS OF

Concept — Article 295 of the Labor Code contemplates four (4) kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal employees; jurisprudence later added a fifth kind, the fixed-term employee; the law determines the nature of the employment, regardless of any agreement expressing otherwise. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

Fixed-term employment — The Court has declared that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

— The utter disregard of public policy by the subject contracts negates any argument that the agreement is the law between the parties and that the fixed period was knowingly and voluntarily agreed upon by the parties; any ambiguity

possibility of abandonment; a slothful work attitude falls squarely within the ambit of gross and habitual neglect of duty, which is one of the grounds for termination enumerated under Art. 297(b) of the Labor Code; respondent's departure was merely a precursor to his scheme to turn the table against petitioner by lodging a baseless complaint for illegal dismissal even though it was he who abandoned his employment. (Mehitabel, Inc. *vs*. Alcuizar, GR. Nos. 228701-02, Dec. 13, 2017) p. 863

— Respondent's non-compliance with the directive in the Return to Work signifies his intention to sever the employment relation with petitioner, and gives credence to the latter's claim that it was respondent who abandoned his job. (*Id*.)

Burden of proof — Ei incumbit probatio qui dicit, non qui negat; the burden of proof is on the one who declares, not on one who denies; a party alleging a critical fact must support his allegation with substantial evidence; in illegal termination cases, the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss before the burden is shifted to the employer that the dismissal was legal; when not established. (Mehitabel, Inc. *vs*. Alcuizar, GR. Nos. 228701-02, Dec. 13, 2017) p. 863

Closure or suspension of operations — Closure or suspension of operations for economic reasons is recognized as a valid exercise of management prerogative, but the burden of proving, with sufficient and convincing evidence, that said closure or suspension i*s bona fide* falls upon the employer; application. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

Constructive dismissal — The employer should be able to prove that it faced a clear and compelling economic reason which reasonably constrained it to temporarily shut down its business operations, incidentally resulting in the temporary lay-off of its employees assigned to said particular undertaking; it must bear the burden of

the award of such damages. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

— In illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause; it is incumbent upon an employee to first establish by substantial evidence the fact of his dismissal from employment by positive and overt acts of an employer indicating the intention to dismiss; the evidence must be clear, positive and convincing; application. (Expedition Construction Corp. *vs.* Africa, G.R. No. 228671, Dec. 14, 2017) p.1044

— Inasmuch as petitioner failed to adduce clear and convincing evidence to support the legality of respondents' dismissal, the latter is entitled to reinstatement without loss of seniority rights and backwages computed from the time compensation was withheld up to the date of actual reinstatement, as a necessary consequence; however, reinstatement is no longer feasible in this case; thus, separation pay equivalent to one (1) month salary for every year of service should be awarded in lieu of reinstatement. (*Id.*)

— Since there was a conclusive finding that respondent was unjustly dismissed from work, the Court affirms the award of backwages; rationale. (Advan Motor, Inc. *vs.* Veneracion, G.R. No. 190944. Dec. 13, 2017) p. 596

— The two reliefs of reinstatement and backwages have been discussed in *Reyes v. RP Guardians Security Agency, Inc.*: Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal; reinstatement is a restoration to a state from which one has been removed or separated while the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal; the award of one does not bar the other. (*Id.*)

Loss of trust and confidence — The requisites for the existence of the ground of loss of trust and confidence under Art.

inevitably result in a finding that the dismissal is unjustified. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

Retrenchment or lay-off — Retrenchment is the severance of employment, through no fault of and without prejudice to the employee, which management resorts to during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation; a lay-off would amount to dismissal only if it is permanent; when it is only temporary, the employment status of the employee is not deemed terminated, but merely suspended. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

Separation pay — Separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee; given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order. (Ergonomic Systems PhilS., Inc. *vs.* Enaje, G.R. No. 195163, Dec. 13, 2017) p. 669

— The CA had no basis in ruling that respondents' employment was illegally terminated since the fact of dismissal was not adequately supported by substantial evidence; there being no dismissal, the *status quo* between respondents and petitioner should be maintained; however, their relationship has already been ruptured in that

EXEMPTING CIRCUMSTANCES

Insanity — The testimony of the accused-appellant shows that he was hardly the mentally deranged or insane (whether temporarily or permanently) person that he claimed he was when he stabbed the victim to death; his answers to the questions propounded to him by his counsel were intelligent, responsive, and straightforward; his plea of insanity must be rejected because it has no leg to stand on. (People *vs*. Dagsil *y* Caritero, G.R. No. 218945, Dec. 13, 2017) p. 808

FORUM SHOPPING

Commission of — In *Pentacapital Investment Corporation v. Mahinay,* the Court ruled that "forum shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)." (Heirs of Fermin Arania *vs.* Intestate Estate of Magdalena R. Sangalang, G.R. No. 193208, Dec. 13, 2017) p. 643-644

— The following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties; application. (*Id*.)

has actually transacted, or at the very least, intentionally targeted customers of a particular jurisdiction in order to be considered as having used the trade mark in the ordinary course of his trade in that country; the IP Code expressly requires the use of the mark "within the Philippines." (W Land Holdings, Inc. *vs*. Starwood Hotels and Resorts Worldwide, Inc., G.R. No. 222366, Dec. 4, 2017) p 23.

— In *Berris Agricultural Co., Inc. v. Abyadang*, this Court explained that "the ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public; a certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate"; *prima facie* presumption, how may be challenged and overcome. (*Id*.)

— The IP Code and the Trademark Regulations have not specifically defined "use"; however, it is understood that the "use" which the law requires to maintain the registration of a mark must be genuine, and not merely token; based on foreign authorities, genuine use may be characterized as a *bona fide* use which results or tends to result, in one way or another, into a commercial interaction or transaction "in the ordinary course of trade"; the Trademark Regulations was amended by Office Order No. 056-13; Rule 205 now mentions certain items which "shall be accepted as proof of actual use of the mark". (*Id*.)

— The IP Code, under Sec. 124.2, requires the registrant or owner of a registered mark to declare "actual use of the mark" (DAU) and present evidence of such use within the prescribed period; failing in which, the IPO DG may cause the *motu propio* removal from the register of the mark's registration; who may file a petition for cancellation. (*Id*.)

JUDGMENTS

Annulment of — Petition for annulment of judgment, explained; the Court has instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Sec. 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner; not present in this case; explained. (Heirs of Fermin Arania *vs.* Intestate Estate of Magdalena R. Sangalang, G.R. No. 193208, Dec. 13, 2017) pp. 643-644

Doctrine of finality of judgment — The Court finds that it is still necessary to reopen the instant case and recall the Entry of Judgment of the Sandiganbayan, not for further reception of evidence, however, as petitioner prays for, but in order to modify the penalty imposed by said court; the general rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land; exceptions; expounded. (Hernan *vs.* Hon. Sandiganbayan, G.R. No. 217874, Dec. 5, 2017) p. 148

— The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law; the only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable; none of the exceptions is present in this case. (*Id.*)

reported to the Regional Office; a local union does not owe its existence to the federation with which it is affiliated; only the union may invoke the union security clause in case any of its members commits a violation thereof. (*Id*.)

— Union security is a generic term, which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership,' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment; union shop, maintenance of membership shop, and closed shop, defined. (*Id*.)

LACHES

Principle of — As the registered owners, petitioners' right to eject any person illegally occupying their property cannot be barred by *laches; Labrador v. Pobre* and *Bishop v. Court of Appeals,* cited; as a registered owner, petitioner has a right to eject any person illegally occupying his property; this right is imprescriptible and can never be barred by laches"; even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. (Diaz, Jr. *vs.* Valenciano, Jr., G.R. No. 209376, Dec. 6, 2017) p. 291

LAND REGISTRATION

Certificate of title — Tax declarations and realty tax payments are not conclusive proof of ownership or possession, and a certificate of title under the Torrens system serves as evidence of an indefeasible title to the property in favor of the person whose name appears thereon; the Court holds that petitioners have proven by preponderant evidence a better right to ownership and possession of the subject property, and that respondent's occupation is by mere tolerance of petitioners. (Diaz, Jr. *vs.* Valenciano, Jr., G.R. No. 209376, Dec. 6, 2017) p. 291

courts are called upon to pierce the form and go into the substance, not to be misled by a false or wrong name given to a pleading because the title thereof is not controlling and the court should be guided by its averments; application. (Hernan *vs.* Hon. Sandiganbayan, G.R. No. 217874, Dec. 5, 2017) p. 148

Reopening a case — Section 24, Rule 119 and existing jurisprudence provide for the following requirements for the reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order; as the Sandiganbayan ruled, the absence of the first requisite that the reopening must be before the finality of a judgment of conviction already cripples the motion. (Hernan *vs.* Hon. Sandiganbayan, G.R. No. 217874, Dec. 5, 2017) p. 148

Venue and jurisdiction — Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection; venue is procedural, not jurisdictional, and hence may be waived. (Anama *vs*. Citibank, N.A. (formerly First National City Bank), G.R. No. 192048, Dec. 13, 2017) p. 630

Verification — Verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional; such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective; purpose; when circumstances so warrant, as in this case, the court may simply order the correction

reasons; 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case; under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule; and 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel; consequence if, for reasonable or justifiable reasons, the party-pleader is unable to sign. (*Id*.)

PRELIMINARY INVESTIGATION

Probable cause — In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge; a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused; the elements of the crime charged should be present. (Chiang *vs.* PLDT Co., G.R. No. 196679, Dec. 13, 2017) p. 688

— The determination of probable cause is a function that belongs to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case; however, the resolution of the Secretary of Justice may be subject of judicial review; probable cause, for purposes of filing a criminal information, defined. (*Id*.)

PRESUMPTIONS

Disputable presumptions — Anent the civil aspect of the B.P. Blg 22 cases, petitioner's defense of lack of consideration for the checks fails to persuade; apart from having admitted the authenticity and due execution of the promissory note, she also failed to present clear and convincing

do not constitute incontrovertible evidence to overcome the presumption that the property sought to be registered belongs to the inalienable public domain; the 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. (Rep. of the Phils. *vs.* Mendiola, G.R. No. 211144, Dec. 13, 2017) p. 749

Prescription or adverse possession — As early as 1902, when Act No. 496 created the Torrens system of registration, the law already declared that registered land cannot be acquired by prescription or adverse possession; this principle is currently found in Sec. 47 of P.D. No. 1529; application. (Sps. Cano *vs*. Sps. Cano, G.R. No. 188666, Dec. 14, 2017) p. 911

Registration of an imperfect and incomplete title — Applicants for registration of title under Sec. 14(1) of P.D. No. 1529 must sufficiently establish: *(1)* that the subject land forms part of the disposable and alienable lands of the public domain; *(2)* that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and *(3)* that his possession has been under a bona fide claim of ownership since June 12, 1945, or earlier; these triple requirements of alienability and possession and occupation since June 12, 1945 or earlier under Sec. 14 (1) are indispensable prerequisites. (Leonidas *vs*. Vargas, G.R. No. 201031, Dec. 14, 2017) p. 940

Rights over immovable property — Pursuant to Art. 709 of the Civil Code, all rights over immovable property must be duly inscribed or annotated on the Registry of Deeds before they can affect the rights of third persons; the same rule is enunciated in P.D. No. 1529, or the Property Registration Decree, specifically Secs. 51 and 52 thereof; application. (Sps. Cano *vs*. Sps. Cano, G.R. No. 188666, Dec. 14, 2017) p. 911

— The records of both the cases for ejectment and the quieting of title are bereft of evidence of respondents'

(1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense; if private complainant's testimony successfully meets the test of credibility, then the accused may be convicted on the basis thereof; application. (People *vs*. Villanueva, G.R. No. 211082, Dec. 13, 2017) p. 735

Penalty and civil liability — In the absence of an aggravating or mitigating circumstance, the penalty to be imposed is *reclusion perpetua* in each case; additionally, exemplary damages should be awarded for the inherent bestiality of the act committed even if no aggravating circumstance attended the commission of the crime; civil indemnity, moral damages and exemplary damages, awarded. (People *vs*. Villanueva, G.R. No. 211082, Dec. 13, 2017) p. 735

Qualifying circumstances of minority and relationship — Under Art. 266-B of the Revised Penal Code, the minority of a rape victim and her relationship to the offender qualify the charge of rape; the Court upheld the trial court's finding that the qualifying circumstances of minority and relationship attended the commission of the crime; said circumstances were specifically alleged in the information and sufficiently proved during the trial of the case. (People *vs*. Deloso *y* Bagares, G.R. No. 215194, Dec. 14, 2017) p. 1003

RAPE BY SEXUAL ASSAULT

Elements — The following are the elements of rape by sexual assault: (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

RAPE THROUGH SEXUAL INTERCOURSE

Commission of — The insertion of the finger into the vagina constitutes rape through sexual intercourse and not rape by sexual assault; rape by sexual assault is the act of "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"; instrument and object, defined. (People *vs.* Bagsic *y* Valenzuela, G.R. No. 218404, Dec. 13, 2017) p. 784

REGIONAL TRIAL COURTS

Jurisdiction — Section 19 of B.P. Blg. 129, as amended by R.A. No. 7691, provides: Regional Trial Courts shall exercise exclusive original jurisdiction: (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation; in determining the jurisdiction of an action whose subject is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be ascertained; jurisdiction over a petition to revive judgment is properly with the RTCs. (Anama *vs*. Citibank, N.A. (formerly First National City Bank), G.R. No. 192048, Dec. 13, 2017) p. 630

— The RTC has exclusive original jurisdiction over civil actions involving title to or possession of real property, or any interest therein in case the assessed value of the property exceeds ₱20,000.00 (or ₱50,000.00 in Metro Manila). (Regalado *vs* De La Rama *vda*. De La Pena, G.R. No. 202448, Dec. 13, 2017) p. 705

RES JUDICATA

Bar by prior judgment — *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of

— There are three (3) types of retirement plans available to employees; the first is compulsory and contributory; this type of plan is embodied in R.A. No. 8282 for those in the private sector and R.A. No. 8291 for those in the government; the second and third types of retirement plans are voluntary; the second type of retirement plan is by agreement between the employer and the employee, usually embodied in the CBA between them; the third type is one that is voluntarily given by the employer, expressly as in an announced company policy or impliedly as in a failure to contest the employee's claim for retirement benefits. (*Id.*)

RULES OF PROCEDURE

Interpretation of — In this case, only twelve (12) of respondents were able to sign the Verification and Certification against Forum Shopping since they were only given ten (10) days from the receipt of the LA's decision to perfect an appeal; but it does not mean that those who failed to sign were no longer interested in pursuing their case; the Court finds justification to liberally apply the rules of procedure to the present case. (Innodata Knowledge Services, Inc. *vs.* Inting, G.R. No. 211892, Dec. 6, 2017) p. 314

SALES

Innocent purchasers for value — The acquisition of the property by respondents must be respected because they were innocent purchasers for value; general principle that persons dealing with registered land have the right to completely rely on the Torrens title issued over the property; buyers are not required to go beyond what the certificate of title indicates on its face, provided the acquisition of the land is made in good faith, that is, without notice that some other person has a right to, or interest in, the property. (Sps. Cano *vs*. Sps. Cano, G.R. No. 188666, Dec. 14, 2017) p. 911

cancelled for violations of agrarian laws, rules and regulations; grounds for the cancellation of registered EPs under DAR AO No. 02-94; petitioners abandoned whatever right they may have over the subject land when they executed a joint affidavit of waiver; this alone is sufficient ground for the cancellation of the EPs registered in their names. (*Id*.)

— Sustaining the validity of the subject EPs despite its glaring irregularity and in spite of the fact that the same covers land already legally conveyed to qualified tenants-tillers thereof would unjustly and unduly deprive the latter of their property. (*Id*.)

— The sale to qualified beneficiaries and actual tillers of the subject land is valid; the sale of the subject land emancipated them from the bondage of the soil they were tilling; the very purpose of P.D. No. 27 was therefore achieved; consequently, the subject land, having been acquired in a valid sale pursuant to P.D. No. 27, could no longer be bound by separate EPs in favor of other persons. (*Id*.)

Right of retention — Landowner, defined; under P.D. No. 27, the right of retention may only be claimed and exercised by the landowner identified to be such as of 21 October 1972, and/or any of his heirs who inherited such agricultural lands after the said date. (Digan *vs.* Malines, G.R. No. 183004, Dec. 6, 2017) p. 220

Transfer of ownership over tenanted rice and/or corn lands — P.D. No. 27 prohibited the transfer of rice and corn lands; the general rule is that any transfer of ownership over tenanted rice and/or corn lands after 21 October 1972 to persons other than the heirs of the landowner, via hereditary succession, is prohibited; however, when the conveyance was made in favor of the actual tenant-tiller thereon, such sale is valid. (Digan *vs.* Malines, G.R. No. 183004, Dec. 6, 2017) p. 220

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